

ORIGINAL

Decision No. 58930

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MILTON ROTH,

Complainant,

v.

Case No. 6293

PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, a corporation,

Defendant.

W. M. Sarnoff, for complainant.  
Lawler, Felix & Hall, by A. J. Krappman, Jr., for  
defendant.  
Roger Arnebergh, City Attorney, by Laurence R.  
Corcoran, Deputy City Attorney, for the  
Police Department of the City of Los Angeles,  
intervener.

O P I N I O N

By the complaint herein, filed on June 19, 1959, complainant alleges that he resides at 919 South Sherbourne, Apartment No. 4, Los Angeles, California, and is the subscriber to a telephone known as OLeander 5-7873; that on or about April 17, 1959, he was arrested by members of the Los Angeles Police Department and charged with a violation of Section 337a of the Penal Code; that at the time of his arrest the telephone was disconnected and removed; that thereafter, on May 27, 1959, the criminal complaint was dismissed; that the complainant is ill and needs a telephone; and that he has demanded that the telephone be restored but the defendant refuses to do so.

On July 7, 1959, by Decision No. 58711 in Case No. 6293 the Commission ordered that the telephone service be restored to complainant pending a hearing on the complaint.

On July 16, 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 April 21, 1959, had reasonable cause to believe that the telephone service furnished to complainant under number OLeander 5-7873, at 919 South Sherbourne Street, Apartment 4, 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 defendant was required to disconnect service pursuant to this Commission's Decision No. 41415, supra.

A public hearing on the complaint was held before Examiner Kent C. Rogers in Los Angeles on August 3, 1959.

The complainant testified that on April 17, 1959, he was arrested by members of the Los Angeles Police Department at his apartment on suspicion of bookmaking; that the telephone was removed; that subsequently the charge was dismissed; that he has a serious heart condition and needs a telephone in order to contact his doctor; and that at no time was the telephone used for any illegal purposes.

A deputy city attorney was present at the hearing but presented no evidence.

Exhibit 1 is a letter from the commanding officer of the Administrative Vice Detail of the Los Angeles Police Department to

the defendant advising defendant that on April 17, 1959, complainant's telephone under number OL 5-7873 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 the defendant disconnect the services. This letter was received by the defendant on April 21, 1959, service was disconnected on April 23, 1959, and reconnected pursuant to this Commission's Decision No. 58711, supra, on July 10, 1959.

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 service inasmuch as it had received the letter designated as Exhibit 1.

After full consideration of this record, we 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 evidence fails to show that the complainant's telephone was used as an instrumentality to violate or to aid and abet the violation of the law. Complainant is, therefore, entitled to telephone service.

O R D E R

The complaint of Milton Roth 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 order of the Commission in Decision No. 58711, dated July 7, 1959, temporarily restoring telephone service to complainant, be made permanent, such service 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 25<sup>th</sup> day of August, 1959.

[Signature]  
President

[Signature]

[Signature]

[Signature]

Commissioners

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