

ORIGINAL

Decision No. 48077

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ANDREW LOCOCO

Complainant,

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,

Respondent.

Case No. 5414

David Rice for complainant. Pillsbury, Madison & Sutro by John A. Sutro, and Lawler, Felix & Hall by E. B. Conant, for defendant.

O P I N I O N

The complaint alleges that, prior to August 1950, complainant's lessee, Johnson Paint Distributor, was a subscriber and user of telephone service furnished by defendant telephone company under number Orchard 7-3369, which was an extension service of that being furnished to complainant. The complainant maintained his place of business at 4334 West Imperial Highway, and the extension was at 4338 West Imperial Highway. During the summer of 1950 the telephone facilities of complainant's lessee were disconnected by the defendant telephone company upon the request of the Los Angeles County Sheriff's Office because of suspected bookmaking activities being conducted at 4338 West Imperial Highway. 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.

Under date of September 24, 1952, by Decision No. 47748, in Case No. 5414, this Commission issued an order granting temporary interim relief, directing the defendant telephone company to restore telephone service to complainant pending a hearing in the matter. On October 14, 1952, the defendant telephone company filed an answer denying the allegations in the complaint, alleging that the defendant telephone company had reasonable cause to believe that the telephone service requested by 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 20, 1952, before Examiner Syphers, at which time evidence was adduced and the matter submitted.

At the hearing a stipulation was submitted to clarify certain facts in this matter. The substance of the stipulation was that on September 21, 1949, and prior thereto, the telephone service furnished to 4338 West Imperial Highway consisted of three telephones having the numbers Oregon 8-4114, Oregon 8-4115 and Orchard 1-5056. The subscriber to those telephones was George E. Allen, doing business as Centinela Liquor Distributors. On September 21, 1949, these three

telephones were disconnected by members of the Los Angeles County Sheriff's Office on suspicion of bookmaking. It was further stipulated that the complainant Andrew Lococo, at his premises at 4334 West Imperial Highway, has telephone service under number Orchard 7-3369, which service Mr. Lococo acquired on April 15, 1949, by superseding to a service which previously had been subscribed to by one Clifford A. Gillen. This telephone service, under Orchard 7-3369, is still being used by complainant. It was further stipulated that the telephone company had reasonable cause to refuse service to Lococo, and in this connection Exhibit No. 1 was received in evidence, which exhibit consists of a letter dated September 21, 1949, from the Sheriff of Los Angeles County to The Pacific Telephone and Telegraph Company, advising that the communication facilities furnished to the premises at 4338 West Imperial Highway were being used for the purpose of bookmaking.

The complainant herein presented testimony that he is the owner of the Cockateo Cafe at 4334 West Imperial Highway. This cafe now occupies the premises which are designated as 4334 West Imperial Highway and also the premises which formerly were designated as 4338 West Imperial Highway. It consists of a restaurant and cocktail bar, being a building of about 6,000 square feet located on a lot 140 feet by 138 feet, with an adjoining parking lot of 30 feet by 138 feet. The telephone facilities at this cafe consist of one line under number Orchard 7-3369, which consists of one telephone in the office and three extension telephones, one at the entrance of the

cafe and one at either end of the bar. The telephone in the office has a dial by which outgoing calls can be made, and also one of the telephones at the bar has a dial. In addition to this, as a result of Decision No. 47748, supra, there is one other telephone line consisting of a telephone in the office and one in the stock room.

The cafe has twenty-eight employees and serves about three hundred people each day. The telephones are used by the secretary and head chef in the conduct of the business and also by the other employees and by Lococo himself. Also, the telephones are used by the customers for receiving and making calls. It was the testimony of this witness that the present telephone facilities are not sufficient to adequately conduct the business, and he requested that a rotary telephone service be installed in this cafe. He further testified that he had not used the telephones for bookmaking or any other illegal activity and did not intend to do so.

A deputy sheriff of Los Angeles County presented testimony that on September 21, 1949, at about 2:45 P.M., the premises, which were then at 4338 West Imperial Highway and consisted of a shed about 15 feet by 15 feet in dimension, were entered by deputy sheriffs of the Los Angeles County Sheriff's Office, following a lead that bookmaking activities were there being conducted. While the deputies were checking this shed they noticed that on the adjoining lot to the west and in the rear of that lot there was a small bungalow. As one of the deputies proceeded to this bungalow, he observed Mr. Lococo

in front of the bungalow. He stopped him and took him into the bungalow. Upon entering he found two other men there, with three telephones containing numbers Oregon 8-4114, Oregon 8-4115 and Oregon 1-5056. A search disclosed some betting markers, and while the deputies were there they answered all of the telephones and recorded bets on horse races. This bungalow had the address 875-1/2 Acacia Street, Hawthorne. There was a fence between this bungalow and the shed at 4338 West Imperial Highway, and also there was another house in front of the bungalow. The deputies arrested all three of the men, including the complainant Lococo. Two of the men were convicted of bookmaking, but the charges against Lococo were subsequently dismissed.

