

ORIGINAL

Decision No. 49420

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN DREW MILLER,
Complainant

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a
corporation,
Defendant.

Case No. 5489

John Drew Miller, in propria persona. Pillsbury,
Madison and Sutro, by John A. Sutro, and Lawler, Felix
and Hall, by L. B. Conant, for defendant.

O P I N I O N

The complaint alleges that on or about April 10, 1953, the telephone facilities of complainant were disconnected by the Los Angeles Police Department which, at that time, arrested one Lonnie Leon Hinton on suspicion of bookmaking. The complaint further alleges that complainant has made demand upon defendant telephone company to have these telephone facilities restored but that defendant has refused to make such restoration. It is further alleged that complainant did not use, does not now intend to use, and had no knowledge of any use for unlawful purposes of the aforesaid telephone facilities, and that the complainant will suffer irreparable injury and great hardship by being deprived of these telephone facilities.

An order granting temporary interim relief was issued by this Commission on September 4, 1953, in Decision No. 49051,

directing defendant telephone company to restore the facilities in question pending a hearing on the complaint. Under date of September 11, 1953, the defendant telephone company filed an answer to the complaint, the principal allegation of which was that the telephone company had reasonable cause to believe that the use made, or to be made, of the telephone facilities concerned was prohibited by law and that, accordingly, it was required to discontinue service to the subscriber under the provisions of Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

A public hearing was held on November 19, 1953, before Examiner Syphers in Los Angeles, at which time evidence was adduced and the matter submitted. It is now ready for decision.

At the hearing the complainant testified that on or about April 10, 1953, upon coming home to his residence at about 10:00 p.m., he found that his telephone had been disconnected. He further testified that his residence at 1838 $\frac{1}{2}$ South Gramercy Place, Los Angeles, was an upstairs apartment occupied by himself and his wife. One Lonnie Leon Hinton had a key to the apartment inasmuch as Hinton was paying Miller \$20 per week for the use of his telephone. This arrangement had gone on for approximately two weeks prior to April 10, 1953. While Miller testified that he had no connection with any bookmaking activities, he also testified that he knew Hinton was engaged in bookmaking activities.

A police officer of the City of Los Angeles testified that he, with four other officers, went to complainant's address on April 10, 1953, at about 3:30 p.m. and remained there for

about one hour. During that time the telephone rang several times and the police officers answered it and received bets on horse races. At that time Lonnie Leon Hinton, who was the only person other than the police officers present in the apartment, was arrested upon charges of bookmaking.

Exhibit No. 1 is a copy of a letter dated April 13, 1953, from the Chief of Police of Los Angeles to the telephone company requesting that telephone service under number Republic 3-6802 at 1838½ South Gramercy Place, Los Angeles, 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 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. 41415, 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. While there is no evidence that complainant was actually engaged in bookmaking, nevertheless, the evidence does disclose that he was accepting a rental from Hinton for the use of his phone and that he knew Hinton was using the phone for bookmaking purposes.

O R D E R

The complaint of John Drew Miller 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. 49051 in Case No. 5489 is hereby set aside and vacated.

IT IS FURTHER ORDERED that upon the expiration of sixty 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 1838½ South Gramercy Place, Los Angeles, 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 15th day of December, 1953.

[Signature]
President
[Signature]
[Signature]
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Commissioners