

ORIGINAL

Decision No. 61843

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORLO CLARENCE WELLS,

Complainant,

vs.

Case No. 7045

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a corporation,

Defendant.

Francis B. Toler, Jr., for complainant.
Lawler, Felix & Hall, by A. J. Krappman, Jr.,
for defendant.
Harold W. Kennedy by Gordon W. Treharne, for
Los Angeles County Sheriff's Department,
intervener.

O P I N I O N

By the complaint herein, filed on January 5, 1961, Orlo Clarence Wells requests an order of this Commission that the defendant, The Pacific Telephone and Telegraph Company, a corporation, be required to reinstall telephone service at his home at 1208 E. Palmer Street, Compton, California. The Commission, by Decision No. 61340 in this proceeding, dated January 17, 1961, ordered defendant to restore telephone service to the complainant pending hearing herein.

On January 25, 1961, 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 6, 1959, had reasonable cause to believe that the telephone service furnished to Orlo Clarence Wells under number NEwmark 9-4493 at 1208 E. Palmer Street, Compton, 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 pursuant to this Commission's Decision No. 41415.

A public hearing was held in Los Angeles on March 10, 1961, before Examiner Robert D. DeWolf.

Orlo Clarence Wells testified that he is the subscriber and user of telephone service furnished by defendant under number NEwmark 9-4493 at said address; that complainant did not use and does not now intend to use said telephone facilities as instrumentalities to violate the law nor in aiding or abetting such violation; that complainant has been without the use of a telephone for two years at great inconvenience and that his present work makes it imperative that he have a telephone for the proper conduct of his activities and business.

Exhibit No. 1 is a letter dated February 4, 1959, from the Commander of the Vice Division of the Police Department of Los Angeles to the defendant, advising the defendant that the telephone furnished to Orlo Clarence Wells under number NEwmark 9-4493 was, on February 4, 1959, being used for the purpose of disseminating horse racing information which was being used in connection with book-making in violation of Section 337a of the Penal Code, and requesting that the telephone company disconnect the service. The position

of the telephone company was that it had acted with reasonable cause as that term is used in Decision No. 41515 in disconnecting the telephone service inasmuch as it had received the letter designated as Exhibit No. 1.

The Sheriff of Los Angeles County appeared and intervened by deputy county counsel. A deputy from the sheriff's office testified that he made a phone call to complainant's number on February 4, 1959, in an effort to make a bet on a horse race, but did not place one; that he then entered complainant's house but could not identify complainant as the one who had answered the telephone; and that there was a scratch pad near the phone upon which there was a betting marker. The complainant was not convicted of a violation of Section 337a of the Penal Code.

After full consideration of the record we find that the telephone company's action was based upon reasonable cause as that term is used in Decision No. 41415 and we further find that the complainant's telephone was, on February 4, 1959, being used as an instrumentality to violate the law; that the complainant was not identified as a participant therein; that more than two years have now expired since said alleged violation, and that, therefore, the complainant is now entitled to restoration of telephone service.

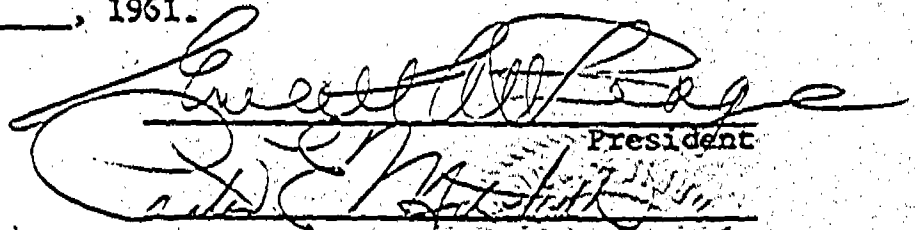
O R D E R

The complaint of Orlo Clarence Wells 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 herein,

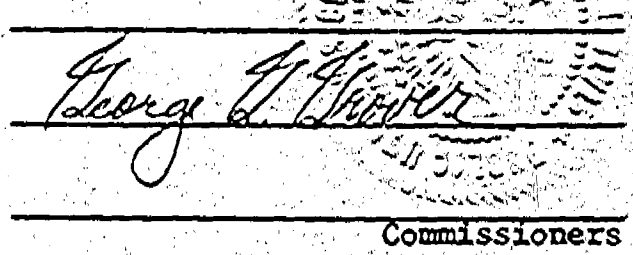
IT IS ORDERED that Decision No. 61340, ordering temporary restoration of telephone service, be made permanent.

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

Dated at San Francisco, California, this 18th day of APRIL, 1961.



President



Commissioners

Frederick B. Holoboff
Commissioners C. Lyn Fox, being
necessarily absent, did not participate
in the disposition of this proceeding.