

L/bh

ORIGINAL

Decision No. 93361 JUL 22 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CAUSE (Campaign Against Utility Service Exploitation),

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH COMPANY,

Defendant.

Case No. 10107
(Filed May 28, 1976)

LOUIS SAMUEL, Individually and in a representative capacity,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,

Defendant.

Case No. 10142
(Filed July 16, 1976)

CARY D. LOWE,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH COMPANY, INC., AND DOES I THROUGH X, Inclusive,

Defendants.

Case No. 10204
(Filed November 12, 1976)

Investigation on the Commission's own motion into the rules, practices, and procedures of all telephone corporations, as listed in Appendix A attached to the O.I.I., concerning disclosure of non-published telephone numbers, credit and other subscriber information.

Case No. 10206
(Filed November 16, 1976)

ORDER MODIFYING DECISION NO. 92860
AND DENYING REHEARING

A petition for rehearing of Decision No. (D.) 92860 has been filed by the United States Attorney for the Southern District of California. In addition, a petition for modification of D. 92860 has been filed by the Pacific Telephone and Telegraph Co. We believe that some of the points raised by the petitions have merit and accordingly we will modify D. 92860 in several particulars.

Pacific has pointed out that some of the language of D. 92860 is so broad as to require a judicial determination for any subpoena issued covering release of credit information and calling records. While the proceedings in D. 92860 were focused upon protecting the legitimate privacy interests of telephone subscribers who were the subject of law enforcement investigations, we agree that it is inappropriate to impose a judicial determination requirement on civil and administrative subpoenas. We note that under California law, it is the right to such a determination that is crucial in protecting the privacy interests of persons whose records are the subject of a civil subpoena. Southern Pacific Co. v. Superior Court (1940) 15 Cal.2d 206. Accordingly, we will modify D. 92860 to provide that in the absence of an actual judicial determination that a subpoena should issue, the subscriber must be notified of the subpoena and afforded an opportunity to seek a judicial determination (by a motion to quash or other appropriate motion) before the information can be released.

The U.S. Attorney has noted that our use of the term "felony" in the guidelines covering deferral of notification to the subscriber (Paragraph D(1) and (2) of Appendix B) could conceivably impede investigations of potentially serious crimes which under federal law are technically classified as misdemeanors. We agree and the modification incorporated into Paragraphs D(1) and (2) of Appendix B is designed to eliminate this problem.

Finally, it has come to our attention that Fire Departments were inadvertently omitted from the list of authorized

agencies entitled to receive nonpublished information. We have corrected this omission by adding Fire Departments and Fire Protection Agencies to the list of authorized agencies contained in Appendix A.

Until this matter becomes final by operation of law, we deem it appropriate to suspend the operation of the tariff rules governing Release of Credit Information and Calling Records (Appendix B) only insofar as they apply to subpoenas issued by an agency of the federal government without a judicial determination. This limited and partial stay should remain in effect until further order of this Commission.

With the exception of these matters, we do not believe that good cause for granting rehearing has been shown. Therefore,
IT IS HEREBY ORDERED that:

(1) Finding of Fact No. 34 in Decision No. 92860 is modified to read as follows:

"34. Because of the high degree of confidentiality accorded credit information and calling records, the right of investigative agencies to obtain them should first be determined by the courts and be evidenced by the issuance of a judicially authorized search warrant or subpoena."

(2) Finding of Fact No. 34a is added to Decision No. 92860 to read as follows:

"34a. In the case of civil and administrative subpoenas, the subscriber should be entitled to protect the confidentiality of his credit information and calling records by being afforded reasonable notice and an opportunity to quash the subpoena before the information is released."

(3) The tariff rules governing Nonpublished Service (attached hereto as Appendix A) and Release of Credit Information and Calling Records (attached hereto as Appendix B) shall be published in accordance with the ordering paragraphs of Decision No. 92860.

(4) The stay ordered by Decision No. 93212 is terminated, except that the operation of the tariff rules govern-

C. 10107, et al. L/bh

ing Release of Credit Information and Calling Records (Appendix B) shall remain suspended only insofar as they apply to federal subpoenas which have not in fact been authorized by a federal judge or magistrate. This partial stay shall remain in effect until further order of the Commission.

(5) Rehearing of Decision No. 92860 as modified herein is denied.

