

ORIGINAL

Decision No. 48526

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GERTRUDE GROSSE,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Case No. 5444

Gertrude Grosse, by James A. Grosse. Pillsbury,
Madison & Sutro, by John A. Sutro, and Lawler, Felix &
Hall, by L. B. Conant, for defendant.

O P I N I O N

Complainant is an operator of a bar and cafe at 535 South Beacon Street, San Pedro, California. At the inside front portion of these premises there was installed a telephone booth having a coin-operated pay telephone located therein. This telephone installation, in the words of the company's tariff (Cal. P.U.C. No. 36-T, Original Sheet 14), is of a type described as "a non-listed non-subscriber exchange station installed for the convenience of the public at a location chosen or accepted by the company."

On or about January 27, 1953, the complainant received a letter from the defendant telephone company, advising that the communication facilities hereinbefore described were to be disconnected inasmuch as the company had advice that those facilities

were being used as an instrumentality to violate or to aid and abet the violation of law. The complaint filed herein alleged the status of complainant and also the receipt of the letter from the telephone company. It was further alleged that complainant had never "been in any illegal business of any kind" and further that irreparable injury and great hardship would be suffered by being deprived of the telephone facilities. The complaint also alleged that the telephone had been removed from the premises; that the complainant had not used, and did not intend to use, the telephone facilities in violation of the law. Restoration of these telephone facilities was requested.

Under date of February 17, 1953, by Decision No. 48275, in Case No. 5444, the Commission issued an order granting temporary interim relief directing the telephone company to restore the above described telephone service pending a hearing on the complaint.

A public hearing was held before Examiner Syphers on April 16, 1953, at which time evidence was adduced and the matter submitted.

At the hearing complainant testified that the telephone service in question had been located on his premises for fourteen years and that the telephone company paid him a rental for the use of the property amounting to 15 per cent of the money collected in the telephone. He stated that he had never used this telephone for any illegal purpose and that he knew of no illegal use thereof by any other person. The principal use of this pay telephone is by his customers and by the public

generally, including a large number of Navy men. He has another telephone in his business and, accordingly, does not use this pay station in the business.

An officer of the Los Angeles Police Department testified that on December 13, 1952, a known bookmaker was arrested on the premises of complainant. For some time prior thereto the police had had these premises under observation and had obtained evidence to the effect that bookmakers were using the telephone. The police officer further testified that since this arrest complainant has cooperated with the police in every respect, and that there has been no evidence of any bookmaking activity.

The Chief Special Agent of the defendant telephone company presented Exhibit No. 1, a letter received by the company from the Chief of Police of Los Angeles under date of January 7, 1953, requesting the company to disconnect the telephone facilities in question inasmuch as they were being used for receiving and recording bets.

It was the position of the telephone company that, due to the type of telephone service involved, the company may at its discretion locate or remove the facilities. The company contended that this telephone was installed under the provisions of its tariff as contained in Cal. P.U.C. No. 11-T, Original Sheet 6. The pertinent provisions of these rules and regulations are as follows:

"2. Public telephones will be installed by the Company, at its discretion and at locations chosen or accepted by the Company, to meet the general and transient public requirements. The use of public telephones by the occupants of the premises in which they are located is only incidental to the purpose for which such telephones are installed."

- "4. Public telephone station signs are furnished and displayed at the option of the Company.
- "5. Telephone numbers of public telephones will not be listed in the telephone directory."

It was the further position of the telephone company that it had acted upon reasonable cause in disconnecting the telephone service inasmuch as it had received the letter designated as Exhibit No. 1.

After a thorough consideration of this matter we hereby find that the telephone company's action was based upon reasonable cause as that term is used in Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

We further find that under the existing tariff provisions the company may remove or install a telephone of the type here in question at its discretion. The complainant herein cannot be considered as a subscriber to this telephone service.

Inasmuch as the record herein discloses that there is no present problem as to bookmaking at the premises of complainant, we further find that the telephone company may at its discretion maintain the telephone service in question on the premises of complainant providing complainant, or whoever else may be in control of these premises, permits the use of the premises in question for that purpose.

ORDER

The complaint of Gertrude Grosse against The Pacific Telephone and Telegraph Company having been filed, public hearing having been held thereon, the matter now being ready for decision, and the Commission being fully advised in the premises and basing its decision upon the evidence of record in this case and the findings herein,

IT IS ORDERED that the order of this Commission in Decision No. 48275, dated February 17, 1953, in Case No. 5444, is hereby set aside and vacated.

IT IS FURTHER ORDERED that the complaint for restoration of telephone service filed herein be, and it hereby is, dismissed.

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

Dated at San Francisco, California, this 28th day of April, 1953.

R. J. [Signature] President

Harold P. [Signature]

[Signature]

[Signature]

Commissioners