

ORIGINAL

Decision No. 66636

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GERALDINE W. SMITH ROGERS,)
Complainant,)

vs.)

Case No. 7724

THE PACIFIC TELEPHONE AND)
TELEGRAPH COMPANY, a)
corporation,)
Defendant.)

Geraldine W. Smith Rogers, in propria persona.
Lawler, Felix & Hall, by John M. Maller,
for defendant.

Roger Arnebergh, City Attorney, by Frank D. Wagner
for the Police Department of the City of
Los Angeles, intervenor.

O P I N I O N

Complainant seeks restoration of telephone service at 455-1/2 N. Oakhurst Drive, Beverly Hills, California. Interim restoration was ordered pending further order (Decision No. 66049).

Defendant's answer alleges that on or about July 30, 1963, it had reasonable cause to believe that service to Geraldine W. Smith under number 275-0564 was being or was to be used as an instrumentality directly or indirectly to violate or aid and abet violation of law, and therefore defendant was required to disconnect service pursuant to the decision in Re Telephone Disconnection, 47 Cal. P.U.C. 853.

The matter was heard and submitted before Examiner DeWolf at Los Angeles on November 4, 1963.

By letter of July 23, 1963, the Chief of Police of the City of Beverly Hills advised defendant that the telephone under number 275-0564 was being used to disseminate horse-racing information used in connection with bookmaking in violation of law, and requested disconnection (Exhibit 1).

Complainant testified that she pleaded guilty to a charge of bookmaking, a misdemeanor, and paid a fine of \$150. She is presently reporting to the probation office; there are no other pending charges against her.

Complainant further testified that she lives alone and works in studios as a cartoonist and would suffer great hardship without telephone service. Complainant admitted the use of the telephone in connection with the bookmaking and stated that she would not engage in any more of such activities.

Complainant further testified that she needs a telephone to secure medical aid in case of serious illness; that she has great need for telephone service, and will not use the telephone for any unlawful purpose in the future.

A deputy city attorney appeared and cross-examined the complainant, but no testimony was offered on behalf of any law enforcement agency.

We find that defendant's action was based upon reasonable cause, and 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, and should be disconnected.

O R D E R

IT IS ORDERED that complainant's request for installation of telephone service be denied and that the temporary interim relief granted by Decision No. 66049 is vacated and set aside.

IT IS FURTHER ORDERED that, upon the expiration of sixty days after the effective date hereof, complainant may file an application with the utility for telephone service and that, if such application is filed, The Pacific Telephone and Telegraph Company shall install telephone service at complainant's residence at 455-1/2 N. Oakhurst Drive, Beverly Hills, 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 14th day of January, 1964

Hollman G. Bennett
President
W. H. [unclear]
[unclear]

Commissioners

DISSENTING OPINION OF COMMISSIONER GROVER

The failure of the majority to allow credit for the time complainant has already been without service constitutes a departure from our previous decisions. Complainant's telephone was disconnected on July 23, 1963 and was reconnected following our interim order of September 24, 1963; complainant was therefore without service for more than 60 days. Heretofore, where it has been established that a telephone has been unlawfully used, the policy of the Commission has been to suspend service for 60 days, but to allow a credit against such suspension for the period during which the subscriber has gone without service. In each of the following cases the Commission found that the telephone was used for an illegal purpose, but no suspension was ordered because of the length of time the complainant had already been deprived of a telephone:

Morris v. General Telephone, Case 7277, Dec. No. 63714,
May 22, 1962 (60 days).

Cerrato v. P. T. & T., Case 7268, Dec. No. 63713,
May 22, 1962 (60 days).

Webb v. P. T. & T., Case 7278, Dec. No. 63570,
May 17, 1962 (90 days).

Munz v. P. T. & T., Case 7208, Dec. No. 63256,
February 13, 1962 (105 days).

Today's order imposes upon this complainant a total suspension longer than that in any of the cited cases. No reason for this uneven justice has been suggested; certainly none is discernible in the majority opinion.

Law enforcement officers, knowing our past suspension policy, have been saved the time, trouble and expense of appearing at hearings where the complainant has been without service for at least 60 days. The uncertainty which will flow from today's decision may now lead to more appearances by law enforcement agencies, with attendant public expense.

The majority decision puts a premium on the speed with which a complainant reaches the Commission's docket office with a request for

interim relief. Ironically, it is the offender who has immediately available an attorney experienced in the special procedure governing these cases who will be least affected by the new policy; a less professional complainant is more likely to lose time in obtaining an interim order. The honest complainant will also be penalized; unwilling to include in his pleading the false allegation that there has been no illegal use of the telephone, he may be denied the interim relief which unscrupulous petitioners readily obtain.

George T. Grover
Commissioner

I concur with Commissioner Grover.
Friedrich B. Helshoff,
Commissioner.