

ORIGINALDecision No. 46037

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MONNIE EBERHART,

Petitioner,

vs.

PACIFIC TELEPHONE AND
TELEGRAPH CO.,

Respondent.

Case No. 5283

O P I N I O N

The complaint herein alleges that, on or about February 9, 1951, the telephone facilities of complainant were physically disconnected and removed from the premises by officers from the office of the District Attorney of Los Angeles County, and that subsequent thereto the telephone company has refused to restore telephone service to the complainant. The complaint further alleges that the telephone facilities were not used 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 April 4, 1951, 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 February 9, 1951, the use 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 in Los Angeles before Examiner Syphers on July 27, 1951, at which time evidence was adduced and the matter submitted.

At the hearing the complainant testified that she is the owner of a two-story house located at 6165 North Baldwin Avenue (formerly 2207 North Baldwin Avenue), Arcadia, California. Shortly after her husband's death she endeavored to rent an upstairs apartment in this house, and, on February 5, 1951, she did rent this upstairs apartment to a man who gave his name as Mr. Schaffer. This Mr. Schaffer told her he was a salesman and used a telephone in his work. The telephone facilities of complainant at that time consisted of a telephone under number Atlantic 6-5041, which was located on the first floor of the house, and an extension to this telephone which was located on the second floor.

About two hours after renting the apartment to Mr. Schaffer, Mrs. Eberhart left her home and went to visit her daughter in Beverly Hills. During the time subsequent to the renting of the apartment, and prior to Mrs. Eberhart's

departure, she stated that she heard no calls being made or received on the telephones. She returned to her home on Wednesday, February 7, about noon, and stayed for about two hours. During this period the telephone rang two or three times, and it developed they were calls for the tenant. Mrs. Eberhart went back to her daughter's house, and again returned to her own home on Friday, February 9, at about noon.

While she was in the yard four men came and told her they were from the District Attorney's office. All but one of them went upstairs, and the one remaining downstairs told Mrs. Eberhart that they had been tipped off that there was a bookie operating there. They conducted a search of the house, and physically removed the telephones, both the one in the downstairs portion and the extension which was upstairs. While the officers were there they answered several calls on the telephones from persons who wanted to place bets. The tenant, Mr. Schaffer, was not there at this time, and Mrs. Eberhart has not seen him since. She further testified that she had never used the telephone facilities for bookmaking purposes, and never intended to use them. Furthermore, she stated that she had no knowledge that her tenant, Mr. Schaffer, was so using the telephone.

Further testimony in the hearing supported Mrs. Eberhart's testimony that she had been living with her daughter in Beverly Hills during the days indicated. Mrs. Eberhart likewise testified that she had a pressing need for telephone service inasmuch as she is under a doctor's care. Exhibits 1

and 2 are letters from Martha Kohl, M. D., of 1003 South Baldwin Avenue, Arcadia, to the effect that Mrs. Eberhart is under her care and that emergency conditions may arise necessitating immediate contact with the doctor.

The Supervising Special Agent of The Pacific Telephone and Telegraph Company testified that, under date of February 13, 1951, the company received a letter from the Sheriff of Los Angeles County, requesting that the telephone facilities herein described be disconnected. Exhibit 3 is a copy of this letter. Thereafter, on February 23, 1951, the telephone company actually effected the disconnection.

It is the contention of the telephone company that, since the 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", the telephone company acted with reasonable cause, as such term is used in Decision No. 41415, supra. With this contention we agree and we so find.

The specific problem presented by this matter, therefore, is whether or not the activities of the tenant, performed without knowledge of the landlord, in using a telephone for unlawful activities constitutes sufficient grounds to justify the termination of the order granting temporary interim relief, or whether, in view of the owner's apparent innocence in this matter, the aforesaid temporary order should be made permanent.

A fair view of all of the evidence in this case impels the conclusion that the complainant, as owner of the

premises, was not involved in the bookmaking activities of the tenant, and, in fact, did not know of them. Furthermore, the evidence does not show that she had any reason to suspect that the tenant would use the telephone for unlawful activities.

In view of this situation, and limiting our findings to the specific case herein, we hereby find that the complainant is entitled to telephone service, and, accordingly, the temporary order will be made permanent.

O R D E R

The complaint of Monnie Eberhart against The Pacific Telephone and Telegraph Company having been filed, public hearings having been held thereon, the case now being ready for decision, 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 granting temporary interim relief, dated April 4, 1951, by Decision No. 44539, in Case No. 5283, be, and it hereby is, made permanent, such restoration being subject to all rules and regulations of the telephone company and to existing applicable law.

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.

Justus F. Coenen
Harold P. Hule
Lawrence P. Potter
John E. Mitchell

COMMISSIONERS