

ORIGINAL

58709

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PAULETTA FEARS,

Complainant,

vs.

Case No. 5266

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Joseph T. Forno for the complainant.
Lawler, Felix & Hall, by A. J. Krappman, Jr., for
the defendant.

O P I N I O N

By the complaint herein, filed on May 6, 1959, Pauletta Fears alleges that prior to April 23, 1959, she was a subscriber and user of telephone service furnished by defendant under numbers LUDlow 9-5809 and LUDlow 9-5800, located at 1436 East 90th Street, Los Angeles, California; that on or about April 23, 1959, said telephone facilities were removed and disconnected by the defendant pursuant to instructions from the Los Angeles County Sheriff's Office, which office caused complainant herein to be arrested on or about said date on a suspicion of violation of Section 337a of the Penal Code; that complainant did not use and does not intend to use said telephone facilities as instrumentalities to violate the law nor in aiding or abetting such violation; and that complainant has made demand upon defendant that it restore telephone service.

On May 19, 1959, by Decision No. 58448, in Case No. 6266, the Commission ordered that the telephone service be restored to complainant pending a hearing on the complaint.

On May 29, 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 April 28, 1959, had reasonable cause to believe that the telephone service furnished to complainant under numbers LUDlow 9-5800 and LUDlow 9-5809, at 1436 East 90th Street, Los Angeles, 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, defendant was required to disconnect the service pursuant to this Commission's Decision No. 41415, supra.

A public hearing was held on the complaint in Los Angeles before Examiner Kent C. Rogers on June 15, 1959.

The complainant testified that prior to April 23, 1959, she was a subscriber and user of telephone services described at 1436 East 90th Street, Los Angeles; that she resides there with her husband; that she was arrested on April 23, 1959 and the telephone was removed; that no complaint was ever filed; that no wagers were made over the telephones, or either of them; that she conducts an information service and that she was doing this work for a Mr. Plotkin, and under this employment gave out race results only over the telephone; and that this information can be secured by anyone over the radio or from the National Daily Reporter Scratch Sheet.

No evidence was presented on behalf of any law enforcement agency.

Exhibit No. 1 is a copy of a letter from the captain of the Vice Detail of the Los Angeles Sheriff's Department to the defendant advising the defendant that complainant's telephone services were, on April 23, 1959, being used for the purpose of disseminating horse racing information which was being used in connection with bookmaking in violation of Section 337a of the Penal Code; that the telephones were removed; and requesting that the defendant disconnect the services. It was stipulated that this letter was received by the telephone company on April 28, 1959; that both telephones were disconnected on May 1, 1959; and that pursuant to Decision No. 58448, supra, they were reconnected on May 25, 1959; and that the telephones are now being used by the complainant. 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 a reasonable cause as that term is used in Decision No. 41415. We further find that the evidence fails to show that complainant's telephones, or either of them, were used as instrumentalities 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 Pauletta Fears 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. 58448, dated May 19, 1959, temporarily restoring telephone service to the 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 twenty days after the date hereof.

Dated at San Francisco, California,
this 7th day of July, 1959.

[Signature]
President
[Signature]
[Signature]
[Signature]
Theodore Jenner
Commissioners