

RULE 31 PRACTICE GUIDE

PROCEDURE FOR CHALLENGING REFUSAL OR DISCONNECTION OF TELECOMMUNICATIONS SERVICE AT THE BEHEST OF LAW ENFORCEMENT OFFICIALS

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What is Rule 31?

The term itself refers to Tariff Rule 31 of Pacific Bell Telephone Company's tariff. (Legal Requirements for Refusal or Discontinuance of Service", Network Exchange Services, A2. General Regulations, Rule 2.1.31.) Every telecommunications company has a tariff rule with exactly the same wording, although it may be numbered differently. Complaints which arise under these comparable provisions of any carrier's tariffs are generically referred to as "Rule 31 complaints". Rule 31 spells out the procedures by which telecommunications companies may refuse or discontinue service to subscribers when advised by law enforcement officials that the service is or will be used for unlawful purposes. It also sets out the procedures by which a subscriber who has been disconnected or refused service based on the actions of law enforcement officials may challenge that disconnection or refusal of service. The text of Pacific Bell's Rule 31 is attached. The procedure established under Rule 31 is the exclusive procedure for obtaining or challenging refusal or disconnection of service based on unlawful activity.

The present text of Rule 31 arose as an appendix to [Commission Decision \(D.\) 91188](#) which examined modifications to predecessor language in light of *Goldin et al. v. Public Utilities Commission, et al.*, (1979) 23 Cal 3d 638.

Orders to disconnect service or to refuse new service to a subscriber must be signed by a magistrate, defined as being a judge of the state's superior courts, court of appeal or Supreme Court. (C. Pen. C. §§ 807, 808.) Such orders are generally obtained on an *ex parte* basis, i.e., without the subscriber present or even aware the order is being sought, and are based on a finding by the magistrate that probable cause exists that the phone service is or will be used for an unlawful purpose or to assist in the violation of the law. Alleged unlawful purposes can range from regulatory violations (operating a business without a requisite permit) to serious criminal activity (prostitution, drug trafficking, etc.) Demonstrations of probable cause are often done by sworn affidavits. The magistrate's findings must also include a determination that absent immediate and summary action, significant dangers to public health, safety, or welfare will result.

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Law enforcement agencies are fairly broadly construed, with disconnection orders being sought by city attorneys, district attorneys or other public agency personnel, frequently based on the product of investigations by police.

Once the magistrate's order is obtained, it is forwarded to the telecommunications company serving the number(s) in question and service is refused or terminated.

The telecommunications company must immediately notify the subscriber or applicant for service of the refusal/discontinuance resulting from the magistrate's order, identify the law enforcement agency and provide the applicant/subscriber with a copy of Rule 31 and tell them that assistance can be obtained from the Commission.

Who may file a Rule 31 complaint?

Any telecommunications subscriber who has had telecommunication service discontinued or refused due to presentation by a law enforcement agency to the telecommunications company of an order signed by a magistrate may complain.

How does the customer complain?

When service is discontinued, the telecommunications company has the obligation to inform the customer in writing of the reason for the discontinuation, the agency that sought it and recourse available, including providing a copy of Rule 31.

The complaint is filed using a standard complaint format as set out in the Commission's Rules of Practice and Procedure. Once the complaint form is completed, it is filed with the Commission's Docket Office. Of significance is that it is not an expedited complaint proceeding (ECP) but conducted as a standard complaint, although with some unique scheduling and procedural elements.

Who are the respondents?

The named respondent to the complaint is the telecommunications company that refused or disconnected service. The defending party and real party in interest, however, is the law

enforcement agency that obtained the magistrate's order and requested the refusal or discontinuance of service by the telecommunications company.

Notice, hearing, record

Notice

Due to the short time within which a hearing must be held, a notice is served on the complainant, respondent telecommunications company¹ and law enforcement agency that obtained the magistrate's order advising parties of the date, time and location of the hearing and the name of the Administrative Law Judge designated as the presiding officer.

It is also recommended that the notice highlight the fact that pursuant to Rule 31, the law enforcement agency has the burden of proof, rather than the complainant. While somewhat unusual, it is premised on the fact that this is the first hearing on the refusal or discontinuance in which the subscriber is participating.

