

**ORIGINAL**

Decision No. 52356

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HERBERT S. FORMAN, dba  
HERB'S SEA FOODS,  
Petitioner,

vs.

Case No. 5685

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

Milton R. Gunter, by Terrence Cooney, 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 October 13, 1955, alleges that Herbert S. Forman operates a fish market at 8371 West 3rd Street, Los Angeles County, California; that he is a subscriber and user of telephone service furnished by respondent at that address under number WEBster 9-9331; that on or about the 8th day of September, 1955, the petitioner was advised by the defendant that it had received information that the telephone facilities were being used as an instrumentality to violate the law or to aid and abet such violation; that immediately thereafter the facilities were disconnected by the respondent and were disconnected at the time the complaint was filed; that the petitioner has suffered and will

suffer irreparable injury to his reputation and great hardship as a result of the removal of the telephone service, and great financial loss and humiliation; and that complainant did not use said telephone facilities to violate the law nor to aid and abet such violation.

On October 18, 1955, by Decision No. 52080 in Case No. 5685, this Commission issued an order directing the telephone company to restore service to the complainant, pending a hearing on the matter.

On October 25, 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), the defendant, on or about August 31, 1955, had reasonable cause to believe that the telephone service furnished by defendant under number WEBster 9-9331 at 8371 West 3rd Street, Los Angeles, California, 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.

A public hearing was held in Los Angeles before Examiner Kent C. Rogers on November 18, 1955, and the matter was submitted.

The complainant testified that the allegations of the complaint are true; that as a result of being deprived of the telephone he had lost an estimated \$700; and that he has never used the telephone for illegal purposes. On cross-examination he testified that no other person used the telephone for illegal purposes as far as he knew; that the telephone had been reinstalled with the same number as before; that it is and was a coin-operated

wall telephone; and that there is a sign outside the store stating that there is a public telephone on the premises.

The complainant called a former employee of his as a witness. This witness testified that he started working for the complainant about two years prior to August 26, 1955, and that he has never heard complainant take bets over the telephone. He further testified that he has never heard the word Petrolli in the fish business and has never heard nor used the name Pet or Pete around the business.

A police officer of the City of Los Angeles connected with the Vice Detail testified that on August 25, 1955, he and his partner went to the vicinity of the complainant's store and remained there about 45 minutes observing; that during this period twelve to fifteen people entered the store and only 25 percent of these customers brought any packages out with them. He further testified that the following day, August 26, 1955, he and the other officer returned to the rear door of the premises; that he observed a Sam Schwartz behind the counter; that he could not see but could hear the complainant talking on the telephone; that he heard the complainant say, "yes, yes, Pete, plenty of time for the 6th, doesn't go off until 4:45, it is 4:30 now, still open for the 6th"; that the complainant hung the receiver up; that he observed complainant with a pencil behind his ear and a piece of paper in his hand; that the complainant and Sam Schwartz looked at a scratch sheet; that the officers entered the show room and the witness took the paper from the complainant; that, in addition, there was a piece of paper on a table; that on the paper which he took from the complainant was written "Pet 6-4-5 x 5"; that in his opinion

this was a recorded bet; and that there was also on the table, what was in his opinion, an "owe sheet" which lists the amounts due to bettors. The officer further testified that Schwartz said he was a retired businessman; that the complainant denied being a bookmaker and denied having made any writing after talking on the telephone. Thereafter, he said, the complainant was taken to jail, and his trial is scheduled for November 22, 1955.

On cross-examination the witness stated that he could not recall what was on the "owe sheet" other than names and figures; and that he believed the word "pet" on the slip the complainant had when he came from the telephone was the name of a person; that the "6" on that piece of paper was the only thing that designated a race track; and that he could not say definitely that the complainant took a bet over the telephone.

The other officer corroborated the testimony of the first officer heretofore set forth.

The complainant testified in rebuttal that customers frequently come in and leave orders for fish without carrying out any merchandise; that "pet" on the so-called betting marker indicates Petrolli which is a better grade of filet of sole; that the figures "5 x 5" indicate five five-pound packages of fish; and that the "6" and "4" represent pounds of fish; and that not all the figures on the slip were written at the same time. Complainant introduced into evidence Exhibit No. 2 (withdrawn by stipulation of the parties) which was a sales slip from a Nate Davidow showing, among other things, the following: 100:Filet Pet 50 \$50:00. The witness said this indicated that he purchased from Davidow

100 pounds of Petrolli filet, at 50 cents a pound, for \$50, and is similar to the notation made on the so-called betting marker. The complainant reiterated his denial of having engaged in book-making activities. On cross-examination the complainant testified that the figures on the so-called betting marker appeared as shown on Exhibit No. 3 herein; and that after taking orders for fish he enters them in a record book. He stated that he did not remember whether or not he wrote the figures on the so-called betting marker which the officer said he denied writing.

A supervising special agent for the telephone company testified that the letter, Exhibit No. 1, was received by the telephone company on August 31, 1955. This letter was written by the chief of police of the City of Los Angeles, advising the defendant that the complainant's telephone facilities were being used for forwarding or receiving bets. Acting on the information contained in this letter, the facilities were disconnected, the agent said. The position of the telephone company was that it had acted with reasonable cause in disconnecting the telephone services 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 that term is used in Decision No. 41415, referred to supra. We further find that the evidence fails to show that complainant used the telephone facilities for bookmaking activities or permitted the telephone facilities to be used for bookmaking activities. Therefore, the complainant is now entitled to restoration of telephone service.

O R D E R

The complaint of Herbert S. Forman against The Pacific Telephone and Telegraph Company, a corporation, having been filed, a public hearing having been held thereon; 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 order of the Commission in Decision No. 52080, dated October 18, 1955, in Case No. 5685; temporarily restoring telephone service to complainant, be made permanent, such restoration being subject to all duly authorized rules and regulations of the telephone company and to existing applicable law.

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

Dated at San Francisco, California;  
this 17<sup>th</sup> day of December, 1955.

[Signature]  
President  
[Signature]  
[Signature]  
[Signature]  
Commissioners