

ORIGINAL

Decision No. 58962

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ANGELO DeVICARIIS,

Complainant,

vs.

Case No. 6298

PACIFIC TELEPHONE & TELEGRAPH CO.,

Defendant.

Franklin D. Laven, for complainant.

Lawler, Felix & Hall, by A. J. Krappman, Jr., for defendant.

Roger Arnebergh, City Attorney, by Laurence R.

Corcoran, Deputy City Attorney, for the Police Department of the City of Los Angeles, intervener.

O P I N I O N

By the complaint herein, filed on June 29, 1959, Angelo DeVicariis, of 12610 Oxnard Street, North Hollywood, California, alleges that the Los Angeles Police Department, without due cause, on June 19 entered his premises with the misunderstanding that the telephone was being used illegally; that they confiscated the telephone; and that subsequently the complaint against the complainant was dismissed.

On July 15, 1959, the telephone company filed an answer, the principal allegation of which was that on or about June 24, 1959, it had reasonable cause to believe that the telephone service furnished complainant under number POp1ar 1-2988, at 12610 Oxnard Street, North Hollywood, California, was being used 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 on the complaint was held on August 3, 1959, before Examiner Kent C. Rogers, in Los Angeles, California.

The complainant testified that on June 19, 1959, he was arrested at his home at 12610 North Oxnard Street, North Hollywood, on the charge of bookmaking; that he had not then nor at any time engaged in bookmaking; that for many years he had been a horse handicapper as a hobby and that he occasionally went to the race track; that on the 19th of June he got a call from a man who requested that he take a horse race bet but that he refused, and that approximately five minutes later the officers came in and arrested him for bookmaking, but that subsequently the charge was dismissed; that both he and his wife are in poor health and need a doctor, and also that a telephone is necessary for the health of both parties.

On cross-examination he testified that for his own benefit and entertainment he daily selects horses and occasionally goes to the race track; that when he goes he writes his proposed bets on paper, but when he does not go to the track he does not write the bets; that when the officers arrested him they took a pad; that this pad is used by him for writing down memoranda of his handicapping; that his brother subscribes to a scratch sheet, one of which was on the premises at the time of his arrest; and that he was not and is not a professional bookmaker.

Exhibit 2 is a copy of a letter dated June 22, 1959, from the office of the Chief of Police of the City of Los Angeles to the defendant apprising the defendant that complainant's telephone was being used as an instrumentality to violate or to aid and abet the

violation of the law, and requesting that the telephone service be disconnected. This letter was received by the defendant on June 24, 1959, and pursuant thereto complainant's telephone service was disconnected on June 27, 1959. 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 service inasmuch as it had received the letter designated as Exhibit 2.

A police officer connected with the Vice Detail of the Police Department of the City of Los Angeles testified that on June 19, 1959, he called complainant's telephone number and placed a horse race bet with the person who answered the telephone; that he and his partner thereupon went to complainant's premises; that the complainant was present; that while they were on the premises the telephone rang and the caller placed a horse race bet with the witness; that on the premises near the telephone was a scratch pad, Exhibit 1 herein, the top sheet of which had been removed but the indentations showed notations of bets; and that there was on the premises by the telephone a National Daily Reporter scratch sheet for the date of the arrest, June 19, 1959 (Exhibit 3 herein). The witness further testified that the complainant was arrested for bookmaking at the time he visited complainant's premises.

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, supra. We further find that the telephone facilities in question were used for bookmaking purposes.

O R D E R

The complaint of Angelo DeVicariis against The Pacific Telephone and Telegraph Company having been filed, a public hearing having been held thereon, the Commission having made the foregoing findings and based upon said findings,

IT IS ORDERED that the complainant's request for restoration of telephone service be and the same hereby 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 Company shall install telephone service at the complainant's residence at 12610 Oxnard Street, North Hollywood, 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 1st day of September, 1959.

Ernest A. Page
President

John E. Mitchell

William J. ...

E. Lynn Fox

Theodore Jensen
Commissioners