

Decision No. 70671**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CHET D. LYBARGER,

Complainant,

vs.

PACIFIC TELEPHONE COMPANY, a
Corporation,

Defendant.

Case No. 8255

Max Solomon, for complainant.
Lawler, Felix & Hall, by Robert C. Coppo, for defendant.
Roger Arnebergh, City Attorney, by
Michael T. Sauer, for the Police
 Department of the City of Los
 Angeles, intervener.

O P I N I O N

Complainant seeks restoration of telephone service at 2129 North Broadway, Los Angeles, California. Interim restoration was ordered pending further order (Decision No. 69641, dated September 8, 1965).

Defendant's answer alleges that on or about July 29, 1965, it had reasonable cause to believe that service to Chet D. Lybarger, under numbers 221-6461 and 221-2536, 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, 1965. Intervener, by letter dated November 17, 1965, requested the matter be reopened to present further evidence. Commission order dated December 14, 1965, reopened the matter for further hearing which was held before Examiner DeWolf on January 11, 1966, and the matter then was submitted.

By letter of July 28, 1965, the Chief of Police of the City of Los Angeles advised defendant that the telephones under numbers 221-6461 and 221-2536 were being used to disseminate horse-racing information used in connection with bookmaking in violation of Penal Code Section 337a, and requested disconnection (Exhibit 1, received November 4, 1965).

At the hearing on November 4, 1965, complainant testified that he owns and operates a garage and auto repair shop and requires two telephones, one in the front portion and one in the rear near the yard, for use when calls are received regarding work by his mechanics, and that the disconnection of his telephone service for over a month caused him to lose business. Complainant testified that, at the time his telephones were removed by the police, he was not using the telephones for bookmaking and he had not used his telephones for any unlawful activity.

Complainant further testified that he was arrested after removal of his telephones; that he was tried by the court, found guilty, and paid a fine of \$266 for a misdemeanor violation of Section 337a, Penal Code of California; and that he is the same person as the complainant named in Case No. 7658 before this Commission, in which case the Commission rendered Decision No. 66917.

Complainant further testified that telephone service is essential to his garage business, he has great need for telephone service, and he did not and will not use the telephone for any unlawful purpose.

A deputy city attorney appeared on November 4, 1965, and cross-examined the complainant, but no testimony was offered on behalf of any law enforcement agency.

At the hearing on January 11, 1966, a police officer testified that he and another officer made an investigation of the complainant's premises on November 11, 1965; that he watched the complainant for approximately one hour from a position across the street; that during said time he saw him answer the telephone eleven times and make notes on small pieces of paper and place them under the telephone; that he and the other officer then entered the premises and that while they were on the premises the telephone rang two times; that when he answered the telephone, the party who called hung up; that he arrested complainant Lybarger on the premises for bookmaking and removed his two telephones, and that thereafter the bookmaking charges against complainant Lybarger were dismissed.

The complainant did not offer evidence at the hearing on January 11, 1966.

We find that defendant's action was based upon reasonable cause, and the evidence fails to show that the telephones were used for any illegal purpose. The Commission concludes that complainant is entitled to restoration of telephone service.

O R D E R

IT IS ORDERED that Decision No. 69641, dated September 8, 1965, temporarily restoring service to complainant, is made permanent, subject to defendant's tariff provisions and existing applicable law.

This order shall be effective twenty days after the date hereof.

Dated at San Francisco, California, this 10th day of MAY, 1966.

Frederick B. Holoff
President

George E. Trower

Augusta

William L. Bonds
Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.