

ORIGINAL

Decision No. 65838

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LAWRENCE S. BALMFORTH,)
)
 Complainant,)
)
 vs.)
)
 THE PACIFIC TELEPHONE AND)
 TELEGRAPH COMPANY, a corporation,)
)
 Defendant.)

Case No. 7694
Filed August 27, 1963

Lawrence S. Balmforth, complainant,
 for self.
 Lawler, Felix & Hall, by John M.
Maller, for The Pacific Telephone
 and Telegraph Company, defendant.

O P I N I O N

Complainant seeks restoration of telephone service at 3139 Dublin Street, Costa Mesa, California. Interim restoration was ordered, pending further order, in Decision No. 65967, dated September 10, 1963.

Defendant's answer alleges that on or about July 3, 1962, it had reasonable cause to believe that service to Lawrence S. Balmforth under telephone numbers KImberly 9-0663 (non-published) and KImberly 5-6803 was being used 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 Decision No. 41415, in Re Telephone Disconnection, 47 Cal. P.U.C. 853.

The matter was heard and submitted before Examiner Chiesa at Los Angeles on December 10, 1963.

The evidence shows and we find that:

By letter dated July 3, 1962, the district attorney of Orange County informed defendant that the telephones at 3132 Dublin Street, Costa Mesa, California, being Kimberly 5-6803 and Kimberly 9-0663 listed to Lawrence S. Balmforth were being used for the purpose of "assembling information on horse racing, information which was being used in connection with bookmaking" in violation of Section 337a of the California Penal Code, and requested that the services be disconnected (Exhibit No. 1).

We find that telephone service, number 545-6803 (formerly KI 5-6803), was restored on or about September 13, 1963, and has since been in use by complainant; that complainant pleaded guilty of bookmaking and was sentenced to spend 16 week ends in the Orange County jail and was placed on three years' probation; that at all times herein mentioned complainant has been employed by Duncan Electronics and is presently employed by said firm; that complainant has not engaged in bookmaking nor has he violated the law since his conviction; that complainant is married and has five children, ages 4 to 15, is living with and supporting his family and that said family is in need of telephone service for medical, shopping, social and legitimate business purposes.

The defendant telephone company offered evidence in justification of the disconnection of service and otherwise helped develop the record.

The request for restoration of the service is not opposed.

We further find that defendant's action was based upon reasonable cause and that the complainant's telephones were used by him as an instrumentality to violate the law in that they were used for bookmaking purposes in connection with horse racing.

Based upon the evidence and said findings the Commission concludes that Decision No. 65967 be vacated and set aside and that telephone service at 3139 Dublin Street, Costa Mesa, California, be disconnected for a period of thirty days.

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. 65967 is vacated and set aside.

IT IS FURTHER ORDERED that, upon the expiration of thirty 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 3139 Dublin Street, Costa Mesa, 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 18th day of February, 1964.

William W. Bennett
President
Edward J. [unclear]
Walter [unclear]

Commissioners

We dissent. Complainant has already been without telephone service for approximately 16 months; disconnection for an additional 30 days is unwarranted and discriminatory. (See dissenting opinion in Case 7724, filed Jan. 14, 1964 in connection with Decision 66636.)

*George H. Trover
Frederick B. Hallock*