

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

November 20, 2008

TO PARTIES OF RECORD IN CASE 08-05-037,
DECISION 08-11-039, MAILED NOVEMBER 20, 2008.

On October 20, 2008, 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/ PHILIP SCOTT WEISMEHL for ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hkr

Attachment

Decision 08-11-039 November 20, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ross Robinson,

Complainant,

vs.

AT&T Mobility, LLC, dba New Cingular Wireless
PCS, LLC, fka Cingular Wireless and Related
Entities (U3060C),

Defendant.

Case 08-05-037
(Filed May 28, 2008)

Ross Robinson, *in pro per*, complainant.

David Discher, Attorney at Law, for AT&T Mobility,
LLC, defendant.

Peter G. Fairchild, Attorney at Law, for the
California Public Utilities Commission's
Consumer Protection and Safety Division,
interested party.

**DECISION DENYING REQUEST FOR RESTORATION
OF TELEPHONE SERVICE**

Summary

Ross Robinson, an individual doing business as (dba) Have Van-Will Travel, seeks restoration of a wireless telephone line following disconnection by AT&T Mobility, LLC, dba New Cingular Wireless, at the direction of the Superior Court for the County of Alameda. The Commission finds that probable

cause has been established to support the termination of the telephone service, and because we find no basis upon which to provide interim relief, we deny the request for restoration of service and deny the complaint.

1. Background

Investigations by the Commission's Consumer Protection and Safety Division (CPSD) revealed that, from May 2003 through February 27, 2008, Ross Robinson, an individual doing business as (dba) Have Van-Will Travel (Robinson or Complainant), held himself out to engage in the business of transporting household goods without holding a valid permit from the Commission authorizing him to do so. Robinson also falsely held himself out to the public as a licensed household goods carrier by displaying an invalid license number "CAL-T-116655" painted on the side of his truck in violation of Pub. Util. Code § 5314.5. CPSD further alleged that Robinson had been posting flyers in or around Alameda and San Francisco Counties offering unlawful moving services to the public.¹ On April 20, 2007, Robinson signed an Official Notice which notified him that operating and advertising household goods moving services without a valid permit are violations of the Public Utilities Code, and continued violations might result in penalties. CPSD asserts that Robinson continues to violate the law, notwithstanding its directives to cease and desist. It notes that

¹ These written advertisements contained two telephone numbers: (510) 451-5000 and (510) 613-9913 (a wireless phone and a pager, respectively). Since paging services are not included in the definition of a "public utility" telephone corporation, pursuant to Pub. Util. Code § 234(b)(2), and are not within the direct intrastate jurisdiction of the Commission, the pager was not included as a number subject to disconnection. Exhibit (Exh) 16 at p. 1 (Affidavit Supporting Probable Cause Finding) (June 20, 2008).

the violations uncovered are punishable as misdemeanors under provisions of the Public Utilities Code and the Business and Professions Code.²

Pursuant to the March 14, 2008 order of Superior Court Judge Vernon Nakahara, AT&T Mobility, LLC, dba New Cingular Wireless (AT&T Mobility), disconnected a (510) area code telephone number used by Complainant, dba Have Van-Will Travel. The court, acting on an affidavit prepared by the CPSD, found probable cause to believe that Robinson's telephone line was being used as an instrumentality to violate the law, and that this presented a significant danger to the public health, safety, or welfare. In this complaint, Robinson seeks reconnection of the telephone line pursuant to Pub. Util. Code § 5322.

Section 5322 requires disconnecting service to an existing customer upon receipt of a writing from any authorized official of the Commission,³ signed by a magistrate, finding that there is probable cause to believe that the customer:

is advertising or holding out to the public to perform, or is performing, household goods carrier services without having in force a permit issued by the commission authorizing those services, or that the telephone service otherwise is being used or is to be used as an instrumentality, directly or indirectly, to violate or to assist in violation of the laws requiring a household goods carrier permit.

Section 5322 specifies that a magistrate must find that, absent immediate and summary action, a danger to public welfare or safety will result.

² Specifically, Pub. Util. Code §§ 5133, 5314.5, 5139, 5161, Commission General Order (GO) 100-M, GO 136-C, Item 88 of the Commission's MAX 4 Tariff applicable to household goods carriers, and Business and Profession Code Section 17500.

³ After it is shown that other available enforcement remedies of the Commission have failed to terminate unlawful activities detrimental to the public welfare and safety.

Under § 5322, 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 21⁴ days, 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.

The hearing in this case took place in the Commission's San Francisco courtroom on June 20, 2008. Complainant testified and cross-examined the sole witness tendered by CPSD. CPSD not only presented one of its investigators as the primary witness, but also identified and moved 17 exhibits into the record. AT&T Mobility identified and moved two exhibits into the record. The matter was submitted on June 20, 2008.

2. Enforcement Agency Testimony

Investigator Brian Kahrs testified that in December 2000, the Transportation Enforcement Branch of the CPSD received information and opened an investigation into the allegation that Robinson was operating as an unlicensed household goods carrier. CPSD closed the investigation in July 2001 without any enforcement action. On July 30, 2001, Robinson applied to obtain a household goods carrier permit. He did not submit any evidence of public liability and property damage or cargo insurance with the application. In January 2002, CPSD asked Robinson to provide a written explanation of his criminal record. He declined to pursue the application further, and in

⁴ Specifically, the hearing must be held within 21 calendar days of the filing and assignment of a docket number to the complaint.

September 2002, the Commission denied the application. In May 2003, CPSD sent a letter to Complainant advising him that he could not operate as a household goods carrier until he obtained a valid, active Commission permit.⁵

Kahrs testified that on January 24, 2007, he found a flyer advertising “Have Van-Will Travel” in Hayes Valley, San Francisco. That day, CPSD sent Complainant a Cease and Desist letter. Kahrs stated that he saw Robinson perform a household goods move in Hayes Valley on February 1, 2007, and Robinson told him that he had a household goods application pending, but he was having trouble getting insurance. On February 21, 2007, Robinson and his paralegal representative met with another CPSD investigator who advised him that he could not conduct household moves without authorization, instructed him to remove the T-number from his van, and gave him a blank application for a household goods carrier permit.⁶

Investigator Kahrs reported that on April 19, 2007, he found a new Have Van-Will Travel flyer in Hayes Valley. The next day, Complainant signed an Official Notice acknowledging that any operation as an unlicensed household goods carrier and/or advertising household goods service without the required authority could result in penalties.⁷ In May 2007, February 2008, and May 2008, Commission Consumer Services Representatives and a CPSD Investigator telephoned the number advertised for Have Van-Will Travel and arranged for

⁵ Exh 1 at p. 2 (Testimony of Brian Kahrs).

⁶ *Id.*

⁷ Exhs 7, 8, and 16 at p. 3.

household goods carrier moves with Robinson.⁸ Kahrs further testified that he found Robinson's flyers posted in the Bernal Heights, Rincon Hill, and Hayes Valley neighborhoods in San Francisco during June and December 2007 and February and May 2008, respectively.⁹

Kahrs stated, in direct testimony, that consumers respond to advertisements by unlicensed household goods carriers, which in turn exposes them and the general public to unlicensed movers' financial risks. Telephone service is essential for a moving company to conduct business. In fact, licensed and unlicensed movers alike arrange the majority of moving services through the use of telephone service. Kahrs noted that the Commission requires household goods carriers to have public liability and property damage insurance coverage of at least \$600,000 combined single limit; cargo insurance protection of not less than \$20,000; and workers' compensation insurance coverage. Unlicensed movers often do not carry the required insurance. Such failure places their customers, employees, and the motorists with which they share the public highways at serious risk. Failure to pay for the required insurance enables an unlicensed mover to charge lower rates, unfairly compete, and take business away from legal, licensed moving companies.¹⁰ According to Kahrs, the Commission's various rules and regulations reflected in its Maximum Rate Tariff 4 and GO 142 protect consumers by enabling the public to verify that a

⁸ Exhs 9, 12, 15, and 16 at p. 3.

⁹ Exhs 10, 11, 13, 14, and 16 at p. 3.

¹⁰ Exh 1 at pp. 3-4.

mover is properly licensed¹¹ and requiring carriers to have adequate equipment as well as capable help.

