

ORIGINAL

Decision No. 48527

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALVIN C. WARD,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Case No. 5446

Calvin C. Ward, in propria persona. 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 Calvin C. Ward, who resides at 1111 East 127th Street, Los Angeles, prior to January 27, 1953, was a subscriber and user of telephone service furnished by defendant company under number Lorain 9-3252. On or about January 27, 1953, these telephone facilities were disconnected by the Sheriff's Office of Los Angeles County on suspicion of bookmaking. The complainant has made demand upon defendant telephone company to restore service, but it has refused to do so. It is also alleged that complainant will suffer irreparable injury and great hardship if he is deprived of the use of his telephone, and further that he did not use and does not now intend to use the telephone facilities as an instrumentality to violate the law.

Under date of February 17, 1953, this Commission, by Decision No. 48277 in Case No. 5446, issued an order granting temporary interim relief directing the telephone company to restore telephone service to complainant pending a hearing in the matter. On February 26, 1953, the telephone company filed an answer, the principal allegations of which were that the defendant telephone company had reasonable cause to believe that the use made or to be made of the telephone service furnished to complainant under number Lorain 9-3252 was prohibited by law and that said 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, having such reasonable cause, defendant was required to disconnect the service pursuant to Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

A public hearing was held in Los Angeles on April 16, 1953, before Examiner Syphers, at which time evidence was adduced and the matter submitted.

At the hearing the complainant testified that he resided at 1111 East 127th Street in the City of Los Angeles, and that prior to January 27, 1953, he was the subscriber and user of a telephone at his residence, which telephone had the number Lorain 9-3252. On or about January 27, 1953, when he returned home from work he discovered that the telephone had been removed from the premises. He later learned that the telephone had been disconnected by deputy sheriffs of Los Angeles County. He stated that the persons who resided at 1111 East 127th Street were himself, his wife, two children,

and his brother. He is in need of a telephone for personal and home use, and, further, he receives calls in connection with his work.

A deputy sheriff of Los Angeles County testified that on January 27, 1953, he and four other deputies entered the premises at 1111 East 127th Street and there found one William Ward, the brother of complainant, and a woman by the name of La Verne Brown. There was a hand telephone in the living room sitting on a window ledge. On this same ledge there were numerous betting markers and scratch sheets. Also, in the bathroom they discovered between 75 and 100 betting markers. While the officers were there the telephone rang approximately 15 times. On each occasion a deputy sheriff answered and recorded a bet on a horse race. Both William Ward and La Verne Brown were arrested for bookmaking. William Ward made the statement that he had let the lady in the house and then had fallen asleep. He said he knew nothing of any bookmaking activities. La Verne Brown made the statement that she did not live at that address.

The complainant, Calvin C. Ward, presented further testimony to the effect that he did not know La Verne Brown, and, as a matter of fact, he had never seen her. He stated that she was an acquaintance of his wife, but that she had not been in his residence for the past two months. He further stated that he had not used the telephone for unlawful purposes and did not know of any bookmaking activities which may have been conducted there.

Exhibit No. 1 is a copy of a letter dated January 27, 1953, from the Sheriff of Los Angeles County to the telephone company, requesting that telephone service under number Lorain 9-3252, at 1111 East 127th Street, be disconnected. The position of the telephone company was that it had acted upon reasonable cause in disconnecting the telephone service inasmuch as it had received the letter designated as Exhibit No. 1.

After consideration of this record we now find that the telephone company's action was based upon reasonable cause, as such term is used in Decision No. 41115, supra. We further find that the telephone facilities here in question were used as an instrumentality to aid and abet the violation of the law. However, there is no evidence in this record to show that the complainant, his wife, or children, had any connection with or any knowledge of the alleged bookmaking activities. The evidence discloses that the brother of complainant, William Ward, was present when bookmaking activities were being conducted, and the evidence further discloses that this brother is a resident of the premises and has access to the telephone.

In summary, the testimony discloses that bookmaking was performed over the telephone in question apparently without the knowledge of the subscriber to the telephone, but in the presence of a resident of the premises who still has access to the telephone facilities.

ORDER

The complaint of Calvin C. Ward 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 on the evidence of record 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. 48277 in Case No. 5446 is hereby set aside and vacated.

IT IS HEREBY FURTHER ORDERED that upon the expiration of thirty days after the effective date of this order the complainant herein may file an application for telephone service, and if such filing is made The Pacific Telephone and Telegraph Company shall install telephone service at complainant's residence at 1111 East 127th Street, such installation being subject to all duly authorized rules and regulations of the telephone company and to the existing applicable law.

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

Dated at San Francisco, California, this 28th day of April, 1953.

A. I. [Signature]
President

Harold [Signature]

[Signature]
[Signature]

Commissioners