

Decision 97-07-023 July 16, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

John F. Cox, Jr.,	)
	)
Complainant,	)
	)
vs.	)
	)
Pacific Bell Payment Center,	)
	)
Defendant.	)

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Case 96-12-035  
(Filed December 17, 1996)

**ORIGINAL**

John F. Cox, Jr., for himself, complainant.  
Douglas Phason, for Pacific Bell, defendant.  
Tamara Dragotta, for Duke/Louis Dreyfus,  
interested party.

O P I N I O N

Background

This complaint was filed by John F. Cox, Jr. on December 17, 1996, seeking the following:

- a. restoring telephone service to the telephone number (510) 741-8003 and
- b. absolving him of any wrongdoing.

On August 7, 1996, the Honorable James J. Marchiano, Judge of the Superior Court, Contra Costa County, issued a magistrate's finding that there was probable cause to conclude that the telephone services at the following telephone numbers have been or are to be used by complainant as instruments to violate or assist in violation of the penal laws of the State of California: (510) 778-1869, (510) 625-7986, and (510) 741-8003. Pacific Bell (Pacific) was ordered to disconnect the existing service to those numbers for a one-year period; further it was ordered not to provide referral service for those numbers.

Pacific disconnected numbers (510) 778-1869 and (510) 741-8003 on August 15, 1996. Number (510) 625-7986 had previously disconnected on February 9, 1996.

Under Rule 31 of Pacific's tariffs, 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 January 24, 1997, to determine whether complainant should have his telephone service to number (510) 741-8003 restored. Complainant requests only that the one number be restored.

At the hearing, the following persons appeared:

- John F. Cox, Jr., appearing for himself.
- Douglas Phason, case manager appearing for defendant Pacific.
- Tamara Dragotta, of Duke/Louis Dreyfus, interested party.

Decision 91188, dated January 8, 1980, 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 Pacific 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. The magistrate must find 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 Contra Costa County District Attorney's Office, as the concerned law enforcement agency under Schedule Cal. P.U.C. No. D&R 3rd Rev. Sheet 61 has:

"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."

There was no testimony or representation by law enforcement at this hearing.

Cox testified that when he found his service at (510) 741-8003 disconnected, he discovered that it had been shut off due to a court order concluding that the service had been used fraudulently. He had no knowledge of any fraudulent use. He had allowed a friend to temporarily stay at his residence and use this number, which was to his fax machine. That person, Lynda Kozak, apparently had the other numbers that were ordered disconnected. She operated a business called Bubbles the Clown or Bubbles the Clown Professional Entertainment Agency (Bubbles), which offered party and entertainment services for children.

Problems arose when people contracted with Kozak for children's party entertainment, paid a deposit, and Kozak failed to show up at the agreed upon time and location, or failed to provide all the services ordered. Refunds were either not given or were very difficult to obtain, and Kozak was difficult to contact. Many customers complained to law enforcement or to the Better Business Bureau.

Cox testified that he had no knowledge of these problems since Kozak retrieved the facsimile copies when he was not home and did not inform him of the contents. Cox testified that he has not had contact with Kozak or Bubbles on his fax since about July 1996.

Cox requests that number (510) 741-8003 be restored as it is sequential to his other telephone number, (510) 741-8002. However, he is also agreeable to a new number if the Commission deems that to be appropriate.

Discussion

Cox appears to be a victim of circumstance due to his generosity in allowing Kozak to use his fax number. Kozak's business problems then became Cox' problem with regard to his telephone service.

While no law enforcement representative was present or testified, in this instance we believe that is not needed, as there is ample and unrefuted evidence of fraud on the part of Kozak. Exhibit 4 introduced by Pacific contains copies of many complaints of customers of Bubbles. Two of the three numbers ordered disconnected were apparently Kozak's, with only the fax number belonging to Cox.

Kozak did not appear or have a representative appear on her behalf.

We find that there is no evidence or contention of wrongdoing by Cox in this matter. He is simply a victim of circumstance due to his generosity toward Kozak. We, therefore, will order his telephone service to be restored, but not with the same number. We want to insure that Kozak does not have a further opportunity to use Cox' fax number, potentially subjecting Cox to further disconnections caused by Kozak.

Findings of Fact

1. Complainant allowed Kozak to use his fax telephone service number (510) 741-8003 at his residence.
2. Kozak apparently subscribed to the other telephone services numbers that were disconnected, (510) 625-7986 and (510) 778-1869.
3. Kozak neither appeared at the hearing nor requested that the other telephone services be restored.

4. Cox had no knowledge of the apparent fraudulent business practices of Bubbles.

Conclusions of Law

1. The relief requested by complainant should be granted with respect to reconnecting his telephone service.

2. Complainant's number should be changed to avoid potential future fraudulent use of the service by Kozak.

3. This proceeding should be closed.

4. This order should be effective on the date signed in order to restore service to Cox as soon as possible.

ORDER

IT IS ORDERED that:

1. Pacific Bell shall promptly restore telephone service to John F. Cox, Jr. at his residence, with a different number than the disconnected number, (510) 741-8003.

2. This proceeding is closed.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

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

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