

ORIGINAL

Decision No. 64290

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THOMAS A. FITZSIMON,

Complainant,

vs.

Case No. 7392

PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,

Defendant.

Barton C. Sheela, Jr., for complainant.
Gray, Cary, Ames & Frye, by Rudi M.
Brewster, for defendant.

O P I N I O N

By the complaint herein, filed on July 2, 1962, Thomas A. Fitzsimon requests an order of this Commission that the defendant, Pacific Telephone and Telegraph Company, a corporation, be required to reinstall telephone service at 5624 La Jolla Boulevard, La Jolla, California.

By Decision No. 63897, dated July 3, 1962, the Commission ordered that the defendant restore telephone service to the complainant pending further Commission order.

On July 16, 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 June 28, 1962, had reasonable cause to believe that the telephone service furnished to

Thomas A. Fitzsimon under number Glencourt 4-5920, 5624 La Jolla Boulevard, La Jolla, 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 San Diego, California, on August 14, 1962, before Examiner Robert D. DeWolf and the matter was submitted on the same date.

Exhibit 1 is a medical report dated August 14, 1962, stating that complainant's wife has been under medical care for arthritis and heart disease with congestive heart failure, and requires medical supervision from time to time. Exhibit 2 is a letter dated June 21, 1962, from the Police Department of the City of San Diego to the defendant, advising the defendant that the telephone furnished to Thomas A. Fitzsimon under number GL 4-5920 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 1.

Complainant testified that he is in the business of picture framing; that no charges have been made against him; and that he has never used the telephone for any unlawful purpose. Complainant further testified that he has great

need for telephone service on account of his business and for medical reasons, his wife being in need of constant care as a heart patient.

There was no appearance on behalf of, or testimony offered by, any law enforcement agency.

After full consideration of this 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 Thomas A. Fitzsimon 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. 63897, dated July 3, 1962, in Case No. 7392, 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 25th day of SEPTEMBER, 1962.

George F. Grover
President

John A. Mitchell

John L. Fox

Walter W. Page

Frederic B. Hubloff
Commissioners