

ORIGINAL

Decision No. 59176

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RALPH EDWARD NEWCOMB, SR.,
Complainant,

vs.

THE PACIFIC TELEPHONE & TELEGRAPH
COMPANY, a corporation,
Defendant.

Case No. 6326

Donald H. Blanchard, by Richard H. Burton, for
the complainant.
Lawler, Felix & Hall, by A. J. Krappman, Jr., for
the defendant.
Roger Arnebergh, City Attorney, by Laurence R.
Corcoran, Deputy City Attorney, for the Los
Angeles Police Department, intervener.

O P I N I O N

The complaint of Ralph Edward Newcomb, Sr., filed on July 31, 1959, alleges that on or about May 16, 1959, the complainant was arrested for violation of Section 337a of the Penal Code of California; that at or about said time complainant's rotary telephone, number POplar 1-6153, located at complainant's place of business at 4872 Lankershim Boulevard, North Hollywood, California, was disconnected by order of the Los Angeles Police Department; that thereafter complainant entered a plea of guilty to one count of said Section 337a, for accepting a wager; that complainant was fined \$500 and placed on probation at said time; that complainant needs a telephone and that the absence of said telephone works a severe hardship on the complainant.

On August 14, 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 May 21, 1959, had reasonable cause to believe that the telephone service furnished to complainant under numbers POplar 1-6153 and POplar 1-6154 in rotary at 4872 Lankershim Boulevard, North Hollywood, California, was being or was to be used as an instrumentality 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 in Los Angeles on September 11, 1959, before Examiner Kent C. Rogers.

The applicant testified that he is in business at 4872 Lankershim Boulevard; that he needs a telephone; that on or about May 16, 1959, the telephone was disconnected because of the use of it for bookmaking purposes; that he paid a fine therefor; that he is on probation, and the complaint was dismissed; that he needs the telephone in his business; and that he will not use the telephone for illegal purposes in the future.

On cross-examination by the deputy city attorney, complainant testified that he had used the telephone for taking horse race bets and that he had no federal tax stamp for such use.

Exhibit No. 1 is a letter dated May 20, 1959, from the Commander of the Los Angeles Police Department Administrative Vice Detail to the defendant, advising defendant that on May 16, 1959, complainant's telephone number POplar 1-6153-4 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 service. This letter was received by the defendant on May 21, 1959, a central office disconnection was effected pursuant thereto on May 27, 1959, and the service has not been reconnected. The position of the telephone company is 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 the 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 record shows the telephone in question was used for bookmaking purposes, but that inasmuch as the telephone was disconnected and the user paid the penalty prescribed, the telephone service will be reinstated.

O R D E R

The complaint of Ralph Edward Newcomb, Sr. 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 on the evidence of record,

IT IS ORDERED that complainant's request for telephone service be 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 place of business at 4872 Lankershim Boulevard, North Hollywood, 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 five days after the date hereof.

Dated at San Francisco, California, this 20th day of October, 1959.

 President

 Commissioners

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