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Decision 95-07-030 July 19, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Raul Valderrama, doing business as
RC Refrigeration and RC Appliance,

Complainant,

v.

Pacific Bell and The Bureau of
Electronic and Appliance Repair,

Defendants.

ORIGINAL

Case 93-09-016
(Filed September 9, 1993)

Ronald S. Galasi, Attorney at Law, for
Raul Valderrama, complainant.
David Discher, Attorney at Law, for Pacific
Bell, and Carol S. Romeo, Deputy Attorney
General, for The Bureau of Electronic
and Appliance Repair, defendants.

ORDER OF DISMISSAL

Complainant, who runs an appliance repair business, filed this case on September 9, 1993, seeking an order that a large number of his business telephone numbers be reconnected. The numbers had been disconnected by defendant Pacific Bell (Pacific) pursuant to the procedure outlined in Decision 91188, which has been formalized in Pacific's Rule 31, entitled "Legal Requirements for Refusal or Discontinuance of Service." Under this procedure, Pacific must disconnect service upon receipt of a finding by a law enforcement agency, signed by a magistrate, that probable cause exists to believe that the telephone service for which disconnection is sought has been used to commit or facilitate illegal acts, and that injury to public health, welfare, or safety will result unless immediate action is taken. In this case, Pacific received the request from the Bureau of Electronic and

Appliance Repair of the State of California (Bureau), which presented Pacific with a Finding of Probable Cause signed by Judge Donna Little of the Municipal Court of the City and County of San Francisco.

Under Pacific's Rule 31, a party whose service is disconnected because of a magistrate's finding like that described above may file a complaint with the Commission seeking interim relief. Rule 31 also requires that a hearing be held within 20 calendar days after the complaint is filed. A hearing on the complaint here was held on September 22, 1993.

At the hearing, complainant and the Bureau (represented by the California Attorney General) presented a stipulation that they expected all parties to sign. Under the stipulation, 12 of complainant's numbers would remain disconnected, but 35 others would be reconnected, and all of this would be done without prejudice to a criminal proceeding pending against complainant in the City of Concord, or to license revocation proceedings pending against complainant before the Bureau. The stipulation also provided that upon reconnection of the 12 numbers, "Complainant...shall dismiss his Complaint filed before the Public Utilities Commission." The stipulation was signed by all of the parties on September 23 and 27, 1993, and by Judge Little on September 28, 1993.

Complainant apparently believed that the stipulation was sufficient in and of itself to effect dismissal of the instant case. While that is not true under Public Utilities Code § 308, the issue is moot, because as far as we know the stipulation was put into effect, and the complaint has not been pursued. Accordingly, we conclude that this complaint should be dismissed for lack of prosecution.

Findings of Fact

1. The complaint herein seeking reconnection of complainant's business telephone numbers was filed on September 9, 1993.
2. Pursuant to Pacific's Rule 31, a hearing on the complaint was held on September 22, 1993.
3. At the hearing, the parties presented a stipulation calling for the reconnection of 35 of complainant's business telephone numbers, such reconnection to be without prejudice to criminal and civil administrative proceedings then pending against complainant.
4. The stipulation was signed by all parties on September 23 and 27, 1993, and on September 28, 1993 by the Municipal Court judge who had signed the Finding of Probable Cause that originally triggered the disconnection of complainant's business telephone numbers.
5. Since September 28, 1993, no further action has been taken on the complaint.

Conclusion of Law

The complaint herein should be dismissed for lack of prosecution.

IT IS ORDERED that the complaint herein is dismissed.
This order is effective today.

Dated July 19, 1995, at San Francisco, California.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Wesley Franklin

Acting Executive Director

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners