

Decision No. 65041

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LESLIE T. ROBERT,
Complainant,

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a
corporation,
Defendant.

Case No. 7481
(Filed November 13, 1962)

Lawler, Felix & Hall, by A. J. Krappman, Jr.,
for defendant.
Roger Arnebergh, by Charles Greenberg, deputy
city attorney, for the City of Los Angeles,
intervener.

O P I N I O N

Complainant seeks restoration of telephone service at 4606 Third Avenue, Los Angeles, California. Interim restoration was ordered pending further order (Decision No. 64548).

Defendant's answer alleges that on or about August 30, 1962, it had reasonable cause to believe that service to 4606 3rd Avenue, Los Angeles, under number AX 2-1813, was being or was to be used as an instrumentality directly or indirectly to violate or aid and abet violation of law, and therefore defendant was required to disconnect service pursuant to the decision in Re Telephone Disconnection, 47 Cal. P.U.C. 853.

The matter was heard and submitted before Examiner DeWolf at Los Angeles on January 8, 1963.

By letter of August 28, 1962, the Chief of Police of the City of Los Angeles advised defendant that the telephone under number AX 2-1813 was being used to disseminate horse-racing information used in connection with bookmaking in violation of Penal Code Section 337a, and requesting disconnection (Exhibit 1).

The complainant telephoned before the hearing that she was joining her husband out of the state and they would be away for about a year. She asked to have an earlier hearing or to submit the case on the allegations of the complaint, if possible.

Attorneys for defendant and intervener stipulated that complainant, if called, would testify to the truth of the allegations in the complaint. There was no appearance on behalf of the complainant, although Julia Marine, complainant's representative, came in after the case was submitted and said that she had gone to another hearing in the building by mistake, but did not wish to reopen the case as she had no further evidence to give.

The intervener called a police officer who testified that he had entered the premises of complainant on August 28, 1962; that he found betting markers and equipment on the premises; and that the telephone rang nine times while he was on the premises, during which time he took bets on horse races from three different people.

We find that defendant's action was based upon reasonable cause, and the evidence discloses the complainant's telephone was used for bookmaking purposes contrary to law and should be disconnected.

O R D E R

IT IS ORDERED that complainant's request for restoration of telephone service be denied and that the temporary interim relief granted by Decision No. 64548 is vacated and set aside.

IT IS FURTHER ORDERED that, upon the expiration of ninety days after the effective date hereof, complainant may file an application with the utility for telephone service and that, if such application is filed, The Pacific Telephone and Telegraph Company shall install telephone service at complainant's residence at 4606 Third Avenue, Los Angeles, California, such restoration 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 6th day of MARCH, 1963.

George J. Hoover
President
Frederick B. Holoboff
William W. Bennett

Commissioners

*I dissent:
will file
an opinion
later
Peter E. Mitchell
Commissioner.*

-3- Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

McKEAGE, Commissioner, dissenting:

I dissent from the majority for the reason that the decision of the Commission is, to say the very least, cryptic when read in light of the record underlying the same.

Several decisions rendered by a majority of the Commission during the last few months take a very dim and shallow view of the Commission's rule prohibiting the unlawful use of telephone service, with particular regard to illegal bookmaking. However, that view should not justify the making of a joke of this rule as has been done by the instant decision.

Bearing in mind that the use of telephone facilities is easily converted into an unlawful use, and that the unlawful use of telephone facilities may be a justification for denying to a person telephone service, let us examine the record in this case.

The complainant, herein, filed her verified complaint with the Commission on November 13, 1962, stating that her telephone service had been disconnected by the telephone company upon the complaint of the Sheriff of Los Angeles County. (The evidence at the trial of the case showed that it was the Chief of Police of the City of Los Angeles who made the complaint.) Complainant admitted in her complaint that she had used her telephone service to violate the law, but stated that she did not intend to continue such violation in the future. She further alleged that she had made demand upon the telephone company to restore this telephone service, but that the telephone company had refused to do so. Also, the complainant alleged generally that she would suffer irreparable injury to her reputation and would suffer great hardship if deprived of telephone service. In addition, she alleged that she

was pregnant and alone in a house with three young children aged 8, 9, and 10 years, respectively, and that it was imperative that telephone service be restored. She further alleged that her husband was in New Orleans.

