

ORIGINAL

Decision No. 55717

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARVIN ORVILLE HUTCHINS,  
Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY,  
Defendant.

Case No. 5961

Ned A. Kimball, for complainant.

Lawler, Felix and Hall, by L. E. Conant, for defendant.

James Don Keller, District Attorney San Diego County,  
and James Du Paul, City Attorney, by Frederick  
B. Holoboff, intervenors.

O P I N I O N

In the complaint herein, filed on August 1, 1957, Marvin Orville Hutchins, the owner of a cocktail lounge located at 4257 University Avenue, San Diego, California, alleges that on or about February 21, 1957, he was the subscriber to two telephones furnished by defendant at said address; that on or about said date the defendant caused said telephones to be removed from said premises and has since refused to restore telephone service to said premises; that the telephones were removed at the request of the District Attorney of San Diego County; that on or about February 21, 1957, the complainant was arrested and charged with permitting his premises to be used for bookmaking; that on or about May 15, 1957,

complainant ~~pleaded~~ *pleaded* guilty to said charge; that on June 6, 1957, the complainant was placed on probation for three years; that complainant has never knowingly used, caused to be used, or allowed to be used, the said telephone instruments for the purpose of violating the laws of the State of California or any other governmental agency; that the complainant has no intention to use the said telephones for the purpose of violating the laws; and that the San Diego County District Attorney has no objection to the restoration of the telephone service to the complainant's premises.

Attached to the complaint as Exhibit "A" and made a part of the record by stipulation is an affidavit of the San Diego County District Attorney. In the affidavit the District Attorney states that one of the complainant's telephones, a semipublic pay telephone to which complainant was the subscriber, was being used by a bookmaker operating on the premises with the full knowledge of the complainant but that the investigation did not show that complainant had knowledge of the illegal use of the telephone. The District Attorney further stated that the complainant's private telephone situated in his office was being used by the same bookmaker for bookmaking purposes and that the investigators found that the use of this telephone for such purposes was in the presence of the complainant and with his knowledge. The affidavit of the District Attorney further states that on May 15, 1957, complainant entered a plea of guilty to a violation of Subdivision 5 Section 337a of the Penal Code (permitting premises to be occupied for the purpose of bookmaking) and that "If upon consideration of the foregoing and upon evidence on matters presented to you by complainant

herein" the Commission "finds that telephone service should be restored to either" of complainant's telephones "this office would enter no further objection or opposition to such finding."

On August 26, 1957, the telephone company filed an answer, the principal allegation of which was that on or about March 4, 1957, it had reasonable cause to believe that the telephone service furnished by it to complainant under both telephone numbers at 4257 University Avenue, San Diego, 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 services 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 on the complaint was held in San Diego on September 23, 1957, before Examiner Kent C. Rogers, evidence was presented and the matter was submitted.

The complainant appeared as a witness in his own behalf. His testimony generally substantiated the allegation of the complaint and supported the allegations in the affidavit of the district attorney. He added that he will not permit the telephones to be used for illegal purposes if service is restored and that in addition to being placed on probation for three years, he paid a fine of \$500 and that he has been without a telephone in the business location for six months.

Exhibit No. 1 is a copy of a letter dated February 28, 1957, from the District Attorney of San Diego County advising the defendant that on February 20, 1957, complainant's telephones

referred to were being used for bookmaking purposes in violation of Section 337a of the Penal Code, requesting that the complainant's telephone service be disconnected, and advising the defendant that the telephones had not been confiscated.

This letter was introduced into evidence by stipulation and the parties further stipulated that the telephone company forthwith upon the receipt of said letter disconnected complainant's telephone services. The position of the telephone company was that it had acted with reasonable cause as that term is used in Decision No. 41415, referred to supra, in disconnecting the complainant's telephone services inasmuch as it had received the letter designated as Exhibit No. 1.

The interveners presented no evidence.

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 the 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 he may have committed and there is no indication that he will in the future use the telephone facilities in an unlawful manner. Inasmuch as the complainant's telephones are used in his business and he has been without telephone service for over six months, the order herein will become effective five days after the date hereof.

O R D E R

The complaint of Marvin Orville Hutchins 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, a corporation, shall install telephone services to replace those removed at complainant's place of business at 4257 University Avenue, San Diego, California, such installations 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 five days after the date hereof.

Dated at San Francisco, California,  
this 22<sup>nd</sup> day of OCTOBER, 1957.

*Ed. M. ...* President  
*Paul ...*  
*...*  
*...*  
*...*  
Commissioners