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Decision 95-08-015 August 11, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Viktor Veytsman, complainant,

vs.

Pacific Bell, defendant.

Defendant:

ORIGINAL

Viktor Veytsman, complainant,
Nelsonya Causby, Attorney at Law, for
Pacific Bell, defendant.
Lynne Lampros Arthur, Attorney at Law, for
the San Jose Police Department, interested
party.

OPINION

1. Summary

Viktor Veytsman, owner and operator of exotic dancer services, seeks restoration of his business telephones following disconnection by Pacific Bell (Pacific) at the direction of the superior court for the County of Santa Clara. Because we find that probable cause has been established to support the termination of the telephone service in question, and because we find no basis upon which to provide interim relief, we deny the request for restoration of service.

2. Background

This complaint was filed on April 25, 1995, by Veytsman, who operates a business offering massage, nude modeling and escort services in Santa Clara County. Among the names of Veytsman's services are "Natasha's Classy Ladies," "Natasha's Classy Girls," "Party Girls," "Garden of Eden Entertainment" and "San Jose Private Adult Entertainment."

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Decision 95-08-012 JANUARY 11 2001

On April 7, 1995, Pacific disconnected six telephone numbers used by Veytsman pursuant to order of Santa Clara Superior Court Judge Paul R. Teilh. The court, acting upon an affidavit prepared by the San Jose Police Department, found probable cause to believe that Veytsman's telephone numbers were being used as an instrumentality to violate California criminal laws. In this complaint, Veytsman seeks reconnection of the telephone numbers pursuant to Rule 31 in Pacific's tariffs.

Rule 31, entitled "Legal Requirements for Refusal or Discontinuance of Service," governs this case. The rule requires a telephone company to disconnect service to a customer upon written demand of a law enforcement agency signed by a magistrate, asserting that there is probable cause to believe that the telephone facilities "have been or are to be used in the commission or facilitation of illegal acts." The character of such acts must pose significant danger to public health, safety, or welfare.

Under Rule 31, a disconnected subscriber may file a complaint with the Commission seeking restoration of service. The Commission is required to schedule a hearing on the complaint within 20 days of filing, and to serve notice on the concerned law enforcement agency. At hearing, the law enforcement agency has the burden of proving that the disconnection of service was based on probable cause, and that service should not be restored.

Rule 31, as amended, was promulgated by this Commission in Decision (D.) 91188, dated January 8, 1980. The California Supreme Court dismissed constitutional objections to the rule and upheld its validity in Goldin v. Public Utilities Commission, (1979) 23 Cal.3d 638.

A hearing in this case was held on May 15, 1995, within 20 days of the filing of the complaint. Notice of the hearing was posted in the Daily Calendar on May 1, 1995. The parties were notified of the hearing date by telephone. Through inadvertence, written individual notice was not provided 10 days prior to hearing.

(Rule 52, Rules of Practice and Procedure) but the parties waived objections based on this notice requirement. Following the hearing, the parties elected closing argument in lieu of briefs, and the case was deemed submitted for Commission consideration upon receipt of transcript, which occurred on June 12, 1995.

3. Evidence at Hearing

At hearing, the San José Police Department presented its evidence through the testimony of three police officers, all assigned to the department's vice unit. Pacific offered the testimony of one witness. Veytsman testified on his own behalf and presented the testimony of one additional witness. The Commission received nine exhibits into evidence.

4. Police Testimony

Police Officer Pete Scanlon testified that in June 1994 he and other vice unit officers conducted a "hotel date" operation in which they called local escort services to arrange visits by women in order to test whether the services were fronts for prostitution. He stated that he called a service called "Garden of Eden" and was quoted a price of \$250 for the services of a female model for one hour. A woman showed up at his room thereafter, accompanied by a man who identified himself as her driver. The driver collected the \$250 and said that he would return in an hour to pick up the woman. Scanlon stated that during the course of the next hour, the woman agreed to an act of prostitution. (Penal Code § 647.) Scanlon alerted officers waiting in an adjoining room, and they placed the woman under arrest. The driver was detained when he returned. Scanlon said that the woman and the driver identified their employers as Viktor Veytsman and Alex Iosilevsky. Scanlon testified that the woman admitted prior acts of prostitution while employed by Veytsman and Iosilevsky.

Scanlon also testified that he spoke to Veytsman by telephone 10 days later when Veytsman called the police station to ask whether his business was under investigation. Scanlon

testified that Veytsman said that his policy was to dismiss any woman who agreed to have sex with a client. Scanlon said that Veytsman admitted that his employees occasionally would perform masturbation on clients. Veytsman denied that she had made such a statement to Scanlon. On cross-examination, Veytsman elicited from Scanlon an acknowledgement that Scanlon had not recorded the telephone conversation and that he could not recall whether another officer had been on the line with him.

Officer Gordon Bowen testified that as part of another vice investigation, he observed a "phone spot," which he described as a bank of telephones, in a small suite in a business complex in San Carlos. Through city records, he said that it was learned that the suite was leased by Iosilevsky and another individual. Through Pacific records, he said that it was learned that the phone spot received calls for enterprises called "Eden Entertainment" and "Garden of Eden" and forwarded those calls to Veytsman's residence on Calvelli Court in San Jose. Bowen testified that Pacific records show that the two telephone numbers (800-306-3336 and 408-559-6976) were listed in Veytsman's name.

Officer Jan Males, who prepared the affidavit acted upon by the Superior Court, testified that, in her experience, an owner of an escort service may advertise in the Pacific Yellow Pages and in sex-oriented publications using several different names and telephone numbers. Through phone spots, however, calls are forwarded to a single main answering service that may be located in a residence. She said that one purpose of such a telephone network is to avoid detection by law enforcement agencies who may not know that a telephone number is being forwarded to another city or county.

Males testified as to the contents of her affidavit, which was received into evidence without objection. (Exhibit 4.) According to the affidavit and to the Males testimony, other officers interviewed two individuals who stated that they were sex

customers of an escort service run by Veytsman and that they had obtained illicit sexual services from some of the women sent to or them by the service, although other women from the same service refused their advances. Males testified that the investigation of Veytsman was suspended briefly in 1994 but was resumed in September 1994 when police found advertisements for a service called "Natasha's Escorts" with photographs of two women previously affiliated with the "Garden of Love/Garden of Eden" services. (Exhibit 6.)

Males introduced Pacific customer records obtained during the investigation that she said identified 12 different telephone numbers traceable to Veytsman that were used in the operation of escort services operating under 13 different names. (Exhibits 7 and 8.) Also admitted into evidence was a selection of newspaper advertisements bearing Pacific telephone numbers at issue here. Some of these advertisements display pictures of semi-nude women and contain language which, while not repeated here, suggested that sensual pleasures more intimate than visual stimulation were available. (Exhibits 6 and 9.)

On cross-examination, Males acknowledged that she was not present at the interviews of the two customers, that only one of the customers had identified Veytsman, and that Males did not know whether that customer said that Veytsman had "sent him a girl to have sex with him." (Transcript p. 64.) She also acknowledged that Veytsman and Iosoleyski had at some point dissolved their partnership, and she was not certain which of the two was operating "Garden of Love/Garden of Eden" at the time of the customer interviews.

5. Pacific Testimony

At Pacific's request, Veytsman stipulated that the Superior Court order received by Pacific appeared valid on its face, that Pacific acted pursuant to Rule 31 in disconnecting service as required by the court order and in sending notice to

Veytsman; that Pacific received a request from Veytsman to reconnect the telephone lines, and that the San Jose Police Department had objected to reconnection of service. Pacific's witness, Nancy Hensley, case manager in the company's legal department, testified that Pacific had received the order to disconnect service on April 7, 1995, and that it had disconnected six of the 12 numbers identified. She testified that three numbers had been disconnected previously, that two other numbers are no longer listed to Veytsman, and that one number was a Pacific voice mail number used widely by the public. As required by the court order, one number listed to Veytsman was left in place as a single line telephone intended for residential customer use only.

6. Subscriber's Testimony

Since he was not represented by counsel, Veytsman was advised by the administrative law judge that he could make an unsworn statement responding to the evidence presented, or he could testify under oath in which case he would be subject to cross examination. Veytsman elected to testify. Veytsman testified that he had come to this country about a year ago from Russia and formed an adult entertainment business with another Russian immigrant, Iosilevsky. In June 1994, the two agreed to operate independently, and Veytsman obtained another license for adult entertainment under the name "Natasha's." Veytsman testified that he operated a legitimate business, hiring women as independent contractors to perform exotic dancing, massage and striptease for clients. He said that many of his clients are photographers, who used his service to obtain models. He said that he required the women he retained to sign a contract agreeing that they would perform illegal sex acts, and he said that he often

Superior Court order received by Pacific appeared valid on its face, that Pacific acted pursuant to Rule 31 in disconnecting service as required by the court order and in sending notice to

questioned women after their appointments and terminated the contracts of those who had performed illegal sex acts. He testified that in February 1995 Iosilevsky decided to quit the adult entertainment business to begin a computer service. Veytsman agreed to take over his former partner's contracts for advertising in the Pacific Yellow Pages and in various sex-oriented publications. On cross-examination, Veytsman acknowledged that he had operated his escort services under several names and had begun taking calls from Iosilevsky's services, which also operated under various names.

Veytsman stated that the market price for the service he provided was \$160 to \$200 per hour. The women he retained received \$100 on credit card calls, plus tips. Veytsman paid the drivers. On cash calls, Veytsman and the women he retained divided the payments evenly.

Veytsman stated that he provided two basic types of shows, the bachelor party show and the private show, and he provided each of his entertainers with a driver. If an assignment called for a bachelor party, Veytsman stated that the driver stayed inside with the woman entertainer to provide security. If the assignment was a private show, the driver left and returned in an hour to pick up the entertainer. Veytsman testified that he coined the term "fantasy show" to describe his service, but that essentially the show involved a striptease in which the entertainer disrobed and danced nude for the client.

1 Veytsman testified that he had another method of determining whether women he retains have refrained from illegal sex acts. He testified: "I have one gentleman who calls me all the time, and he wants sex only. So every time he calls, if I have hired somebody new, I have the person call the gentleman. And if she goes and does the service, I terminate her contract. That's the way I control the business." (Transcript, p. 83-41)

Veytsman stated that prior to entering the adult entertainment business, he had been a computer programmer for 14 years. He stated that he had been put out of business when his telephone service was disconnected. He said that when police searched his premises on April 7, 1995, in connection with the disconnect order, they seized all of his records, including the telephone numbers of his models, and therefore he was unable to contact the models to appear and to testify in his behalf. Veytsman presented a witness, Jacob Gralnik, who testified that he had been a driver for the "Natasha" service in the fall of 1994. Gralnik testified that he received \$20 for driving a female entertainer to and from an assignment. His testimony may be summarized in the following exchange during cross-examination:

"Q. Did you ever ask any of the girls that you drove whether they had performed any sex acts or any sex for the customers?"

"A. Yes. I always asked that, to all, from all of them. I always told them it's illegal to have sex. Whatever happens, if a customer requests something like that, you have to run away, right away. And after that I was always watching them, how they act after the performance. I was always asking them, what did they do? I wanted to just make sure there is nothing illegal involved in that."

"Q. Did any of them ever admit that they had performed some sex acts?"

"A. No, never."

"Q. None of them?"

Veytsman testified that he had another method of determining whether women performed sex acts. He testified: "I have one gentleman who calls me all the time, and he wants to know if I have the person call the gentleman. And if she does, I want to know if she does it. He argued that his exotic dancer company is a legal business, and that his responsibility is to make sure there is nothing illegal involved in that."

to direct his performers not to engage in illegal sex acts and to terminate their contracts if they do engage in such conduct. He argued that he had carried out his responsibility.

