

ORIGINAL

Decision No. 55485

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JACK M. O'HARA
 Complainant,
 vs.
 PACIFIC TELEPHONE AND
 TELEGRAPH COMPANY, a corporation,
 Defendant.

Case No. 5946

Joseph T. Forno, for complainant.
Lawler, Felix & Hall, by John H. Sink, for defendant.
Roger Arnebergh, City Attorney, by Philip E. Grey,
 Deputy City Attorney, for the Police Department
 of the City of Los Angeles, intervener.

O P I N I O N

The complaint, filed on May 22, 1957, alleges that Jack M. O'Hara resides at 15742 Hartsook Street, Encino, California; that prior to May 11, 1957, complainant was a subscriber and user of telephone service furnished by defendant under numbers Stanley 3-1309 and State 9-6627 together with five stations at said address; that on or about May 11, 1957, the telephone facilities of complainant were wrongfully and without reasonable and probable cause removed by the Los Angeles Police Department and the complainant and his wife were arrested on a charge of suspicion of bookmaking; that no complaint was filed against the complainant or his wife; that complainant has made demand upon the defendant to have his telephone facilities

restored but defendant has refused and does now still refuse to do so; that the complainant has suffered and will suffer irreparable injury to his reputation and great hardship as a result of being deprived of said telephone facilities; and that complainant did not use and does not now intend to use said telephone facilities as instrumentalities to violate the law nor in aiding or abetting such violation.

On June 18, 1957, by Decision No. 55141 in Case No. 5946, this Commission issued an order directing the telephone company to restore telephone service to complainant pending a hearing on the matter.

On June 28, 1957, the telephone company filed an answer, the principal allegation of which was that on or about May 23, 1957, it had reasonable cause to believe that the telephone service furnished to complainant under STanley 3-1309 and STate 9-6627 at 15742 Hartsook Street, Encino, 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. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

A public hearing was held in Los Angeles before Examiner Kent C. Rogers on July 29, 1957, and the matter was submitted. The complainant did not appear, but was represented by an attorney. Notice of the time and place of the hearing was mailed to the complainant by the Secretary of the Commission on July 5, 1957.

Exhibit No. 1 is a copy of a letter from the Commander of the Administrative Vice Division of the Los Angeles Police Department advising the defendant that complainant's telephones, above referred to, had been confiscated; that they had been used for the purpose of disseminating horse racing information in violation of section 337a of the General Code; and requesting that the complainant's telephone facilities be disconnected. An employee of the telephone company testified that this letter was received on May 23, 1957, and that a central office disconnection was effected thereafter. The position of the telephone company was that it had acted with reasonable cause, as that term is used in Decision No. 411415, referred to supra, in disconnecting the telephone services inasmuch as it had received the letter designated as Exhibit No. 1.

Two police officers of the City of Los Angeles testified concerning the removal of the complainant's telephone. From their testimony, which was undisputed, it appears and we find that on May 10, 1957, horse racing bets were called in to one of complainant's telephone numbers; that thereafter the officers went to complainant's premises; that officers listened on an extension telephone in a separate building and heard several horse racing bets being placed over the telephone; that the officers entered the complainant's house and arrested the complainant and his wife; that there were four telephone instruments in the house with the two telephone numbers referred to; that there were in the house, besides the complainant and

his wife, one other man, who said he was delivering furniture; that in the kitchen there were four professional-type forms used by bookmakers to record telephoned bets; that the four cards contained records of approximately 20 bets similar to those the officers heard over the extension telephone; that the officers found in the house cards for previous days' races wrapped in scratch sheets for the respective days reflected on the cards; that these cards showed bets averaging about \$2,000 per day; and that telephone bills and utility bills which the officers found in the house were in the name of complainant (Exhibit No. 2). Complainant denied all knowledge of the above-mentioned race information paraphernalia.

The officers were unable to say that the writings referred to were in complainant's handwriting or that the complainant talked over the telephone.

In the light of the 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 Jack M. O'Hara 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 services be denied and that said complaint be and it hereby is dismissed. The temporary interim relief granted by Decision No. 55141 in Case No. 5946 is hereby set aside and vacated.

IT IS FURTHER ORDERED that upon the expiration of 180 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 15742 Hartsook Street, Encino, 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 Los Angeles, California, this 27th day of August, 1957.

President
Ronald L. Intermeier

R. H. Hardy

E. J. Fox

Commissioners
Peter E. Mitchell
Commissioner Matthew J. Dooley being
necessarily absent, did not participate
in the disposition of this proceeding.