

**ORIGINAL**Decision No. 57038

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RUSTICO GARCIA,

Complainant,

Case No. 6112

vs.

THE PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY, a corporation,

Defendant.

Joseph T. Forno, for complainant.  
 Lawler, Felix & Hall, by Thomas E. Workman, Jr.,  
 for defendant.  
 Roger Arnebergh, City Attorney, by John Neville,  
 Deputy City Attorney, for the Los Angeles  
 Police Department, intervener.

O P I N I O N

The complaint of Rustico Garcia, proprietor of a cafe at 912 West 2nd Street, Los Angeles, California, filed on May 21, 1958, alleges that prior to April 9, 1958, complainant was the subscriber and user of telephone service furnished by defendant under number MADison 6-1010 at 912 West 2nd Street, Los Angeles, California; that on or about April 9, 1958, the telephone facilities of complainant were removed and disconnected by the defendant; that complainant was arrested on April 9 on suspicion of bookmaking; that no complaint was ever filed against complainant; that complainant has demanded that the telephone facilities be restored but

defendant refuses to restore said facilities; and that the telephone facilities are necessary to complainant in his business.

On June 9, 1958, 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), the defendant on or about April 15, 1958, had reasonable cause to believe that the telephone service furnished by defendant under number MADison 6-1010 at 912 West 2nd Street, Los Angeles, 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 it was required to disconnect the telephone service.

A public hearing was held in Los Angeles before Examiner Kent C. Rogers on June 27, 1958.

The complainant testified that the address referred to is his restaurant; that a telephone is necessary therein; that on April 9, 1958, he was arrested by a police officer, and the telephone removed; that the officer was in there for approximately two hours; that during that time the telephone rang three or four times and that the officer answered the telephone at all times; and that complainant has not used and will not permit the telephone to be used for illegal purposes.

Exhibit No. 1 is a letter from the Chief of Police of Los Angeles to the defendant advising that the complainant's telephone at 912 West 2nd Street, Los Angeles, California, was being used in connection with bookmaking on April 9, 1958, that the telephone at

that time was removed by police officers, and requesting that the telephone service be disconnected. This letter was received by the telephone company on April 15, 1958, and pursuant to that letter the telephone was disconnected on April 25, 1958, and has not been reconnected. The position of the telephone company was that it had acted with reasonable cause, as that term is used in Decision No. 41415, supra, in disconnecting service, inasmuch as it had received the letter designated as Exhibit No. 1.

A police officer of the City of Los Angeles testified that on April 9, 1958, he and his partner entered the complainant's place of business at the said address; that the complainant was standing by a wall in the back by the telephone with a wet sponge; that there was no writing on the wall; that he talked to the petitioner and asked him what was on the wall but the petitioner would not state what was written thereon; that he was on the premises for one hour; that during that time the telephone rang eight or nine times and that the witness or his partner answered; that on each occasion but one the party calling hung up when he or his partner answered the telephone; that on one occasion the voice calling gave the witness over the telephone three horse racing bets on horse races being run that day in tracks in California and then hung up; that the complainant was arrested

and taken to jail and the telephone was removed; and that this is what is known to the police department as a relay spot.

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. 41415, supra. We further find that complainant's telephone was used as an instrumentality to violate the law in that it was used for bookmaking purposes in connection with horse racing, and that complainant knew that it was so used.

O R D E R

The complaint of Rustico Garcia 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 complainant's request for restoration of telephone service be denied.

IT IS FURTHER ORDERED that upon the expiration of 30 days after the effective date of this order the complainant herein may file an application for telephone service, and if such application is made The Pacific Telephone and Telegraph Company

shall install telephone service at the complainant's place of business at 912 West 2nd Street, 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 twenty days from the date hereof.

Dated at San Francisco, California,  
this 23rd day of JULY, 1958.

E. Lynn Fox  
President  
Ray G. Winter  
Theodore Jensen  
Commissioners

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