

Decision No. 59104

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

TOYE NISHIDA,

Complainant,

vs.

Case No. 6313

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Joseph T. Forno, for complainant.
Lawler, Felix & Hall, by A. J. Krappman, Jr.,
for defendant.

Roger Arnebergh, City Attorney, by Samuel C. Palmer,
Deputy City Attorney, for the Los Angeles
Police Department, intervener.

O P I N I O N

By the complaint herein, filed on July 13, 1959, complainant Toye Nishida, 953 Santee Street, Los Angeles, California, alleges that prior to April 24, 1959, she was a subscriber and user of telephone service furnished by defendant under number MADison 2-1696 at 953 Santee Street, Los Angeles, California; that on or about April 24, 1959, the telephone facilities of complainant were removed and disconnected by the defendant pursuant to instructions from the Los Angeles Police Department which caused complainant to be arrested on or about said date on a charge of suspicion of violation of Section 337a of the Penal Code; that complainant had not used said facilities as an instrumentality to violate the law; and that complainant has demanded that the defendant restore the telephone facilities but the defendant refuses to do so.

On July 28, 1959, by Decision No. 58821, in Case No. 6313, the Commission ordered that the telephone service be restored to complainant pending a hearing on the complaint.

On August 6, 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 29, 1959, had reasonable cause to believe that telephone service furnished to complainant under number MADison 2-1696, at 953 Santee 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 defendant was required to disconnect service pursuant to this Commission's Decision No. 41415, supra.

A public hearing was held before Examiner Kent C. Rogers in Los Angeles on September 1, 1959.

The complainant testified that she resides at 953 Santee Street, Apartment 202, Los Angeles, California; that she lives there by herself; that prior to April 24, 1959, she had a telephone furnished by defendant; that on that date a man called for a Jimmy Atadero and attempted to place a horse race bet, but she told him that she was not working for Jimmy; and that she needs a telephone.

Exhibit No. 1 is a letter dated April 27, 1959, from the Commander of the Administrative Vice Division of the Los Angeles Police Department to the defendant, advising defendant that on April 24, 1959, complainant's telephone under number MADison 2-1696 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 removed, and requesting that defendant disconnect the service. It was stipulated that this letter was received on April 29, 1959, and that a central office disconnection was effected on May 7, 1959, and that the service was reconnected pursuant to Decision No. 58821 on July 31, 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 telephone service inasmuch as it had received the letter designated as Exhibit No. 1.

A police officer connected with the Vice Detail of the Los Angeles Police Department stated that on May 24, 1959, the witness telephoned complainant and placed a horse race bet with her; that thereafter, the same day, he and several other officers entered the complainant's apartment and found therein a record of the bet which the officer had called in; that the complainant advised the officer that she had been taking action for two days and that she had taken in \$30 for action that day. The evidence further shows that as a result of the arrest the complainant paid a \$500 fine for the bookmaking offense, and that subsequently the conviction was set aside on motion of the complainant. The deputy city attorney stated that in his opinion the complainant had suffered sufficient punishment inasmuch as she was a small operator, and recommended that she be given no further penalty.

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 as an instrumentality to violate the law in that it was used for bookmaking purposes in connection with horse racing. However, inasmuch as complainant has paid the penalty prescribed by law, her telephone will be ordered restored.

O R D E R

The complaint of Toye Nishida 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,

IT IS ORDERED that the order of the Commission in Decision No. 58821, dated July 28, 1959, temporarily restoring telephone service to the 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 6th day of October, 1959.

 President
(Signature: E. P. ...)

(Signature: ... Fox)

(Signature: ...)

 Commissioners

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