

ORIGINAL

Decision No. 57533

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FRANK JOSEPH LA MARR,
Complainant,

vs.

Case No. 6168

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY,
Defendant.

Frank Joseph La Marr, in propria persona.
Lawler, Felix & Hall, by Thomas E. Workman, Jr.,
for the defendant.
Harold W. Kennedy, County Counsel, by Terry C.
Smith, Deputy County Counsel, for the
Sheriff's Department of Los Angeles County,
intervener.

O P I N I O N

The complaint herein, filed on August 18, 1958, alleges that the complainant is Frank Joseph La Marr, residing at 9843 Val Street, Temple City, California; that on or about April 1, 1958, the complainant was arrested for a violation of Section 337a, subdivision 1, of the Penal Code; that the complainant pleaded guilty to said charge and on June 30, 1958, was granted probation and ordered to pay a fine as a condition thereof; that at the time of the arrest the Sheriff's deputies removed complainant's telephone from said address and have not returned said telephone; that complainant engaged in said bookmaking activities in order to obtain funds to pay for his wife's illness, and that a telephone is essential in the complainant's home.

On September 8, 1958, the telephone company filed an answer, the principal allegation of which was that on or about April 24, 1958, it had reasonable cause to believe that the telephone service furnished to the complainant under number Hillcrest 7-4811 at 9843 Val Street, Temple City, 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 the defendant was required to disconnect the service pursuant to this Commission's Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

A public hearing was held in Los Angeles before Examiner Kent C. Rogers on September 30, 1958, and the matter was submitted.

At the hearing the complainant testified that the allegations of the complaint are true; that he engaged in bookmaking activities over the telephone on or about April 1, 1958; and that on or about June 30, 1958, he paid a fine of \$150 and was placed on two years' probation. The complainant further testified that he needs the telephone at his residence inasmuch as his wife is sick and that he has two youngsters, ages 7 years and 11 years, and that if the telephone service is restored he will not use it for illegal purposes in the future.

Exhibit No. 1 is a copy of a letter from the Captain of the Vice Detail of the Sheriff's Department of Los Angeles County to the telephone company, advising it that the telephone at 9843 Val Street, Temple City, California, had been confiscated; that on or about April 1, 1958, the telephone was being used for

the purposes of disseminating horse racing information which was being used in connection with bookmaking in violation of Section 337a of the Penal Code, and requesting that the telephone service be disconnected. An employec of the telephone company testified that this letter was received on April 24, 1958, that a central office disconnection of said telephone service was effected on May 6, 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 used in Decision No. 41415, supra, in disconnecting the telephone service inasmuch as it had received the letter designated as Exhibit No. 1.

The intervener presented no evidence.

In the light of this record we find that the action of the telephone company was based upon reasonable cause as that term is used in Decision No. 41415, supra. We further find that the complainant has paid the penalty prescribed by law for using the telephone for illegal purposes and that, therefore, the complainant is now entitled to the restoration of telephone service.

O R D E R

The complaint of Frank Joseph La Marr 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 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, upon the filing

by complainant of an application for telephone service, The Pacific Telephone and Telegraph Company shall install telephone service at the complainant's residence at 9843 Val Street, Temple 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 28th day of October, 1958.

E. Leo Fox
President
W. E. K. Hill
Paul W. Kramer
Walter J. Cole
Theodore Jenner
Commissioners