The effective date of this order is the date hereof.

Dated ~~_____~~ JUL 22 1981, at San Francisco, California.

John E. Gypsum
President
Michael D. Howell
Leonard W. Jensen
Walter Calver
Patricia C. Yew
Commissioners

Nonpublished Service

- A. Definition of nonpublished service: Upon a subscriber's request, subscriber name, address, and telephone number are not listed in any telephone directory, street address directory, or in the directory assistance records available to the general public. This information, as well as call-forwarding information from such unlisted telephone numbers, shall be released by telephone utilities in response to legal process or to certain authorized governmental agencies provided the requesting agency complies with the rules herein established for the release of nonpublished information.
- B. Agencies authorized to receive nonpublished information:
- (1) Any California public agency which employs persons who are peace officers pursuant to California Penal Code Section 830 and all subsections thereof.
 - (2) An agency of the federal government which is lawfully authorized to:
 - a. Conduct investigations or make arrests for violations of the criminal laws of the United States; or,
 - b. prosecute violations of the criminal laws of the United States; or,
 - c. enforce civil sanctions which are ancillary to criminal statutes; or,
 - d. conduct investigations into matters involving the national security of the United States; or,
 - e. protect federal or foreign officials; or,
 - f. protect public health and safety; or,
 - g. conduct emergency rescue operations.

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- (3) Any public health agency of the State of California or of a city, county, or other local government.
 - (4) County or city 911 projects.
 - (5) State Fire Marshall and Local Fire Departments or Fire Protection Agencies.
- C. Procedure for release of nonpublished information to authorized agencies.
- (1) A telephone utility shall only provide nonpublished information to persons within authorized agencies who are either (a) peace officers pursuant to California Penal Code Section 830 and all subsections thereof and who are lawfully engaged in a criminal investigation in their official capacity, or (b) health officers who are acting in their official capacity and are lawfully investigating a matter involving a serious communicable disease or life-threatening situation, or (c) employees of an authorized federal agency acting in an official capacity pursuant to a responsibility enumerated in B(2) above, or (d) employees of a county or city 911 project when acting in an official capacity, or (e) employees of an agency listed in B(5) above when engaged in an investigation involving arson or when engaged in firefighting duties in which there is immediate peril to life or property.
 - (2) Nonpublished information shall be released by a telephone utility to an authorized agency upon the agency's written request provided that the agency has previously furnished the utility with a statement, signed by the head of the agency, requesting that nonpublished information be provided to the agency upon its written request, and listing designated persons, by name, and title, who are authorized to request, in writing, nonpublished information. The written request for the nonpublished information must be signed by the head of the agency or by a previously designated person and the request must state that the nonpublished information is necessary for a lawful investigation being conducted by the agency pursuant to its responsibilities.

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- (3) Nonpublished information shall also be released by a telephone utility to an authorized agency upon the agency's telephonic request, provided the agency has previously furnished the utility with a statement. It must be signed by the head of the agency, requesting that nonpublished information be provided to the agency upon telephonic request and listing designated persons, by name, title, and telephone number, who are authorized to request, by telephone, nonpublished information. The telephonic request for nonpublished information must be made by the head of the agency or by one of the previously designated persons.

The nonpublished information requested by telephone shall be provided by the utility only on a call-back verification basis.

The requesting agency shall, within five working days after making the telephonic request, mail the utility a letter confirming the request.

D. Notification to Subscriber

- (1) The telephone utility shall not notify a subscriber regarding the release of subscriber's nonpublished information unless the subscriber contacts the utility and specifically requests to know whether his nonpublished information has been released.
- (2) When a subscriber inquires of the utility whether his nonpublished information has been released, the subscriber shall be informed that if information has been released he or she will be notified by mail about what information was released and which agency requested the information. If there was no release of nonpublished information, the subscriber will receive no communication from the utility.
- (3) If the requesting agency certifies that disclosure to a subscriber about the release of his or her nonpublished information to that agency could impede an ongoing criminal investigation, the telephone utility shall withhold notice to the subscriber for a period of one year from the date of release of the information to the agency.

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- (4) The one-year period of nondisclosure shall be extended for successive one-year periods upon new written certification by the agency in each instance.
- (5) If no request has been made for nondisclosure to the subscriber, the subscriber who inquires shall be notified in writing as to the identity of the agency which requested the nonpublished information and the information released.

