

ORIGINAL

Decision No. 55988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RUDOLPH W. HOWARD,)
)
 Complainant,)
)
 vs.)
)
 THE PACIFIC TELEPHONE AND TELEGRAPH)
 COMPANY, a corporation,)
)
 Defendant.)

Case No. 5989

Rudolph W. Howard, in propria persona.

Lawler, Felix & Hall, by Gene Otsea, for the defendant.

Roger Arnebergh, City Attorney, by Walter C. Foster,
Deputy City Attorney, for the Los Angeles Police
Department, intervener.

O P I N I O N

By the complaint herein, filed on September 23, 1957,
 Rudolph W. Howard alleges that he resides at 1375 Hauser Boulevard,
 Los Angeles, California; that prior to September 7, 1957, he was a
 subscriber and user of telephone service furnished by defendant under
 number WEbster 9-1459 at said address; that on September 7, 1957, the
 telephone facilities of complainant were disconnected by the defendant
 after the Los Angeles Police Department advised defendant that the
 complainant was using the telephone to violate the law; that the
 telephone was disconnected at the time the complaint was filed; that
 complainant has suffered and will suffer business loss and injury to
 his reputation and great hardship as a result of being deprived of

said telephone; and that complainant did not use and does not intend to use said telephone as an instrumentality to violate the law nor in aiding or abetting such violation.

On October 8, 1957, by Decision No. 55647, in Case No. 5989, this Commission issued an order directing the telephone company to restore service to complainant pending a hearing on the matter.

On October 17, 1957, the telephone company filed an answer the principal allegation of which was that the telephone company pursuant to Decision No. 41415, dated April 6, 1948, in Case No. 4930, (47 Cal. P.U.C. 853), on or about September 16, 1957, had reasonable cause to believe that the telephone service furnished to complainant under number WEbster 9-1459, at 1375 Hauser Boulevard, Los Angeles, 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 service.

A public hearing was held in Los Angeles on November 8, 1957, before Examiner Kent C. Rogers and the matter was submitted.

The complainant testified that for several years he has been living in a four-family flat building at 1375 South Hauser, that he rented this room from a Mrs. Wheeler, who lived there with her niece; that for many years, including the time he has been living at the present place, he has been the subscriber to the telephone; that on September 7, 1957, the telephone box was in the hall in the flat and there was one extension therefrom with a 25-foot cord and another extension into the room of Mrs. Wheeler; that on Saturday, September 7, he went to work at 7 a.m., at which time the telephones were in the

premises; that when he returned at approximately 5:30 in the evening the telephones and Mrs. Wheeler were absent; that he called Mrs. Wheeler's sister and was informed that Mrs. Wheeler had been arrested; that Mrs. Wheeler returned home later that same day and said she had been arrested and the phones taken out; that he filed a complaint herein and was granted temporary service pending a hearing; that he needs the telephone in his home for his business as a house painter; that he did not know that the phone was being used for any illegal purposes.

On cross-examination he testified that he pays Mrs. Wheeler \$100 a month for room and board; that he has seen a National Daily Reporter scratch sheet in the flat on two occasions; that he himself goes to the horse races occasionally; and that if the telephone is left in he will see that it is used for business purposes and that he does not want the telephone removed from the Wheeler home as he likes the people there and desires to remain there.

Exhibit No. 1 is a copy of a letter from the Police Department of the City of Los Angeles to the telephone company advising it that on September 7, 1957, complainant's telephone was being used for the purpose of disseminating horse racing information which was being used in connection with bookmaking; that the telephone and the extension had been removed by police officers; and requesting that the defendant disconnect the services. An employee of the telephone company testified that this letter was received on September 16, 1957, and a central office disconnection was effected on September 21, 1957, pursuant to the request contained in the letter. The position of the telephone company was that it had acted with reasonable cause, as

that term is used in Decision No. 41415, referred to supra, in disconnecting the telephone service inasmuch as it had received the letter designated as Exhibit No. 1.

A police officer attached to the Vice Detail of the Los Angeles Police Department testified that on September 7, 1957, he received information that complainant's telephone was being used for bookmaking purposes; that he and his partner went to the vicinity of 1375 South Hauser; that he went to a drug store nearby and dialed complainant's telephone number; that a female voice answered; that the witness stated that this is "Don" and that he wanted to place a horse race bet; that the voice said it did not know the caller and hung up; that the witness and his partner went to the door and knocked; that there was a two or three minute pause and thereafter the buzzer rang, admitting him and his partner to the apartment; that there was a woman there, later identified as Helen Wheeler, and no one else; that he informed Mrs. Wheeler that he had information bookmaking was going on there; that Mrs. Wheeler said to look around, that she was not bookmaking; that on the table in the front room where the one telephone was situated, there were two pads which showed no writing but showed indentations; that by using carbon, the writing became visible and showed that the writing on the pad consisted of names and numbers and was a copy of an owe sheet; that Helen Wheeler said that about once a year the Wilshire Vice Detail comes in and checks her activities but had made no arrests; that on a table in the hall were two National Daily Reporter scratch sheets, one for the prior day and one for the day before that; that when she was asked what she was doing Mrs. Wheeler said she played the horses; that the

witness found a pad in a desk drawer which was blank; that he used carbon on this pad and found what he considered to be a list of wagers on horses; that Mrs. Wheeler said this was her own list of wagers; that he and his partner were in the premises approximately 45 minutes; that the telephone rang 8 to 10 times during that period; that the witness answered by saying "Hello"; and that the calling parties hung up without saying anything, but on one occasion the calling party asked for Helen; that the witness said he would take the action but that the caller said he did not know the witness and would not place a bet; that on further search the officers found several scratch sheets; that after the witness showed Helen Wheeler what he had found on the betting markers Helen Wheeler said she was called by her girl friends and she would take bets from them; that she knew two or three good bookmakers; that now a man calls her on a half-hourly basis and she gives him the bets she has received; and that when the officers came to her apartment she had flushed the betting markers down the toilet. The officer further testified that both telephones were taken out; that Helen Wheeler was arrested and taken to the police department and subsequently discharged; and that in his opinion Helen Wheeler was operating what is called in book-making parlance a relay spot, that is, a place to which bets are called in by prospective betters, the bets are taken down and the bookmaker subsequently calls and is given the bets, and the records of bets are then destroyed.

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 and that the complainant herein knew or should have known that the facilities were so used.

O R D E R

The complaint of Rudolph W. Howard 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. The order of Decision No. 55647 temporarily restoring service to the complainant is hereby vacated and set aside.

IT IS FURTHER ORDERED that upon the expiration of sixty 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 1375 Hauser Boulevard, Los Angeles, 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 the date hereof.

Dated at San Francisco, California,
this 16th day of December, 1957.

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