

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

December 28, 2007

TO PARTIES OF RECORD IN CASE 07-08-007, DECISION 07-12-063,
MAILED 12/28/2007.

On November 26, 2007, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 15.5(a) of the Commission's Rules of Practice and Procedures provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:rbg

Attachment

Decision 07-12-063

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Teodulo Martinez and TMG Corp.,

Complainants,

vs.

Pacific Bell Telephone Company, dba AT&T
California (U1001C),

Defendant.

Case 07-08-007
(Filed August 13, 2007)

Teodulo Martinez, for himself and TMG Corp.,
complainants.

Gary Coppers, for Pacific Bell Telephone Company,
defendant.

Don Kass, Attorney at Law, for Los Angeles City
Attorney's Office, real party in interest.

PRESIDING OFFICER'S DECISION

1. Background

On July 23, 2007, Defendant Pacific Bell Telephone Company (PacBell) terminated Complainant's telephone service at the direction of the City of Los Angeles (City). The City had obtained an *ex parte* order issued by a Superior Court judge who, acting on an affidavit from the City, found probable cause to believe that the telephone was being used in furtherance of an illegal enterprise,

in this case an unlicensed taxi service. Under its Tariff Rule 31,¹ PacBell was obligated to terminate telephone service to Complainants subject to their right to a public hearing within 20 days before an Administrative Law Judge (ALJ) to determine whether their service should be restored. On August 13, 2007, Complainants filed this action and sought a hearing within 20 days, as required by Tariff Rule 31. Scheduling difficulties prevented a hearing at which all parties

¹ Tariff Rule 31 provides in pertinent part,

“1. Any communications utility operating under the jurisdiction of this Commission shall...disconnect existing service to a customer upon receipt from any authorized official of a law enforcement agency of a writing, signed by a magistrate...finding that probable cause exists to believe 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. Included in the magistrate’s writing shall 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 in the premises, significant dangers to the public health, safety, or welfare will result.

2. Any person aggrieved by any action taken or threatened to be taken pursuant to this rule shall have the right to file a complaint with the Commission and may include therein a request for interim relief. The Commission shall schedule a public hearing on the complaint to be held within 20 calendar days of the filing of the complaint....

4. Any concerned law enforcement agency shall have the right to Commission notice of any hearing held by the Commission pursuant to paragraph 2 of this rule, and shall have the right to participate therein, including the right to present evidence and argument and to present and cross-examine witnesses...and shall have both

(1) the burden of proving that the use made or to be made of the service is prohibited by law, or that the services is being or is to be used as an instrumentality, directly or indirectly, to violate or 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

(b) the burden of persuading the Commission that the service...should not be restored.”

could be present and for which there was a Commission hearing room, court reporter and translator available, prior to October 10th.

With the complainants' concurrence, this matter was set for 9:00 a.m., Wednesday, October 10, 2007, in the Commission's Hearing Room, Junipero Serra State Office Bldg., 320 West 4th St., Suite 500, Los Angeles, CA 90013. The ALJ repeatedly advised the parties of the time and place of the hearing. Complainants were initially advised of the time and place of the hearing through communications with their counsel. On October 3, Gary Leemon, then counsel for Complainants, sent an email to the parties and the ALJ stating that he no longer represented them. He included in his email the statement that "Mr. Martinez plans to attend the hearing as scheduled."

Mr. Martinez did not appear at the hearing nor did he communicate either to the other parties or to the ALJ his intention not to appear. Donald Kass, counsel for the City, the real party in interest, appeared together with witnesses prepared to testify that Mr. Martinez was using his telephone service to operate an illegal taxi business.

On October 23, 2007, the ALJ ordered the City to file its exhibits and ruled that the case would be deemed submitted upon receipt of the exhibits. The City filed its response to the Ruling on October 24, 2007.

2. Discussion

Tariff Rule 31 is designed to accommodate the sometimes conflicting interests of law enforcement agencies and telephone customers. While, on the one hand, the Rule authorizes a telephone company to disconnect service without notice to the customer on receipt of a court order finding probable cause to believe the telephone is being used in furtherance of illegal acts, it also recognizes the importance of telephone service to the customer. It does this in

two specific ways, first, by giving the customer notice and a prompt opportunity to be heard and second, by placing the burden of proof on the issues of illegal use and whether to restore service on the law enforcement agency that obtained the court order, in this case the City.

However, there is a minimum amount of effort that the customer has to make to avail himself of the protections of the Tariff Rule: he has to appear at the hearing. Because Complainant neither appeared at the hearing nor communicated further with the City, PacBell or the ALJ, the case must be decided on the basis of the exhibits submitted by the City.

In response to the ALJ's October 23rd order, the City filed an extensive set of exhibits including the probable cause finding of the Superior Court judge and the documents on which that finding was based. Those documents included official records of more than 30 arrests of drivers for Complainant's taxi company for violations of law including operating without a license, operating without insurance, operating unsafe vehicles, making illegal passenger pick-ups and, most relevant to this case, distributing advertising material that included telephone numbers through which taxi service could be obtained. Sixteen of these arrests occurred between January, 2006 and August, 2007.

Based on this history, on July 16, 2007, Superior Court Judge Maral Injejikian found probable cause to believe Complainant was using his telephones to conduct an illegal enterprise and ordered all telephone companies providing service to Complainant to disconnect his telephones immediately and not to forward calls made to the disconnected numbers. Based on the record of this proceeding, we find that Pacific Bell is not obligated to restore Complainants' telephone service.

3. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Karl J. Bemederfer is the assigned Administrative Law Judge.

4. Findings of Fact

1. On July 16, 2007, Superior Court Judge Maral Inejikian found probable cause to believe Complainant Teodulo Martinez was using numerous telephone numbers to conduct an illegal enterprise. Judge Inejikian ordered all telephone companies providing service to Complainant to disconnect his service and to refrain from forwarding calls to the disconnected numbers.

2. On July 23, 2007, Complainant's telephone service was terminated by Defendant Pacific Bell Telephone Company pursuant to Judge Inejikian's order.

3. Pursuant to Tariff Rule 31, a hearing before the assigned ALJ on whether to restore the terminated service was set for 9:00 a.m., October 10 2007, at the Commission's Hearing Room in Los Angeles.

4. Complainant received repeated notices of the time and place of the hearing in this matter.

5. Complainant failed to appear at the designated time and place.

6. The City of Los Angeles, real party in interest, appeared through counsel and with witnesses prepared to testify regarding Complainant's illegal operations.

5. Conclusions of Law

1. This matter is governed by Pacific Bell Telephone Company's Tariff Rule 31.

2. As required by Tariff Rule 31, Complainant received notice and opportunity to appear to contest the disconnection.

3. Judge Injejikian's finding of probable cause and related disconnection order is supported by ample evidence of illegal activity by Complainant.

O R D E R

IT IS ORDERED that:

1. Pacific Bell Telephone Company is not obligated to restore the telephone service of Complainants Teodulo Martinez and TMG Corp.
2. Complainants' complaint is dismissed with prejudice.
3. This order is effective immediately.
4. Case 07-08-007 is closed.

This order is effective today.

Dated December 28, 2007, at San Francisco, California.