

ORIGINAL

Decision No. 46892

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

J. E. TAYLOR,

Petitioner,

vs.

Case No. 5347

THE PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY,

Respondent.

Arthur Lund, attorney, for complainant. Pillsbury, Madison & Sutro by John A. Sutro, and Lawler, Felix & Hall by L. B. Conant, for defendant. E. H. Weyant, Deputy Sheriff of Los Angeles County Sheriff's Office.

O P I N I O N

The complaint alleges that J. E. Taylor, who resides at 8133 Wilcox Avenue in Los Angeles County, California, is a subscriber and user of telephone service furnished by defendant company under number Kimball 9750. On or about September 29, 1951, the complainant was deprived of the use of his telephone and was advised by defendant telephone company that the communication facility was being disconnected inasmuch as it had been used as an instrumentality to violate the law. Complainant requested the defendant telephone company to restore the telephone service, but it has refused to do so. The complaint further alleges that the complainant will suffer irreparable damage if he is deprived of the use of his telephone.

Under date of December 27, 1951, this Commission, by

Decision No. 46595 in Case No. 5347, issued an order granting temporary interim relief, directing the defendant telephone company to restore telephone service to complainant pending a hearing on the complaint. On January 4, 1952, the respondent telephone company filed an answer denying most of the allegations in the complaint, but admitting that it had been advised that the communication facilities furnished to complainant were being used as an instrumentality to violate or to aid and abet the violation of the law, and that, accordingly, the defendant telephone company notified the complainant that the said communication facilities would be discontinued. The answer further alleges that, on or about November 23, 1951, the defendant telephone company did discontinue the telephone service furnished to complainant.

A public hearing was held in Los Angeles on March 6, 1952, before Examiner Syphers, at which time evidence was adduced and the matter submitted.

At the hearing the complainant testified that on September 29, 1951, when he returned home from work, he discovered that his housekeeper, Genevieve Marie Hite, was conducting bookmaking activities over the telephone. About a half an hour later, at approximately 4:00 P.M. of that same day, deputy sheriffs came to the house and arrested both the complainant and his housekeeper. Exhibit No. 1 is a copy of the Transcript of Docket in the Justice's Court of San Antonio Township, Los Angeles County, in Case No. 32442, which shows that Joseph Edwin Taylor, the complainant herein, was charged with the violation of Section 337a, paragraph 5, of the Penal Code of California. In subsequent proceedings the case against him was dis-

missed. Exhibit No. 2 is a copy of the Judgment of the Superior Court of the County of Los Angeles in Case No. 114921, The People of the State of California vs. Genevieve Marie Hite, finding her guilty of violation of Section 337a, paragraph 2, of the Penal Code of California and sentencing her to four months in jail, the execution of the sentence being suspended and the defendant being granted probation for a period of three years on the condition that she is not to bet on horses outside the race track, not to have possession of any bookmaking paraphernalia, not to frequent places where bookmaking is conducted, and to pay a fine in the sum of \$100.

The complainant further testified that it was necessary that he have a telephone in his residence inasmuch as his work is periodic and he needs a telephone to receive calls to report to work, and, further, that a Margaret Jacobson, who is over seventy-five years of age, lives there and needs frequent medical attention. Exhibit No. 3 is a letter from complainant's employer, stating that it is necessary for him to be contacted by telephone on occasions, and Exhibit No. 4 is a letter from Mrs. Jacobson's doctor, stating that she required frequent medical attention at her home. Genevieve Hite still lives with complainant and still has access to the telephone.

A deputy sheriff of Los Angeles County testified that on September 29, 1951, accompanied by two other deputies, he went to complainant's residence at 8133 Wilcox Avenue. While he was talking to the lady who answered the door, he saw complainant Taylor go from the front bedroom of the house to the rear bedroom. The deputy sheriff followed him to the rear bedroom and there Taylor

was in possession of a scratch sheet and various betting papers, and was attempting to put them in a wardrobe closet. Genevieve Hite was in a front bedroom in possession of various types of papers, and she admitted that she had been bookmaking. Taylor told the deputy sheriffs he was not bookmaking. While the officers were in the premises the telephone rang several times and bets were recorded.

Exhibit No. 5 is a letter from the Sheriff's Office to the telephone company, requesting that the telephone Kimball 9750, which was the complainant's telephone, be disconnected.

The position of the telephone company was that it had acted upon reasonable cause in removing the telephone inasmuch as it had received the letter designated as Exhibit No. 5. After consideration of this record we now find that the telephone company exercised due care in taking the action it did, and that this action was based upon reasonable cause as such term is used in Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853). We further find that the telephone facilities here in question were used as an instrumentality to aid and abet the violation of the law.

In a consideration of this record we are faced with a problem wherein complainant's housekeeper was conducting bookmaking activities over the telephone facilities, presumably without the knowledge of complainant, although we cannot overlook the testimony of the deputy sheriff to the effect that the complainant attempted to conceal the scratch sheet and betting markers when the officers came to the premises. Exhibit No. 1 discloses that when the com-

plainant was charged with violation of Section 337a, paragraph 5, of the Penal Code, which section relates to being the owner or in control of the premises where bookmaking is conducted, he was found not guilty and the case against him was dismissed. Another factor which should be noted is that the housekeeper who was found guilty of bookmaking still has access to the telephone facilities.

O R D E R

The complaint of J. E. Taylor against The Pacific Telephone and Telegraph Company having been filed, public hearing having been held thereon, the matter now being ready for decision, and the Commission being fully advised in the premises and basing its decision upon the evidence of record in this case 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. 46595, dated December 27, 1951, on Case No. 5347, is hereby set aside and vacated.

IT IS FURTHER ORDERED that, upon the expiration of thirty (30) 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 similar new subscriber.

Dated at San Francisco, California, this 25<sup>th</sup> day of March, 1952.

R. Z. [Signature]  
President  
Justus F. [Signature]  
Harold [Signature]  
Peter E. [Signature]  
Commissioners