

ORIGINAL

Decision No. S2127

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JAMES SMART,

Complainant,

vs.

PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a
Corporation,

Defendant.

Case No. 7058

Stanley R. Malone, Jr., for the complainant.
Lawler, Felix & Hall, by A. J. Krappman, Jr.,
for the defendant.
Roger Arnebergh, by Bernard Patrusky, for
Los Angeles Police Department, intervener.

O P I N I O N

By the complaint herein, filed on February 2, 1961, James Smart 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 business at 1400 West Vernon Avenue, Los Angeles, California. The Commission, by Decision No. 61524 in this proceeding, dated February 21, 1961, ordered defendant to restore telephone service to the complainant pending hearing herein.

On March 6, 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 January 10, 1961, had reasonable cause to believe that the telephone service furnished to James Smart under number AXminster 5-9143 at 1400 West Vernon Avenue, 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 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 May 12, 1961, before Examiner Robert D. DeWolf.

James Smart testified that he is the subscriber and user of telephone service furnished by defendant under number AXminster 5-9143 at said address; that complainant did not use and does not now intend to use said telephone facilities as instrumentalities to violate the law or in aiding or abetting such violation; that complainant was not charged with any violation of law, and complainant's work makes it imperative that he have a telephone for proper conduct of his activities and business.

Exhibit No. 1 is a letter dated January 9, 1961, from the Chief of the Police Department of Los Angeles to the defendant, advising the defendant that the telephone furnished to James Smart under number AXminster 5-9143 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, 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. 41415 in disconnecting the telephone service inasmuch as it had received the letter designated as Exhibit No. 1.

A deputy city attorney appeared and intervened on behalf of the Los Angeles Police Department. A police officer was called and testified to an arrest for bookmaking on said premises and that complainant was charged with a violation of Section 337a of the Penal Code, but that said charges were dismissed. The officer also testified that no written evidence of horse race betting was found on said premises.

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 evidence fails to show that the complainant's telephone was used for any illegal purpose, and that therefore the complainant is entitled to restoration of telephone service.

O R D E R

The complaint of James Smart 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,

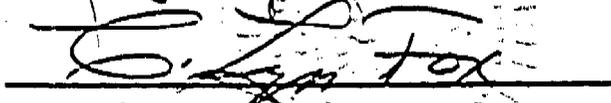
IT IS ORDERED that Decision No. 61524, dated February 21, 1961, ordering temporary restoration of telephone service, be made permanent.

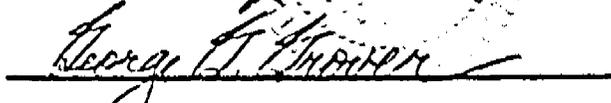
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 13th day of JUNE, 1961.



President





Commissioners