On the occasion of this investigation on September 21, 1949, the deputy sheriff further testified that he checked the wiring of the telephones in the bungalow and found a one-inch pipe apparently containing telephone wire connected to these telephones which led from this bungalow to the main building of the Cockatoo Cafe at 4334 West Imperial Highway.

Subsequently, on March 4, 1950, there was a second investigation of the premises at 4338 West Imperial Highway by deputy sheriffs of Los Angeles County, and on that occasion they found one telephone which proved to be an extension of a telephone in the Cockatoo Cafe. Likewise, there were nine people in the place and during the thirty-minute period that the officers were there other people came and were detained and questioned. One John A. Jefferson finally admitted that he

was conducting bookmaking and stated that no one else was responsible for these bookmaking activities. He was arrested.

Another deputy sheriff presented testimony that on November 16, 1952, he was in the Cockatoo Cafe from 6:30 P.M. until approximately 8:10 P.M., and that during that period the telephone on the bar rang only twice. Likewise, during the last thirty minutes of that period, the chef came into the room and mingled with the guests.

It was the contention of complainant that these bookmaking activities did not involve the complainant and, further, that there was a need for telephone facilities at complainant's present place of business. It was pointed out that when the deputy sheriff was there on November 16, 1952, a Sunday evening, was not typical as far as the need for telephones was concerned, it being contended that there was a far greater patronage in the cafe on weekdays and a far greater need for telephone service.

It was the position of the telephone company that it had acted upon reasonable cause in refusing service to complainant because of the stipulation hereinabove referred to and because of the letter received as Exhibit No. 1.

After consideration of this record, we now find that the telephone company did act with reasonable cause, as such term is used in Decision No. 41115, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853). We further find that bookmaking activities were being conducted at 4338 West Imperial Highway, as disclosed by the testimony of the

investigations conducted on March 4, 1950, and further that there were bookmaking activities being conducted in the bungalow at 875-1/2 Acacia Street, as disclosed by the investigation of September 21, 1949.

The complainant contended that he had not engaged in any bookmaking, that he had been acquitted of any charge therefor, and, further, that the premises at 4338 West Imperial Highway now have been completely demolished, and the cafe at 4334 West Imperial Highway has been enlarged so that it now encompasses the former area of the premises at 4338 West Imperial Highway. The telephone service of complainant at these premises, under number Orchard 7-3369, is not at issue in these proceedings.

The complainant's position was that the present telephone service, Orchard 7-3369, is not sufficient to conduct his business and requested that a rotary service be installed. However, this problem was not adequately raised by the pleadings, and, furthermore, there was no evidence as to the effect of such an installation. Therefore, this request will be denied.

The order granting temporary interim relief, Decision No. 47748, supra, was based upon allegations in the complaint, which allegations were admittedly erroneous in that they alleged that complainant's lessee, Johnson Paint Distributor, was a subscriber and user of telephone service under number Orchard 7-3369, which was an extension service of that being furnished to complainant, it being further alleged that the

extension was at 4338 West Imperial Highway, and complainant's place of business was at 4334 West Imperial Highway. A further allegation in the complaint states that during the summer of 1950 the telephone facilities of complainant's lessee were disconnected, and apparently refers to the alleged extension of Orchard 7-3369. Decision No. 47748 was partly based upon these facts, and ordered restoration of the telephone facilities which had been disconnected. However, upon this record, it now appears that the disconnections were made on September 21, 1949, and that they consisted of three telephones, the numbers of which were Oregon 8-4114, Oregon 8-4115 and Oregon 1-5056, all of which were in the bungalow at 875-1/2 Acacia Street. On the occasion of the second raid on March 4, 1950, hereinabove described, the telephone facilities were not disconnected. It is obvious that Decision No. 47748 was based upon allegations of facts which are incorrect. Therefore, that order will be dissolved.

Our remaining question, therefore, is whether in this proceeding we should order the defendant telephone company to furnish additional facilities to complainant. In the light of this record we hereby find that we should not.

O R D E R

The complaint of Andrew Lococo 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 complainant's present request for installation and/or 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. 47748, dated September 24, 1952, in Case No. 54114, is hereby set aside and vacated.

IT IS FURTHER ORDERED that upon the expiration of ninety (90) 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 Los Angeles, California, this 16th day of December, 1952.

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

CERTIFIED AS A TRUE COPY:

Secretary, Public Utilities Commission of the State of California.