

ORIGINAL

Decision No. 57037

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MANNY KLEINBERG,

Petitioner,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Respondent.

Case No. 6114

Samuel Reisman and Robert Memel, by Robert Memel,
for petitioner.
Lawler, Felix & Hall, by Thomas Workman, Jr., for
respondent.
Roger Arnebergh, City Attorney, by John Neville,
Deputy City Attorney, for the City of
Los Angeles, intervener.

O P I N I O N

The petitioner Manny Kleinberg, by the petition herein filed on May 23, 1958, alleges that he was a subscriber and user of telephone service furnished by respondent at 1223 South Maple Avenue, Los Angeles, California, under telephone number Richmond 8-0707; that on or about March 14, 1958, said telephone facilities were disconnected by respondent on advice of the Los Angeles Police Department and said facilities are still disconnected; that petitioner has requested that the telephone facilities be restored; that respondent has refused, and now refuses to do so; that petitioner has suffered injury as a result of having telephone service disconnected; and that petitioner has not, and does not now intend to use said

facilities as an instrumentality to violate the law, nor to aid or abet such violation.

On June 9, 1958, the telephone company filed an answer, the principal allegation of which was that the telephone company, pursuant to Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853), on or about March 7, 1958, had reasonable cause to believe that the telephone service furnished to petitioner under number RIchmond 8-0707 at 1223 South Maple Avenue, 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, and that having such reasonable cause it was required to disconnect the service pursuant to Decision No. 41415, supra.

A public hearing was held in Los Angeles on June 27, 1958, before Examiner Kent C. Rogers.

Petitioner testified that he has a business known as Manny's at 1223 South Maple Avenue, Los Angeles; that the telephone therein was used for business purposes only; that on March 4, 1958, the telephone was taken out by police officers and he was arrested; that on the day of the arrest he was sitting in his place of business between 10:30 and 11 a.m., doing some paper work; that he saw someone enter the front of his store and he went to see who it was; that it was a police officer who told him he was under arrest; that the police officers remained there one and one-half hours; that the only calls that came in during said period were business calls, that he has not used the telephone services for bookmaking or other illegal purposes and that he will not allow them to be so used; that after his arrest he pleaded guilty to bookmaking and paid a \$150 fine.

Exhibit No. 1 is a copy of a letter from the Commander of the Administrative Vice Division of the Los Angeles Police Department to the telephone company advising that the petitioner's telephone had been removed, that it had been used for the purpose of disseminating horse racing information for bookmaking, and requesting that the telephone facilities be disconnected. An employee of the telephone company testified that this letter was received on March 7, 1958, and that a central office disconnection was effected on March 12, 1958, and that the service has not been reconnected. The position of the telephone company was that it had acted with reasonable cause as that term is defined in Decision No. 41415, supra, in disconnecting telephone service inasmuch as it had received the letter designated as Exhibit No. 1.

Two police officers testified to finding betting paraphernalia by petitioner's telephone; that petitioner admitted he was taking bets over the telephone for his friends; that a bet was received over the telephone by one of the officers; that the telephone was removed; and that petitioner was arrested for bookmaking.

After full 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, supra. We further find that petitioner's telephone was used for bookmaking purposes. However, inasmuch as the petitioner has been convicted and has paid the penalty for such illegal purposes, the telephone will be ordered to be restored.

ORDER

The petition of Manny Kleinberg against The Pacific Telephone and Telegraph Company, a corporation, having been filed, a public hearing having been held thereon, the Commission being fully advised in the premises and basing its decision on the evidence of record and the findings herein,

IT IS ORDERED that the petitioner's request for restoration of telephone service be granted, and that upon the filing by him of an application for telephone service, The Pacific Telephone and Telegraph Company shall install telephone service at the petitioner's place of business at 1223 South Maple Avenue, Los Angeles, 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 23rd day of JULY, 1958.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners

Commissioner Matthew J. Dooloy, being necessarily absent, did not participate in the disposition of this proceeding.