

ORIGINAL

Decision No. 59181

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CLARENCE MASSEY,

Petitioner,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Respondent.

Case No. 6338

Clarence Massey in propria persona.

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 August 20, 1959, complainant alleges that he resides at 1334 East 23rd Street, Los Angeles, California; that on December 13, 1957, the telephone was removed for alleged illegal use thereof; and that he needs the telephone and will not permit it to be used for illegal purposes.

On September 1, 1959, by Decision No. 58941, in Case No. 6338, the Commission ordered that the telephone service be restored to complainant pending a hearing on the complaint.

On September 11, 1959, the telephone company filed an answer, the principal allegation of which was that the telephone company, pursuant to this Commission's Decision No. 41415, dated

April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853), on or about December 18, 1957, had reasonable cause to believe that the telephone service furnished to complainant under number ADams 1-6184 at 1334 East 23rd Street, Los Angeles, 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 before Examiner Kent C. Rogers in Los Angeles on September 28, 1959.

The complainant testified that on December 13, 1957, he permitted another man to remain in his apartment for the purpose of calling a repair man to repair complainant's T.V.; that when he returned home his telephone had been removed and this man arrested; that he needs the telephone; and that he will not permit its use for illegal purposes.

The complainant was cross-examined by a deputy city attorney representing the Los Angeles Police Department. This attorney attempted to elicit admissions from the complainant relative to complainant permitting the telephone to be used for book-making purposes but the complainant denied any knowledge of any illegal use and denied that he permitted the telephone to be used for illegal purposes. The city attorney presented no affirmative evidence.

Exhibit No. 1 is a letter from the Commanding Officer of the Administrative Vice Detail of the Los Angeles Police Department

to the defendant advising the defendant that on December 13, 1957, complainant's telephone under number ADams 1-6184 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 service. This letter was received by the defendant on December 18, 1957, service was disconnected on December 25, 1957 pursuant thereto, and reconnected pursuant to this Commission's Decision No. 58941, supra, on September 4, 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 No. 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 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 Clarence Massey 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 HEREBY ORDERED that the order of the Commission in Decision No. 58941, dated September 1, 1959, temporarily restoring telephone service to complainant, be made permanent, such restoration 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.

[Signature] President
[Signature]
[Signature]
Theodore H. Jenner Commissioners

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