

# ORIGINAL

Decision No. 46587

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LEE E. BASSETT,

Petitioner, )

vs. )

Case No. 5306

THE PACIFIC TELEPHONE AND TELE-  
GRAPH COMPANY, a Corporation,

Respondent. )

WILLIAM MUSSO, individually, and )  
WILLIAM MUSSO and PHILIP MUSSO, co- )  
partners, doing business under the )  
firm name and style of HOWARD LOAN )  
AND JEWELRY, and HOWARD LOAN AND )  
JEWELRY, a Co-partnership, )

Petitioners, )

vs. )

Case No. 5307

THE PACIFIC TELEPHONE AND TELE-  
GRAPH COMPANY, a Corporation,

Respondent. )

## O P I N I O N

Both complaints herein allege that on the 29th day of May, 1951, the petitioners were advised by the respondent telephone company that the respondent had received information from the office of the Attorney General of the State of California that the communication facilities of the petitioners were being put to use prohibited by the law. Further, both complaints

allege that on the 15th day of June, 1951, the petitioners were advised by the office of the Attorney General of the State of California that on June 25, 1951, the Attorney General would again request respondent telephone company to disconnect the telephone services of petitioner Lee E. Bassett, the telephone number being 3-7183 at 1519 Lemon Street, Vallejo, California and the other petitioners' telephone number being 3-6098 at 222 Georgia Street, Vallejo, California. The complaints further allege that the petitioners will suffer irreparable injury and great hardship by being deprived of these telephone facilities and further, "that there has been no determination, judgment or decision by any court of the State of California that the communication facilities of the petitioners have at any time been used as an instrumentality to violate the law, or to aid or abet the violation of the law."

Orders granting temporary relief were issued by this Commission on June 26, 1951, by Decision No. 45887 on Case No. 5306 and Decision No. 45888 on Case No. 5307, directing the respondent telephone company to restore the telephone facilities in question pending a hearing on the complaints. These restorations were effected and subsequently the telephone company filed an answer to both complaints; the principal allegation of each answer being that the respondent telephone company had reasonable cause to believe that the use made and to be made of the telephone facilities concerned was prohibited by law and that accordingly, it was required to discontinue service to the subscribers under the provision of this Commission's order in Decision No. 41415, dated April 6, 1948, on Case No. 4930

(47 Cal. P.U.C. 853).

Public hearings were held in San Francisco, California, on August 29, 1951, before Examiner Syphers, at which time both matters were consolidated for hearing, evidence was adduced and both matters were submitted.

Neither of the petitioners was present at the hearings although both were represented by counsel. A stipulation was agreed upon between counsel for the petitioners and the telephone company to the effect that Lee E. Bassett is a subscriber for telephone service in Vallejo, Number 3-7183, at 1519 Lemon Street, Vallejo, California, and that the petitioners in Case No. 5307 are the subscribers of service furnished by the telephone company in Vallejo, California, Number 3-6098, at 222 Georgia Street. It was further stipulated that petitioners had filed a suit in the Superior Court of Solano County and obtained a temporary injunction restraining the telephone company from disconnecting the services furnished but that as a result of an agreement between the parties the court suit was dismissed and the proceedings before the Commission were instituted.

Exhibit 1 is a copy of a letter dated May 24, 1951, from the Attorney General of the State of California, to the respondent telephone company, advising that the communication facilities of Lee E. Bassett were being used in violation of Section 337-A of the Penal Code and requesting disconnection.

Exhibit 3 is a similar letter concerning the telephone facilities of the other petitioners herein.

Exhibit 2 is a copy of a letter from the Attorney General to the telephone company dated June 25, 1951, requesting

the telephone company to proceed with the original requests of the Attorney General to disconnect petitioners' telephone facilities.

