

ORIGINAL

Decision No. 60873

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WALLACE LeDUFF and HORACE McKENNA,
doing business as St. Bernards'
Meat Market,

Complainants,

vs.

PACIFIC TELEPHONE & TELEGRAPH CO.,

Defendant.

Case No. 6746

Richard A. Corsini, for complainants.
Lawler, Felix & Hall, by A. J. Krappman, Jr.,
for the defendant.
Roger Arnebergh, City Attorney, by William E.
Doran, Deputy City Attorney, for the
Los Angeles Police Department, intervener.

O P I N I O N

By the complaint herein, filed on August 3, 1960,
Wallace LeDuff and Horace McKenna, doing business as St. Bernards'
Meat Market, request that the telephone service furnished to them
at their place of business at 2821 West Jefferson Boulevard,
Los Angeles, California, be ordered restored.

On August 18, 1960, 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 July 7, 1960, had
reasonable cause to believe that the telephone service furnished

to the St. Bernards' Meat Market under number REpublic 4-9303 at 2821 West Jefferson Boulevard, 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 the defendant was required to disconnect the service pursuant to Decision No. 41415, supra.

A public hearing was held on September 12, 1960, in Los Angeles before Examiner Kent C. Rogers.

At the outset it should be noticed that the complaint was filed by Wallace LeDuff and Horace McKenna. At the hearing it was stipulated that the telephone service was furnished to Wallace LeDuff and Horace McKenna, doing business as St. Bernards' Meat Market, and the complaint was amended to reflect such change.

Wallace LeDuff testified that he and Horace McKenna conduct a meat market at 2821 West Jefferson Boulevard, Los Angeles; that on or about June 21, 1960, he was arrested on the premises and his semi-public pay telephone was removed; that at that time he and his brother were present; that he never made horse race books on the premises; that neither he nor anyone else made horse race bets on the telephone; and that on June 21, 1960, at the time he was arrested, the officers were on the premises approximately three hours and that the telephone rang only two times. Horace McKenna was also present and testified at the hearing, but knew nothing about what took place at the time of arrest. He testified that the telephone was necessary in the meat market business.

Exhibit No. 1 is a letter dated July 5, 1960, from the Chief of Police of the City of Los Angeles to the defendant advising the defendant that the telephone service being furnished to the St. Bernards' Meat Market at 2821 West Jefferson Boulevard under number REpublic 4-9303 was being used for receiving and forwarding bets and that the extension telephone had been removed. The letter notified the defendant that the facilities were being used as an instrumentality to violate and to aid and abet the violation of the law. The record shows that this letter was received on July 7, 1960, by the defendant and that pursuant thereto a central office disconnection was effected on July 15, 1960, and that the telephone service 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 the telephone service inasmuch as it had received the letter designated as Exhibit No. 1.

A police officer connected with the Los Angeles Police Department testified that on June 21, 1960, acting on information he had received, he and his partners went to the complainants' premises at 2821 West Jefferson Boulevard, Los Angeles; that they entered the premises and that Wallace LeDuff and his brother, Morris Smith LeDuff, known as "Smitty", were in the premises; that there were two telephones visible, a pay telephone by the door and an extension therefrom by the counter; that the telephone rang and the witness answered the extension telephone and was given a horse race bet over the telephone by a female voice which asked for "Smitty"; that after receiving the horse race bet, the witness

placed the complainant, Wallace LeDuff, and his brother, Morris LeDuff, under arrest for suspicion of bookmaking; that after placing said parties under arrest the premises were searched and there were found thereon 5-10 Caliente betting forms, the racing section of a newspaper and one betting owe sheet; that some items on the owe sheet were circled and the defendant, Wallace LeDuff, stated that the circles indicated bets which he owed and that if there were no circles, it indicated that the bettor owed him money. The witness further testified that he and the other officers were on the premises about two hours and that during that time the telephone rang four times; that on the first call he received a horse race bet; that on the second call the party hung up when he answered; that on the third call the party who had given him a bet changed the bet and gave him a different bet; and that the fourth call was a call that did not mention horse races.

After full 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 the evidence shows that the complainants' telephone was used as an instrumentality to violate the law in that it was used for bookmaking purposes.

O R D E R

The complaint of Wallace LeDuff and Horace McKenna, doing business as St. Bernards' Meat Market, against The Pacific Telephone and Telegraph Company, a corporation, having been filed, a public hearing having been held thereon, the Commission being

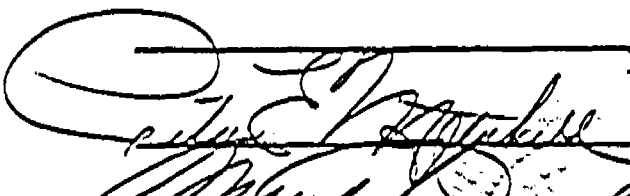
fully advised in the premises and basing its decision upon evidence of record,


IT IS ORDERED that the complainants' request for restoration of telephone service be and it hereby is denied.

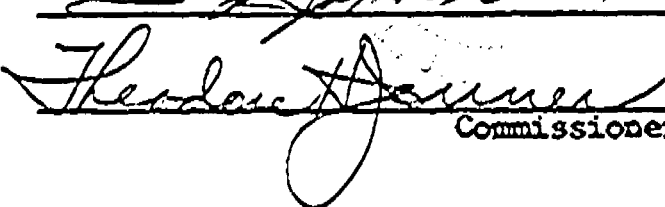
IT IS FURTHER ORDERED that upon the expiration of five days after the effective date of this order, the complainants, or either of them, may file an application for telephone service and if such application is filed, The Pacific Telephone and Telegraph Company shall install telephone service at complainants' place of business at 2821 West Jefferson 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 five days after the date hereof.

Dated at San Francisco, California, this 11th day of OCTOBER, 1960.



President




Commissioners

Commissioner Everett C. McKee, being necessarily absent, did not participate in the disposition of this proceedings.