

**ORIGINAL**Decision No. 48580

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

E. D. BAUER

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, a corporation,

Defendant.

Case No. 5443

Erwin D. Bauer, in propria persona. Pillsbury,  
Madison & Sutro, by John A. Sutro, and Lawler, Felix  
& Hall, by L. E. Conant, for defendant.

O P I N I O N

The complaint alleges that E. D. Bauer, who resides at 948 19th Street, San Diego, prior to June 3, 1952, was a subscriber and user of telephone service furnished by defendant company under number Main 3732. On or about June 3, 1952, these telephone facilities were disconnected by San Diego police officers. The complainant has made demand upon the 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 10, 1953, this Commission by Decision No. 48272, in Case No. 5443, issued an order granting temporary interim relief, directing the telephone company to restore telephone service to complainant pending a hearing on the matter. On February 18, 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 Main 3732 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).

Public hearing was held in San Diego on April 28, 1953, before Examiner Syphers, at which time evidence was adduced and the matter submitted.

At the hearing the complainant testified that he maintained a rooming house at 946-948 19th Street in San Diego, which rooming house is a two-story building, the upper story being designated as 946 and the lower story as 948. At the time of the disconnection of the telephone facilities on or about June 4, 1952, there were four men, in addition to himself, living at the addresses. On this date, at about 1:00 p.m. in the afternoon, several police officers came to the house, disconnected the phone and arrested all five of the men on charges of bookmaking. Bauer testified that he was subsequently found not guilty and that the cases against the other four men were

dismissed. He further stated that he needs the phone in the conduct of his rooming house as well as his business. He has a restaurant business at another location and this necessitates the making and receiving of telephone calls at his residence.

An officer of the San Diego Police Department testified that on June 4, 1952, he and three other officers entered the premises at 948 19th Street in San Diego at about 1:45 p.m. There they found complainant and four other men. A search of the house revealed several bet registrations, which were notations of bets made on slips of paper. In the dining room there was a card table on which were a telephone, radio, clock, several pads of paper, and pencils and pens. While the officers were there the phone rang two or three times and on one of the occasions, the officer testified, he had taken bets over the telephone.

Exhibit No. 1 is a copy of a letter dated June 5, 1952, from the Chief of Police of San Diego to the telephone company requesting that telephone service under number Main 3732 at 946-948 19th Street be disconnected. The position of the telephone company was that it had acted with reasonable cause in disconnecting the telephone service inasmuch as it had received the letter designated as Exhibit No. 1.

After a 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. 44415, 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.

O R D E R

The complaint of E. D. Bauer 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 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. 48272 in Case No. 5443, is hereby set aside and vacated.

IT IS 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 948 19th Street, San Diego, 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 12<sup>th</sup> day of May, 1953.

R. J. [Signature]  
President

[Signature]

[Signature]

[Signature]  
Commissioners