Based on the preceding particulars, Kahrs prepared an affidavit that stated that telephone number (510) 451-5000 was being used to assist an unlicensed moving company in violation of the law, and the unlicensed service is preying on the public. The affidavit noted that the Commission staff has found the disconnection of telephone service to be a very effective means of stopping ongoing criminal activity. CPSD presented this affidavit to Superior Court Judge Nakahara, who signed the disconnection order, finding probable cause.

3. Complainant's Position

On the witness stand, Robinson did not deny any of the allegations made by CPSD. Rather, he testified that he believed that he had completed "all the necessary procedural steps in regards to getting licensed."¹² He took the exam and he passed. However, he could not afford to purchase all the insurance required by law. Robinson stated that he was never able to earn enough money to buy what the Commission required for a household goods carrier permit. He also testified that he did not think that AT&T Mobility should have disconnected his telephone number because of a May 2008 recording of him giving a quote for the hourly rate for a move. He denied operating as a household goods mover within the last year and a half.¹³

¹¹ Maximum Rate Tariff 4 contains a requirement that carriers include their permit number in all advertising. (Item 88, paragraph 7.)

¹² Vol. 2 (2) Reporters Transcript (RT) 14: 13-14 (June 20, 2008).

¹³ 2 RT 14-15: 27-28; 1-20 (June 20, 2008).

4. Discussion

For a business relying on the telephone, uninterrupted telephone service is an interest in “property” constitutionally entitled to protection against “taking” without due process of law.¹⁴ Before disconnection of telephone service can occur, in the context of the instant case, there must be probable cause to believe that the telephone facility is being or is about to be used to commit illegal acts, and it must be shown that the character of the acts is such that, absent summary action, significant dangers to public health, safety, or welfare will result.¹⁵

Such a showing of probable cause must be made before a magistrate – in this case, the Superior Court for the County of Alameda – and is reasonably comparable to the showing that must be made in order to obtain a search warrant.¹⁶ Based on the exhibits, affidavit, and supporting documentation entered into evidence here, Judge Nakahara concluded that there was probable cause to believe that Complainant’s business telephone was being used to violate or assist in violating the law, and that, absent summary action, such violation could cause significant danger to public health, safety, or welfare. (Exh 17.)

The Commission is empowered to rule on the adequacy of the showing of probable cause, and to determine whether interim relief is warranted pending the resolution of the misdemeanor charges brought against the subscriber. As the California Supreme Court has stated:

¹⁴ *Goldin v. Public Utilities Commission*, 23 Cal.3d 638 at 662 (1979); see also *Board of Regents v. Roth*, 408 U.S. 564 (1972).

¹⁵ *Id.* at 663-664.

¹⁶ *Sokol v. Pub. Util. Comm.* 65 Cal.2d 247, 256 (1966).

“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 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.... Even in cases when it appears to the Commission that the finding is adequately supported by the affidavits presented to the magistrate, it may wish to consider the strength and character of the showing made as a factor to be weighed, along with pressing need or imminent economic damage, in its determination whether or not interim relief should be afforded to the subscriber.”¹⁷

The evidence presented here reveals that Robinson has held himself out as a licensed mover, and operated as a mover of used household goods without authority off and on since 2000.¹⁸ Investigator Kahrs testified that he and his colleagues at the Commission have observed Robinson holding himself out and operating as a licensed household goods carrier over the years. He offered a credible assessment of what he saw and heard from Complainant. Kahrs has sufficient experience in unlicensed moving company investigations to support his analysis of Robinson’s business.

Based on Kahrs’ and Robinson’s testimonies and the exhibits, we find that the totality of the evidence would lead a reasonably prudent person to conclude that violations of the laws governing household goods carriers’ licensing and conduct have been shown, and that such violations posed a significant danger to public health, safety, or welfare. We find that these violations were made possible in large part by the use of the disconnected telephone number, since

¹⁷ *Goldin, supra* at 668, footnotes omitted.

