

ORIGINAL

Decision No. 52985

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DONALD L. BERNARD,

Complainant,

vs.

Case No. 5735

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Donald L. Bernard, in propria persona.
Pillsbury, Madison and Sutro, and Lawler,
Felix and Hall, by L. B. Conant, for respondent.

O P I N I O N

The complaint, filed on February 29, 1956, alleges that complainant resides at 193 Maronde Way, Monterey Park; that on March 18, 1955, Helen Duca, sister-in-law of the complainant, was arrested at complainant's address by members of the Los Angeles County Sheriff's Department and charged with violating Section 337a Penal Code, Bookmaking; that the members of the Sheriff's Department, at the time of the arrest, removed complainant's telephone, Atlantic 2-9008; that on June 8, 1955, the case against Helen Duca was dismissed and no prosecution was had.

On March 15, 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 March 23, 1955, had reasonable cause

to believe that the telephone service furnished by defendant under number Atlantic 2-9008 at 193 Maronde Way, Monterey Park, 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 April 11, 1956, and the matter was submitted.

The complainant testified that on and prior to March 18, 1955, he and his wife were employed; that they resided at 193 Maronde Way, Monterey Park; that he had hired his sister-in-law to care for the complainant's baby while he and his wife were at work; that on and prior to that day he had a telephone, number Atlantic 2-9008 at his residence; that on March 18, 1955, he arrived home about 7:00 p.m. and found the telephone gone; that his brother-in-law was taking care of the baby; that he never permitted the telephone to be used for bookmaking purposes; and that he needs the telephone.

Exhibit No. 1 is a copy of a letter from the Sheriff of Los Angeles County to the telephone company advising that the telephone furnished to Donald L. Bernard at 193 Maronde Way, Monterey Park, California, telephone number Atlantic 2-9008, had been confiscated and requesting that the telephone facilities be disconnected. An employee of the telephone company testified that the letter was received on March 23, 1955, and a central office disconnection was effected 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. 41115, referred to supra. We further find that there is no evidence that complainant was engaged in, was directly connected with, or permitted the telephone facilities to be used for bookmaking or other illegal activities. Therefore, the complainant is now entitled to restoration of telephone service.

O R D E R

The complaint of Donald L. Bernard 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 upon the evidence of record and the findings herein,

IT IS ORDERED that the complainant's request for restoration of telephone service be granted, and that, upon the filing by the complainant of an application for telephone service, The Pacific Telephone and Telegraph Company shall install telephone service at complainant's residence at 193 Maronde Way, Monterey Park, 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 1st day of May, 1956.

John E. Mitchell
President

Justus F. Caswell

Rex Hardy

William J. ...

Commissioners

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