

ORIGINAL

Decision No. 57285

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN MOTTA, JR.,

Complainant,

vs.

Case No. 6139

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Fred Noon, attorney, for complainant.
Gray, Carey, Ames & Frye, by Alfred Lord, attorneys,
for defendant.
J. F. Du Paul, City Attorney, by Fred Holoboff,
Deputy City Attorney, for the City of San Diego,
intervener.

O P I N I O N

The complaint, filed on June 27, 1958, alleges that complainant John Motta, Jr., is the husband of Margaret Motta; that they, at all times hereinafter mentioned, resided and still reside at 3220 Hugo Street, San Diego, California; that for a long time prior to August 21, 1957, complainant was a subscriber to the defendant's telephone service at said address, said service being furnished under telephone number ACademy 3-5134; that on or about August 21, 1957, members of the San Diego Police Department and the San Diego County Sheriff's office removed complainant's telephone from said address; that at the time said telephone was removed, complainant's wife, Margaret Motta, was arrested; that no complaint was ever filed against complainant herein; and that Margaret Motta was fined for engaging in bookmaking activities.

On July 16, 1958, 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 August 26, 1957, had reasonable cause to believe that the telephone service furnished by defendant under telephone number ACademy 3-5134 at 3220 Hugo, San Diego, 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 said telephone pursuant to said order of the Commission.

Public hearing was held in San Diego before Examiner Kent C. Rogers on August 12, 1958, and the matter was submitted.

The complaining witness testified that he has resided at 3220 Hugo Street, San Diego, since 1944, and has resided in San Diego for twenty-four years; that he has lived with his wife during all of said period; that he is a supervisor for the Star-Kist Tuna Company in San Diego; that he works eight hours during the day but is on call during the night as the tuna ships come in and unload; that in order to retain his job it is necessary that he have a telephone; that on or about August 21, 1957, during his absence, the police arrested his wife for bookmaking activities and removed complainant's telephone; that his wife subsequently paid a fine for the bookmaking activity; that a telephone is absolutely necessary to him in his business; and that he has been informed that he will lose his job unless he secures a telephone at his residence.

Margaret Motta testified that she is the wife of John Motta; that they have been married for twenty-four years; that they own their home at 3220 Hugo Street, San Diego; that on August 21,

1957, in her husband's absence, she was arrested for bookmaking activities and the telephone was removed; that she subsequently pleaded guilty to playing the horses and paid a fine; that her husband knew absolutely nothing of such activities and that she will never in the future use a telephone for illegal purposes.

No evidence was presented on behalf of the intervener.

Exhibit No. 1 is a letter from the Chief of Police to the defendant advising that the complainant's telephone had been confiscated, that it had been used for the purpose of disseminating horse racing information in connection with bookmaking and requesting that the service be disconnected. It was stipulated that this letter was received on or about August 23, 1957, and that pursuant to that letter the service was disconnected by the defendant on August 27, 1957, and has not been reconnected. The position of the telephone company was that it had acted with reasonable cause as that term is used in Decision No. 41415, supra, in disconnecting service inasmuch as it had received the letter designated as Exhibit No. 1.

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 the complainant's telephone was used for illegal purposes, to wit: bookmaking, but that such use was without the knowledge or consent of the complainant herein. It further appears from the record, and we find, that the complainant's telephone is necessary to him in his livelihood and that said complainant has been without a telephone for approximately one year and that the telephone service should be and it will be ordered restored.

O R D E R

The complaint of John Motta, Jr., 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 complainant's request for restoration of telephone service be granted and that upon the filing by applicant of an application for telephone service, The Pacific Telephone and Telegraph Company shall restore telephone service at complainant's home at 3220 Hugo Street, San Diego, 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 ten days after the date hereof.

Dated at San Francisco, California,
this 9th day of September, 1958.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]

Commissioners

Commissioner Ray E. Untereiner, being necessarily absent, did not participate in the disposition of this proceeding.