

52764

Decision No. _____

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROBERT W. BAXTER,

Complainant,

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a corporation,

Defendant.

Case No. 5709

Robert W. Baxter, in propria persona. Pillsbury,
Madison & Sutro and Lawler, Felix & Hall, by
L. B. Conant, for defendant.

O P I N I O N

The complaint herein, filed on December 29, 1955, alleges that Robert W. Baxter of 6539 San Fernando Road, Glendale, California, prior to November 7, 1955, was a subscriber and user of telephone service furnished by defendant company under telephone number CHapman 5-6121; that on or about November 7, 1955, the telephone facilities of complainant were disconnected by members of the Glendale Police Department who arrested the complainant on suspicion of bookmaking, and removed the telephone; that complainant has suffered and will continue to suffer irreparable injury and great hardship as a result of being deprived of said telephone facilities; and that the complainant did not use and does not now intend to use said telephone facilities as an instrumentality to violate the law nor in aiding or abetting such violation.

On January 5, 1956, by Decision No. 52451, this Commission issued an order directing the telephone company to restore service to complainant pending a hearing on the matter.

On January 16, 1956, the telephone company filed an answer, the principal allegation of which was that it had reasonable cause to believe that the telephone service furnished to complainant under number Chapman 5-6121, at 6541 San Fernando Road, Glendale, 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 this Commission's Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. F.U.C. 853).

A public hearing was held in Los Angeles before Examiner Kent C. Rogers on February 14, 1956, and the matter was submitted.

Robert W. Baxter, the complainant herein, testified that he owns Baxter's Ornamental Iron Works located at 6539 San Fernando Road, Glendale; that on and prior to November 7, 1955, there was a telephone in the shop and an extension in the office; that on November 7, 1955, he and some friends were arrested in the office for bookmaking and the telephones were removed; that he subsequently pleaded guilty and paid a fine; that he has done no bookmaking since November 7, 1955; that the telephone was never used for bookmaking purposes; that he used the telephone for calling in his personal bets; that he used the telephone to lay off bets; that on his best day he had \$150 in bets; that the telephone has been reinstalled; and that the telephone is necessary to his business.

On cross-examination the witness stated that he still plays the horses; that some days he makes more money from the operation of the iron works and some days he makes more money from betting on the horses; that he does not phone in his bets now; that he places his bets with a man who comes into the office; and that he will not jeopardize the telephone again by placing bets.

A detective lieutenant of the Glendale Police Department testified that on November 7, 1955, he and two other detectives went to the complainant's iron works at about 4:30 p.m. after having received a phone call from another detective that he had four persons under arrest in the office of the iron works; that he searched the office and found betting markers and scratch sheets next to the telephone; that some of these markers were in complainant's handwriting; that he was in the office for about 40 minutes and the phone rang on several occasions; that on some of these occasions complainant's wife was calling and on the other occasions the telephone would go dead when he picked up the receiver; that complainant was arrested and booked; and that complainant admitted bookmaking at the premises but denied that the location was a phone spot.

Exhibit No. 1 is a copy of a letter from the Chief of Police of the City of Glendale to the telephone company, requesting that the telephone facilities be disconnected. A supervising special agent of the telephone company testified that this letter was received on November 15, 1955, and a central office disconnection was effected shortly thereafter, pursuant to that request. The position of the telephone company was that it had acted with

reasonable cause in disconnecting the telephone service inasmuch as it had received the letter designated as Exhibit No. 1.

After 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, referred to supra. We further find that complainant is entitled to telephone service on the same basis as any other similar subscriber inasmuch as he has paid the penalty for any violation of the penal code which he may have committed, and there is no indication that he will in the future use the telephone facilities in an unlawful manner.

O R D E R

The complaint of Robert W. Baxter 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 the evidence of record and the findings herein,

IT IS ORDERED that the order of the Commission in Decision No. 52451, dated January 5, 1956, temporarily restoring telephone service to the complainant, be made permanent,

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 13th day of March, 1956.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]
Commissioners