

ORIGINAL

Decision No. 57374

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ERVIN C. SMITH,
Complainant,

vs.

Case No. 6155

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, A Corporation,
Defendant.

Ervin C. Smith, in propria persona.
Lawler, Felix & Hall, by Thomas E. Workman, Jr.,
for defendant.

O P I N I O N

The complaint of Ervin C. Smith alleges that he resides at 480 Cypress Street, Pasadena, California; that for some time prior to June 19, 1958, a telephone in complainant's name had been furnished by defendant at 345 Winona Avenue, Pasadena, California, which address is the residence of Eriline Smith, complainant's wife; that on or about June 19, 1958, Eriline Smith was arrested at 345 Winona Avenue, Pasadena, for allegedly using the telephone there for bookmaking purposes and the telephone was removed at that time; that on or about June 27, 1958, the complaint against Eriline Smith was dismissed; and that defendant refuses to install telephone service for complainant at 345 Winona Avenue, Pasadena, California.

On August 1, 1958, the telephone company filed an answer the principal allegation of which was that on or about June 24, 1958, it had reasonable cause to believe that the telephone service furnished to complainant under number RYan 1-5487 at 345 Winona Avenue, Pasadena, 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 28, 1958, and the matter was submitted.

The complainant testified that he and his wife are separated; that he resides at 480 Cypress Street, Pasadena, California, at which place he has a telephone, and that his wife resides at 345 Winona, Pasadena, at which place there was, prior to June 19, 1958, a telephone subscribed for and paid for by the complainant; that he and his wife have four children ranging in ages from 10 to 17 years; that it is necessary that his wife have a telephone because of the children, and that it is necessary that the telephone be reconnected so that he can keep in touch with his wife and the children; that the complaint against his wife for using the telephone service at 345 Winona Avenue, Pasadena, for illegal purposes was dismissed on June 27, 1958, and that if the telephone service is reinstalled, he will see to it that his wife does not use the telephone for illegal purposes.

Exhibit No. 1 is a copy of a letter from the Chief of Police of the City of Pasadena to the telephone company advising that the

telephone at 345 Winona Avenue, Pasadena, had been confiscated; that on or about June 19, 1958, said telephone was being used for purposes of disseminating horse racing information which was being used in connection with bookmaking in violation of Section 337a of the Penal Code; and requesting that the telephone service be disconnected. An employee of the telephone company testified that this letter was received on June 24, 1958, and that a central office disconnection of said telephone service was effected on June 30, 1958, and that the service has not been reconnected. The position of the telephone company was that it had acted with reasonable cause as that term is used in Decision No. 41415, supra, in disconnecting the telephone service inasmuch as it had received the letter designated as Exhibit No. 1.

After full 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, supra. We further find that the record in this action does not contain facts upon which we could conclude that complainant permitted the telephone at 345 Winona Avenue, Pasadena, California, to be used for illegal purposes. For that reason the said telephone will be ordered restored.

O R D E R

The complaint of Ervin C. Smith against The Pacific Telephone and Telegraph Company, a corporation, having been filed, and public hearing having been held thereon, the Commission being fully advised in the premises and basing its decision on the evidence of record and findings herein,

IT IS ORDERED that complainant's request for restoration of telephone service be granted and that upon filing by complainant of an application for telephone service The Pacific Telephone and Telegraph Company shall install telephone service at the residence of Eriline Smith, 345 Winona Avenue, 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 September, 1958.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners.