

**ORIGINAL**

Decision No. 67755

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

KENNETH RAY TESCIER,  
Complainant,

vs.

THE PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY, a  
Corporation,

Defendant.

Case No. 7890

Kenneth Ray Tescier, in propria persona.  
Lawler, Felix & Hall, by Robert C. Coppo,  
for defendant.  
Roger Arnebergh, City Attorney, by James H.  
Kline, for the Los Angeles City Police  
Department, intervener.

O P I N I O N

Complainant seeks restoration of telephone service at 7312 Delco Avenue, Canoga Park, California. Interim restoration was ordered pending further order (Decision No. 67213, dated May 19, 1964).

Defendant's answer alleges that on or about February 25, 1964, it had reasonable cause to believe that service to Kenneth R. Tescier under number 883-8556 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 July 16, 1964.

By letter of February 21, 1964, the Chief of Police of the City of Los Angeles advised defendant that the telephone under number 883 8556 was being used to disseminate horse-racing information used in connection with bookmaking in violation of Penal Code Section 337a, and requested disconnection (Exhibit 1).

Complainant testified that he is presently unemployed and looking for work; that his wife is employed as a nurse and that he has three children; and that telephone service is essential for the health of his family, and necessary for both him and his wife to get and keep employment.

Complainant further testified that he was arrested for bookmaking and that the charges were dismissed; and that the officers found no evidence of bookmaking at his premises, and that his telephone was disconnected and remained so for three months; and he has great need for telephone service and did not and will not use the telephone for any unlawful purpose.

A police officer testified that on February 5, 1964, he was introduced to the complainant over a telephone which was

dialed to the complainant's number during a bookmaking investigation; that he made a bet with the complainant, identified as Ken, in the amount of \$2.00 on a horse named "Mr. Consistency" running at Santa Anita that day, and agreed to pay the bet a week later at a bowling alley.

The police officer further identified a tape recording which he said was made of the conversation over the telephone with an electronic device; and the tape recording was offered into evidence for the purpose of corroborating the testimony of the police officer as to his conversation with the complainant and for which purpose it is admissible.

Upon playing the recording, the sounds could not be identified except an occasional word here and there, and introduction of the recording into evidence was denied because it was unintelligible. The City attorney stated that there was nothing in the tape recording which the police officer had not already testified to.

The complainant was asked if he had anything further to say or wished to give any further testimony and he declined.

We find that defendant's action was based upon reasonable cause, and the evidence fails to show that the telephone was used for any illegal purpose, or that any bookmaking was conducted over this telephone. Complainant is entitled to restoration of service.

ORDER

IT IS ORDERED that Decision No. 67213, dated May 19, 1964, temporarily restoring service to complainant, is made permanent, subject to defendant's tariff provisions and existing applicable law.

The effective date of this order shall be five days after the date hereof.

Dated at San Francisco, California, this 25<sup>th</sup> day of August, 1964.

Frederick B. Holcomb  
President

George H. Hoover

Thomas W. Dwyer  
Commissioners

I dissent  
Arthur E. Kishell

I dissent.  
The finding advised  
me that the telephone  
was lawfully  
used.

Arthur E. Kishell  
Commissioner.