

Decision 01-02-046

February 8, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Western Referral, Inc.,

Complainant,

vs.

AT&T Communications  
Of California, Inc.,

Defendant.

Case 00-08-001  
(Filed August 1, 2000)

**ORDER DENYING REHEARING OF DECISION NO. 00-12-044**

**I. SUMMARY**

By this decision, we deny rehearing of Decision (D.) 00-12-044 (the Decision) sought by Western Referral, Inc. (Referral). In Case No. 00-08-001, Referral, doing business as VIP Escorts, sought restoration of a business telephone following disconnection by AT&T Communications of California (AT&T), at the direction of the Superior Court for the County of Los Angeles. In the Decision, we found that probable cause had been established to support the termination of the telephone service by the Superior Court and denied the request for restoration of service. Applicant seeks rehearing of the Decision on the grounds that it conflicts with Goldin v. Public Utilities Commission (1979) 23 Cal.3d 638, that there was insufficient evidence, that the evidence did not support the findings and conclusions, and that the process before the Superior Court was constitutionally

defective. For the reasons given below, we do not find any of Applicant's arguments sufficient to grant rehearing.

## II. DISCUSSION

Referral operates a business offering referrals of independent contractors who provide modeling, entertainment and escort services in the Los Angeles area. On July 21, 2000, pursuant to an order of Superior Court Judge Maral Inejikian, AT&T disconnected a toll free number used by Referral. The Court, acting on an affidavit prepared by the Los Angeles Police Department, found probable cause to believe that Referral was using its telephone lines as an instrumentality to violate the law, and that this was a significant danger to public health, safety and welfare.

Applicant's telephone service was disconnected pursuant to AT&T's Rule 22, which is virtually identical to similar rules used by other telephone companies in California. The rule requires disconnecting 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 22, 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 22, as amended, was approved by this Commission in Decision (D.) 91188, (1980) Cal. P.U.C. 87. The California Supreme Court dismissed constitutional objections to the rule and upheld its validity in Goldin, *supra*, 23

Cal.3d 638. In fact, D. 91188 adopted changes in the Rule as required by the Court in Goldin, *supra*, 23 Cal.3d 638.

A hearing in this case was scheduled in the Commission's courtroom in Los Angeles on August 14, 2000, within 20 days of filing of the complaint. Following the hearing, the complainant and AT&T filed initial and reply briefs, and the City of Los Angeles submitted a reply brief only. The case was deemed submitted for Commission consideration on September 15, 2000.

On October 10, 2000, the Presiding Officer issued her Presiding Officer's Decision (POD). On October 20, 2000, the Complainant filed its appeal of the POD. AT&T filed its response in opposition to the appeal on November 8, 2000. D. 00-12-044 was issued on December 21, 2000.

Referral first argues that the Decision conflicts with the decision of the California Supreme Court in Goldin, *supra*, 23 Cal.3d 638 because there was insufficient evidence of "on going prostitution." A review of the evidence presented, together with the language contained at pages 3-5 of the Decision contradicts Applicant's argument.

The Los Angeles Police Department presented its evidence through the testimony of two witnesses; AT&T offered one. We summarized the police testimony beginning at page 3 of the Decision:

"The Los Angeles Police Department accuses Western Referral of engaging in commercial prostitution and other violations of the Los Angeles Municipal Code in the operation of its businesses.

Lee Jett III, a Los Angeles Police Department detective, testified that he is assigned to the Organized Crime and Vice Division, prostitution section. He stated that the prostitution section's primary function is the investigation of pimping and pandering cases and escort services as they relate to prostitution. He explained that during the 10 years of his assignment to

this section he has participated in hundreds of prostitution investigations.

With regard to VIP Escorts (Western Referral's dba), Detective Jett stated in the latter part of June 2000, on two occasions, undercover officers rented a hotel room, called up the escort service, and requested that a woman be sent to the hotel room. On the first occasion, a woman arrived at the hotel room. She stated that her base fee was \$200 and for an additional \$300 tip she would do "everything" except sodomy. She was arrested for violating section 647(B) of the California Penal Code.

On the second occasion, another woman performed a massage in violation of Section 103.205 of the Los Angeles Municipal Code, and was arrested. The woman arrived at the hotel room and the officer paid \$210 for the base fee. The officer stated that the woman then indicated that for an additional \$300 tip the officer would be "very happy." The woman then performed a massage on the officer. When the officer sought greater specificity as to the additional services the woman would perform for the tip, she demanded proof of the officer's alleged occupation as a certified appraiser. The officer concluded that the woman was playing a "word game" to avoid an arrest, and summoned nearby officers, who determined she lacked a massage permit, and arrested her.

Based on the two arrests, Detective Jett prepared an affidavit that stated that telephone number (800) 477-2454 was being used to accomplish commercial prostitution in the City and County of Los Angeles, and that such activity would continue absent disconnection of the telephone number. Detective Jett presented this affidavit to Superior Court Judge Maral Inejikian, who signed the disconnection order.

Detective Supervisor Keith R. Haight also testified for the Los Angeles Police Department. He stated that he has served in a supervisory capacity in the vice section for 13 years and that he has been involved in a couple thousand prostitution arrests. He testified on the department's policy toward telephone suspension

orders, and stated that he has been personally involved in obtaining such orders in 12 cases. Detective Haight explained that when officers reach the conclusion that a telephone number is being used for prostitution, they prepare an affidavit, along with supporting documentation, and present it to the court. The court then determines whether or not to issue an order suspending service. He stated that typically between two and five arrests for prostitution are used to support the affidavit.”

The California Supreme Court first addressed the issue of the sufficiency of the evidence for discontinuance of telephone service used for illegal purposes and announced the standard which any Commission Rule must meet in Sokol v. Public Utilities Commission (1966) 65 Cal.2d 247, summarized by the Court at page 645 of Goldin, *supra*, 23 Cal.3d 638:

“**MANUEL, J.**—Twelve years ago this court, in the case of *Sokol v. Public Utilities Commission* (1966) 65 Cal.2d 247 [53 Cal.Rptr. 673, 418 P.2d 265], struck down on constitutional grounds the then existing rule for discontinuation of telephone service used for illegal purposes and announced the standard which any future rule must meet. “[W]hatever new procedure is hereafter devised,” we held, “must at a minimum require that the police obtain prior authorization to secure the termination of service by satisfying an impartial tribunal that they have probable cause to act, in a manner reasonably comparable to a proceeding before a magistrate to obtain a search warrant. In addition, after service is terminated the subscriber must be promptly afforded the opportunity to challenge the allegations of the police and to secure restoration of the service. A procedure incorporating these measures would provide substantial protection to the subscriber without hindering the enforcement of [the] laws.” (65 Cal.2d at p. 256.)”

In the Goldin case, the Court reviewed the factual evidence and found it sufficient to support the termination of service. That evidence was strikingly similar to that presented here. In Goldin, as here, an investigation by the Los

Angeles Police Department revealed that telephone answering services were being used for the illicit solicitation of prostitution. An affidavit was presented to a Municipal Court Judge, who issued a “Finding of Probable Cause” to believe that certain telephone numbers were being used for illicit purposes. The evidence contained in the affidavits was found adequate by the Supreme Court to issue the order and subsequent discontinuance of service. This consisted of testimony of 17 to 20 police officers that they had placed a telephone call responding to an advertisement for outcall massage or nude modeling services; that as a result of the call a woman was dispatched and arrived at hotel or motel accommodations where the officer was located; that after stating the price of the massage or nude modeling service (\$35 to \$40) and indicating that she herself received only a small portion (\$5 to \$10) thereof, the woman offered to perform various acts of a sexual nature, including sexual intercourse, for a sum ranging from \$40 to \$100 over and above the cost of the advertised service; and that in these cases, the woman was subsequently arrested for prostitution. (Goldin, *supra*, at 649.)

The activities engaged in here are virtually identical to those found sufficient in Goldin, *supra* to justify the issuance of a Finding of Probable Cause and the subsequent termination of telephone service. In fact, the only difference is in the number of arrests and the charges made for services. We therefore find that Applicant’s argument of insufficient evidence is without merit. We further note that there was evidence submitted at the hearing in this matter of additional instances of prostitution other than those presented to the Superior Court. (Reporter’s Transcript, page 130).

Applicant next argues that the evidence was insufficient to support the Findings and Conclusions of Law contained in the Decision. He fails to indicate which Findings and Conclusions of Law are unsupported, and his allegation is therefore in violation of Section 1732 of the Public Utilities Code, which requires that “The application...shall set forth specifically the ground or grounds on which applicant considers the decision...to be unlawful.” Moreover, we not only

consider the evidence to be sufficient under the Goldin standard but also to fully support the Findings and Conclusions of Law.

Referral next argues that the police reports were admitted into evidence in violation of Public Utilities Code, Section 1710, because they were not certified under penalty of perjury. The argument is without merit. A review of the transcript, at pages 40 and 80 reveals that each of the witnesses was properly sworn before offering the exhibits in question.

Applicant next complains that he was denied discovery of the police reports before they were entered into evidence. The same argument was made in Goldin, *supra*, 23 Cal.3<sup>rd</sup> 638, 670. The Court there held that the argument was without merit because Petitioner had failed to pursue his request. The same is true here. The testimony of the police indicated that Applicant was offered complete discovery of documents, but failed to follow the usual department procedure in obtaining it. (Reporter's Transcript, pages 48, 56)

Referral next argues that the Commission's procedures are flawed because they are too "lengthy and cumbersome" and because Applicant was denied the opportunity to appear at the Commission's meeting of December 21, 2000 when the Decision was signed. In fact, in Goldin, *supra*, at page 664, the Court stated that in a termination of service proceeding there must be an "early hearing." A review of the timetable in this proceeding indicates that the Commission complied with this requirement. A hearing was scheduled in the Commission's Los Angeles courtroom on August 14, 2000, within 20 days of filing of the complaint seeking restoration of service. Following the hearing, which took only one day, initial and reply briefs were filed and the case was submitted for consideration on September 15, 2000. On October 20, 2000, the Presiding Officer issued her Presiding Officer's Decision. On October 20, 2000, Applicant filed its appeal of that decision, and AT&T filed its response in opposition to the appeal on November 8, 2000. Our Decision was issued on December 21, 2000. We do not consider a four-month period to be excessive or

cumbersome. With regard to the “hearing” of December 21, 2000, of which Applicant complains he was not notified, the argument is again without merit. There was no “hearing” on that date, but a regularly scheduled Commission meeting at which the Commission formally signs its decisions. Parties to Commission proceedings rarely speak at these proceeding, although opportunities to briefly address the Commission are sometimes given, if requested. These meetings are duly noticed in the Commission Calendar and Applicant had the opportunity to attend had he taken advantage of it.

Finally, Applicant takes exception to the entire process before the Superior Court of Los Angeles resulting in the order disconnecting its telephone service. However, a review of that proceeding, together with that before the Commission, indicates that there was no violation of the Goldin case as alleged by Applicant.

First, Referral argues that the Superior Court had no authority to issue the order in question. The Supreme Court has specifically confirmed such authority in Goldin, *supra*. Applicant next argues that AT&T’s Rule 22 cannot act to divest the Superior Court, the California Courts of Appeals or the California Supreme Court of authority to “modify, amend, or rescind” the order of the Superior Court. Rule 22 has no such purpose or effect. Under its provisions, which have been approved by the Supreme Court, Applicant’s remedy following the order of the Superior Court was to file a complaint with the Commission, which it did. Following an unfavorable ruling, Applicant may then file an application for rehearing, which is the subject of this decision. Following the ruling in this proceeding, Applicant may then appeal to the Court of Appeal and then to the Supreme Court. There has been no denial of the right to appeal the order of the Superior Court nor any usurpation of Applicant’s constitutional or other rights from the initiation of the Superior Court proceedings to this date. The argument is completely without merit.

**III. CONCLUSION**

Applicant has demonstrated no error of fact or law, nor any violation of its constitutional rights in the Decision. Rehearing should therefore be denied.

**IT IS THEREFORE ORDERED THAT:**

1. Rehearing of Decision No. 00-12-044 is denied.
2. This proceeding is closed.

This order is effective today.

Dated February 8, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners