

ORIGINAL

Decision No. 57050

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JAY HOLMES,

Complainant,

vs.

THE PACIFIC TELEPHONE & TELEGRAPH CO.,
a corporation,

Defendant.

Case No. 6099

Franklin D. Laven, for the complainant.
Lawler, Felix & Hall, by Thomas E. Workman, Jr.,
for defendant.
Donald K. Byrne, Deputy County Counsel for the
Los Angeles County Sheriff's Department,
intervener.

O P I N I O N

The complaint of Jay Holmes, 1719 Gillette Crescent, South Pasadena, California, filed on May 9, 1958, alleges that he has requested the restoration of his telephone at the above address; that said telephone had been removed by the Los Angeles County Sheriff's Department; that he is engaged in the insurance business and requires a telephone; that, in addition, he has minor children who are ill and require the services of a physician; that his wife had heretofore pleaded guilty to bookmaking charges; that said telephone was used only casually for said activities without the consent of the plaintiff; and that said activity has ceased.

On May 26, 1958, the telephone company filed an answer, the principal allegation of which was that pursuant to Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C.853), the defendant, on or about February 4, 1958, had reasonable cause to believe that the telephone service furnished by defendant under number CLinton 7-1231 at 1719 Gillette Crescent, South Pasadena, 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.

A public hearing was held before Examiner Kent C. Rogers on June 27, 1958, and the matter was submitted.

Complainant testified that on January 21, 1958, he and his wife were arrested at home for bookmaking and the telephone was removed; that the telephone was used for placing horse racing wagers prior to that time by him and his wife; that they called such bets in for themselves and their friends; that he did not believe it was illegal although he thought it might be wrong; that the telephone is necessary for him in his business which is insurance and the lack of a telephone renders him unable to carry on said activity; that after the arrest his wife pleaded guilty to the charge of bookmaking and the complaint against him was dismissed; that his wife paid a \$150 fine; and that his wife now works but he is not employed.

The intervener presented no evidence.

Exhibit No. 1 is a copy of a letter from the Sheriff of Los Angeles County to the telephone company, dated February 3, 1958, advising that the complainant's telephone had been confiscated, that it had been used for purposes of disseminating horse racing information in connection with bookmaking, and requesting that the telephone facilities be disconnected. It was stipulated that this letter was received by the telephone company on February 4, 1958, and a central office disconnection was effected on February 8, 1958. The complainant has not had his telephone restored. The position of the telephone company was that it had acted with reasonable cause, as that term is defined in Decision No. 41415, supra, in disconnecting the telephone service inasmuch 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. 41415, supra. We further find 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 that complainant knew that it was so used.

O R D E R

The complaint of Jay Holmes 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,

IT IS ORDERED that complainant's request for restoration of telephone service be denied.

IT IS FURTHER ORDERED that upon the expiration of thirty days after the effective date of this order the complainant herein may file an application for telephone service and if such filing is made, The Pacific Telephone and Telegraph Company shall install telephone service at complainant's residence at 1719 Gillette Crescent, South Pasadena, 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 29th day of July, 1958.

E. Lynn Fox
President

John A. Hill

Ray C. Interscience

Theodore Jenner

Commissioners:

Commissioner Matthew J. Dooley, being necessarily absent, did not participate in the disposition of this proceeding.