

ORIGINAL

Decision No. 46036

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

<p>CLEM NEVEAUX,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>PACIFIC TELEPHONE AND TELEGRAPH COMPANY,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 5296</p>
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O P I N I O N

The complaint herein alleges that, on or about February 22, 1950, the telephone facilities of complainant were physically disconnected and removed from the premises by the Los Angeles police, and that the telephone company has refused and does now refuse to reconnect the telephone facilities involved. The complaint further alleges that the telephone facilities were not used by complainant in violation of the law, and that complainant would suffer irreparable injury and damage unless the telephone service is restored.

An order granting temporary interim relief was issued on May 7, 1951, by Decision No. 45652, in Case No. 5296, directing respondent telephone company to restore the facilities in question pending a hearing on the complaint. This restoration was effected, and subsequently the telephone company filed an answer to the complaint, the principal allegation of which was

that the telephone company had reasonable cause to believe that, on or about February 23, 1950, the use made and to be made of the aforesaid telephone service was prohibited by law, and that, accordingly, it was required to discontinue service to the subscriber under the provisions of this Commission's order contained in Decision No. 411415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 583).

A public hearing was held before Examiner Syphers in Los Angeles on July 27, 1951.

At the hearing the complainant testified that, on or about February 22, 1950, he left for his work about 8:00 A.M. in the morning, and, on returning to his apartment about 11:00 P.M. that evening, he discovered the telephone had been removed. Other testimony presented by officers of the Los Angeles Police Department indicated that on this day three policemen went to this address to investigate a complaint of bookmaking, and that they found in the apartment one Milford Lessley sitting by the telephone and in possession of bookmaking paraphernalia. The officers remained there for about forty-five minutes, and received ten or twelve calls over the telephone from persons making bets. Lessley was arrested. The complainant testified that this Lessley was a former roommate of his who did not then live in the apartment, but who apparently had a key thereto. The complainant further testified that he had not been engaged in bookmaking activities and did not intend to so engage, although he further stated that Milford Lessley still had a key to his apartment, and that he would permit Lessley to use the telephone should he so request, although he contended that Lessley would not now use it for bookmaking.

Under date of February 23, 1950, the Chief of Police of the City of Los Angeles addressed a letter to The Pacific Telephone and Telegraph Company, requesting disconnection of this telephone, and the disconnection was made. Since this disconnection was made as a result of "written notice to such utility" from an "official charged with the enforcement of the law, stating that such service is being used or will be used as an instrumentality ... to violate ... the law", we hereby find that the telephone company acted with reasonable cause, as such term is used in Decision No. 41415, supra.

While there is no specific evidence showing that the complainant herein actually used the telephone facilities for bookmaking purposes, nevertheless the evidence is uncontraverted that the facilities were so used. In view of the factual situation, and with particular reference to the testimony that a known bookmaker still has access to these telephone facilities, we find that the complaint should be dismissed.

O R D E R

The complaint of Clem Neveaux against The Pacific Telephone and Telegraph Company having been filed, a public hearing having been held thereon, the case now being ready for decision, the Commission being fully advised in the premises and basing its opinion on the evidence of record and the findings herein,

IT IS ORDERED that the complainant's request for restoration of telephone service be denied, and that the said complaint be, and it hereby is, dismissed. The temporary

interim relief granted by Decision No. 45652, dated May 7, 1951, in Case No. 5296, is hereby set aside and vacated.

IT IS FURTHER ORDERED that, upon the expiration of sixty (60) days after the effective date of this order, The Pacific Telephone and Telegraph Company may consider an application for telephone service from the complainant herein on the same basis as the application of any new subscriber.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 7th day of August, 1951.

Matthew F. Coe
Harold P. Hull
Lawrence P. Patten
John L. McNeill

COMMISSIONERS