

ORIGINAL

Decision No. 46740

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARK RUTHERFORD,)
)
 Complainant,)
)
 vs.)
)
 THE PACIFIC TELEPHONE AND)
 TELEGRAPH COMPANY,)
)
 Respondent.)

Case No. 5328

Block, Dunbar, Toler & Bulloch, by Lloyd A. Bulloch, 516 East Compton Boulevard, Compton, California, for complainant. Pillsbury, Madison & Sutro, by John A. Sutro, and Lawler, Felix & Hall, by L. B. Conant, for The Pacific Telephone and Telegraph Company, defendant.

O P I N I O N

The complaint alleges that Mark Rutherford, residing at 304 South Mayo Street, in the City of Compton, on or about September 1, 1951, made a demand of The Pacific Telephone and Telegraph Company that the complainant be furnished with telephone service at his place of residence and, further, that the respondent telephone company has refused such demand.

Under date of October 15, 1951, the respondent telephone company filed an answer alleging that on or about October 4, 1950, it had reasonable cause to believe that the use made or to be made of the telephone service then being furnished to complainant under telephone number Newmark 1-1366,

was prohibited by law, and that on said date the service was being or was to be used as an instrumentality directly or indirectly to violate or to aid and abet the violation of the law, and that respondent, having such reasonable cause, was required to and did disconnect and discontinue the service, pursuant to an order of the Public Utilities Commission of the State of California, in Decision No. 41115, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853). Resultantly, the answer alleges that complainant was not entitled to receive from respondent the requested telephone service.

A public hearing was held in Los Angeles on December 13, 1951, before Examiner Syphers, at which time evidence was adduced and the matter submitted. At the hearing it was stipulated that the complainant was a subscriber to telephone service under the number Newmark 1-1366, which telephone was installed at 304 South Mayo Street, Compton, California. This service was disconnected by the police on September 27, 1950, and the telephone company terminated services on October 5, 1950, on the basis of a letter received from the sheriff of Los Angeles County. This letter was received in evidence as Exhibit No. 2.

The complainant testified that on January 8, 1951, he was sentenced to the county jail for a period of ninety days as a result of a conviction for bookmaking, in violation of Section 337a of the Penal Code, and actually served seventy-five days of that term, receiving fifteen days off for good conduct. He further testified that since the serving of that sentence he has not performed any unlawful acts, and that it is not now his intention to use a telephone for any unlawful purpose. He

stated that he is in need of telephone service inasmuch as both he and his wife are under a doctor's care and that a telephone is necessary in his managing of certain properties.

An officer of the Bureau of Investigation of the District Attorney's office, Los Angeles County, testified that he was one of the investigating officers against complainant herein in September 1950, and that since that time there have been no further complaints against this complainant. Exhibit No. 1 is a letter from the Chief of the Bureau of Investigation of the District Attorney's office, addressed to the Chief Special Agent of the telephone company, dated October 29, 1951, advising that that office has no objection to reinstallation of telephone facilities at the complainant's address.

It was further stipulated that the respondent telephone company had reasonable cause to disconnect the telephone service.

Upon this record we find that the telephone company exercised due care in taking the action it did, and we further find that this action was based upon reasonable cause as such term is used in Decision No. 41415, supra. We further find that the complainant is now entitled to telephone service on the same basis as any other similar subscriber, inasmuch as he has served his sentence for any violation of the Penal Code which he committed, and there is now no indication that he will in the future use telephone facilities in an unlawful manner.

O R D E R

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

IT IS ORDERED that the respondent The Pacific Telephone and Telegraph Company 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 from the date hereof.

Dated at San Francisco, California, this 13th day of February, 1952.

Q. J. [Signature]
President

Justice F. Cooney
Harold H. Lida

[Signature]
[Signature]
Commissioners