A sample of a complete notice is available [here](#).

Hearing

A hearing must be scheduled within 20 calendar days of the filing date of the complaint. The complainant may request or agree to a longer time before hearing.

This is a formal hearing and a court reporter will be required. If the complainant is uncomfortable with English, a certified translator will be required to be provided by the Commission to facilitate the proceedings. A certified translator can be engaged by contacting the [Consumer Service and Information Division](#).

Record

As noted, the law enforcement agency has the burden of proof. In the event a complainant does not attend, a record must still be established if the law enforcement agency wishes to maintain the discontinuance or refusal of service. In other words, failure of a complainant to attend does

¹ Or companies. In many cases multiple services may be the subject of the law enforcement action and the magistrates order, e.g., local, long distance and wireless services may be implicated in a single action.

not confirm the refusal/discontinuance of service since the complainant does not have the burden of proof.

Failure of the law enforcement agency to put on a sufficient showing, whether by witness, exhibit or otherwise, will result in a finding in favor of the customer and an order for connection/reconnection of service.

Decision

The decision will address what considerations must be undertaken before denying or restoring service. In particular, the Commission must conclude whether the law enforcement agency had probable cause to have served the telecommunications company with the injunction. The burden of proof rests with the law enforcement agency to show that the customer must continue to be denied service. The Commission may not be overly concerned with the potential criminality of the customer as defined in the magistrate's written injunction unless the law enforcement agency demonstrates that there is a significant danger to public health, safety or welfare.

The decision is a presiding officers decision (POD), which becomes the order of the Commission after 30 days unless appealed by a party or a request for review is made by a commissioner.

Return to service

If the Administrative Law Judge (ALJ) finds that there is no significant danger to the community, a return to service may be ordered. If the ALJ agrees with the law enforcement agency, service will not be restored until such a time as the law enforcement agency is satisfied or the period set by the magistrate expires. This is usually one year from the initial disconnection of service.

Can the complaint be dismissed?

The law enforcement agency has the burden of proof to show that the complainant is breaking the law, and that, to protect the public, the phone service needs to remain disconnected. If the law enforcement agency does not appear at the hearing, the case may be dismissed and service restored.

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The complaint can be dismissed at any time and it is understood that the complainant can refile, unless the ALJ specifies that the case is dismissed with prejudice. If the case is dismissed with prejudice, the complainant can restate the complaint and ask for a modification of the decision. The complainant can withdraw the complaint and refile at a later date?

Timeline

Disconnection of service by the utility is immediate upon receipt of the magistrate signed injunction from the law enforcement agency. The utility notifies the customer of disconnection immediately in writing with the following information:

- Name and contact information of law enforcement agency
- Copy of Rule 31
- Information on how to request information and assistance from the PUC regarding this rule
- PUC complaint form

Fifteen days from disconnection, service is returned at customer's request unless the law enforcement agency objects in writing to the utility. If disconnection stays in place, the remedy for the customer is to then file a complaint as described above. A hearing must be scheduled within 20 days of the complaint being filed.

Disconnections Under Business and Professions Code Distinguished

Various sections of the California Business and Professions Code (see, e.g., §§ 149 and 7099.10) provide procedures for state licensing authorities to obtain remedies for the unlawful provision of services subject to their jurisdiction. These sections concern the Department of Consumer Affairs and the State Contractor's Licensing Board respectively. Each provides, among the available remedies, that the agency may order the disconnection of telephone service for any telephone number used in advertising the unlawful provision of service. Each provides an opportunity for the person or entity subject to the issued citation to contest it, with the opportunity for a hearing.

If a recipient of a citation fails to comply with the citation after it has become final, the agency can seek an order of the Public Utilities Commission directing the telephone company servicing the line or lines to cease providing the service. The Commission has explicitly delegated this

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authority to its Executive Director by Resolution T-12035 in the case of Bus. & Prof. C.§ 7099.10 disconnection requests. The Executive Director (and in some situations the Director of the Communications Division) has issued orders in response to such a request directing the telephone company to discontinue service to the line or lines.

