

Decision No. 66917

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CHESTER D. LYBARGER,

Complainant,

Case No. 7658

-vs-

THE PACIFIC TELEPHONE  
AND TELEGRAPH COMPANY,  
a corporation,

Defendant.

Joseph T. Forno, for complainant.  
Lawler, Felix & Hall, by John M. Maller,  
for defendant.  
Roger Arnebergh, City Attorney, by Herbert  
Blitz, for the Police Department of the  
City of Los Angeles, intervener.

O P I N I O N

Complainant seeks restoration of telephone service at 2129 North Broadway, Los Angeles 21, California. Interim restoration was ordered pending further order (Decision No. 65696).

Defendant's answer alleges that on or about June 18, 1963, it had reasonable cause to believe that service to Chet D. Lybarger under numbers 221-2536 and 221-6461 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 De Wolf at Los Angeles on January 24, 1964.

By letter of June 13, 1963, the Chief of Police of the City of Los Angeles advised defendant that the telephones under numbers CA 16461 and CA 12536 were being used to disseminate horse-racing information used in connection with bookmaking in violation of Penal Code Section 337a, and requested disconnection (Exhibit 1).

Complainant testified that he is the owner and operator of Chet's Automotive Service and telephone service is essential to the operation of his business. The complainant testified, on cross-examination by the deputy city attorney, that he placed bets with a bookmaker and had been assigned number eight and that the bookmaker would not stop by to pick up less than \$100, so complainant sometimes took bets from friends to make up this amount, but made no charge for or profit from so doing. Complainant testified that he was not bookmaking, but only playing the horses.

Two police officers testified that a telephone call was made to complainant's telephone and a bet was made to complainant on his telephone prior to their entry on the premises. One of the officers testified that betting markers and a National Daily Reporter were found on the premises and that during an hour while they were there, the telephone rang five times, and on one of the calls a party called in bets on horses running in races scheduled for that day. One of the officers also testified that complainant admitted to him that he had been making bets on the horses at that location.

We find that defendant's action was based upon reasonable cause, and that the 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 should be disconnected.

O R D E R

IT IS ORDERED that complainant's request for installation of telephone service be denied and that the temporary interim relief granted by Decision No. 65696, dated July 9, 1963, is vacated and set aside.

IT IS FURTHER ORDERED that, upon the expiration of sixty 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 2129 North Broadway, 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 10th day of March, 1964.

William W. Bennett  
President  
George J. Grover

Commissioners  
Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.