

Decision No. 52283**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOSEPH H. UNCAPHER, doing business
as UNCAPHER'S DRUG STORE,)

Complainant)

vs.)

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,)

Defendant.)

Case No. 5671

John H. Klenke, for complainant.Pillsbury, Madison & Sutro, and Lawler, Felix
& Hall, by L. B. Conant, for defendant.O P I N I O N

The complaint, filed on August 16, 1955, alleges that Joseph H. Uncapher, doing business as Uncapher's Drug Store at 1355 West Manchester Boulevard, Los Angeles, California, was a subscriber and user of telephone service furnished by the defendant company at that address under numbers PLeasant 8-4614 and TWinoaks 1833; that on March 9, 1955, the telephone facilities under number PLeasant 8-4614 were disconnected by the defendant, and on March 18, 1955, the telephone facilities under number TWinoaks 1833 were disconnected by the defendant; that complainant has made demand upon the defendant to have the telephone facilities restored but the demand has been refused; that the complainant has suffered pecuniary loss, and damage and injury to his

reputation as a result of being deprived of said telephone facilities; and that complainant did not use and does not intend to use said telephone facilities, or either of them, to violate the law or in aiding or abetting said violation.

On August 23, 1955, by Decision No. 51851, in Case No. 5671, this Commission issued an order directing the telephone company to restore service to complainant pending a hearing in the matter.

On August 31, 1955, the telephone company filed an answer, the principal allegation of which was that pursuant to Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853) defendant, insofar as number Pleasant 8-4614 is concerned, on or about March 14, 1955, and insofar as number TWinoaks 1833 is concerned, on or about March 17, 1955, had reasonable cause to believe that the said services were being or were 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 October 21, 1955, before Examiner Kent C. Rogers. Evidence was presented thereat and the matter was submitted.

The complainant testified that his drug store contained a prescription booth in which were situated the two telephones in question, and that about 15 feet from said telephones were two wall public pay telephones. He said that no calls came in on the pay telephones; that he has no control over the users thereof; and that the drug store is open to the public. He stated that he has never used the numbers in question for unlawful purposes. He further testified that on March 9, 1955, police officers entered the drug

store, arrested him and a man named Robinson for bookmaking and disconnected the telephone with the number Pleasant 8-4614. He was, he said, thereafter released, and the complaint against him was dismissed on April 26, 1955 (Exhibit No. 1). Mr. Robinson pleaded guilty. He stated that on March 18, 1955, telephone number TWinoaks 1833 was disconnected by the defendant at the request of the Los Angeles Police Department.

On cross examination the complainant testified that his full name is Joseph Harold Uncapher; that he is not known as "Hal"; that he did not know of any bookmaking activities in the store; that he knew bookmakers came in to buy scratch sheets; that he never placed a bet on either of the telephones; that he usually answers calls on the two telephones; and that no one ever attempted to place a bet over the telephones to his knowledge.

On redirect examination, the complainant stated that he has known Robinson for two years and that he comes in to eat at the lunch counter.

A Los Angeles City police officer testified that on March 9, 1955, he and two other officers arrived at complainant's drug store about 2:10 p.m.; that he went to the rear of the store to the prescription room; that he observed complainant and a Dave Robinson in the room; that the two telephones in question were in this room; that Robinson had a paper with records of 150 bets on horses in his hand; and that there was a scratch sheet for that day lying on a filing cabinet near the telephones. The witness further testified that he remained at the premises about one hour; that the two telephones in question rang ten or twelve times each during this period; that on some of these occasions the

callers asked about medicine and on some occasions the callers asked for Hal or David; that on several occasions the officer said he was Hal and the caller hung up; that on one occasion the caller asked for Hal or David, the witness said he was Hal and the caller gave him a bet on a horse racing at Santa Anita that day. The officer stated that thereafter he arrested the complainant and Robinson, disconnected one of the telephones, and took the complainant and Robinson to jail. Subsequently, he said, Robinson pleaded guilty and complainant was found not guilty.

Exhibit No. 2 and Exhibit No. 3 are copies of letters from the Los Angeles City Police Department advising the telephone company that the telephones in question were used for illegal purposes and requesting that they be disconnected. A supervising special agent for the telephone company testified that after receipt of these letters the telephones were 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 letters designated as Exhibit No. 1 and Exhibit No. 2.

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 in question were used for bookmaking purposes.

It should be noted that, subsequent to submission, complainant's counsel filed, on October 28, 1955, a petition to set aside submission and to take further evidence herein. After careful consideration of all of the allegations contained in such petition, the Commission concludes that even if the new evidence referred to therein were received in this record and given the construction most favorable to complainant, the evidence would still be insufficient to cause the Commission to disturb its findings in the above paragraph. Therefore, such petition will be denied.

O R D E R

The complaint of Joseph H. Uncapher against The Pacific Telephone and Telegraph Company having been filed, public hearing having been held thereon, 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. 51851 in Case No. 5671 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 drug store at 1355 West Manchester Boulevard, Los Angeles, California, such installation being subject to all duly authorized rules and regulations of the telephone company and to the existing applicable law.

IT IS FURTHER ORDERED that the petition to set aside submission and to take additional evidence, filed October 28, 1955, on behalf of complainant, be and it hereby is denied.

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

Dated at San Francisco, California, this 29th day of November, 1955.

Arthur E. ...
President
Justin J. ...
Ralph ...
...
Commissioners

Commissioner Rex Hardy, being necessarily absent, did not participate in the disposition of this proceeding.