Complaints have occasionally been tendered to the Commission's Docket Office by the subscriber challenging disconnection pursuant to these Business and Professions Code sections. However, they have been rejected as being outside the Commission's jurisdiction. Unlike "Rule 31 disconnections", where the complaint filed at the Commission is the first opportunity to have a hearing on the disconnection order, disconnections under the various Business and Professions sections have already provided the subscriber a reasonable opportunity to seek a review of the citation, including the opportunity for a hearing. By the time they have been presented to the Commission, they are final orders of the issuing agency.

Attachment 1- Excerpts from D.91188

LEGAL REQUIREMENTS FOR REFUSAL OR DISCONTINUANCE OF SERVICE

California Public Utilities Commission's Decision No. 91188, in Case No. 4930, requires that each communications Utility, operating under the jurisdiction of the Commission, include the provisions of the rule set forth in Appendix B of that decision as a part of the rules in the Utility's tariff schedules. Accordingly, Appendix B of Decision No. 91188, Case No. 4930, is quoted herein:

APPENDIX B

1. Any communications utility operating under the jurisdiction of this Commission shall refuse service to a new applicant and 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, as defined by Penal Code Sections 807 and 808, 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 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. The remedy provided by this rule shall be exclusive. No other action at law or in equity shall accrue against any communications utility because of, or as a result of, any matter or thing done or threatened to be done pursuant to the provisions of this rule.

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3. If communications facilities have been physically disconnected by law enforcement officials at the premises where located, without central office disconnection, and if there is not presented to the communications utility the written finding of a magistrate, as specified in paragraph 1 of this rule, then upon written request of the subscriber the communications utility shall promptly restore such service.

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. Such law enforcement agency shall be entitled to receive copies of all notices and orders issued in such proceeding 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 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 public health, safety, or welfare will result and

(2) the burden of persuading the Commission that the service should be refused or should not be restored.

5. The utility, immediately upon refusal or disconnection of service in accordance with paragraph 1 of this rule shall notify the applicant or subscriber in writing that such refusal or disconnection has been made pursuant to a request by a law enforcement agency, naming the agency, and shall include with said notice a copy of this rule together with a statement that the applicant or subscriber may request information and assistance from the Commission at its San Francisco or Los Angeles office concerning any provision of this rule.

6. At the expiration of fifteen days after refusal or disconnection of service pursuant to paragraph 1 of this rule the utility, upon written request of the applicant or subscriber, shall provide or restore such service unless the law enforcement agency concerned shall have notified the utility in writing of its objection to such provision or restoration of service, in which event service may be provided or restored only in a complaint proceeding pursuant to paragraph 2 of this rule. At the time of giving any such notice of objection, the law

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enforcement agency shall mail or deliver a copy thereof to the applicant or subscriber.

Nothing in this paragraph shall be construed to preclude the granting of interim relief in a proceeding initiated pursuant to paragraph 2 of this rule.

7. Each contract for communications service, by operation of law, shall be deemed to contain the provisions of this rule. Such provisions shall be deemed to be a part of any application for communications service.

Applicants for service shall be deemed to have consented to the provisions of this rule as a consideration for the furnishing of such service.

8. The term 'person', as used herein, includes a subscriber to communications service, an applicant for such service, a corporation, a company, a copartnership, an association, a political subdivision, a public officer, a governmental agency, and an individual.

9. The term 'communications utility', as used herein, includes a 'telephone corporation' and a 'telegraph corporation', as defined in Division 1 of the California Public Utilities Code.

THE ADDRESS OF THE COMMISSION'S OFFICE IS AS FOLLOWS:

California Public Utilities Commission

State Building

505 Van Ness Avenue, Room 3210

San Francisco, California 94102

Attachment 2- Relevant Business & Professions Codes

Cal. B&P Code, § 149:

149. (a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:

(1) Cease the unlawful advertising.

