

ORIGINAL

Decision No. 59106

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RUSTICO P. GARCIA,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Case No. 6325

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 Police Department
of Los Angeles, intervener.

O P I N I O N

By the complaint herein, filed on July 28, 1959, Rustico P. Garcia alleges that prior to June 6, 1959, he was a subscriber and user of telephone service furnished by defendant under number MADison 8-5975, at 912 West 2nd Street, Los Angeles, California; that on or about June 6, 1959, the telephone facilities of complainant were removed and disconnected by defendant pursuant to instructions from the Los Angeles Police Department, which department caused complainant to be arrested on said date on a charge of suspicion of violation of Section 337a of the Penal Code; that complainant has not and does not intend to use said telephone facilities as instrumentalities to violate the law nor in aiding or abetting such violation; and that complainant has demanded of the defendant that it restore said telephone service but that defendant has refused to do so.

On August 11, 1959, by Decision No. 58873, in Case No. 6325, the Commission ordered that the telephone service be restored to complainant, pending a hearing on the complaint.

On August 20, 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 June 9, 1959, had reasonable cause to believe that the telephone service furnished to complainant under number MADison 8-5975, at 912 West 2nd 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 the service pursuant to this Commission's Decision No. 41415, supra.

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

The complainant testified that prior to June 6, 1959, he was a subscriber to telephone service furnished by defendant at his restaurant at 912 West 2nd Street, Los Angeles; that no complaint was ever filed; that he was arrested on that date; that subsequently he was charged with possession of a sweepstake ticket; that he at no time used the telephone for any illegal purposes; and that the telephone is necessary in his business.

No evidence was presented by the City Attorney of the City of Los Angeles.

Exhibit No. 1 is a copy of a letter from the captain of the Vice Detail of the Los Angeles Police Department to the defendant

advising the defendant that complainant's telephone services were, on June 6, 1959, being used for the purpose of disseminating horse racing information which was being used in connection with book-making in violation of Section 337a of the Penal Code; that the telephone was removed; and requesting that the defendant disconnect the services. It was stipulated that this letter was received on June 9, 1959; that the service was disconnected pursuant to said letter on June 15, 1959; and that pursuant to Decision No. 58873, supra, of this Commission, the service was reconnected on August 13, 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.

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 evidence fails to show that complainant's telephone was being used as an instrumentality to violate or to aid and abet the violation of the law. The complainant is therefore entitled to telephone service.

O R D E R

The complaint of Rustico P. Garcia 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. 58873, dated August 11, 1959, temporarily restoring the 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 twenty days after the date hereof.

Dated at San Francisco, California, this 6th day of October, 1959.

President

Commissioners

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