

ORIGINAL

Decision No. 58396

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JEAN OPAL ZINK,

Complainant,

vs.

Case No. 6230

PACIFIC TELEPHONE AND TELEGRAPH
CO., A CORPORATION,

Defendant.

Toshiro Hiraide, for complainant.
Lawler, Felix & Hall, by A. J. Krappman, Jr.,
for defendant.
Alister McAlister, Deputy County Counsel, for the
Sheriff's Department, County of Los Angeles,
intervener.

O P I N I O N

The complaint of Jean Opal Zink, 1234 West 90th Street, Los Angeles, California, filed on March 2, 1959, alleges, inter alia, that on about August 2, 1958, the defendant company removed her telephone on the grounds that it was used by her for receiving bets on the results of horse races; that on December 15, 1958, she was convicted of such offense and paid the penalty therefor; that she is in poor health and under a physician's care and has been requested by the physician to maintain constant contact with him; and that she has requested the defendant to restore her telephone service but that the defendant has refused to comply with such request.

On March 18, 1959, 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 August 26, 1958, had reasonable cause to believe that the telephone service furnished to complainant under number PLYmouth 6-3839 at 1234 West 90th Street, 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, respondent was required to disconnect the service pursuant to this Commission's Decision No. 41415, supra.

A public hearing was held before Examiner Kent C. Rogers in Los Angeles on April 14, 1959, and the matter was submitted.

The complainant testified that for two weeks in August, 1958, she used her telephone for bookmaking purposes; that she was arrested and paid a fine therefor; that she will not use the telephone for illegal purposes in the future; and that she is ill and needs a telephone in her home. Financial troubles, she said, caused her to attempt to raise money by the illegal means.

Exhibit No. 1 herein consists of a letter and an affidavit from two physicians, each stating that due to complainant's physical condition it is essential that she have a telephone in her home.

The arrest was made by Los Angeles County deputy sheriffs and Los Angeles City police. A deputy county counsel was present at the hearing to represent the Sheriff's Department and the Police Department, but presented nothing in opposition to the request for a telephone.

Exhibit No. 2 is a letter dated August 25, 1958, from the Commander of the Los Angeles Police Department Administrative Vice Detail to the defendant, advising defendant that on August 22, 1958, complainant's telephone PLYmouth 6-3839 was being used for the purpose of disseminating horse racing information which was being used in connection with bookmaking in violation of Section 337a of the Penal Code; that the telephone had been confiscated; and requesting that defendant disconnect the services. This letter was received by defendant on August 26, 1958, and a central office disconnection was made by defendant pursuant thereto on August 28, 1958. 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. 2.

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 telephone in question was used for bookmaking purposes; but inasmuch as the telephone was disconnected and the complainant paid the penalty prescribed by law, the telephone service will be reinstated. For the reason that the complainant is required to be in contact with her physician due to her illness, the order of restoration will be made effective on the date of the order herein.

O R D E R

The complaint of Jean Opal Zink against The Pacific Telephone and Telegraph Company 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,

IT IS ORDERED that complainant's request for telephone service is granted, and that 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 1234 West 90th Street, 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 the date hereof.

Dated at San Francisco, California, this 12th day of May, 1959.

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

Commissioner Everett C. McKenna, being necessarily absent, did not participate in the disposition of this proceeding.