

Decision No. 74655

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE CITY OF LOS ANGELES,
a municipal corporation,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant,

GERALD H. KILGORE,
KATHLEEN ALDEN PUBLICATIONS,
and J. K. SPORTS JOURNAL,

Defendants and Real
Parties in Interest.

Case No. 8832

ORDER OF DISMISSAL

Prior Proceedings

In Kilgore v. General Telephone Company (Case No. 7971),
Decision No. 72782, issued July 18, 1967, concluded that the use
to which Kilgore put certain telephone facilities encouraged the
unlawful act of bookmaking, and that Kilgore should be prohibited
from using the facilities of General in furtherance of such
activities. General was ordered to remove its telephone facilities
from Kilgore's offices at 10687 Santa Monica Boulevard, Los
Angeles. Petition for writ of review was denied by the Supreme
Court. (Kilgore v. Pub. Ut. Comm., S.F. No. 22563.)

In February of 1968 intervenor City of Los Angeles petitioned
to amend the 1967 decision, alleging, (based "upon the information"
contained in affidavits of three police officers attached to the
petition) that Kilgore was continuing substantially identical
activities at an address in North Hollywood, receiving telephone
service from Pacific Telephone and Telegraph Company. Petitioner
City requested as follows:

1. That upon notice "to the public utilities affected" and opportunity to be heard, the 1967 decision be amended to prohibit such "continuing operations" by Kilgore.

2. That the "public utilities affected" be required to advise the Commission as to the subscribers, equipment, and termination dates at the old address, and the equipment and subscribers at the new address.

3. That the Commission advise all subscribers, "affected utilities", and Kilgore of an opportunity to be heard, and that they be ordered to show cause why the 1967 decision should not be amended so as to apply to the equipment and facilities supplied by Pacific Telephone at the North Hollywood address.

Decision No. 73855 (March 19, 1968) dismissed the petition to amend the 1967 decision. It reviewed the allegations of the three affidavits, noted the prescription of a new "discontinuance" rule, noted that the old "discontinuance" rule had been held unconstitutional by the Supreme Court in Sokol v. Pub. Ut. Comm., 65 Cal. 2d 247, and concluded as follows:

"Decision No. 72782 in Case No. 7971 directed General Telephone to remove its facilities from particular offices at a specified address. Pacific Telephone was not a party to that proceeding, and is not a public utility affected by the order issued therein. Yet petitioner City seeks to have that order amended so as to apply to facilities of Pacific Telephone at a different address.

Instead of taking appropriate action in accordance with the revised 'discontinuance' rule, in effect petitioner is asking the Commission to determine whether probable cause exists to believe that telephone facilities are being used to violate or assist in violation of the law. This is a function of a magistrate, and Sokol does not require the Commission to assume that judicial power.

The petition to amend is dismissed without prejudice."

The Complaint in Case No. 8832

The present complaint of the City of Los Angeles names Pacific Telephone as a defendant, and Kilgore, Kathleen Alden Publications, and J. K. Sports Journal as "Defendants and Real Parties in Interest". Attached to the present complaint are the

same three affidavits that were attached to the earlier petition to amend the 1967 decision in Case No. 7971. Based upon those affidavits, the complaint alleges that Kilgore has changed his location to the North Hollywood address, is there continuing business operations substantially identical to those described in the 1967 decision, receives telephone service from Pacific Telephone, subscribers being listed as Kathleen Alden Publications and J. K. Sports Journal, and that such telephone facilities are in a building owned by Kilgore.

Complainant requests as follows:

1. That upon notice to the "subscribers and public utilities affected" and opportunity to be heard, an order issue "prohibiting telephone service" to Kilgore because such telephone service is used to encourage perpetration of unlawful acts of bookmaking.

2. That the "public utilities affected" be required to advise the Commission as to the subscribers, equipment, and termination date at the old address, and the equipment and subscribers at the new address.

3. That the Commission advise all subscribers, "affected utilities", and Kilgore of an opportunity to be heard on the complaint, and that the Commission issue its order "to said subscribers, utilities and Gerald H. Kilgore terminating all telephone service presently existing" at the North Hollywood address.

Complainant alleges that procedures established under the present "discontinuance" rule should not be applied here because original complaint proceedings (Kilgore v. General Telephone Company, Case No. 7971), pursuant to the old "discontinuance" rule (held unconstitutional in Sokol, supra), have already been had. It is alleged those proceedings required over three years and that no actual disconnection was ever made under the order, in that Kilgore had circumvented the operative effect of the order in moving to a new location and obtaining service from a different

utility. Reference is made to time elements in certain proceedings pending before the Commission under the present "discontinuance" rule, and it is alleged that unless the Commission proceeds under the present complaint, a person found to be using telephone service contrary to public policy may escape the operative effect of Commission orders by merely relocating facilities.

The present "discontinuance" rule, prescribed in 66 Cal. P.U.C. 675, reads in part as follows:

"1. Any communications utility operating under the jurisdiction of this Commission shall refuse service to a new applicant, and shall disconnect existing service to a subscriber, upon receipt from any authorized official of a law enforcement agency of a writing signed by a magistrate, as defined by Penal Code Sections 807 and 308, finding that probable cause exists to believe that the use made or to be made of the service is prohibited by law, or that the service is being or is to be used as an instrumentality, directly or indirectly, to violate or to assist in the violation of the law."

The rule also provides in part that any person aggrieved by any action taken or threatened to be taken under the rule may file a complaint with the Commission and may request interim relief.

Pacific Telephone, here named a defendant, was not a party to the earlier proceeding. It is not a public utility affected by the 1967 decision. Under Pub. Ut. Code Sec. 1702 a complaint may be filed setting forth any act or thing done or omitted to be done "by any public utility, * * * in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission. * * *" There is no allegation of violation by defendant Pacific Telephone. There is no allegation that the other defendants are public utilities subject to regulation by the Commission.

As in its petition to amend the 1967 decision, filed in Case No. 7971, and dismissed by Decision No. 73855, complainant city is seeking to have a 1967 order directed to General Telephone apply to facilities of Pacific Telephone at a different address.

Not only does the complaint fail to state a cause of action within the jurisdiction of the Commission, but as stated in Decision No. 73855, and for the second time, complainant city,

"Instead of taking appropriate action in accordance with the revised 'discontinuance' rule, in effect petitioner" [complainant in present Case No. 8832] "is asking the Commission to determine whether probable cause exists to believe that telephone facilities are being used to violate or assist in violation of law. This is the function of a magistrate, and Sokol does not require the Commission to assume that judicial power."

Case No. 8832 is dismissed without prejudice.

Dated at San Francisco, California, this 11th day
of SEPTEMBER, 1968.

William J. Synovis, Jr.
President

William L. Bennett

Augustin

Fred P. Monsey
Commissioners

I dissent. This
matter should be
heard.
John E. Mitchell