Based upon the complainant's request for immediate restoration of telephone service, the Commission granted interlocutory relief under date of November 21, 1962. In granting this interlocutory relief, the Commission followed the usual rule adopted by courts of equity. In other words, this interlocutory relief was granted upon the verified complaint of the complainant. However, an entirely different story may be revealed when the case comes to trial on the merits. This is what happened in the instant case, as the decision of the Commission reveals.

This case was set for trial before an examiner sitting for the Commission. Sometime before the date of trial, the complainant telephoned the examiner, informing him that she was joining her husband out of the state and that they would be away for about a year. She requested that an earlier hearing be held or, in the alternative, requested that the case be submitted on the allegations of her complaint, if possible.

The case went to trial, the complainant not appearing, and the attorneys for the defendant and intervenor, City of Los Angeles, stipulated that the complainant, if called, would testify to the truth of the allegations in her verified complaint. There was no appearance on behalf of the complainant, although one Julia Marine, claiming to be complainant's representative, came in after the case was submitted and explained that she had gone to another hearing in the State Building by mistake, but stated that she did not wish to reopen the case as she had no further evidence to give.

The intervenor called a police officer who testified that he had entered the premises of the complainant on August 28, 1962; that he found betting markers and equipment on the premises, and that the telephone rang nine times while he was on the premises, during which time he took bets on horse races from three different people.

Based upon this record, the examiner who presided at the trial of the case recommended that the decision of the Commission which had granted interlocutory relief be vacated and set aside and that, upon the expiration of six months thereafter, complainant be permitted to file an application with the telephone company and that, if such application should be filed, the telephone company would be directed to install the requested telephone service.

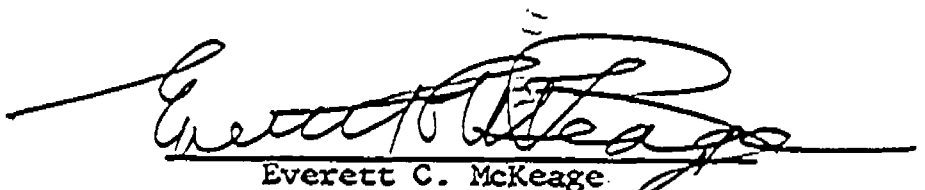
The decision which the Commission has issued speaks for itself. It reveals that the recommendation made by the examiner that the complainant be denied telephone service for six months was reduced to ninety days. Nowhere in the decision, herein, is it divulged that the complainant admitted having used her telephone service unlawfully. Said decision takes a cavalier attitude toward the record, herein, and certainly constitutes a disservice to law enforcement, particularly when it is realized that the law enforcement in question is pursuant to a rule of the Commission's own creation.

The record, herein, requires that the complaint of the complainant be denied. The record shows, and the complainant admitted, that she made unlawful use of her telephone service. The testimony of the police officer indicated that the complainant was doing a flourishing bookmaking business. Her failure to appear at the hearing, for whatever purpose, indicated a lack of enthusiasm on the part of the complainant for the justice of her case.

Furthermore, the complainant told us that she was leaving the state to join her husband, apparently in New Orleans, and that they will be away for a year. What possible purpose could be served by restoring the telephone service in question when both the husband and wife are not within the State of California and could not possibly use such service?

After the expiration of ninety days, this telephone service may be restored, upon complainant's application therefor. Based upon this record, it may well be asked: What public interest or lawful private interest can be subserved by restoring telephone service in the circumstances existing?

The decision, herein, defaults and stultifies the rule of this Commission which seeks to prohibit and discourage the unlawful use of telephone service.


Everett C. McKeage
Commissioner

San Francisco, California,
March 7, 1963.