If there has been a request for nondisclosure within 25 working days after the expiration of any outstanding certification for nondisclosure, or any renewal of such certification, a subscriber who has previously inquired, at any time during the period of nondisclosure, whether his or her nonpublished information was released, shall automatically be notified in writing by the utility that such information was released and which agency received this information.

E. Exception for Health Officers

No notification shall ever be made to a subscriber that nonpublished information was released to an authorized public health agency provided the chief health officer or designated health officer from the agency certifies that disclosure to the subscriber could violate a client's or contact's right of privacy and confidentiality.

F. Retention of Records

All written documents pertaining to nonpublished service shall be retained by telephone utilities for at least one year. When an agency requests that notice to the subscriber be withheld, the telephone utility shall retain the records involved for a period of not less than one year from the date on which the period of nondisclosure expires.

Release of Credit Information
and Calling Records

A. Definitions

(1) Credit Information

A subscriber's credit information is the information contained in the subscriber's utility account record, including but not limited to: account established date, "can-be-reached" number, name of employer, employer's address, subscriber's social security and/or driver's license number, billing name, location of previous service. Not included in subscriber credit information for purposes of these rules are: nonpublished subscriber information, or subscriber's name, address, and telephone number as listed in the telephone directory.

(2) Calling Records

Calling records are the records of calls made from a subscriber's telephone no matter how recorded and regardless of whether such information appears in the subscriber's monthly telephone service bill. Toll records and pen registers are examples of calling records.

B. Release of Subscriber credit Information
and Calling Records

A subscriber's credit information and/or calling records shall be released by a telephone utility only under the following circumstances:

- (1) Upon receipt of a search warrant obtained pursuant to California or federal law; or
- (2) Upon making return to a subpoena or subpoena duces tecum, when in fact authorized by a state or federal judge to divulge the information or records.
- (3) In the case of civil or administrative subpoenas, upon notifying the subscriber that a subpoena has issued and affording that subscriber at least ten days to move to quash the subpoena; or
- (4) Upon receiving permission of the subscriber to release the information.

C. Notification to the Subscriber

- (1) Except as provided below, the subscriber whose credit information or calling records are requested by judicial subpoena or search warrant shall be notified by the utility by telephone the same day that the subpoena or search warrant is received (only one attempt by telephone is necessary). Telephone notification, whether successful or not, shall be followed by written notification within twenty-four hours after the receipt of the subpoena or warrant.
- (2) Both oral and written notification shall state that a judicial subpoena or search warrant was received for credit information or calling records for the specified dates and telephone numbers, and provide the name of the agency making the request.

D. Deferral of Notification

- (1) Notification to the subscriber will be deferred, and no disclosure made for a period of 90 days if there is a certification for nondisclosure in the body of a subpoena or search warrant. The certification for nondisclosure must contain a statement that there is probable cause to believe notification to the subscriber would impede the investigation of an offense pursuant to which the subpoena or warrant was issued. Upon making return to the court to a subpoena, the telephone utility shall request instruction from the court whether it should notify the subscriber of its receipt of the subpoena before divulging the information or records requested.
- (2) The 90-day period can be extended for successive 90-day periods upon a new written certification in each instance that there is probable cause to believe notification to the subscriber would impede the investigation of an offense pursuant to which the subpoena or warrant was issued.

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- (3) Successive new written certifications shall be made by the individual who procured the issuance of the subpoena or warrant or, if that person is unavailable, by another member of the authorized agency who also certifies that he or she has been assigned to handle the matter for which the credit information or calling records has been obtained.
- (4) Within five working days of the expiration of any outstanding certification, or any renewal of such certification, the deferred notification shall be given in writing to the subscriber in accordance with (C) above.

E. Exception to Procedure for Release or Credit and Calling Records

- (1) The procedure set forth above does not apply where the requester is a collection agency working for the utility on the subscriber's account or is an independent telephone company or Bell Company.

F. Retention of Records

- (1) Records of requests for credit information and calling records, other than from a utility's employees, shall be retained for a period of at least one year from the date on which the subscriber is notified in writing of the request. A copy of the letter of notification which was sent to the subscriber shall also be retained for a like period of one year.