(2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:

- (1) The Bureau of Barbering and Cosmetology.
- (2) The Funeral Directors and Embalmers Program.
- (3) The Veterinary Medical Board.
- (4) The Hearing Aid Dispensers Advisory Commission.
- (5) The Landscape Architects Technical Committee.
- (6) The California Board of Podiatric Medicine.
- (7) The Respiratory Care Board of California.
- (8) The Bureau of Home Furnishings and Thermal Insulation.
- (9) The Bureau of Security and Investigative Services.
- (10) The Bureau of Electronic and Appliance Repair.
- (11) The Bureau of Automotive Repair.
- (12) The Tax Preparers Program.
- (13) The California Architects Board.
- (14) The Speech-Language Pathology and Audiology Board.
- (15) The Board for Professional Engineers and Land Surveyors.
- (16) The Board of Behavioral Sciences.
- (17) The State Board for Geologists and Geophysicists.
- (18) The Structural Pest Control Board.
- (19) The Acupuncture Board.
- (20) The Board of Psychology.
- (21) The California Board of Accountancy.
- (22) The Bureau of Naturopathic Medicine.

Cal. B&P Code, § 7099.10:

7099.10. (a) If, upon investigation, the registrar has probable cause to believe that a licensee, an applicant for a license, or an unlicensed individual acting in the capacity of a contractor who is not otherwise exempted from the provisions of this chapter, has violated Section 7027.1 by advertising for construction or work of improvement covered by this chapter in an alphabetical or classified directory, without being properly licensed, the registrar may issue a citation under Section 7099 containing an order of correction which requires the violator to cease the unlawful advertising and to notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising, and that subsequent calls to that number shall not be referred by the telephone company to any new telephone number obtained by that person.

(b) If the person to whom a citation is issued under subdivision (a) notifies the registrar that he or she intends to contest the citation, the registrar shall afford an opportunity for a hearing, as specified in Section 7099.5, within 90 days after receiving the notification.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after the order is final, the registrar shall inform the Public Utilities Commission of the violation, and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

Attachment 3- Resolution T-12035

C-5

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RECEIVED
AUG 4 1987

EVALUATION & COMPLIANCE DIVISION
Telecommunications Branch

RESOLUTION NO. T-12035
July 29, 1987

PACIFIC BELL
LEGAL DEPT.

R E S O L U T I O N

RESOLUTION DIRECTING THE EXECUTIVE DIRECTOR TO ORDER
DISCONNECTION OF TELEPHONE NUMBERS LISTED IN ALPHABETICAL
AND CLASSIFIED DIRECTORIES BY UNLICENSED CONTRACTORS IN
COMPLIANCE WITH BUSINESS AND PROFESSIONAL CODE 7099.10

SUMMARY

Business and Professions Code 7099.10, enacted as part of State Senate Bill (SB) No. 1650 of the 1986 session, requires the Public Utilities Commission, upon proper notification from the Contractors' State License Board (CSLB), to order the disconnection of telephone numbers used in unlawful advertising by unlicensed contractors in alphabetical and classified directories. Upon written notification by the Registrar of the CSLB, the Public Utilities Commission must notify the telephone company furnishing telephone service to the offending contractor to disconnect the telephone number(s) used in the unlawful advertisement. SB No. 1650 became effective January 1, 1987.

This resolution directs the Executive Director of the Public Utilities Commission to order telephone companies to disconnect from service any telephone number listed in classified telephone directories by an unlicensed contractor, upon receiving proper written notification from the Registrar of the Contractors' State License Board. The notice from CSLB will indicate; that it completed an investigation; that proper legal notice was provided; that its citation informed the respondent that telephone service to numbers listed in the citation would be disconnected unless the respondent voluntarily disconnects the service or successfully appeals the citation; that the citation has become final either after a hearing or because it was not appealed; and that the telephone service has not been voluntarily disconnected.

BACKGROUND

SB 1650, approved by the Governor July 1, 1986 and effective January 1, 1987, concerns persons who advertise unlawfully for construction or work of improvement covered by the Contractors' State License Law without holding a valid contractor's license. Section 1 of the bill spells out new monetary criminal penalties for unlawful advertising which includes advertising via newspapers, radio, signs, cards, directories, etc. These are in addition to fines and penalties already covered under current law regarding contracting without a license. Section 2 of the bill, which effects the CPUC, limits itself to directories. It requires the CPUC, upon receiving notification from the Registrar of the CSLB, (or his designates, the Regional Deputies in charge of enforcement) to order telephone utilities to disconnect service to any telephone number listed in an unlawful advertisement in an alphabetical or classified directory.

