

Decision 00-12-044 December 21, 2000

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)

Roger Jon Diamond, Attorney at Law, for complainant.

Darlene M. Clark, Attorney at Law, for AT&T Communications of California, defendant.

Deborah L. Sanchez, Attorney at Law, Los Angeles City Attorney's Office, for Los Angeles Police Department, intervenor.

O P I N I O N

1. Summary

Western Referral, Inc., (Western Referral) doing business as VIP Escorts, seeks restoration of a business telephone following disconnection by AT&T Communications of California, Inc. (AT&T), at the direction of the Superior Court for the County of Los Angeles. Because we find 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.

2. Background

Western Referral operates a business offering referrals of independent contractors who provide nude modeling, entertainment, and escort services. Western Referral's offices are located in San Diego, but Western Referral offers its services in Orange, Los Angeles, Sacramento, and San Francisco counties. Western Referral is accused by the Los Angeles Police Department of using its telephone number to accomplish commercial prostitution and other violations of the Los Angeles Municipal Code.

On July 21, 2000, pursuant to order of Superior Court Judge Maral Inejikian, AT&T disconnected a toll free telephone number used by Western Referral. The court, acting on an affidavit prepared by the Los Angeles Police Department, found probable cause to believe that Western Referral's telephone lines were 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, Western Referral seeks reconnection of the telephone line pursuant to Rule 22 of AT&T's tariffs.

Rule 22, entitled "Legal Requirements for Refusal or Discontinuance of Service," governs this case. 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, dated January 8, 1980. The California Supreme Court dismissed constitutional objections to the rule and upheld its validity in Goldin v. Public Utilities Commission (1979) 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.

3. Evidence at Hearing

At hearing, the Los Angeles Police Department presented its evidence through the testimony of three witnesses, all of them Los Angeles Police Department officers. AT&T offered the testimony of one witness. Complainant, through counsel, cross-examined all witnesses and questioned the legal sufficiency underlying the disconnections. Complainant presented one witness, the owner of Western Referral. The Commission received seven exhibits into evidence.

4. Enforcement Agency Testimony

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 business.

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 Injejikian, 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.

5. AT&T's Testimony

AT&T's witness, Jane Gil, manager of the law government affairs division, testified that a member of AT&T's Network Services Fraud Division received a copy of the Superior Court order on July 25, 2000, confirmed receipt of the order with Detective Jett, and disconnected the requested telephone number.

She also admitted that AT&T failed to notify the subscriber immediately in writing of the disconnection, as required by Rule 22. She added, however, that Western Referral's attorney called AT&T's Network Services Fraud Division on July 28, 2000, and received an explanation of the court order. On August 8, 2000, AT&T gave written notice of the service suspension in conformance with the content requirements of Rule 22.

6. Complainant's Position

Complainant's President, Frank Saslow, testified that Western Referral has been in business for six years and is licensed by the City of San Diego to provide referral service. Western Referral denies any involvement in prostitution activities and stated that, to the contrary, it carefully trains its employees and independent contractors to avoid such conduct.

Complainant also offered several legal challenges. First, complainant argues that the Rule 22 process violates the due process rights of the United States constitution. Second, complainant also contends that it has been deprived of a valuable property right, its telephone service, without compensation. Third, on the merits of the case, complainant asserts that the Los Angeles Police Department has failed to meet its burden of proof.

Finally, complainant alleges that it was denied its discovery rights because the Police Department refused to provide copies of police reports without a formal request through the Department's established process.

7. Commission Analysis

For a business relying on telephones, uninterrupted telephone service is an interest in "property" constitutionally entitled to protection against "taking" without due process of law. (Goldin, supra at 662; see also Board of Regents v. Roth (1972) 408 U.S. 564.) Before disconnection of telephone service can occur, in the context of the case now before us, there must be probable cause to believe that the telephone facilities are being or are 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, and welfare will result. (Goldin, supra at 663-64.)

Such a showing of probable cause must be made before a magistrate – in this case, the Superior Court for the County of Los Angeles – and is reasonably

comparable to the showing that must be made in order to obtain a search warrant. (Sokol v. Pub. Util. Comm. (1966) 65 Cal.2d 247, 256.) Based on the affidavit and exhibits that have been entered into evidence here (Exhibits 1, 4 and 5), Judge Injejikian concluded that there was probable cause to believe that complainant's business telephones were 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, and welfare. (Exhibit 1.)

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 civil court charges brought against the subscriber. As the California Supreme Court has stated:

"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." (Goldin, supra at 668; footnotes omitted.)

The evidence presented here recounts two instances of services being provided by Western Referral, doing business as VIP Escorts. In both instances, the entertainers readily and immediately sought "tips" of \$300, in addition to their \$200 or \$210 base fee, and engaged in activities inconsistent with platonic nude modeling or entertainment, with such activities resulting in their arrests.

