AM

Decision No. 53735

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Elvin Mackey, Complainant, vs. The Pacific Telephone and Telegraph Company, a corporation, Defendant.	Case No. 5788

Elvin Mackey, for himself.
Dudley A. Zinke, John A. Sutro and Pillsbury, Madison and Sutro for defendant.
James A. Mullan, for the San Francisco Police Department.

O P I N I O N

This complaint filed June 22, 1956, alleges that on or about May 3, 1956, certain police officers removed complainant's telephone furnished by defendant company under telephone number KL 2-2118 from the place where he then resided. It was further alleged that the officers asserted that his landlady had been taking bets on horse races over said telephone. Complainant stated that he had no knowledge of any conduct of the nature complained of and that he would not have permitted any such conduct. Complainant has moved to another address, 444 Page Street, and requests an order directing defendant to restore his telephone service.

The answer of the telephone company filed July 5, 1956, alleges that on or about May 7, 1956, it had reasonable cause to believe that the use made or to be made of the telephone service

was prohibited by law and that said service was being or was to be used as an instrumentality, directly or indirectly, to violate or to aid or abet violation of the law and that having such reasonable cause, discontinued said service pursuant to the order of Decision No. 41415 dated April 6, 1948, in Case 4930. (47 Decisions of the Public Utilities Commission of the State of California 853)

Public hearing was held before Examiner Rowe in San Francisco on August 10, 1956, at which time evidence both oral and documentary was adduced and the matter submitted for decision.

James A. Mullan sought an intervention on behalf of the Police Department of the City and County of San Francisco. It was stated that such intervention was sought so that the police department could justify its action. This intervention was refused because there was no showing of compliance with Rule 45 of the Commission's Rules of Procedure. Also it did not appear that any intervention was justified. The propriety of the action of the police department had not been made an issue in the proceeding by any allegation in either the complaint or answer filed in the case.

Exhibit No. 1 is a copy of a letter from the Police Department of the City and County of San Francisco, dated May 4, 1956, requesting that the telephone service under number KL 2-2118 and UN 1-2561, be discontinued because of illegal use. According to the testimony the other telephone, number UN 1-2561, stood in the name of complainant's landlady. Complainant testified that at the new address, 444 Page Street, his former landlady would have no access to his telephone and he wishes the telephone facilities installed there.

After a consideration of the record we now find that the telephone company's action was based upon reasonable cause as such

term is used in said Decision No. 41415. We further find that the telephone facilities here in question have not been shown to have been used to aid or abet the violation of the law by complainant, and that any such use at his former address was without his knowledge or consent.

O R D E R

A public hearing having been held in the above-entitled matter, the Commission being fully advised in the premises and good cause appearing,

IT IS ORDERED that complainant's application for telephone service be accepted and that The Pacific Telephone and Telegraph Company install service for complainant at 444 Page Street in the City and County of San Francisco, such installation being subject to all duly authorized rules and regulations of the defendant's tariff and applicable law; provided, however, that complainant's application for service shall have priority over like applications filed subsequent to May 9, 1956.

The effective date of this decision shall be ten days after the date hereof.

Dated at San Francisco, California, this 4th day of September, 1956.

President

Commissioners