

Decision No. 53700

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN EARL FALLON,

Complainant,

vs.

Case No. 5784

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Ezra Neff for complainant.

Pillsbury, Madison & Sutro, and Lawler, Felix
& Hall, by L. B. Conant, for defendant.

O P I N I O N

The complaint herein, filed June 8, 1956, alleges that complainant, John Earl Fallon, resides at 2411 East Gage Avenue, Apartment 21, Huntington Park, California; that on February 1, 1956, complainant was arrested by the Los Angeles County Sheriff's vice squad at said apartment and charged with violation of certain subdivisions of Section 337a of the Penal Code of California; that immediately thereafter a deputy sheriff removed complainant's telephone instrument bearing number LUdlow 7-4664; that thereafter complainant was convicted of a violation of subdivision 2 of Section 337a of the Penal Code, was sentenced to serve 90 days and said sentence was suspended and complainant was placed on probation for two years; that complainant is 73 years of age; that since his arrest complainant has suffered

the enucleation of his left eye to relieve intense headaches; that complainant is unable by virtue of his age and physical condition to drive an automobile or engage in any work requiring continuous attention; that complainant's only source of income is Old Age Assistance and such small amounts as are furnished him from time to time by his son; that in order to live complainant is forced to sell Christmas cards but must have a telephone to do so; and that complainant will not use any telephone service furnished to him for the purpose of carrying on bookmaking or any other illegal activity.

On June 22, 1956, the telephone company filed an answer, the principal allegation of which was that on or about February 6, 1956, it had reasonable cause to believe that the telephone service furnished to complainant under number LUdlow 7-4664 at 2411 East Gage Avenue, Huntington Park, 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. P.U.C. 853).

A public hearing was held in Los Angeles before Examiner Kent C. Rogers on August 7, 1956, and the matter was submitted.

The complainant testified under oath that each of the allegations of the complaint are true. He further testified that prior to his arrest he had earned extra money by going to the race tracks during racing seasons and placing bets thereat for friends and acquaintances; that he had never used the telephone for commer-

cial bookmaking but had on occasions placed bets for his lady friends over the telephone; and that he will not permit the telephone to be used for illegal purposes in the future if it is re-installed.

Exhibit No. 1 is a copy of a letter dated February 2, 1956, from the Los Angeles County Sheriff's Office to the telephone company advising that the telephone had been confiscated and requesting that it be disconnected. A telephone company employee testified that this letter was received by the telephone company on February 6, 1956, 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 as much as it had received the letter designated as Exhibit No. 1.

After consideration of the record we now find that the telephone company's action was based upon reasonable cause as that term is used in Decision No. 411415, referred to supra. We further find that complainant is entitled to telephone service on the same basis as any other similar subscriber in as much 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 John Earl Fallon 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 complainant's request for restoration of telephone service be granted and that, upon the filing by the complainant of an application for telephone service, The Pacific Telephone and Telegraph Company shall install telephone service at the complainant's residence, Apartment No. 21, 2411 East Gage Avenue, Huntington Park, 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 Los Angeles, California, this 29th day of AUGUST, 1956.

[Signature]
President

[Signature]
[Signature]

[Signature]
[Signature]
Commissioners