

ORIGINAL

Decision No. 50202

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PHILIP MICHAEL

Complainant,

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a corporation,

Defendant.

Case No. 5540

Philip Michael in propria persona. Pillsbury,
Madison & Sutro, by John A. Sutro, and Lawler, Felix &
Hall, by L. B. Conant, for defendant.

O P I N I O N

The complaint alleges that Philip Michael of 254 South Broadway, Los Angeles, California, prior to February 24, 1954 was a subscriber and user of telephone service furnished by defendant telephone company under numbers MICHIGAN 0861 and MICHIGAN 0862. On or about February 24, 1954 these telephone facilities were disconnected by police officers of the City of Los Angeles. The complainant has made demand upon the telephone company to restore service but it has refused to do so. It is also alleged that complainant will suffer irreparable injury and great hardship if he is deprived of the use of his telephone facilities, and further that he did not use and does not now intend to use the telephone facilities as an instrumentality to violate the law.

Under date of April 27, 1954 this Commission, by Decision No. 49982 in Case No. 5540, issued an order granting temporary interim relief, directing the telephone company to restore telephone service to complainant pending a hearing on the matter. On May 6, 1954 the telephone company filed an answer, the principal allegation of which was that, pursuant to Decision No. 41415, dated April 6, 1948 in Case No. 4930 (47 Cal. P.U.C. 853), the telephone company had reasonable cause to believe the telephone facilities were being or were to be used as an instrumentality directly or indirectly to violate or to aid and abet the violation of the law.

Public hearing was held in Los Angeles on June 16, 1954 before Examiner Syphers, at which time evidence was adduced and the matter submitted.

At the hearing the complainant testified that he operated a telephone answering service and a mail service. The telephone facilities he had prior to February 24, 1954 consisted of two telephones under numbers Michigan 0861 and Michigan 0862, which telephones were located in one room, and in another room there was an extension of Michigan 0861. Also in the first room there were eight other telephones which were extensions of telephones from various professional offices in downtown Los Angeles. On February 24, 1954 two policemen and one policewoman entered the premises, arrested complainant and disconnected the two telephones, Michigan 0861 and Michigan 0862, as well as the extension in the other room. The other eight telephones were not disconnected. Subsequently the complainant plead guilty to violation of Section 415 of the Penal Code, which, among other

things, relates to disturbing the peace, and was fined \$250. . . This fine was paid April 8, 1954. He further testified that he had previously been arrested on November 7, 1953 for possession of lewd films, and as a result of that arrest he plead guilty and was fined \$100. Complainant admitted that he had used the telephone once to arrange for the purchase of some lewd films. . .

A police officer of the City of Los Angeles testified that prior to the arrest of November 7, 1953 arrangements had been made for the purchase of lewd films over the telephone, and that there were several telephonic contacts with complainant before the actual purchase was accomplished.

On February 24, 1954, the officer further testified, . . as a result of a letter complaining against Marilyn's Lonely Club which was advertising in a newspaper and which advertisement contained the address 254 South Broadway and the telephone number Michigan 0861, the police by telephone call arranged for a policewoman to call at this lonely club upon the pretext that she desired membership. The call was made by the policewoman, and after improper advances by complainant two policemen entered and arrested him, disconnecting the telephones. . . The policewoman testified and verified these facts. . .

It is the position of the complainant that he had paid his fines for these offenses and that he is in need of these telephones since this answering service is his means of livelihood. . .

Exhibit No. 1 is a list of the customers he had prior to the disconnection on February 24, 1954. . He stated he had lost . .

many of these customers even though the telephones were now temporarily reinstalled.

Exhibit No. 2 is a copy of a letter dated February 26, 1954, from the Chief of Police of Los Angeles to the telephone company, requesting that telephone service under numbers Michigan 0861 and Michigan 0862, at 254 South Broadway, be disconnected. The position of the telephone company was that it had acted with reasonable cause in disconnecting these telephone facilities and refusing to reinstall them inasmuch as it had received the letter designated as Exhibit No. 2.

After a consideration of this record we now find that the telephone company's action was based upon reasonable cause as such term is used in Decision No. 41415, supra. We further find that the telephone facilities here in question were used as an instrumentality to aid and abet the violation of the law. The testimony discloses that the complainant has been found guilty and fined for these violations. However, the complaint which complainant originally filed disclosed none of these facts. The temporary interim relief granted by Decision No. 49982 was based upon the incomplete allegations in this complaint. From this record we can do nothing else but conclude that all of these facts were in the possession of complainant at the time he filed the complaint since they pertain to offenses of which he was convicted and to which he testified at the hearing in this matter. We also find from this record that the telephone facilities of complainant were used in connection with the perpetration of these offenses. Therefore, it appears that the obtaining of the

temporary interim relief was not done in good faith. This type of proceeding is in the nature of an equity proceeding, and it is fundamental that the complainant should come to the Commission with clean hands. This complainant did not meet such a requirement. The order granting temporary interim relief will be dissolved and the complaint will be denied.

O R D E R

The complaint of Philip Michael against The Pacific Telephone and Telegraph Company having been filed, public hearing having been held thereon, the matter now being ready for decision, and the Commission being fully advised in the premises and basing its decision upon the evidence of record and the findings herein,

IT IS ORDERED that complainant's request for restoration of telephone service be denied, and that said complaint be and it hereby is dismissed. The temporary interim relief granted by Decision No. 49982 in Case No. 5440 is hereby set aside and vacated.

IT IS FURTHER ORDERED that upon the expiration of thirty days after the effective date of this order The Pacific Telephone and Telegraph Company may consider an application for

telephone service from the complainant herein on the same basis as the application of any new subscriber.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 29 day of June, 1954.

Robert E. Mitchell
President

Justin D. Adams

Werner Soggin

Commissioners

Kenneth Potter
Commissioner....., being
necessarily absent, did not participate
in the disposition of this proceeding.