

ORIGINAL

Decision No. 55881

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARTIN CUSIMANO,

Complainant,

vs.

Case No. 5985

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Joseph T. Forno, for complainant.
Lawler, Felix and Hall, by Gene Otsea, for the defendant.
Roger Arnebergh, city attorney, by John Neville, deputy city
attorney, for the Los Angeles Police Department, intervener.

O P I N I O N

The complaint of Martin Cusimano, filed on September 13, 1957, alleges that prior to January 9, 1957, complainant was a subscriber and user of telephone service furnished by the defendant under number Capitol 1-3016 at 119½ South Avenue 22nd, Los Angeles, California; that on or about January 9, 1957, the complainant's telephone facilities were removed by the defendant pursuant to instructions from the Los Angeles Police Department, which Department caused complainant to be arrested on or about said date on a charge of violation of Section 337a of the Penal Code; that subsequently the complainant was found not guilty of said charge; that complainant has made demand upon defendant to have said telephone facilities restored but defendant has refused and still refuses to do so; that complainant has suffered and will suffer irreparable injury to his reputation and great hardship as a result of being deprived of said facilities; and that complainant did not use and does not intend to use said telephone facilities as an instrumentality to violate the law nor in aiding and abetting such violation.

On October 1, 1957, by Decision No. 55624, in Case No. 5985, this Commission issued an order directing the telephone

company to restore service to complainant pending a hearing on the matter.

On October 10, 1957, the defendant 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 defendant, on or about January 11, 1957, had reasonable cause to believe that the telephone service furnished by defendant under number Capitol 1-3016 at 119½ South Avenue 22nd, Los Angeles, California, was being or was to be used as an instrumentality directly or indirectly to violate or to aid and abet the violation of the law.

A public hearing was held in Los Angeles before Examiner Kent C. Rogers on November 1, 1957, and the matter was submitted.

Complainant testified that on January 9, 1957 he resided at 119½ South Avenue 22nd, Los Angeles, and had a telephone there furnished by the defendant; that he did not take bets or engage in bookmaking practices over the telephone; and that he was arrested on or about January 9 and subsequently tried and found not guilty of the charge of bookmaking.

A police officer connected with the Vice Squad of the City of Los Angeles Police Department testified that on January 1, 1957 at about 12:05 p.m., he went to complainant's address with three other officers; that one of the officers went to a nearby place and made a phone call to the defendant's home; that the officers then entered the front and side doors of the complainant's home; that the witness entered the side door and went into the kitchen; that the telephone was on the kitchen table, together with a radio and scratch pad and two pencils; that there was a cigar box under the sink containing betting markers; that there was, in a drawer in the kitchen, a National Reporter scratch sheet with numbers written

down beside names of horses; that the witness heard the telephone ring while he was on the premises; and that the witness did not answer the telephone and did not hear the conversation on the telephone.

Exhibit No. 1 is a copy of a letter from the Chief of Police of the City of Los Angeles to the telephone company, dated January 10, 1957, advising the telephone company that the complainant's telephone, having the number Capitol 1-3016, was, on January 9, 1957, being used for the purpose of disseminating horse racing information in connection with bookmaking; that the telephone had been removed by the police; and requesting that the telephone service be disconnected. The parties stipulated that this letter was received by the telephone company on or about January 11, 1957, and that subsequently thereto a central office disconnection was effected pursuant to the request contained in said letter. The position of the telephone company was that it had acted with reasonable cause, as that term is used in Decision No. 41415, referred to supra, in disconnecting service, inasmuch as it had received the letter designated as Exhibit No. 1.

After consideration of this record, we now find that the telephone company's action was based upon reasonable cause, as that term is used in Decision No. 41415, referred to supra. We further find that there is no evidence that the telephone facilities of complainant were used in connection with bookmaking activities; therefore the complainant is now entitled to restoration of telephone service.

O R D E R

The complaint of Martin Cusimano against The Pacific Telephone and Telegraph Company, a corporation, having been filed,

a public hearing having been held thereon, the Commission being fully informed 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. 55624, dated October 1, 1957, 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 from the date hereof.

Dated at San Francisco, California, this 3rd day of December, 1957.

John L. Winkler
President
Robert L. ...
Michael ...
R. V. ...
L. ...
Commissioners