

ORIGINAL

Decision No. 57734

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EDWARD M. WADDY,

Complainant,

vs.

Case No. 6180

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Walter L. Gordon, Jr. and Robert J. Hall, for complainant.
Lawler, Felix & Hall, by Thomas E. Workman, Jr.,
for defendant.

Roger Arnobergh, City Attorney of the City of Los
Angeles, by D. H. Von Wittenburg, Deputy City
Attorney, for the Police Department of the
City of Los Angeles, intervener.

O P I N I O N

The complaint herein, filed on September 17, 1958, alleges that Edward M. Waddy is the subscriber to telephone service furnished by defendant under numbers ADams 2-9195 and ADams 3-5886 at a barber shop located at 3317 Griffith Avenue, Los Angeles, California; that said service was used for lawful purposes; that within sixty days prior to the filing of the complaint herein police officers removed the complainant's telephones from said place of business; that said telephones are necessary for the conduct of complainant's business, and that as a result of their removal complainant has suffered loss of profits from his business.

On October 2, 1958, the telephone company filed an answer, the principal allegations of which were that on or about September 5, 1958, it had reasonable cause to believe that the telephone service furnished to complainant under number ADams 2-9195, and on or about September 14, 1958, it had reasonable cause to believe that the telephone service furnished to complainant under number ADams 3-5886, both at 3317 Griffith Avenue, Los Angeles, were to be used as instrumentalities 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 services pursuant to this Commission's Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

The matter was set for hearing in Los Angeles on November 3, 1958, and continued for hearing to November 18, 1958 in Los Angeles. At the latter time and place the matter was heard by Examiner Kent C. Rogers, evidence was presented and the matter was submitted.

The complainant testified that he has a barber shop at 3317 Griffith Avenue, Los Angeles; that he has one barber and a janitor named Robert Shaw working on the premises; that 75 percent of his appointments are arranged by telephone; that he has had a semipublic telephone (ADams 2-9195) on the wall in a rear room with an extension by the barber chairs, and because of the press of business he has recently had a private telephone (ADams 3-5886) installed in the rear room so that he could call his lady friend; that he kept the latter telephone locked with a padlock; that he had

lost the key to the private telephone shortly before the police arrested him; that on July 22, 1958, while he was barbering a customer, Robert Shaw was arrested in the back room and the private telephone was removed; that he and Shaw were taken to the police station but he was not arrested; that on July 29, 1958, the semipublic telephone was removed; that he does not make books and that the telephones were not used for bookmaking purposes.

On cross-examination complainant testified that Shaw had found the key to the private phone before the arrest.

A Los Angeles police officer testified that on August 25, 1958, he went to complainant's barber shop at 3317 Griffith Avenue on information that bookmaking was being conducted there; that complainant was barbering a customer and Robert Shaw was using the telephone in the back room with a formica plate nearby; that he observed Shaw wipe notations off the formica plate; that another officer took the telephone from Shaw's hand and Shaw disconnected the call by depressing the bar on the telephone; that the telephone rang on several occasions and complainant answered via the extension and said "this is not the Cholo Cafe" and that the caller had the wrong number; that on one occasion the witness answered the pay telephone when complainant answered the extension and heard a horse race bet being given complainant; that complainant told the caller he had the wrong number and that "this is not the Cholo Cafe"; that Shaw said he had the key to the private phone and complainant did not tell the witness that he had lost the key to said telephone; that complainant told the officer

he used the private telephone to call his girl friend; that in a period of 45 minutes six calls came in on his semipublic telephone and that in each instance the complainant told the caller he had the wrong number.

In rebuttal complainant testified that the telephone number of the Cholo Cafe was ADams 2-9198, and that he frequently received calls on his telephone which were intended for this cafe.

Exhibits 1 and 2 are copies of letters from the Police Department of the City of Los Angeles to the defendant, dated August 29, 1958, advising the defendant that the telephone services of complainant at 3317 Griffith Avenue were being used for forwarding and receiving racing bets in violation of the law. Exhibit 2 further advises the defendant that the telephone service under number ADams 3-5886 was on August 27, 1958, being used for the purpose of disseminating horse racing information which was being used in connection with bookmaking in violation of Section 337a of the Penal Code; that the telephone had been removed and requesting that the defendant disconnect the telephone service.

A telephone company employee testified that pursuant to these letters the telephone services of the complainant were disconnected pursuant to the information contained in Exhibits 1 and 2. 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 the telephone services inasmuch as it had received the letters designated as Exhibits 1 and 2.

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 evidence shows that the telephone facilities were being used for bookmaking purposes and that complainant knew or should have known they were so used.

O R D E R

The complaint of Edward M. Waddy against The Pacific Telephone and Telegraph Company, a corporation, having been filed, 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 complainant's request for restoration of telephone service 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 application is made, The Pacific Telephone and Telegraph

shall install telephone service at complainant's place of business at 3317 Griffith Avenue, 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 after the date hereof.

Dated at San Francisco, California,
this 16th day of December, 1958.

E. L. Fox
President
Ray B. Entenman
Michael J. ...
Richard J. ...
Commissioners

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