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Phone-Disclosure Rule Blocked By a Federal Judge at Hearing

NYTimes

By ARNOLD H. LUBASCH OCT 23 1975

A new state rule that requires the telephone company to inform subscribers before it gives their telephone records to investigators was blocked yesterday by a Federal judge, who assailed it as "an incredible encroachment on law enforcement."

Judge Lloyd F. MacMahon issued a temporary restraining order to block the rule, pending his final decision on it, and suggested in strong terms at a hearing in Federal District Court here that he intended to issue a permanent injunction.

The injunction has been requested by United States Attorney Paul J. Curran, who filed a suit for the Federal Government challenging the disclosure requirement, which was ordered by the state's Public Service Commission.

Judge MacMahon described the commission's disclosure orders as a usurpation of Federal powers and criticized the commission for "intruding in this outrageous manner in a field that is none of its administrative or regulatory business."

"This is an incredible encroachment on law enforcement," the judge exclaimed. "It would seem to me," he added, "that the Public Service Commission might better spend its time protecting the consuming public in its principal business of regulating a monopoly and its rates."

The commission ordered the disclosure requirement in May, reaffirmed it last month and won the support of civil liberties groups seeking to protect the rights of privacy.

Under the commission's orders, the telephone company was required to notify any subscriber \$2 hours in advance if the company was releasing the subscriber's toll billing re-

records to any investigative agency, including Federal grand juries that subpoena such records.

This disclosure could be avoided, according to the commission, only if the investigative agency obtained a court order suspending the telephone company's obligation to make the disclosure to the individual subscriber.

Howard J. Read, a staff counsel for the commission, argued at the hearing before Judge MacMahon that the disclosure requirement protected the privacy of telephone subscribers and "in no way interferes with grand jury proceedings."

Arguing for the Government, however, Mr. Curran contended that the required disclosures needlessly alerted the targets of criminal investigations, violated grand jury secrecy and represented "a disservice to law enforcement."

Mr. Curran said that it was "a national policy of the Bell System" not to inform subscribers of subpoenas for their telephone records in felony investigations if the subpoenas were accompanied by a prosecutor statement that disclosure could jeopardize an investigation.

The telephone company still follows this policy throughout the country, Mr. Curran said, except in New York State, where the commission's new disclosure requirement provides for penalties "up to \$1,000 per day per violation."

The commission's counsel, Mr. Read, noted that Federal prosecutors in Brooklyn had obtained the necessary court orders to avoid disclosure in a number of cases, but that Mr. Curran had not attempted to obtain such court orders. "I'd be appalled," Judge MacMahon snapped, "if he did."