

ORIGINAL

Decision No. 48027

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOSEPH J. POSSNER,
 Complainant,
 vs.
 THE PACIFIC TELEPHONE AND
 TELEGRAPH COMPANY, a corporation,
 Defendant.

Case No. 5408

Arthur E. T. Chapman for complainant. Pillsbury,
 Madison & Sutro by John A. Sutro, and Lawler, Felix
 & Hall by L. B. Conant, for defendant.

O P I N I O N

The complaint alleges that Joseph J. Possner, prior to July 31, 1952, was a subscriber and user of telephone service furnished by defendant telephone company under number Hollywood 9-4243, at 7746 Santa Monica Boulevard, Los Angeles, California. On or about July 31, 1952, the telephone facilities of complainant were disconnected by deputies from the Sheriff's Office of Los Angeles County on suspicion of book-making. Complainant has requested the 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 deprived of the use of these telephone facilities.

By Decision No. 47703, dated September 16, 1952, in Case No. 5408, this Commission issued an order granting temporary interim relief, directing the telephone company to restore telephone service to complainant pending a hearing on the matter. Under date of September 26, 1952, the defendant telephone company filed an answer, the principal allegation of which was that it had reasonable cause to believe that the telephone service furnished to complainant was prohibited by law, and that said service was to be used as an instrumentality directly or indirectly to violate or to aid and abet the violation of the law.

A public hearing was held in Los Angeles on November 21, 1952, before Examiner Syphers, at which time evidence was adduced and the matter submitted.

At the hearing the complainant testified that he had a telephone, number Hollywood 9-4243, at the premises in question where he operates a cafe; that on or about July 25, 1952, the telephone was removed by deputy sheriffs on suspicion of bookmaking. He further testified that the facilities he had consisted of a telephone in the office at the rear of the cafe and an extension thereto on the end of the bar. This telephone service, according to complainant, is necessary in the conduct of his business.

Two deputy sheriffs of Los Angeles County presented testimony to the effect that on July 25, 1952, at about 12:45 P.M., they entered complainant's cafe and went to the private office in the rear of the premises. There was in

that office a small desk with a hand telephone on it, and while the deputies were there the telephone rang about five times in the space of a half hour. One of the calls placed a bet on two horse races.

At the time of this investigation, one Gwendolyn Elliott, who worked as a waitress in the cafe, admitted to the officers that she had been taking bets over the telephone on occasions. Likewise, another individual who was arrested, a man named Marcus, told the deputies that Possner had nothing to do with the bookmaking, but he had informed Marcus that he, Marcus, could run it at his own risk.

The position of the defendant telephone company was that it had acted upon reasonable cause in refusing service to the complainant and, in this connection, introduced in evidence Exhibit No. 1, a letter dated July 25, 1952, from the Sheriff of Los Angeles County to the defendant telephone company, requesting that the telephone service here in question be disconnected.

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 bookmaking activities were being conducted at 7746 Santa Monica Boulevard, the address of the cafe operated by complainant herein, over the telephone facilities here in question.

While the testimony indicates that complainant Possner did not actually take part in these bookmaking activities, nevertheless it is a reasonable conclusion from this testimony that he did know of the use to which the telephone was being made.

O R D E R

The complaint of Joseph J. Possner 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. 47703, dated September 16, 1952, in Case No. 5408, 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.

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

Dated at San Francisco, California, this 9th day of December, 1952.

A. J. [Signature]
President

Justin J. [Signature]

Harold [Signature]

[Signature]

[Signature]
Commissioners