

ORIGINAL

Decision No. 62688

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SAM MAURICE SWAY,

Complainant,

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,
a corporation.

Defendant.

Case No. 7085

Dan O'Neill, for complainant.
Lawler, Felix & Hall, by A. J. Krappman, Jr.,
for defendant.
Roger Arnebergh, by Bernard Patrusky, for
the City Attorney of the City of Los
Angeles, intervener.

O P I N I O N

By the complaint herein, filed on March 24, 1961, Sam Maurice Sway requests an order of this Commission that the defendant, The Pacific Telephone and Telegraph Company, a corporation, be required to reinstall telephone service at 7815 Melvin Avenue, Reseda, California.

By Decision No. 61802, dated April 11, 1961, the Commission ordered that the defendant restore telephone service to the complainant pending hearing on the matter.

On April 20, 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 11, 1961, had reasonable cause to believe that the telephone service furnished to Sam Maurice Sway under number Dickens 2-9253 at 7815 Melvin Avenue, Reseda, 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 September 8, 1961, before Examiner Robert D. De Wolf.

Complainant testified that he attends horse races at the race track and buys racing forms for handicapping horses, and that he was working on the Los Angeles Examiner Post Position contest at the time of this arrest; that charges against him for bookmaking were finally dismissed in the Superior Court; that he has not heretofore used, and will not in the future use, the telephone for placing bets on horse races or for other illegal purposes; that he has urgent need for a telephone on account of the ill health of his wife.

Exhibit No. 1 is the reporter's transcript of Preliminary Examination of defendant in Case No. 8689 in the Municipal Court, Division No. 68, in which Counts I and II were dismissed and Samuel Maurice Sway was held to answer Count III, and the transcript contains the testimony of the police officers at the said preliminary hearing, with a description of the betting paraphernalia found on the premises of the defendant.

Exhibit No. 2 is a copy of entries made by defendant in the Los Angeles Examiner Post Position game in connection with horse races at the Santa Anita race track.

Exhibit No. 3, dated January 9, 1961, is a letter from the Police Department of the City of Los Angeles to the defendant, advising that the telephone furnished to Sam Sway under number DI 29253 at 7815 Melvin, Reseda, was being used for the purpose of disseminating horse racing information in violation of Section 337a of the Penal Code, and requesting that the telephone company disconnect the service. Pursuant thereto a central office disconnection was effected.

After full consideration of this record the Commission finds and concludes that the telephone company's action was based upon reasonable cause as that term is used in Decision No. 41415; that the complainant's telephone was used as an instrumentality to violate the law in that it was used for bookmaking purposes in connection with horse racing; that complainant's telephone was disconnected for more than ninety days and that all criminal charges against him have been disposed of; that there is urgent need for a telephone by complainant's family; and that the complainant should have telephone service at his residence at 7815 Melvin Avenue, Reseda, California, restored.

O R D E R

The complaint of Sam Maurice Sway 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 the order of the Commission in Decision No. 61802, dated April 11, 1961, in Case No. 7085, temporarily restoring telephone service to the complainant, be made permanent, such restoration 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 17th day of OCTOBER, 1961

Charles W. Rogers
 President

John J. ...

E. J. ...

George T. ...

Frederick B. ...
 Commissioners