

ORIGINAL

Decision No. 38058

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

EDWARD SOLOMON,

Complainant

vs.

SOUTHERN CALIFORNIA
TELEPHONE COMPANY,

Defendant

Case No. 4755

ALBECK and ALBECK, by Albert A. Albeck, for Complainant

PILLSBURY, MADISON & SUTRO, by Francis N. Marshall,
James C. Marshall, and Leslie C. Tupperand, for
Defendant

BY THE COMMISSION:

O P I N I O N

Edward Solomon complains that Southern California Telephone Company wrongfully disconnected his telephone service at Apartment 301, 1247 Ingraham Street, Los Angeles, designated as Vandike 7070, and asks this Commission to order defendant to reestablish said telephone connection.

Southern California Telephone Company admits its refusal to reconnect service and contends that it was justified in its action in that it has reasonable cause to believe that the service, if reestablished, would be used for an unlawful purpose, namely, for the purpose of bookmaking, in violation of Section 337a of the Penal Code of the State of California. A hearing upon this complaint was held in Los Angeles on March 29, 1945, and briefs have since been filed.

We need not undertake an extensive review of all the facts which prompt the Telephone Company to deny a reestablishment of plaintiff's telephone service. Since the plaintiff was first arrested on January 1, 1941, his alleged operations

as a bookmaker appear to have been under rather constant investigation by the police of the City of Los Angeles. On several occasions the police invaded his premises and removed his telephone instrument. The first occasion was upon his arrest on January 1, 1941. Following his arrest at that time, plaintiff pleaded guilty and was given a suspended sentence and put on probation for three years. Thereafter, on February 12, 1941, when telephone service had been begun at another address under the name of Salman, his instrument was removed without making an arrest. The Company restored service in March of the same year. Again on October 31, 1944, the police removed plaintiff's telephone instrument and placed him under arrest. After trial, he was acquitted. On each of these occasions the Police Department, by letter, asked the Company to discontinue service, and later stated that in the opinion of the Department, telephone service should not again be restored to plaintiff.

Plaintiff declares that he is now the manager of a Cafe and Fountain and that it is necessary that he have telephone service to aid him in the hiring of employees and the ordering of supplies. He argues that the Company's defense must fail, because it is not rested upon proof of actual guilt but merely upon the claim that there was reasonable cause to believe that the use to be made of the service would be unlawful. Moreover, he asserts, the only cause the Company has to believe the use will be unlawful is founded on general information received from the police and on a single judgment of conviction in 1941, which, after the probationary period had run, was wiped out in accordance with the procedure prescribed in Section 1203.4 of the Penal Code.

It is true that the Company rests its general defense on the ground that it was fully justified in concluding that plaintiff's telephone service would be used unlawfully if it were now reestablished. But it is hardly correct to say that this is its sole defense, nor that it has relied solely upon representations made by the Police Department. It had firsthand knowledge that on three occasions its telephone facilities serving the plaintiff had been physically interfered with. Its refusal to again connect these facilities and accord plaintiff the status of a telephone customer is declared to be a right permitted it by its Service Rule and Regu-

lation No. 11, on file with this Commission. That rule, in two parts, reads as follows:

"D. Legal Requirements.

The Company may refuse to establish service for an applicant, or it may discontinue and disconnect service to a subscriber, whenever the use made or to be made of the service, or the furnishing of service to the premises of the applicant or subscriber, is prohibited under any law, ordinance, regulation, or other legal requirements."

"F. Abuse or Fraud.

The Company has the right to refuse telephone service to any premises and at any time to discontinue telephone service, if it finds it necessary to do so to protect itself against abuse or fraud."

It is not the function of this Commission to determine whether plaintiff on any occasion was guilty of the crime of bookmaking, as this crime is defined in the Penal Code. And we would have much less right to speculate whether any applicant for telephone service might reasonably be expected to violate that statute in the future. The only jurisdiction we possess to consider a complaint such as this is derived from those provisions of the Public Utilities Act which impose upon a utility the duty not to discriminate or maintain unreasonable differences as to service or facilities accorded its customers. Such general terms as these are not susceptible to exact definition. They take on meaning only as they are applied administratively or judicially in particular cases. There always has been a common law duty resting upon a utility to serve all without discrimination. But this duty is not without its limitations. One such limitation clearly established is that a utility has the right to protect its property and service against abuse by individual customers.

This Commission requires each utility to file and publish rules and regulations designed to express as clearly as possible those distinctions that will generally be applied between classes of service and between particular users of service. Such rules, both when prescribed by the Commission and when proposed and filed by the utility, become binding upon the utility and its patrons, and even upon

the Commission, until thereafter changed in a lawful manner. Rule and Regulation No. 11 filed by the defendant company is such a rule. Therefore, unless the rule, fairly construed, is in conflict with some fundamental duty resting upon the defendant, or is so inherently unreasonable as to justify the prescription of another, it must be taken as controlling our disposition of this case.

We are compelled to hold that the rule filed by defendant does not conflict with any principle of substantive law. If the purely private interest of the utility supports its right to protect its property and service against abuse by individual patrons, it could hardly be said that it would have any less right to take like action in the interest of the public order and welfare. This is not to say that utilities are the censors of public or private morals. It is merely a recognition of the fact that as long as it remains the policy of this State to suppress bookmaking, and remains the view of law enforcement authorities that the telephone instrument is an essential part of the paraphernalia employed in the commission of that crime, it will at times be to the interest of the telephone utility, as well as to the interest of its patrons and the general public, to refuse further service to a subscriber, against whom such a law enforcement program has repeatedly been directed.

Nor can we declare that the rule enforced by the defendant company is inherently unreasonable. It is not unlike similar rules commonly applied by other telephone utilities. No rule could be devised that would not accord the utility some degree of discretion in its application. Until evidence is presented that a given utility so abuses the discretion accorded it under such a rule as to give rise to evils clearly opposed to the public interest, we are not disposed to prescribe a different rule or to say that discretion has been abused in a particular case.

We might also advert briefly to another persuasive fact. Today, as all are aware, telephone service is being rationed in the interest of the war effort. Many applications for connections of service that in normal times we would consider it the duty of the telephone company to approve promptly, must be deferred until

more essential communication demands are satisfied. In view of these conditions, this Commission is not disposed at this time to declare the defendant company has in any way abused the discretion accorded it in the application of its filed Rule and Regulation. To lend equitable aid to plaintiff under the circumstances here presented would appear to be contrary to, rather than in accord with, the public interest.

Therefore, the relief prayed for by plaintiff will be denied and his complaint dismissed.

O R D E R

The complaint of Edward Solomon against Southern California Telephone Company having been heard, briefs filed, and the matter fully considered, and basing its order on the conclusion reached in the foregoing opinion,

IT IS ORDERED that said complainant's request for restoration of service be denied and that said complaint be and hereby is dismissed.

Dated at Los Angeles California, this 10th day of July, 1945.

L. Harold Anderson

Richard H. Chase

Francis W. Brown

Walter D. Russell

Commissioners.