MP /LPC

ORIGINAL

Decision No. 63660

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GEORGE SCHMITT,

Complainant,

vs.

PACIFIC TELEPHONE CO.

Defendant.

Case No. 7282

George Schmitt, in propria persona.
Lawler, Felix & Hall, by Charles L. Rogers, for defendant.
Roger Arnebergh, City Attorney, by Howard P. George, Deputy City Attorney, for the Los Angeles Police Department, intervener.

O P I N I O N

By the complaint herein, filed on February 14, 1962, George Schmitt requests an order of this Commission that the defendant, Pacific Telephone Co., be required to reinstall telephone service at his cafe at 1415 West Florence Avenue, Los Angeles 45, California.

On February 28, 1962, 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 May 27 and May 31, 1960, had reasonable cause to believe that the telephone service furnished to George Schmitt under numbers PL 2-7600 and

PL 3-9566, at 1415 West Florence Avenue, Los Angeles, was being or was 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 both telephones pursuant to this Commission's Decision No. 41415, and that one telephone was a public telephone service and the other a private service.

A public hearing was held in Los Angeles on April 11, 1962, before Examiner Robert D. DeWolf, and the matter was submitted on the same date.

The complainant testified to the truth of the allegations of the complaint and stated that he does not now have telephone service and has not had any such service since April 15, 1960, when it was removed by the police officers. Complainant also testified that the criminal charges against him were dismissed.

Counsel for the defendant stated that the public pay station was maintained by the telephone company on the premises of the complainant and is not subject to an order for restoration in this proceeding.

A deputy city attorney appeared on behalf of the Police Department of the City of Los Angeles but offered no evidence in opposition to the complaint.

Exhibits Nos. 1 and 2 are copies of letters dated May 26 and 27, 1960, from the Police Department of the City of Los Angeles to the defendant, advising that the telephones furnished to George Schmitt under numbers PL 27600 and PL 39566,

at 1415 West Florence, Los Angeles, were 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 evidence fails to show that the complainant's telephones were used for any illegal purpose; and that, therefore, the complainant is entitled to restoration of the private telephone service.

O R D E R

The complaint of George Schmitt 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 the private telephone service is granted and that complainant's request for an order directing installation of a public pay station is denied; that, upon the filing by the complainant of an application with the utility for the private telephone service, The Pacific Telephone and Telegraph Company shall reinstall telephone service at the complainant's cafe at 1415 West

Florence Avenue, 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 five days after the date hereof.

Dated at San Francisco, California, this 8th day of MAY, 1962.

Everett C. Craig
President

Commissioners