

SEP 8 1995

Decision 95-09-028, September 7, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Drake D. Hanson, Complainant,

vs. GTE California, Inc., and Pacific Bell, Defendant.

ORIGINAL

Drake Hanson, for himself, complainant; Nelsonya Causby, Attorney at Law for Pacific Bell and Sandra Newmark, for GTE California, Inc., defendants; David J. Florez, for Riverside County Sheriff's Department, interested party.

OPINION

Background

This complaint was filed by Drake D. Hanson on November 21, 1994, seeking immediate restoration of business telephone service to the following telephone numbers:

- (619) 323-3103, (619) 773-2219, (619) 773-2267, (909) 927-1088, (909) 275-0770, and (909) 652-6620.

On November 14, 1994, the Honorable B. J. Bjork, Judge of the Municipal Court of Riverside County, Desert Branch issued a magistrate's finding that there was probable cause to conclude that the telephone service provided to complainant at the following

telephone numbers were being used by Hanson as instruments to violate or assist in the violation of the penal laws of the State

- of California: (619) 323-3103, (619) 773-2219, (619) 773-2267, (909) 927-1088, (909) 275-0770 and (909) 652-6620.

GTE California (GTEC) was ordered to disconnect the existing service to those

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numbers for one year ending November 1995 further ordering any numbers associated with those numbers, as in call forwarding, to be disconnected, and ordering GTEC to refuse service for the same period of time to any home or business associated with such numbers.

GTEC disconnected (619) 323-3103, (909) 927-1088, and (909) 652-6620. GTEC could not disconnect the numbers (619) 773-2219 and (619) 773-2267 because they were not subscribed and registered at GTEC by Hanson. Those two numbers are subscribed by a business called Perfect Answer Service, which subscribes to a block of numbers that it rents to others for answering service, phone message service or similar uses.

Pacific Bell (Pacific) was not mentioned in the magistrate's finding, although Pacific's telephone number (909) 275-0770 was ordered disconnected. Apparently the Riverside County Sheriff's Department and Municipal Court did not realize that this number was a Pacific number. However, Pacific later disconnected service to that number, a call forwarding number, on November 23, 1994, after complainant informed Pacific that the GTEC number used to forward the calls to this number had been disconnected. Because of this, Pacific was no longer able to forward calls, which is a tariff requirement for call forwarding service.

Under Rule 31 of GTEC, a complainant is entitled to a hearing within 20 calendar days in a court-ordered disconnect case. An evidentiary hearing was held before an administrative law judge on December 13, 1994, to determine whether complainant should have the GTEC telephone services restored. The hearing was held 21 days dating from the filing of the complaint. Complainant waived the time requirement for one day to accommodate that hearing date.

At the hearing, the following persons appeared: complainant Hanson representing himself. (909) 927-1088, (909) 652-6620 and (909) 652-6620. GTEC California (GTEC) was ordered to disconnect the existing service to those

- David J. Florez, (detective for the Riverside County Sheriff's Department vice squad.)
- Nelsonya Causby, (attorney at law) and Nancy Hensley, of Pacific's legal regulatory department.

- Sandra Newmark, (regulatory administrator for GTEC)

The case was submitted for decision on January 6, 1995, following receipt of the late-filed answer to the complaint from Pacific and the hearing transcript.

Decision (D.) 91188, dated January 8, 1995, sets out the procedure whereby telephone service provided by a telephone utility is to be disconnected where the service is being used for illegal purposes. That decision requires GTEC to disconnect existing service upon receipt from any authorized official of a law enforcement agency of a document signed by a magistrate finding that probable cause exists to believe that the service is or will be used to violate or assist in the violation of the law. Included in the magistrate's writing must be a finding that there is probable cause to believe not only that the subject telephone facilities have been or are to be used in the commission or facilitation of illegal acts, but that the character of such acts is such that, absent immediate and summary action, significant dangers to the public health, safety, or welfare will result. (Id., pp. 98-99)

The Riverside County Sheriff's Department was the concerned law enforcement agency under Schedule CALS P.U.C. No. D&R 3rd Rev. Sheet 61 has been amended.

4. (1) the burden of proving that the use made or to be made of the service is prohibited by law, or that the service is being or is to be used as an instrumentality, directly or indirectly, to violate or to assist in the violation of the law and that the character of such acts is such that, absent immediate and summary action in the premises, significant

dangers to the public health, safety, or welfare will result, and

"(2) the burden of persuading the Commission that the service should be refused or not be restored."

Testimony of Riverside County Sheriff's Department

Detective Florez, testifying on behalf of the Riverside County Sheriff's Department, explained the circumstances leading up to the request for a court order to disconnect Hanson's services. In his duties as a vice detective, he investigates prostitution, pimping, and pandering. In early November, he had noticed advertisements in the massage and entertainment section of the classified advertisements of the local newspapers, Desert Sun and Press Enterprise. Florez routinely contacts advertisers that are shown as not licensed, to inform them of the requirements to be licensed by the proper local jurisdiction, and to inform them that the Sheriff's Department is aware that many of these advertisers are fronts for prostitution.

One such contact was to an advertisement called Cindy and Jade, in the massage section of the Desert Sun, which was answered by a female named Cynthia Thayer-Smith who identified herself as working for Hanson. Florez told her to pass the word on to Hanson about the licensing requirements, and the need to not be involved in prostitution. Hanson subsequently assured Florez that he was operating only a strip tease operation, did not employ people who prostituted, and wanted to stay legal.

Florez called another advertisement of Hanson and talked to Jill Lantrey. Lantrey was later arrested for prostitution after solicitation of a sex act. She was arrested a second time for agreeing to perform a full body massage, which in Florez's experience implies masturbation of the customer.

The Riverside County Sheriff's Department is aware of the fact that the experience of the law and the character of such acts as such that, absent immediate and significant

Hanson called Florez about the arrests and told him that Lantrey was still in his employ but she had promised to quit performing illegal acts. Once the GTEC telephone number was obtained...

Approximately two weeks later, in the City of Moreno Valley, a Sheriff's Department reserve deputy called a service of Hanson that was advertised in the Desert Enterprise of Lantrey and Thayer-Smith responded to the motel room and agreed to performing a sex act for money, and were arrested for solicitation of prostitution. Thayer-Smith stated that she worked for Hanson and Lantrey stated that five to 10 girls worked for Hanson. Lantrey continued in Hanson's employ even after three arrests, and the advertisements of Cindy and Jade and Intensity continued; therefore, Florez decided to obtain a court order to disconnect the telephones. The letter was returned.

Testimony of Complainant

Hanson questioned the immediate danger to public health, safety or welfare requiring the need to disconnect the telephone services. In his mind, if such concerns existed, why did it take at least a month to take action?

Hanson also stressed the fact that despite the arrests there have been no convictions, trials, or even court dates resulting from the arrests of his employees. He stated that he had difficulty obtaining information about the arrests and significant

Testimony of Pacific

Nancy Hensley explained the Remote Call Forwarding telephone service at (909) 275-0770 that Hanson had subscribed to. This Pacific service in the Riverside area transfers calls to his telephone service in the GTEC service area at (909) 652-6620.

The two basic reasons for call forwarding service are to allow incoming calls without the calling party paying toll charges, and to maintain a presence in one community while living in another community. In a civil administration for summary termination exists. preceding of this nature, where the liberty of the subscriber is

Under Pacific Tariff Calls P.U.O.R. 5.4V4, the Remote Call Forwarding service must terminate on either a 7- or 10-digit telephone number. Once the GTEC telephone number (909) (652-6620) was disconnected, the Pacific telephone number had no termination telephone number, and was disconnected by Pacific after it was notified of the disconnection of the GTEC telephone number.

Testimony of GTE

Newmark explained the sequence of events in receiving the request for disconnection of the three GTEC telephone services and notifying Hanson of the fact that the order for disconnection was received on November 14, 1994, and the security department of GTEC initiated the disconnection of the three numbers indicated above. They provided a letter to Hanson on November 15 explaining the disconnection. The letter was returned, but the security department contacted Hanson by telephone and faxed a copy of GTEC Rule 31 to him.

Discussion

It has been determined that telephone service is an interest in property entitled to protection against taking without due process. There must be probable cause to believe that facilities are being or are to be used to commit illegal acts, and that the character of the acts is such that, absent summary action, significant dangers to public health, safety, and welfare will result. (Goldin v. Pub. Util. Comm., 23 C.3d 638, 663, (1979).)

Prior to termination of service, the law enforcement agency must show an impartial tribunal that there is probable cause to act in a manner reasonably comparable to a proceeding before a magistrate to obtain a search warrant. (Sokol v. Pub. Util. Comm., 53 Cal. Rptr. 673, 679 (1966), 65 C.2d 247, 256 (1966).)

The Commission's obligation is to review the showing made before the magistrate in order to determine whether probable cause for summary termination exists. "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 and 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." (Goldin v. Pub. Util. Comm. at 668.)

As we mentioned previously, this proceeding is an administrative proceeding concerning telephone service and is not a quasi-criminal matter. There is no requirement of proof beyond a reasonable doubt that the subscriber of the telephone service committed a violation of any law. For discontinuance of service, Tariff Rule 31 requires a showing by the law enforcement agency that the telephone service in question was used directly or indirectly to assist in the violation of the law. As Tariff Rule 31 requires, the Riverside County Sheriff's Department has the burden of proving its case.

Florez testified as to his observations and actions and was available for complainant's cross-examination. Florez also testified about a reserve deputy who called an advertised service of Hanson, which resulted in an arrest of two of Hanson's employees. Hanson did not terminate Lantrey even after her third arrest for prostitution or soliciting prostitution, only doing so after his telephone services were disconnected. Thayer-Smith also remained in Hanson's employ after her arrest for prostitution. Florez warned Hanson of the eventuality of disconnection if the problems continued. Hanson apparently did not heed the warnings.

Under Section 647 of the California Penal Code, it is a misdemeanor to engage in disorderly conduct. Disorderly conduct includes solicitation or agreement to engage in any act of prostitution. Florez has adequately demonstrated that these telephone services were used for soliciting of illegal acts of prostitution, with three arrests of Lantrey and one of Thayer-Smith resulting from such acts. Although two of Hanson's numbers, (619) 632-3310 and (909) 652-6620, are listed in the yellow pages as Hanson's since

Construction, they are also used in violation of the law, either by also being listed for Cindy and Jade, or in the case of the latter number, for call forwarding from the Pacific number.

We find that the totality of the allegations lead a reasonably prudent person to believe that Hanson's employees engaged in soliciting prostitution. We find that trials and convictions are not required to demonstrate that illegal acts were solicited or performed.

With regard to the issue of whether significant danger to public health, safety and welfare was demonstrated, Florez noted the AIDS threat from prostitutes and stated that an important reason for arresting, prosecuting and obtaining a conviction is that the person is then tested for the HIV virus. We believe that the AIDS threat demonstrates that significant danger is associated with the activities of Hanson's employees.

Florez explained under cross-examination by Hanson that the month delay in obtaining the court order after the third arrest was simply due to staffing constraints. At that time, he was the only person assigned to the vice unit and had many other duties, considering that Riverside County is one of the country's largest counties.

We find that Florez established probable cause to believe that termination without notice was directly necessary to prevent continued use of telephone facilities for soliciting illegal acts. Prompt and immediate action without prior notice was required; otherwise the complainant might have used the notice period to arrange for substitute telephone service or otherwise preserve the usefulness of its telephone numbers.

Therefore, the complainant's request for immediate reinstatement of telephone service to (619) 323-3103, (909) 927-1088, and (909) 652-6620 is denied. Telephone service to (619) 773-2219 and (619) 773-2267 could not be disconnected by GTEC since the services were not subscribed to by Hanson.

service to (909) 275-0770 was disconnected by Pacific due to tariff requirements for call forwarding, that service may be reinstated under Pacific's rules.

Findings of Fact

1. Complainant does business as Cindy and Jade, Intensity, and Hanson Construction, advertising in local newspapers in the entertainment and massage sections.

2. The GTEC business numbers for both Hanson Construction and Cindy and Jade is (619) 323-3103; for Intensity is (909) 927-1088. The business number for Hanson Construction (909) 652-6620 is used for call forwarding from Pacific number (909) 275-0770.

3. The testimony of Flores establishes probable cause to believe that the basic exchange access lines known as telephone numbers (619) 323-3103, (909) 927-1088, and (909) 652-6620 are being used or are to be used as an instrumentality for the violation of Section 647 of the California Penal Code.

4. The nature of the violations of Penal Code section 647 (soliciting) are such that absent summary termination of telephone service to (619) 323-3103, (909) 927-1088, and (909) 652-6620, significant danger to the public health, safety and welfare will result.

5. The Riverside County Sheriff's Department has sustained its burden of proving that telephone numbers (619) 323-3103, (909) 927-1088, and (909) 652-6620 are being used as instrumentals to violate or assist in the violation of the law, and that the character of those acts is such that if telephone service were not discontinued, significant dangers to public health, safety and welfare will result.

Conclusion of Law

Rule No. 31 of GTEC's tariffs requires that telephone service to (619) 323-3103, (909) 927-1088, and (909) 652-6620 shall be discontinued and that any numbers associated with those numbers be disconnected, and that any home or business associated with

[Handwritten signatures and stamps, including "COMMISSIONER'S OFFICE" and "APPROVED BY THE ABOVE"]

those numbers be refused service until November 1, 1995, as ordered by the Municipal Court of the Desert Branch of Riverside County or until further order of this Commission.

IT IS ORDERED that: The requests of complainant Drake Hanson, doing business as (Cynthia and Jade) Intensity, and Hanson Construction Company for interim relief (and) reconnection of the disconnected numbers (619) 323-3103, (909) 227-0188, and (909) 695-6620 in Case 94-11-035 is denied. Numbers (619) 773-2219 and (619) 773-2267 have not been disconnected and number (909) 275-0770 was disconnected for reasons other than for violating the law.

2. This proceeding is closed. This order is effective today. Dated September 7, 1995, at Los Angeles, California. The nature of the violation of section 647 of the Public Health, Safety and Welfare Code is such that if telephone service were not discontinued, significant dangers to public health, safety and welfare will result.

DANIEL Wm. FESSLER, President
GREGORY CONLON, Secretary
JESSIE J. KNIGHT, JR., Commissioner
HENRY M. DUQUE, Commissioner

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

Wesley Franklin, Acting Executive Director

NETWORK AND EXCHANGE SERVICES
A5. EXCHANGE SERVICES

5.4 PREMIUM EXCHANGE SERVICES (Cont'd)

5.4.3 CUSTOM CALLING SERVICES

A. DESCRIPTION

Custom Calling Service is an optional service arrangement of central office services furnished to individual line business and residence customers. It is available within the exchange area of all exchanges served by a central office where facilities and operating conditions permit.

B. DESCRIPTION OF FEATURES

1. Call Forwarding Features

- a. Call Forwarding (USOC: ESM) permits the customer to automatically forward (transfer) all incoming calls to another telephone number, and to restore it to normal operation at their discretion.
- b. Busy Call Forwarding (USOC: EVB) permits the forwarding of incoming calls when the customer's line is busy. The forwarded number is fixed by the customer service order. Calls may be forwarded outside the customer's local central office (C.O.).
- c. Delayed Call Forwarding (USOC: EVD) permits the forwarding of incoming calls when the customer's line remains unanswered after customer-designated number of rings. The number of rings and the forwarded number are fixed by the customer service order. Calls may be forwarded outside the customer's local central office (C.O.).
- d. Busy Call Forwarding-Extended (USOC: EVC) forwards calls to a number outside the customer's local C.O.
- e. Busy and Delayed Call Forwarding (USOC: EVE) combines the features described in b. and c. above. If Busy and Delayed Call Forwarding appear on the same line, the fixed number must be the same.
- f. Select Call Forwarding (USOC: CSF) permits the customer to automatically forward (transfer) calls from up to ten customer preselected numbers to another telephone number and to restore it to normal operation at their discretion. Select Call Forwarding can be used in conjunction with Call Forwarding.
- g. Remote Access to Call Forwarding (USOC: RAF) allows the customer to activate and deactivate their Call Forwarding feature and to change their forwarded to number from a location other than where their service is located. (N)
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(N)

Continued