

ORIGINAL

Decision No. 58748

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FRANK M. SPURGEON,

Complainant,

vs.

Case No. 6270

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.

Alister McAlister, Deputy County Counsel, for the
Sheriff's Department of Los Angeles County,
intervener.

O P I N I O N

By the complaint herein, filed on May 14, 1959, Frank M. Spurgeon alleges that prior to April 14, 1959 he was a subscriber and user of telephone service furnished by defendant under number ORchard 7-5332, at 3301 West 113th Street, Inglewood, California; that on or about April 14, 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's wife, Mary C. Spurgeon, to be arrested on or about said date on suspicion of violation of Section 337a of the Penal Code; that neither complainant nor his wife used or permitted said facilities to be used 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 22, 1959, by Decision No. 58502, in Case No. 6270, the Commission ordered that the telephone service be restored to complainant pending a hearing on the complaint.

On June 5, 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 16, 1959, had reasonable cause to believe that the telephone service furnished to complainant under number ORchard 7-5332, at 3301 West 113th Street, Inglewood, California, was being or was to be used 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 in Los Angeles before Examiner Kent C. Rogers on June 15, 1959.

The complainant testified that he resides at 3301 West 113th Street with his wife and daughter; that he is employed and is away from home during the day; that he has never permitted the telephone to be used for illegal purposes nor used it for illegal purposes; that on or about April 14, 1959, in his absence, his wife Mary Spurgeon was arrested with another man on charges of suspicion of bookmaking; that the telephone was removed; and that he needs the telephone and will not permit it to be used for illegal purposes.

Exhibit No. 1 is a letter dated April 15, 1959, from the Vice Detail of the Sheriff's Office of Los Angeles County to the

defendant, advising the defendant that on or about April 14, 1959, complainant's telephone, under number ORchard 7-5332, was 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 telephone had been confiscated; and requesting that defendant disconnect the service. It was stipulated that this letter was received by the defendant on April 16, 1959; that pursuant thereto a central office disconnection was effected on April 29, 1959; and that pursuant to order of this Commission, Decision No. 58502, supra, the service was reconnected on May 22, 1959, and is still 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.

A deputy sheriff connected with the Vice Detail of the Sheriff's Office of Los Angeles County testified that on April 14, 1959, he and other deputies went to the vicinity of complainant's residence at 3301 West 113th Street, Inglewood; that they observed complainant's wife and a man through the windows; that on the table by the telephone they could see a National Daily Reporter Scratch Sheet and numerous slips of paper; that they entered the premises and arrested the two parties; that on the table were several betting markers for that day; that some calls were received over the telephone but the witness's partner answered the calls; that both the parties were arrested and the telephone was removed; and that a trial

is scheduled in Superior Court for June 16, 1959. The deputy further testified that he had a conversation with the arrested man at the time of the arrest; that Mr. Petry said he had been bookmaking at the location for two weeks and that the betting markers were in his handwriting; and that complainant's wife said that she needed money and had been receiving \$75.00 a week for answering the telephone.

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. The evidence in this case justifies the drawing of an inference that the telephone in question had been used in connection with bookmaking, but the evidence fails to reveal that such bookmaking activity was known to the complainant. Complainant is therefore entitled to restoration of telephone service.

O R D E R

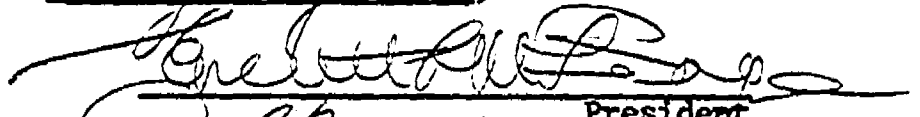
The complaint of Frank M. Spurgeon against The Pacific Telephone and Telegraph Company, a corporation, having been filed, a public hearing having been held thereon, the Commission being fully advised in the premises and basing its decision upon the evidence of record and the findings herein,

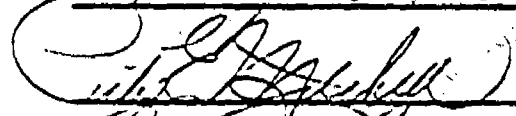
IT IS ORDERED that the order of the Commission in Decision No. 58502, dated May 22, 1959, temporarily restoring telephone service to complainant, be made permanent, such service being

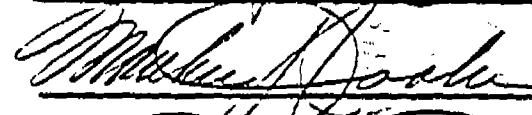
subject to all duly authorized rules and regulations of the telephone company and to the existing applicable law.

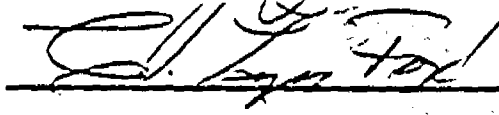
The effective date of this order shall be twenty days after the date hereof.

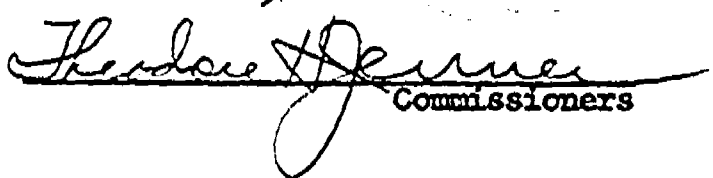
Dated at San Francisco, California,
this 7th day of July, 1959.



President








Commissioners