The police officers involved in this investigation provided credible testimony at hearing of the facts that form the basis for the arrests, and were cross-examined by complainant's counsel. The officers all have substantial

experience in prostitution investigations to support their opinions of the nature of VIP Escorts' business.

More troublesome is complainant's showing that AT&T failed to immediately notify complainant in writing of the disconnection, as required by Rule 22. However, the evidence also shows that complainant and its attorney, within three days of the disconnection, were fully apprised of the action taken and the Rule 22 remedies available to them. Based on this, we find that AT&T's error does not rise to a level requiring us to order the telephone service restored.

In summary, based on the testimony and the exhibits, we find that the totality of the evidence would lead a reasonably prudent person to conclude that violations of laws related to prostitution 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 prospective customers used this number to contact Western Referral, which in turn enabled the solicitation of illegal services alleged in the affidavits. Therefore, we find that the law enforcement agency 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 officers complies with the Goldin decision such that complainant's legal challenges are unfounded. Finally, we find that complainant's own failure to avail itself of the Police Department's process for obtaining police reports caused the delay in receiving the police reports. Thus, complainant's allegation of discovery violations is similarly unfounded.

We turn then to the second showing that Rule 22 imposes on the law enforcement agency, namely that service should not be restored. Here, complainant testified that the two incidents with the undercover Los Angeles

Police Department officers were isolated incidents, and that his receptionists carefully inform all clients that the entertainers perform only nude modeling or entertainment. Complainant presented no evidence, however, that the independent-contractor entertainers systematically refuse to perform acts that could constitute violations of the penal code relating to prostitution.

The police officers' testimony shows that on both of the two occasions when undercover officers sought services from Western Referral's entertainers, both entertainers readily agreed to, in one case, acts constituting prostitution and, in the other case, acts which would make the client "very happy." In neither instance did the entertainer refuse to engage in such acts due to any legal prohibition. The only impediment to completing the acts necessary for a prostitution charge in the second instance was the entertainer's skepticism regarding the legitimacy of the client, not any aversion to prostitution. Thus, during both contacts with Western Referral's entertainers, the police officers observed conduct inconsistent with Western Referral's asserted disavowal of prostitution.

We also note that both entertainers sought an identical amount, a \$300 "tip," for, in the first instance, acts of prostitution, and, in the second instance, acts that would make the client "very happy." The identical pricing of these extra services suggests that these two particular offerings were not isolated instances of misconduct.

We, therefore, further find that good cause has been shown to deny any interim restoration of telephone service pending. 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 Tariff Rule 22. Our order today confirms that ALJ Bushey is the presiding officer.

8. Changes from the POD

Pursuant to Public Utilities Code Section 1701.2, the Commission must provide a statement explaining changes from a POD. In its appeal, Western Referral alleged that the POD addressed the wrong issue in the case and omitted material facts. Western Referral contended that the issue was not whether there was probable cause to support the initial disconnect order. Western Referral argued that the proper issue was whether sufficient evidence had been produced to support continuation of the disconnect order. The Goldin opinion makes it clear that, contrary to complainant's assertions, both issues must be addressed by the Commission. As for Western Referral's second contention that material facts were omitted, we find that all necessary and relevant issues are addressed in the decision. We have, however, made several non-substantive clarifying modifications to the POD, but have not altered the substantive result.

Findings of Fact

1. Western Referral, doing business as VIP Escorts, operates a nude modeling and entertainment service in Los Angeles, California.
2. The telephone number (800)477-2454 was disconnected by AT&T on July 25, 2000, pursuant to its Tariff Rule 22, except that AT&T did not immediately notify Western Referral in writing; however, complainant and its attorney had actual notice of the action taken and the Rule 22 remedies available to them within three days of the disconnection.
3. Pursuant to Rule 22, Western Referral filed a complaint seeking restoration of the telephone numbers disconnected by AT&T and a timely hearing was held on the complaint.
4. The Los Angeles Police Department presented credible evidence through two investigating officers that the telephone service at issue here was being used to assist in the violation of applicable laws against prostitution.

5. Acts of prostitution pose a significant danger to the public health, welfare, and safety.

Conclusions of Law

1. In Goldin the California Supreme Court approved the process set out in Rule 22, against constitutional challenges.

2. Goldin and Rule 22 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. Rule 22 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 1, and the police reports (Exhibits 5 and 6) which were attached to the affidavit presented to the Court, is adequate to support the Court's disconnection order of July 21, 2000.

5. The request for immediate restoration of the telephone line disconnected on July 25, 2000, 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 Western Referral, Inc., doing business as VIP Escorts, seeking restoration of telephone line (800) 477-2454, disconnected pursuant to AT&T Tariff Rule No. 22 on July 25, 2000, is denied.

2. This proceeding is closed.

This order is effective today.

Dated December 21, 2000, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners