

Decision No. 54957**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GEORGETTE PEREZ,

Complainant,

vs.

Case No. 5824

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Joseph C. Haughey, for complainant.
John A. Sutro, Pillsbury, Madison and
 Sutro, by Dudley A. Zinke, for defendant.
Albert Conci, for Chief of Police, Daly City,
 Interested party.

O P I N I O N

The complaint alleges that Mrs. Perez was a subscriber and user of telephone service furnished by defendant telephone company at her home, 854 Templeton Avenue, Daly City, under number Delaware 3-6395. On or about September 4, 1956, this service was disconnected by defendant. On or about August 24, 1956, the defendant received a letter from the Chief of Police of Daly City, dated the 22nd, stating that complainant's telephone was being used to disseminate horse racing information, and that such information was being used in connection with bookmaking, a violation of the Penal Code. Complainant has demanded that the telephone company restore service, but it has refused to do so. It is also alleged that the health and welfare of complainant and members of her family will suffer greatly if she and they are deprived of telephone service, and that at no time did complainant or any member of her family use the said telephone facilities as an instrumentality to violate the law.

At the time this complaint was filed (September 24, 1956), complainant's mother, a married expectant daughter, and two sons of the ages of 15 and 10 were living with complainant and her husband. Complainant, herself, was then ill. Another daughter resided at South San Francisco and has three small children. Complainant had recovered by the time of the hearing.

Under date of September 25, 1956, this Commission, by Decision No. 53809 in this case, issued an order granting temporary interim relief directing the telephone company to restore service to complainant pending a hearing in this matter. On October 4, 1956, the telephone company filed an answer, the principal allegation of which was that the telephone company had reasonable cause to believe that the telephone service under number DELaware 3-6395, at 854 Templeton Avenue, Daly City, was being or was to be used as an instrumentality to violate the law.

A public hearing was held in San Francisco on April 5, 1957, before Examiner Power, at which time evidence was adduced and the matter submitted.

At the hearing the evidence disclosed that an investigator from the United States Treasury Department and another from the District Attorney's office in San Mateo County were investigating three persons for bookmaking in and about Daly City. This led to a raid on May 2, 1956. During this raid (the officers who made it were not identified) certain betting markers of Salvador Perez were found. He is complainant's husband. Salvador Perez gave a statement to the investigators. He was not charged with bookmaking.

Complainant testified that her younger daughter is expecting a child at any time. That she herself is employed at a San Francisco store. That she needs a telephone to order food, amongst other things,

since she sometimes works six days a week. That her daughters, mothers of children of pre-school age, need to be in communication with her.

Her testimony was that never, to her knowledge, had her husband, or any one else placed a bet over her telephone. There is no evidence in the record from anyone that bets were ever received at the Templeton Avenue address.

There was some suggestion that Salvador Perez may have called in a bet of his own from DElaware 3-6395 to a bookmaker. This, however, was contradicted by the testimony of both Perez and his wife, the complainant, given under oath and subjected to cross-examination.

Exhibit No. 1 is a copy of a letter, dated August 22, 1956, from the Chief of Police of the City of Daly City to the Chief Special Agent of the telephone company, requesting that service under number DElaware 3-6395 be disconnected. The position of the telephone company was that it had acted with reasonable cause in disconnecting the telephone service inasmuch as it had received the letter designated as Exhibit No. 1.

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, Dated April 6, 1948 (47Cal.P.U.C. 853). We further find that the telephone facilities here in question were not used as an instrumentality to aid and abet the violation of the law.

O R D E R

The complaint of Georgette Perez 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 the complainant's request for restoration of telephone service be granted and that The Pacific Telephone and Telegraph Company shall install telephone service at complainant's residence under telephone number DELaware 3-6395 at 854 Templeton Avenue, Daly City, California, such installation 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 7th day of MAY, 1957.

John E. McNeil
 President

Ralph L. Intereven

Robert D. Dore

R. Hardy

E. Lynn Fox
 Commissioners