The CSLB representatives normally issue 1,500 to 2,000 citations (cease and desist orders) a year for non-licensed activity. The citations are issued only after an investigation which is usually initiated by a complaint. Almost 90% of the persons given citations were advertising unlawfully; approximately 400 to 500 in directories. The new law should reduce the number of citations which is important because of the deaths and severe injuries that can result from work done by unlicensed persons.

Section 2 of the new law requires that anyone receiving a citation for unlawful advertising in a directory must cease the unlawful advertising and notify the telephone company furnishing service to disconnect the telephone service of all telephone numbers contained in the unlawful directory advertisement. The CSLB must provide a hearing within 90 days of receiving notification from a person wanting to contest the citation. The E & C and Legal Divisions have reviewed the draft procedures received from the CSLB on May 15, 1987. Attached is a form letter that the CPUC will use to notify the local exchange company of the order to disconnect.

CSLB estimates that approximately 50 cases will be submitted to the CPUC for action each year. These will be those cases where a person did not contest the citation and failed to voluntarily have the telephone service disconnected or those that contested the citations and received adverse decisions after hearings. The notice to the CPUC to order disconnection will only be sent as a last recourse.

The new bill eliminates an enormous amount of administrative work and time for CSLB. Prior to the new law, the CSLB had to go through a criminal proceeding and have the district attorney get the authorization to disconnect the phone.

Although the bill specifies alphabetical and classified directories, the CSLB representatives stated it was clearly the legislative intent at hearings to only disconnect numbers listed in the yellow pages. In this way, it would avoid disconnecting residential phones.

The law states that good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service shall constitute a complete defense to any action brought against the telephone company arising from the disconnection of service. Representatives of the telephone industry have been apprised of the effects of SB 1650 in meetings with the Contractors State License Board staff and E and C Division Staff.

FINDINGS

We find that the conditions of service authorized in this Resolution are just and reasonable; therefore,

IT IS ORDERED that:

1. The Executive Director is directed to order any telephone company providing telephone service to unlicensed contractors found to be advertising unlawfully by the CSLB in telephone classified directories, to disconnect telephone service to those numbers listed in the unlawful advertisements after receipt of proper notice from CSLB. The notice shall state: that the CSLB completed an investigation; that proper legal notice was provided; that the citation informs the respondent that telephone service to the numbers listed in the citation would be ordered to be disconnected unless the respondent voluntarily disconnects the service or successfully appeals the citation; that the citation has become final either after a hearing or because it was not appealed; and that the telephone service has not been voluntarily disconnected.

2. Each such order issued by the Executive Director shall recite that it was issued pursuant to this resolution. Each such order to disconnect when signed by the Executive Director shall be deemed to be the order of the Commission.

3. The effective date of this resolution is July 29, 1987.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on July 29, 1987. The following Commissioners approved it:


Executive Director

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

Date

Inside Address

Subject: ORDER TO DISCONNECT

Dear Sir:

In accordance with the attached letter from the California Contractor's State License Board (CSLB), you are hereby ordered to disconnect the service to the following telephone number(s) () _____ () _____, after verifying they belong to:

If the above number(s) do not belong to _____, do not disconnect them, but instead inform _____ of the fact.

The above listed number(s) were used in an unlawful advertisement in the _____ telephone directory by _____ who is not duly licensed in the State of California to advertise for construction or work of improvement covered by the Contractor's State License Law. This is in violation of Section 7026.7 of the Business and Professions Code.

Section 7099.10 of the Business and Professions Code states that good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service shall constitute a complete defense to any action brought against the telephone company arising from the termination of service.

California Commission Resolution T _____ dated _____ directs the Executive Director to issue this order which is deemed to be the order of the Commission.

Please confirm by letter to me the date of disconnection, with a copy to the CSLB Regional Deputy named in the attached CSLB letter.

Sincerely,

Victor R. Weisser
Executive Director