

ORIGINAL

Decision No. 54239

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JO ANN BONNICI ALSO KNOWN
AS JENNIE DONOVAN, dba
JO ANN'S MASSAGE STUDIO,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Case No. 5786

Frank M. Brown for complainant.
Dudley A. Zinke and John A. Sutro of Pillsbury,
Madison & Sutro for defendant.
James A. Bohm for the San Francisco Police
Department, interested party.

O P I N I O N

The complaint herein, filed June 15, 1956, alleges that the telephone service at the place of business of complainant located in Suite 200 at 680 Sutter Street, San Francisco, California on April 20, 1956, was discontinued by defendant, upon the advice of the San Francisco Police Department that the telephone facilities were being used as an instrumentality to violate or to aid and abet the violation of the law; that said facilities have at no time in the past been used as an instrumentality to violate or to aid and abet the violation of the law and at no time in the future will be so used; that complainant was acquitted on charges of violating Section 647 of the Penal Code and Section 240-A of the Municipal Code of the City and County of San Francisco; that after such acquittal complainant made demand upon defendant for restoration of telephone facilities and said defendant refused to restore the same; that

defendant's action has caused complainant great and irreparable damages.

Public hearing was held before Examiner Rowe in San Francisco on September 13, 1956, and after reopening again on November 8, 1956, at which times evidence both oral and documentary was adduced and on the latter date the matter was submitted for decision.

Pursuant to Decision No. 53316, dated June 27, 1956, the telephone facilities were reinstated on or about June 27, 1956, to continue pending hearing on this complaint or further Commission order.

On July 6, 1956, the telephone company filed its answer alleging that it had reasonable cause to believe that the telephone service furnished by defendant to complainant under number ORdway 3-0626 was being used in connection with the violation of the vice laws of the State of California and of the City of San Francisco; that defendant having reasonable cause to believe that the use made of said services was prohibited by law, discontinued said service on or about April 25, 1956, pursuant to the order of the Public Utilities Commission dated April 6, 1948, in Decision No. 41415 in Case No. 4930.

Jennie Donovan, the complainant herein, testified that she operated a bona fide studio as a physiotherapist and had never used or permitted her telephone to be used for an illegal purpose and had no intention of using said facilities for any improper purpose in the future. She further testified that on April 17, 1956, she was contacted by a police officer who requested an appointment with an assistant of hers. When advised that this other operator was not on duty the police officer made offers to her and upon her refusal arrested her and charged her with the crimes above referred to. She was tried and later acquitted in the Municipal Court.

The defendant did not cross-examine this witness. However on further hearing the arresting officer testified that the facts were essentially different from those stated in the testimony of complainant.

Despite the testimony of the police officer in the criminal prosecution, she was acquitted. After hearing, also, the City Board of Permits Appeals has reinstated complainant's permit to carry on her work of physiotherapy. The Commission is not the proper tribunal for prosecuting complainant for a criminal offense. The Commission desires to avoid the use of telephone service for illegal purposes, and, to that end, will not order telephone companies to restore service where the evidence is persuasive that such service has been and will be used for unlawful purposes, and that such use will interfere with proper law enforcement.

This record is devoid of any evidence that complainant has ever used the telephone facilities furnished by defendant in the aid of any criminal action. The police officer's testimony as to complainant's use of telephone facilities was restricted to his statement that he called complainant on the telephone. On the other hand, her testimony is unequivocal that she has never used and never intends to use the telephone for any illegal purpose.

Exhibit No. 1 is a copy of a letter from the Chief of Police of the City and County of San Francisco addressed to and received by the telephone company, requesting that the telephone facilities be disconnected. The telephone company is hereby found to have disconnected the telephone facilities and otherwise acted upon reasonable cause as that term is used in said Decision No. 41415 and in the company rules filed with the Commission. We further find that the telephone facilities in question have not been used to violate or to aid or abet the violation of law and complainant is entitled to telephone service. ✓

O R D E R

The complaint of Jo Ann Bonnici, also known as Jennie Donovan, having been filed, a public hearing having been held thereon, 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 the order of the Commission in Decision No. 53316, dated June 27, 1956, in Case No. 5786, temporarily restoring telephone service to the complainant, be made permanent, such restoration being subject to all duly authorized rules and regulations of the telephone company and to the existing applicable law.

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

Dated at San Francisco, California,
this 11th day of DECEMBER, 1956.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]
Commissioners