

ORIGINAL

Decision No. 52763

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOE P. GARAFALO,
 Complainant,
 vs.
 THE PACIFIC TELEPHONE AND
 TELEGRAPH COMPANY, a corporation,
 Defendant.

Case No. 5714

Charles Hollopeter and Robert Herman, by
R. H. Herman, for complainant.
 Pillsbury, Madison and Sutro and Lawler,
 Felix and Hall, by L. B. Conant, for defendant.

O P I N I O N

The complaint herein, filed on January 17, 1956, alleges that Joe P. Garafalo, doing business as the Owl Cafe at 36 South Garfield Street, Alhambra, California, prior to January 11, 1956, was a subscriber and user of telephone service furnished by defendant at the Owl Cafe at 36 South Garfield Street, Alhambra, California, under telephone number ATLantic 9-0930; that on or about the 11th day of January, 1956, the telephone facilities of complainant were disconnected by or at the request of the Alhambra Police Department and/or the Los Angeles County Sheriff's Office; that on January 11, 1956, the complainant was arrested at his said place of business and the telephone facilities disconnected and the instrument taken by said police officers; that the

complainant has suffered and will continue to suffer irreparable injury and great hardship as a result of being deprived of said telephone facilities; and that the complainant did not, and does not now intend to use said telephone facilities as an instrumentality to violate the law, nor in aiding or abetting said violation.

On January 23rd, 1956, by Decision No. 52521, this Commission issued an order directing the telephone company to restore service to complainant pending a hearing on this matter.

On February 1st, 1956, 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, on or about January 11, 1956, had reasonable cause to believe that the telephone service furnished by defendant under number ATLantic 9-0930 at 36 South Garfield Street, Alhambra, 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 February 14, 1956, and the matter was submitted.

The complainant testified that since September, 1953, he has been the proprietor of the Owl Cafe at 36 South Garfield Street, Alhambra; that the defendant furnished telephone service at that place prior to January 11, 1956; that on January 11, 1956, a man came in and asked him to place bets on two horses for him; that this man gave him \$5.00 and a slip of paper with the names of two horses thereon; that the complainant went to the telephone,

started to make a telephone call and was arrested; that prior to that time he used the telephone for making his personal bets but never for making book; that prior to the arrest he did place bets over the telephone for himself and his friends; that since the arrest he goes to the track to make bets; and that he has had temporary telephone service since January 23 or January 24, 1956.

A Los Angeles County Deputy Sheriff testified that he entered the complainant's place of business at about 1:50 p.m. on January 11, 1956; that at the time he entered the complainant's premises the complainant had been arrested by another deputy; that he asked complainant how long he had been bookmaking and the complainant said approximately one month; that he asked the complainant how much action he had and the complainant stated about \$40 to \$100 per day; and that the complainant stated that an unknown person came in each day and paid off for the previous day's action. The officer further testified that the complainant stated he phoned the bets to an Alhambra number; that he searched the waste basket in complainant's premises and found betting markers for the previous day's action; and that complainant informed him he keeps the markers until he gets the pay off and then throws the markers away. The officer said that complainant was taken into custody; that he has had his preliminary hearing and that his trial is set for February 23, 1956.

Exhibit No. 1 is a copy of a letter from the Sheriff of Los Angeles County to the telephone company requesting that the complainant's telephone facilities be disconnected. A supervising special agent of the telephone company testified that this letter

was received on or about January 13, 1956, and a central office disconnection was effected immediately thereafter pursuant to that request. 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 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. 42415, referred to supra. We further find that the telephone facilities in question were used for bookmaking purposes.

O R D E R

The complaint of Joe P. Garafalo against The Pacific Telephone and Telegraph Company having been filed, a 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. 52521 in Case No. 5714 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 place of business at 36 South Garfield Street, Alhambra, California, 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 13th day of March, 1956.

[Signature]
President

Justin F. Caswell

Ray L. Luterer

[Signature]

R. Hardy
Commissioners