Testimony was presented by one Paul E. Spenger who operates a restaurant in an old ferry boat located at West N Street, Benicia, Solano County, California. This witness stated that in about May of 1950, Lee Bassett and William Musso leased from him, part of the upper deck of the ferry boat for the purpose of operating a social club. For telephone arrangements Spenger told them they could use his telephone, which number was Benicia 415, and as a result this telephone was moved by the telephone company to the leased space. People came to this club until about March of 1951 and in June of 1951, Mr. Bassett and Mr. Musso quit paying the rent which had been \$100 per month. The club had a doorman on duty but had no provisions for serving meals or drinks inasmuch as Spenger had a restaurant on the first deck of the boat.

Further testimony was presented by an investigator of the Federal Communications Commission to the effect that Bassett had told this investigator he operated a card room and "a book" at a loft at Highway No. 40 and Springs Road. The investigator went there and discovered a card room and one person who identified himself as "Fat". There were three telephones in the room and Fat answered them and recorded bets on horse racing.

Mr. Bassett had also told the investigator that he operated "a book" at Spenger's boat. On May 22, 1951, the investigator for the Federal Communications Commission, together with a representative of the Attorney General's office and

special agents of the telephone company went to Spenger's boat. Upstairs in the upper loft they found a nicely furnished room with tables and in one of the side rooms was a desk with four telephones. Each of these telephones had a separate number and was on a separate line.

The supervising special agent for the respondent telephone company testified that the records showed that the telephones at Spenger's Fish Grotto had the numbers Benicia 714, Benicia 718 and Benicia 415. In May, 1950, these telephones were in the name of Lee Bassett and were listed as business services.

An inspector for the San Francisco Police Department testified that on May 10, 1951, he went to a penthouse at 1126 Kearny Street, San Francisco, and there found evidence of bookmaking and marked scratch sheets and other betting paraphernalia. At that time a man by the name of Edward P. Ratto was arrested and on August 15, 1951, plead guilty to Section 337-A of the Penal Code for bookmaking. The telephone at this address bore the number of Exbrook 2-1608.

Further testimony by the supervising special agent of the telephone company disclosed that the telephone number Exbrook 2-1608 was in the name of Lewis J. Ferrari and also that the records of the telephone company showed toll calls had been made from this telephone to Spenger's Fish Grotto. Likewise, the telephone company's records showed that calls had been made between the telephone at Spenger's Fish Grotto and the telephone of Lee E. Bassett, Vallejo 3-7183 and the telephone of the other petitioners at Vallejo 3-6098.

A captain of police of the Vallejo Police Department testified that he knew both Mr. Bassett and William Musso and had observed them together many times and that the general reputation of these two individuals in relation to gambling was not good. The Howard Loan and Jewelry Company, 222 Georgia Street, Vallejo, California, according to this witness, is a pawnbroker's shop operated by Mr. Musso.

A representative of the Attorney General's office presented tabulations which had been made from records of the telephone company showing the calls between Exbrook 2-1608 in San Francisco and the telephones at Spenger's Fish Grotto, Benicia 415, Benicia 714 and Benicia 718, during the period from March 20 to April 20, 1951. This tabulation showed that in this period 173 calls were made from the Exbrook number to Benicia 415, 1 to Benicia 714 and 1 to Benicia 718, a total of 175 calls. In addition to this, there were 21 "collect" calls from Exbrook 2-1608 to Benicia 415 between such dates.

During this same period the calls from the Benicia telephones referred to above to Vallejo 3-6098, the telephone number of the Howard Loan and Jewelry Company, were as follows: from Benicia 415, 28; from Benicia 714, 53; from Benicia 718, 16; or a total of 97 calls. During the period from January 24 to April 20, 1951, the calls from Vallejo 3-6098 to the Benicia telephones were as follows: Benicia 415, 2; Benicia 714, 29; Benicia 718, 8; or a total of 39 calls.

During the period from February 21 to April 10, 1951, the calls from the Benicia telephones to Vallejo 3-7183, the telephone number of Leo E. Bassett, were as follows: Benicia 415,

5; Benicia 714, 8; Benicia 718, 3; or a total of 16 calls. Calls in the reverse direction were as follows for the period from January 23 to April 16, 1951: to Benicia 415, 6; to Benicia 714, 45; to Benicia 718, 3; or a total of 54 calls.

Counsel for petitioners moved to strike all of this testimony and the motions were denied by the presiding examiner. Further, the counsel for petitioners contended that the decision of the Commission, Decision No. 41415 supra, is unconstitutional, that the Public Utilities Commission "is without jurisdiction or authority to impose a penalty upon a person accused of but not convicted of committing or attempting to commit either by himself or in conspiracy with others any act made punishable by the Penal Code of this state", and thirdly, that the Public Utilities Commission "is without jurisdiction or authority to determine the guilt or the innocence, or the probable guilt or the probable innocence, of any person accused of or charged with the commission or the attempt to commit, either by himself or in conspiracy with others, any act made punishable by the Penal Code of the State of California."

In considering the contentions of counsel for the petitioners we wish to point out that in this proceeding we are not attempting to impose a criminal penalty upon petitioners nor are we attempting to prove guilt or probable guilt as to violation of the Penal Code. Our concern is purely with the use made or to be made of the telephone facilities,

We believe the law to be well established and to support the conclusions reached in Decision No. 41415 supra. In that decision at pages 858 and 859 we said: "The right of

a person to utility services, such as telephone and telegraph, is not an inherent right but is due solely to the fact that the State, in the exercise of its police powers, has seen fit, under the provisions of the Public Utilities Act, to require the utility to serve the public without undue or unreasonable discrimination. It, therefore, must be concluded that the State, having the authority to compel a utility to render service, has the authority to impose conditions under which such service may be furnished or terminated. (See *Partnoy v. Southwestern Bell Telephone Co.*, Missouri Public Service Commission, June 13, 1947, 70 P.U.R. (N.S.) 134.) It is established by statute in this State that a telephone or telegraph company is not required to accept messages which will 'instigate or encourage the perpetration of any unlawful act \* \* \*.' (Section 638, Penal Code.)"

Accordingly, we now find that the motions to strike were properly denied by the presiding examiner and we believe the challenge to the constitutionality of Decision No. 41415 supra is without merit.

In the light of this record we find that the action of the telephone company was based upon reasonable cause, as such term is used in Decision No. 41415 supra.

Our specific problem, therefore, is whether there is sufficient evidence of unlawful activities to justify the termination of the orders granting temporary interim relief, issued by Decision No. 45887 on Case No. 5306 and Decision No. 45888 on Case No. 5307, both dated June 26, 1951.

A careful review of this record impels the conclusion that the complaints should be dismissed. The evidence shows that



the telephones in question were frequently used in communicating with a known bookmaking establishment. Therefore, we believe it reasonable to infer and we now find that the telephones of complainants were used in bookmaking transactions. (Millstone v. Pacific Telephone and Telegraph Company, Decision No. 43458, dated October 25, 1949, on Cases Nos. 5023 and 5024 (49 Cal. P.U.C. 178)).

O R D E R

The complaints of Lee E. Bassett and William Musso, individually, and William Musso and Philip Musso, copartners doing business under the firm name and style of Howard Loan and Jewelry and Howard Loan and Jewelry, a copartnership, 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 request of each complainant for restoration of telephone service be denied and that the said complaints be, and they hereby are, dismissed.

Decisions Nos. 45887 and 45888, dated June 26, 1951, on Cases Nos. 5306 and 5307, granting temporary interim relief to petitioners, are hereby set aside and vacated.

IT IS FURTHER ORDERED that, upon the expiration of one hundred eighty (180) days after the date of this order, The

Pacific Telephone and Telegraph Company may consider applications for telephone service from the complainants 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 21st day of December 1951.

R. F. [Signature]  
President  
Justin J. [Signature]  
Harold [Signature]  
[Signature]  
[Signature]  
Commissioners