7. Discussion

For a business relying on telephones, uninterrupted telephone service is an interest in "property" constitutionally entitled to protection against "taking" without due process of law. (Goldin, *supra* at 662; see also *Board of Regents v. Roth* (1972) 408 U.S. 564.) Before such a taking can occur in the context of the case now before us, there must be probable cause to believe that the telephone facilities are being or are to be used to commit illegal acts, and it must be shown that the character of the acts is such that, absent summary action, significant dangers to public health, safety, and welfare will result. (Goldin, *supra* at 663-64.)

Such a showing of probable cause must be made before a magistrate in this case, the Superior Court for the County of Santa Clara, and is reasonably comparable to the showing that must be made in order to obtain a search warrant. (Sokolov v. Pub. Util. Comm. (1966) 65 Cal.2d 247, 256.) Based on the affidavit that has been entered into evidence here (Exhibit 4), Superior Court Judge Teih concluded that there was probable cause to believe that Veytsman's business telephones were being used to violate or assist in violating criminal laws dealing with prostitution, pimping and pandering, and that, absent summary action, such violation could cause significant danger to public health, safety and welfare, specifically through the spread of sexually transmitted diseases.

The Commission is empowered to rule on the adequacy of the showing of probable cause, and to determine whether interim relief is warranted pending the resolution of any criminal charges.

brought against the subscriber. As the California Supreme Court has stated:

"In a civil administrative proceeding of this nature, where the liberty of the subscriber is not at stake, it is sufficient for purposes of the interim protection involved that the Commission limit itself to the face of the affidavits and an assessment of their adequacy to support the magistrate's finding. Even in cases when it appears to the Commission that the finding is adequately supported by the affidavits presented to the magistrate, it may wish to consider the strength and character of the showing made as a factor to be weighed, along with pressing need or imminent economic damage, in its determination whether or not interim relief should be afforded to the subscriber." (Goldin, supra at 668, footnotes omitted.)

The affidavit presented in evidence here (Exhibit 4) recounts the results of a police investigation extending over a period of 10 months. The affidavit alleges that Veytsman, through sophisticated telephone apparatus, including call forwarding, conducted an escort/exotic dancer service that was, in fact, a front for prostitution. The affidavit alleges that one woman affiliated with the service admitted performing acts of prostitution, and it alleges that two customers stated that they used the service on a number of occasions to obtain illicit sex. The affidavit alleges that Veytsman admitted that women retained by him occasionally performed acts of prostitution.

While the affidavit was admitted into evidence without objection, much of it (including the alleged statements of two

The Commission is empowered to rule on the adequacy of the showing of probable cause, and to determine whether interim

2. The San Jose City Attorney represented on information and belief that the Santa Clara District Attorney will be filing criminal charges against Veytsman, alleging violation of Penal Code § 266h (pimping) and § 266i (pandering).

customers) is hearsay.³ In proceedings before the Commission, hearsay is admissible, so long as the substantial rights of the parties are preserved. (Rule 64.) If evidence is objectionable on grounds of hearsay, it will be weighed accordingly when all of the evidence in the case is reviewed. This is consistent with the Goldin court's view. (The Commission) should admit the subject evidence, if it determines, disregarding those aspects of the affidavits which clearly fail to withstand constitutional scrutiny, that a sufficient basis for admission exists." (23 Cal.3d at 669.)

Three San Jose police officers assigned to this investigation testified at hearing supporting much of the evidence presented through the affidavit, and they were available for cross-examination. Based on this testimony, the affidavit and the corroborating documentary evidence, we find that the totality of the evidence would lead a reasonably prudent person to believe that violations of California's penal code related to prostitution have been shown, and that such violations posed a significant danger to public health, safety, or welfare. We find that these violations were made possible in large part by the use of the disconnected telephone numbers, since prospective customers used those numbers, advertised in the Yellow Pages and in various sex-oriented publications, to solicit the illegal services alleged.

Corroborating evidence through affidavits and three investigating officers showing that the six telephone numbers to

3 The San Jose City Attorney asks that we take official notice that Proposition 115 in 1990 added constitutional and statutory language declaring that hearsay evidence is admissible at preliminary hearings in criminal cases, and that a magistrate at a preliminary hearing may base a finding of probable cause in criminal cases on hearsay statements related by a police officer with certain qualifications and experience. Since Proposition 115 applies to criminal cases, its applicability in these administrative proceedings is questionable. (See Whitman v. Superior Court (1991) 54 Cal.3d 1063.) In any event, because we find that evidence presented here is sufficient to support a finding of probable cause, we need not and do not address the applicability of Proposition 115.

