

Decision No. 62444

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN O. CHEATHAM,

Complainant,

vs.

PACIFIC TELEPHONE COMPANY, a
corporation,

Defendant.

Case No. 7096

Joseph T. Forno, by Arthur Lewis, for the
complainant.
Lawler, Felix & Hall, by A. J. Krappman, Jr.,
for the defendant.
Roger Arnebergh, City Attorney, by Bernard
Patrusky, for the Los Angeles Police
Department, intervener.

O P I N I O N

By the complaint herein, filed April 13, 1961, John O. Cheatham requests an order of this Commission that the defendant, The Pacific Telephone and Telegraph Company, a corporation, be required to reinstall two telephones at his home and business at 4051 Monroe Street, Los Angeles, California. The Commission, by Decision No. 61879 in this proceeding, dated April 25, 1961, ordered the defendant to restore telephone service to the complainant pending hearing herein.

On May 3, 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 March 23, 1961, had reasonable cause to believe that the telephone services furnished to John O. Cheatham under numbers Normandy 5-2091 and Normandy 2-8647 at 4051 Monroe Street, Los Angeles, California, were being or were to be used as instrumentalities 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 June 22, 1961, before Examiner Robert D. DeWolf.

Complainant testified that he is the subscriber and user of the telephone service at his residence consisting of two telephones, one a business phone and the other a residence phone; that he is engaged in the painting and contracting business and that said telephones are essential in the operation of the business; that he was not present when his wife was arrested on the premises and charged with bookmaking; that he also has a license as a professional handicapper to run a turf racing service and to sell racing information, and that he is not presently active in this business; that he is not now in contact with any bookmakers but that he has known them; that he obtained the release of his wife on bail about 9 p.m. on the day of her arrest; that no horse racing bets were taken or made on his telephones.

A police officer testified that he forced entry to the premises at 4051 Monroe Street about 1 p.m. on March 17, 1961; that a man who stated his name was "Miller" was making notations on a racing form; that Mrs. Virginia Cheatham was talking over the residence telephone, number NO 28647; and that he found a betting marker in that room and copies of the National Daily Reporter.

Exhibits Nos. 1 and 2 are letters dated March 22, 1961, from the Police Department of Los Angeles to the defendant, advising the defendant that the telephones furnished to John O. Cheatham, under numbers NO 28647 and NO 52091, were on March 17, 1961, 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 letters designated as Exhibits Nos. 1 and 2.

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 residence telephone, number NORmandy 2-8647, was, on March 17, 1961, being used as an instrumentality to violate the law; that there is no evidence that complainant's business telephone, NORmandy 5-2091, was being so used; that complainant is now entitled to restoration of said business telephone service, number NORmandy 5-2091; that complainant's request for restoration of said residence telephone, number NORmandy 2-8647, should be denied.

O R D E R

The complaint of John O. Cheatham 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,

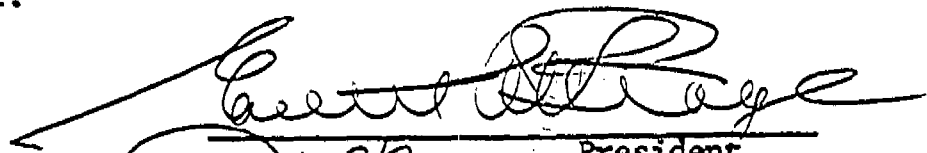
IT IS ORDERED that complainant's request for restoration of telephone service is granted as to his business telephone, number NOrmandy 5-2091, and Decision No. 61879, dated April 25, 1961, is made permanent as to such telephone.

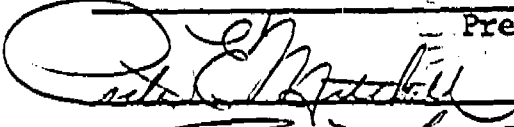
IT IS FURTHER ORDERED that the complainant's request for restoration of telephone service is denied as to his residence telephone NOrmandy 2-8647 and as to such telephone the complaint is dismissed and Decision No. 61879, to that extent, is vacated. ✓


IT IS FURTHER ORDERED that upon the expiration of sixty days after the effective date of this order, the complainant herein may file an application for residential telephone service, and, if such application is made, The Pacific Telephone and Telegraph Company shall install telephone service at complainant's address at 4051 Monroe Street, Los Angeles, California, such installation being subject to all duly authorized rules and regulations of the telephone company and to the existing applicable law.

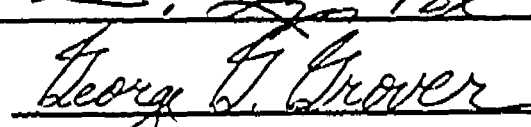
The effective date of this order shall be twenty days after the date hereof.

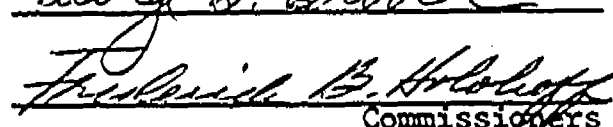
Dated at San Francisco, California, this 22nd day of August, 1961.



President








Commissioners