

ORIGINAL

Decision No. 58596

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FRANK R. DANIELS,

Complainant,

vs.

Case No. 6227

THE PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY, a corporation,

Defendant.

Joseph T. Forno, for complainant.  
Lawler, Felix & Hall, by A. J. Krappman, Jr.,  
for defendant.  
Roger Arnebergh, City Attorney, by Laurence R.  
Corcoran, intervener.

O P I N I O N

By the complaint herein, filed on February 25, 1959, Frank R. Daniels alleges that prior to February 13, 1959, he was a subscriber and user of telephone service furnished by defendant under number CLinton 6-0344 at 1605 Silver Oak Terrace, Los Angeles; that on or about February 13, 1959, said telephone facilities were removed and disconnected by the defendant pursuant to instructions from the Los Angeles Police Department, which department caused complainant to be arrested on or about said date on a charge of suspicion of violation of Section 337a of the Penal Code; that complainant did not use and does not intend to use said

facilities as instrumentalities to violate the law; and that complainant has made demand upon defendant that it restore said telephone service.

On March 17, 1959, by Decision No. 58140 in Case No. 6227, the Commission ordered that the telephone service be restored to complainant pending a hearing on the complaint.

On March 26, 1959, the telephone company filed an answer, the principal allegation of which was that the telephone company, pursuant to Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853) on or about February 18, 1959, had reasonable cause to believe that the telephone service furnished to complainant under number CLinton 6-0344 at 1605 Silver Oak Terrace, Los Angeles, 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, defendant was required to disconnect service pursuant to this Commission's Decision No. 41415, supra.

A public hearing on the complaint was held before Examiner Kent C. Rogers in Los Angeles, on April 14, 1959.

The complainant testified that on or about February 13, 1959, he was arrested at his residence at 1605 Silver Oak Terrace on the charge of bookmaking, and his telephone was removed; that he at no time used his telephone for bookmaking purposes; that the telephone is necessary to him and he wants the same number, CLinton 6-0344, restored; and that if the telephone service is restored he will not permit it to be used for illegal purposes.

Exhibit No. 1 is a letter dated February 17, 1959, from the Administrative Vice Division of the Los Angeles Police Department to the defendant advising the defendant that on February 13, 1959, complainant's telephone under number CLinton 6-0344 was being used for the purposes of disseminating horse racing information, which was being used in connection with book-making in violation of Section 337a of the Penal Code; that the telephone had been confiscated; and requesting that the defendant disconnect the service. This letter was received by the defendant on February 18, 1959, and a central office disconnection was effected pursuant thereto on February 20, 1959, and the service was reconnected pursuant to this Commission's Decision No. 58140, supra, on March 20, 1959. 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.

A police officer connected with the Administrative Vice Detail of the Los Angeles Police Department testified that on February 13, 1959, defendant was arrested at his residence referred to above; that in these premises he found bundles of professional-type betting markers dated the day before and prior dates; that also in the premises were found telephone numbers of various bettors and agents; that the betting markers recorded

over \$100,000 in \$1 and \$5 bets; that the bets reflected on the betting markers had been recorded at some other address and on some other telephone number; that the bets on the betting markers were not made or recorded at complainant's address; that this is not a phone spot; and that the complainant's address was simply a place where bookmakers kept records of their bookmaking operations.

After full consideration of this record we 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 evidence fails to show that complainant's telephone was used as an instrumentality to violate or to aid and abet the violation of the law. Complainant is therefore entitled to telephone service.

O R D E R

The complaint of Frank R. Daniels 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. 58140, dated March 17, 1959, temporarily restoring telephone service to complainant, be made permanent, such service

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 the date hereof.

Dated at San Francisco, California,  
this 22nd day of May, 1959.

[Signature]  
President  
[Signature]  
[Signature]  
Theodore X. Deiner  
[Signature]  
Commissioners