

ORIGINAL

Decision No. 60225

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARTIN CUSAMANO,

Complainant,

vs.

THE PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY, a corporation,

Defendant.

Case No. 6455

Joseph Forno and Arthur Lewis, by Arthur Lewis,  
for complainant.

Lawler, Felix & Hall, by A. J. Krappman, Jr.,  
for defendant.

Roger Arnebergh, City Attorney, by William E.  
Doran, for the Los Angeles Police Depart-  
ment, intervenor.

O P I N I O N

By the complaint herein, filed on April 13, 1960, Martin Cusamano alleges that prior to February 17, 1960, he was the subscriber and user of telephone service furnished by the defendant under number CLinton 5-6732 at 5348 Sumner Avenue, Los Angeles, California; that on or about February 17, 1960, the telephone was removed by the defendant; that he has not used the telephone for any illegal purposes and will not allow it to be so used; that he has demanded of the defendant that it restore said telephone facilities but the defendant has refused to do so; and that he needs a telephone.

On April 26, 1960, by Decision No. 60016, in Case No. 6455, the Commission ordered that the telephone service be restored to the complainant pending a hearing on the complaint.

On May 6, 1960, 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 February 19, 1960, had reasonable cause to believe that the telephone service furnished to complainant under number CLinton 5-6732 at 5348 Summer Avenue, 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 in Los Angeles before Examiner Kent C. Rogers on May 16, 1960.

Complainant testified that he resides at 5348 Summer Avenue, Los Angeles, with his wife; that prior to February 17, 1960, he subscribed to telephone service furnished by the defendant at that address; that on February 17, 1960, the telephone was removed by the Los Angeles Police Department; that the complainant has never used the telephone service for any illegal purposes; and that he desires that the telephone be reinstalled.

Notice of the hearing was given to the Los Angeles City Attorney who made an appearance but presented no evidence.

Exhibit No. 1 is a copy of a letter from the Commander of the Administrative Vice Division of the Los Angeles Police

Department to the defendant advising the defendant that complainant's telephone service was, on February 17, 1960, 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 the defendant disconnect the service. It was stipulated that this letter was received by the defendant on February 19, 1960, and that the telephone was disconnected on February 26, 1960, and that it was reconnected pursuant to Decision No. 60017, supra, on May 4, 1960. 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. It is further found that the evidence fails to show that complainant's telephone was used as an instrumentality directly or indirectly 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 Martin Cusamano against The Pacific Telephone and Telegraph Company, a corporation, having been filed, 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. 60016, dated April 26, 1960, 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 twenty days after the date hereof.

Dated at San Francisco, California,  
this 10<sup>th</sup> day of June, 1960.

Robert D. Foy  
President  
John E. Kitchin  
Theodore J. Deane

Commissioners

Matthew J. Dooley,

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