

ORIGINAL

Decision No. 53047

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN F. FISHER,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Case No. 5732

John F. Fisher, in propria persona.
Pillsbury, Madison & Sutro, and Lawlor,
Felix & Hall, by L. B. Conant, for
defendant.

O P I N I O N

The complaint, filed on February 24, 1956, alleges that John F. Fisher of 1742 Holly Drive, Glendale, California, was a subscriber for telephone service at that address under number CHapman 5-5868; that on or about January 24, 1956, the telephone services were disconnected by officers of the Glendale Police Department for alleged violation of Section 337a of the California Penal Code; that complainant, his wife and daughter aged five and one-half years reside at the said address and said telephone service is necessary for the health and safety of the family and to enable complainant to conduct his business; that complainant will suffer damage to his business and irreparable injury to his child by being deprived of telephone facilities; and that

complainant does not intend to use said telephone facilities in violation of the law of the State of California.

On March 9, 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 February 1, 1956, had reasonable cause to believe that the telephone service furnished by defendant under number CHapman 5-5868 at 1742 Holly Drive, Glendale 6, 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 he is, and was on January 24, 1956, self employed doing property management and painting out of his home at 1742 Holly Drive, Glendale, California; that he resides there with his wife and daughter; that his wife works from 4:00 p.m. to 12 o'clock midnight; that on January 24, 1956, he left the house to attend to business and when he returned his wife was gone and his telephone had been removed; that he checked and found his wife had been taken into custody about 2:30 p.m.; that his wife subsequently pleaded guilty to a violation of Section 337a of the Penal Code of California and received a suspended sentence and a fine; that he and his wife had been placing bets over the telephone for themselves and friends; and that he needs a telephone and he will not use or allow it to be used for betting purposes.

On cross-examination the complainant testified that he has not played the horses the last month or two; that he will not use the telephone for betting; and that his wife is on probation and will not go to the race track.

A Glendale City police sergeant testified that on January 24, 1956, he, in company with other officers, arrested Gilsie Mary Fisher at 1742 Holly Drive, Glendale; that in the premises he found a pad on which were recorded six hundred dollars in bets; that a radio was tuned to the Mexican station giving race results; that while he was there the telephone rang on three occasions; that he had Gilsie Mary Fisher answer the telephone while he listened; that on each occasion he heard a voice placing bets on various horse races; that he disconnected the telephone and placed Gilsie Fisher under arrest; that Gilsie Fisher pleaded guilty to one count of bookmaking and was fined \$150 and placed on probation for two years. The officer further testified that the complainant came to the police station about 5:30 p.m. on January 24, 1956, and asked why his wife had been arrested; that he said he only accepted bets for his friends and passed them on to bookies; and that the witness told the complainant that all the bets were recorded in the complainant's wife's handwriting.

On cross-examination by complainant the officer testified there were about 50 to 75 bets recorded on the pad which was in Gilsie Fisher's handwriting and that there were only about eight different names of bettors.

Exhibit No. 1 is a copy of a letter from the Chief of Police of the City of Glendale to the telephone company advising that complainant's telephone had been confiscated, that it had

been used for the purpose of disseminating horse racing information, and requesting that the telephone facilities be disconnected. An employee of the telephone company testified that this letter was received on February 1, 1956, and that a central office disconnection was effected thereafter. 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.

In the light of this record we find that the action of the telephone company was based upon reasonable cause, as that term is used in Decision No. 41415, 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 John F. Fisher 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,

IT IS ORDERED that complainant's request for restoration of telephone service be, and it hereby is, denied.

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 residence at 1742 Holly Drive, Glendale, 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 8th day of May, 1956.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]
Commissioners