¹⁸ Exhs 1 and 16.

prospective customers used this number to contact Robinson and Have Van-Will Travel, which in turn enabled the violation and assistance in the violation of licensing laws of the State of California as alleged in the affidavit. Thus, we find that the CPSD has met its burden of showing that the disconnection order was justified and that the telephone service in question was being used directly or indirectly to violate or to assist in violating the law. We also find that the process followed by the CPSD complies with the *Goldin* decision.

The second showing that § 5322 imposes on the Commission staff is the burden of persuading the Commission that the telephone service should be refused or should not be restored. Kahrs testified that despite written and verbal warnings to stop soliciting the public and operating as a household goods mover, as recently as May 2008, Robinson has held himself out as a licensed mover. At hearing, when asked if he was operating unlawfully, Robinson stated that he had not operated illegally in more than a year and a half, and did not feel that the May 2008 documentation of his conversation with a potential customer should be held against him. Still, Robinson had no explanation for the recent and munificent flyers bearing his telephone number and posted around San Francisco. And, while he admitted that he did not have and could not afford the required household goods carrier insurance, he indicated that he did not believe that it was necessary for a one-man operation. If Robinson's telephone service is restored now, there is every indication that he will resume his unlicensed moving business and jeopardize the welfare of the public. In fact, Kahrs testified that Commission staff had discovered flyers showing a new telephone number for Robinson's Have Van-Will Travel.

We, therefore, further find that good cause has been shown to deny any interim restoration of telephone service pending Robinson obtaining a valid

household goods carrier permit. Accordingly, the request for reinstatement of the disconnected telephone service is denied, and this complaint is dismissed.

The scope of this proceeding is set forth in Pub. Util. Code § 5322. The order today confirms that Administrative Law Judge (ALJ) Jacqueline A. Reed is the presiding officer.

5. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Jacqueline A. Reed is the assigned ALJ in this proceeding.

Findings of Fact

1. Robinson, an individual doing business as Have Van-Will Travel, operates an unlicensed moving business in the cities of San Francisco and San Leandro, California.
2. Robinson has falsely held himself out to the public as a licensed household goods carrier by displaying an invalid permit number on the side of his truck and in advertisements on flyers throughout San Francisco and San Leandro intermittently from May 2003 until as recently as May 2008.
3. AT&T Mobility disconnected telephone number (510) 451-5000, upon receipt from the CPSD of a Finding of Probable Cause, signed by Judge Vernon Nakahara and dated March 14, 2008.
4. Pursuant to Pub. Util. Code § 5322(d), Robinson filed a complaint seeking restoration of the telephone number disconnected by AT&T Mobility, and a timely hearing was held on the complaint on June 20, 2008.
5. The CPSD presented credible evidence through an investigator and 17 exhibits that the telephone service at issue here was being used to violate and assist in the violation of the state laws governing the licensing and conduct of household goods carriers.

6. An unlicensed moving company poses a danger to public welfare and safety.

Conclusions of Law

1. In *Goldin*, the California Supreme Court approved a process similar to that set out in Pub. Util. Code § 5322, against constitutional challenges.

2. *Goldin* and Pub. Util. Code § 5322 require the Commission to examine the face of the affidavit supporting the finding of probable cause on which the disconnection of telephone service is based in order to determine the adequacy of the affidavit and weigh any request for relief.

3. Pub. Util. Code § 5322 places the burden on the law enforcement agency responsible for a disconnection to (1) show that the telephone service was used directly or indirectly to violate or assist in violating the law; (2) show that the character of the violation was such that significant dangers to public health, safety, or welfare would result if immediate and summary action had not been taken; and (3) show that the service should not be restored.

4. The affidavit set forth in Exhibit 16, and the seven attachments which were affixed to the affidavit presented to the Court, are adequate to support the Court's disconnection order of March 14, 2008.

5. The request for immediate restoration of the disconnected telephone lines should be denied, and the complaint should be dismissed.

6. Because the complaint seeks immediate action by the Commission, this order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The complaint of Ross Robinson, an individual doing business as Have Van-Will Travel, seeking restoration of telephone line (510) 451-5000, disconnected pursuant to Public Utilities Code Section 5322, is denied.
2. Case 08-05-037 is closed.

This order is effective today.

Dated November 20, 2008, at San Francisco, California.