

Page 20

L/nas

MAIL DATE  
4/14/97

**ORIGINAL**

Decision 97-04-050      April 9, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
 own motion into the operations, )  
 practices, and conduct of )  
 Communication TeleSystems )  
 International and Edward S. Soren, )  
 President of Communication )  
 TeleSystems International to )  
 determine whether they have complied )  
 with the laws, rules, regulations )  
 and applicable tariff provisions )  
 governing the manner in which )  
 California consumers are switched )  
 from one long-distance carrier to )  
 another, and other requirements for )  
 long distance carriers. )

I. 96-02-043  
(Filed February 23, 1996)

ORDER DENYING REHEARING OF DECISION 96-07-035

An application for rehearing of Decision (D.) 96-07-035 was filed by Communications TeleSystems International (CTS). In D.96-07-035 we ordered that CTS' senior management is censured for ignoring the potentiality of witness intimidation and/or interference at The Greenlining Institute and The Latino Issues Forum press conference on May 23, 1996. Applicant raises two principle arguments in its application for rehearing. First, it is alleged that there is insufficient factual predicate for a finding that management knew or should have known about the potential for witness intimidation. Second, applicant argues that the Decision violates CTS' rights under the First Amendment. No response to the Application for Rehearing was filed.

We have reviewed the arguments raised by appellant and the language of the Decision and find that no legal error has

been shown. Contrary to appellant's assertion, we find that there is ample evidence in the record to support the conclusion that CTS senior management should have recognized the potentiality of witness intimidation and/or interference at the press conference held by The Greenlining Institute and The Latino Issues Forum. The record shows that the press release issued by Greenlining invited potential victims and former employees to come forward. The record further shows that approximately 100 CTS employees attended the event, that the employees were permitted to leave their work stations during the work day and were paid for their time away from their work stations, that when they disagreed with comments by the conference speakers they expressed their disagreement in unison, and that Greenlining found it necessary to seek the assistance of hotel security to ask all CTS employees to leave so that Greenlining could finish its press conference. CTS management ignored the potentiality of witness intimidation and/or interference resulting from the conduct of its employees, despite the presence of senior management at the press conference. It is this conduct that we censure.

Our review also convinces us that no violation of First Amendment rights has occurred. It is well established that freedom of speech is not absolute. The First Amendment does not protect speech which interferes with the fair and unhindered administration of justice. (Cox v. Louisiana (1964) 379 U.S. 559, 562-563; Laker Airways v. Pan American Airways (D.D.C. 1984) 604 F. Supp. 280, 288.) Under certain circumstances, as was the case under the facts before us, there is not absolute protection for speech that hinders the rights of others. (Cf., Pacific Gas and Electric Co. v. Public Utilities Commission of California (1985) 475 U.S. 1; Bland v. Fessler (9th Cir. 1996) 88 F.3d 729.) The rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. (United Mine Workers v. Illinois Bar Association (1967) 389 U.S. 217, 222-223.) As noted

in D.96-07-035, the proper function of the Commission's investigatory and fact-finding processes mandates the highest regard for the parties' efforts to locate witnesses and present evidence to the Commission. Interference with this basic function of the Commission can have the effect of undermining entire proceedings. The order censuring CTS' senior management for ignoring the potentiality of witness intimidation and/or interference clearly delineates the conduct being censured and so is not overbroad or vague. We reject applicant's claim of legal error.

No further discussion is required of Applicant's allegations of error. Accordingly, upon reviewing each and every allegation of error raised by Applicant we conclude that sufficient grounds for rehearing of D.96-07-035 have not been shown.

Therefore, IT IS ORDERED:

That the application for rehearing of Decision 96-07-035 filed by Communications TeleSystems International (CTS) is denied.

This order is effective today.

Dated April 9, 1997, at San Francisco, California.

P. GREGORY CONLON  
President  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
RICHARD A. BILAS  
Commissioners