Veytsman seeks no interim relief, other than full restoration of all of the disconnected telephone numbers. As noted, one residential number has been left in place at Veytsman's home. There is no evidence to support a finding that further interim relief is warranted.

Accordingly, the request for reinstatement of the disconnected telephone service is denied, and this complaint is dismissed.

Findings of Fact:

1. Veytsman has been engaged in providing outcall services in the areas of escorts, exotic dancing, nude entertainment and massage.

2. Veytsman's business operated by the use of six telephone numbers until April 7, 1995, when these numbers (408-559-1568, 408-559-8866, 408-559-4684, 408-559-8818, 408-559-0313, and 800-306-3336) were disconnected by Pacific.

3. Pursuant to Rule 31, Veytsman on April 15, 1995, filed a complaint seeking restoration of the six telephone numbers disconnected by Pacific.

4. A hearing on the Veytsman complaint was conducted on May 15, 1995.

5. At hearing, the San José Police Department presented evidence through affidavit, three investigating officers, and corroborating exhibits showing that the six telephone numbers to which Veytsman subscribed were being used to assist in the violation of the laws of California against prostitution.

6. Acts of prostitution are such as to pose a significant danger to the public health, welfare, and safety.

The parties stipulated that Pacific has complied with the requirements of Rule 31.

Conclusions of Law:

1. In a hearing for interim relief, Goldin and Rule 31 require the Commission to examine the face of the affidavit

supporting the finding of probable cause on which the termination of service is based in order to determine the adequacy of the affidavit and weigh any request for interim relief.

Rule 31 gives the law enforcement agency responsible for a disconnection the burden of (1) showing that the use of the service is unlawful, or is used directly or indirectly to violate or assist in the violation of the law; (2) showing that the character of the violations is such that significant dangers to public health, safety, or welfare would result if immediate and summary action were not taken; and (3) persuading the Commission that the service should not be restored.

3. Pacific executed the disconnection of April 7, 1995, in compliance with Rule 31.

4. Acts of prostitution are such as to pose a significant danger to the public health, welfare, and safety, and where it is discovered that telephone lines are being used to assist in their commission, immediate and summary action in the premises is required to prevent further such danger to the public.

5. The affidavit set forth in Exhibit 4 supporting the Superior Court's finding of probable cause is adequate to support the disconnection of April 7, 1995.

6. The request for immediate restoration of the six telephone lines disconnected on April 7, 1995, should be denied, and the complaint should be dismissed.

Because the complaint seeks immediate action by the Commission, this order should be made effective immediately.

Administrative Law Judge

supporting the finding of **Q R I D E R** on which the termination of service is based in order to determine the adequacy of the evidence. **IT IS ORDERED** that the request of complainant **Viktor Veytaman** for restoration of six telephone lines (408-559-1568, 408-559-8865, 408-559-4684, 408-559-8818, 408-559-0313 and 800-306-3336) disconnected pursuant to Pacific Tariff Rule N6Y131 on April 7, 1995 is denied in the violation of the law, and the character of the violation of the law is such as to pose a significant danger to the health, safety, and welfare of the public. This order is effective today. Dated August 11, 1995, at San Francisco, California. The Commission's primary action were not taken; and (3) regarding the Commission's primary action should not be restored.

DANIEL W. PESSLER, President
P. GREGORY CONLON, Commissioner
JESSIE J. KNIGHT, JR., Commissioner
HENRY M. DUQUE, Commissioner

the disconnection of April 7, 1995, in the violation of the law, and the character of the violation of the law is such as to pose a significant danger to the health, safety, and welfare of the public. The Commission's primary action were not taken; and (3) regarding the Commission's primary action should not be restored. The request for immediate restoration of the six telephone lines disconnected on April 7, 1995, should be denied. **CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.**

Wealey Franklin
 Acting Executive Director