

ORIGINAL

Decision No. 54014

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LA VERNE COOLEY, Substituted for)
 BARBARA KYSER,)
 Complainant,)
 vs.)
 THE PACIFIC TELEPHONE AND TELEGRAPH)
 COMPANY, a corporation,)
 Defendant.)

Case No. 5761

John H. Marshall and G. Vernon Brumbaugh,
 by G. Vernon Brumbaugh, 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 original complaint herein was filed on May 4, 1956, by Barbara Kyser, who resided at 10508 Walnut Avenue, South Gate, California. In the complaint it is alleged that prior to October 15, 1955, complainant was a subscriber and user of telephone service furnished by defendant under number LOrain 9-6847 at the above address; that on or about October 15, 1955, the telephone facilities of complainant were disconnected by the Police Department and were disconnected at the time of filing of this complaint; that the Police Department arrested complainant's father and took the telephone; that complainant is not and never has been a bookmaker, nor aided

and abetted anyone in bookmaking; that complainant has made demand upon defendant to have the telephone facilities restored but defendant has refused and does now refuse to do so; and that complainant has suffered and will suffer irreparable injury to her reputation and great hardship as a result of being deprived of said telephone facilities.

On May 22, 1956, by Decision No. 53108 in Case No. 5761, this Commission issued an order directing the telephone company to restore telephone service to complainant pending a hearing on the matter.

On June 1, 1956, the telephone company filed an answer, the principal allegation of which was that on or about October 19, 1955, it had reasonable cause to believe that the telephone service furnished to complainant under number LOrain 9-6847 at 10508 Walnut Avenue, South Gate, 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, and that having such reasonable cause the defendant was required to disconnect the service pursuant to this Commission's Decision No. 44415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

A public hearing on the complaint was held in Los Angeles before Examiner Kent C. Rogers on July 3, 1956. During the course of this hearing it was developed that Barbara Kyser is the married daughter of LaVerne Cooley and has moved from the premises wherein the telephone involved is located, and that the real party in interest is LaVerne Cooley. The matter was thereupon continued to September 19, 1956 to permit an amended complaint to be filed on behalf of LaVerne Cooley. This amended

complaint was filed on July 11, 1956, the telephone company filed an answer on July 24, 1956, a further hearing was held on September 19, 1956, and the matter was submitted. The only change effected by the amended complaint and the answer thereto is to substitute LaVerne Cooley for Barbara Kyser. The parties stipulated that the evidence presented during the first day of hearing may be considered by the Commission.

Complainant LaVerne Cooley testified on July 3, 1956, that she is the mother of Barbara Kyser, the original complainant herein; that Barbara Kyser was married in January 1956, and no longer lives on the premises where the telephone referred to is located, which premises are those of LaVerne Cooley.

A deputy sheriff of the Los Angeles County Sheriff's office was called as a witness by the complainant under Section 2055 of the Code of Civil Procedures. On examination by complainant's counsel he testified that on October 15, 1955 he arrested Russell Cooley at 10508 Walnut Avenue, South Gate; that Barbara Kyser was not present; that he removed the telephone from the premises, and that subsequently the complaint against Russell Cooley was dismissed.

On examination by the defendant's attorney the deputy testified that on October 15, 1955, he and four other deputies went to the premises referred to above; that those who went to the front door were admitted; that Russell Cooley was outdoors in the rear of the house and threw some betting markers over the fence; that Cooley was taken into the house; that there was a scratch sheet in the house; that Cooley stated he had been making

book at home for about 1½ weeks and that he took in between \$60 and \$100 per day; and that the betting markers were in Cooley's handwriting. It is not in evidence, however, that the telephone was used in connection with these bookmaking activities. Bookmaking or other unlawful operations are not, per se, within the purview of this Commission's responsibility under Decision No. 41415, supra. Only the use of telephone service in connection with unlawful activities brings them within the scope of our authority. It is not the function of the Commission to determine guilt or mete out punishment; but only to exercise its authority, in aid of the proper law enforcement agencies, in an effort to prevent the use of telephone service in connection with unlawful activities. Where there is no proof that telephone service has been unlawfully employed, we do not deprive the subscriber of service because of violations of the law not involving the use of the telephone. Where such use is not proved, as is the case here, telephone service will not be denied to a subscriber.

Exhibit No. 1 is a letter from the office of the sheriff of Los Angeles County to the telephone company advising it that telephone under number LOrain 9-6847 at 10508 Walnut Avenue, South Gate, California was being used for illegal purposes, that the instrument had been confiscated and requesting that the telephone services be discontinued. A telephone company employee testified that this letter was received on October 19, 1955 and the telephone service was disconnected pursuant to the request.

After consideration of the record we now find that the telephone company's action was based upon reasonable cause as such term is used in Decision No. 41415, referred to supra. We further find that the telephone facilities here in question have not been shown to have been used to aid or abet the violation of the

law. Therefore, the complainant is now entitled to restoration of telephone service.

O R D E R

The complaint of LaVerne Cooley 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 order of the Commission in Decision No. 53108, dated May 22, 1956 in Case No. 5761, temporarily restoring telephone service to the complainant, be made permanent, such restoration being subject to all duly authorized rules and regulations of the existing applicable law.

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

Dated at San Francisco, California, this 30th day of October, 1956.

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

Commissioners

Commissioner Justus F. Craemer, being necessarily absent, did not participate in the disposition of this proceeding.