

ORIGINAL

Decision No. 68952

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

OWEN DALE CONKLIN and
FLORENCE CONKLIN

Complainants,

Case No. 8038

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a
corporation,

Defendant.

James R. McGrath, for complainant.
Lawler, Felix & Hall, by Robert C. Coppo, for defendant.
Roger Arnebergh, City Attorney, by
James H. Kline, for the Police
Department of the City of Los
Angeles, intervener.

O P I N I O N

Complainants seek restoration of telephone service at 1334 North Avenue 45, Los Angeles, California. Interim restoration was ordered pending further order (Decision No. 68113, dated October 27, 1964).

Defendant's answer alleges that on or about May 7, 1964, it had reasonable cause to believe that service to Owen D. Conklin under number 255-9603 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 February 25, 1965.

Complainants testified that they own a catering business and operate nine trucks and rely on use of the telephone to route the trucks and secure business and that telephone service is essential. Each complainant testified that he or she was arrested, pleaded guilty to receiving a bet, was placed on probation for six months conditional upon payment of a fine of \$150, said probation has been completed as to each, the fines paid, the guilty plea has been set aside, a plea of not guilty entered, the case dismissed pursuant to Section 1203.4 of the Penal Code and the record expunged. Exhibit No. 1 is a certified copy of the minutes of the Superior Court in Case No. 290446. Complainants further testified that their telephone service was disconnected about five months and caused substantial financial loss to their business.

Complainants further testified that they have great need for telephone service, and they will not use the telephone for any unlawful purpose.

By letter of May 5, 1964, the Chief of Police of the City of Los Angeles advised defendant that the telephone under number CL 5 9603 was being used to disseminate horse-racing information used in connection with bookmaking in violation of Penal Code Section 337c, and requested disconnection (Exhibit 2).

A police officer testified that he placed wagers on horse races over complainants' telephone to the complainants; at the time of the arrest of complainants he found betting markers on the premises, which Mr. Conklin admitted were in his handwriting; and Mrs. Conklin admitted to him that she had been receiving bets for about a month.

We find that defendant's action was based upon reasonable cause; that complainants' telephone was used in violation of Section 337a of the Penal Code; that complainants have paid fines and completed probation; that complainants were without a telephone for about five months and that they need telephone service to earn a living in their business. We conclude that the temporary restoration of telephone service should be made permanent.

ORDER

IT IS ORDERED that Decision No. 68113, dated October 27, 1964, temporarily restoring service to complainants, is made permanent, subject to defendant's tariff provisions and existing applicable law.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 27th day of APRIL, 1965.

Frederick B. Hubloff
President

George T. Hoover

Augustin

William L. ...
Commissioners

*I dissent,
Peter ...*