

**ORIGINAL**Decision No. 49126

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CLARENCE E. HARRISON,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, a corporation,

Defendant.

Case No. 5457

Herbert Resner, attorney, for applicant.  
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 the operator of a bar and restaurant at 106 West Sixth Street, San Pedro, California. In these premises there were installed two telephone booths having coin-operated pay telephones located therein. These telephone installations in the words of the company's tariff (Cal. P.U.C. 36-T, Original Sheet 14) are 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 the law. The complaint filed herein alleged the status of complainant and the receipt of the letter from the telephone company. It was further alleged that complainant "did not use and does not now intend to use said telephone facilities as an instrumentality to violate the law" and, further, that complainant would suffer irreparable injury and great hardship by being deprived of the telephone facilities. It was requested that the telephone facilities under number TErMinal 2-9113 be restored.

Under date of April 7, 1953, by Decision No. 48451, in Case No. 5457, the Commission issued an order granting temporary interim relief directing the telephone company to restore telephone service under number TErMinal 2-9113 pending a hearing on the complaint.

A public hearing was held on July 21, 1953, before Examiner Syphers at Los Angeles, at which time evidence was adduced and the matter submitted. It is now ready for decision.

At the hearing complainant testified that the two telephones in question, TErMinal 2-9113 and TErMinal 2-9459, were used by the public generally and particularly by servicemen and seamen. He stated that the telephones had never been used for bookmaking to his knowledge and prior to the events described herein he had no complaints from any law enforcement agencies. He further testified that he has his own business.

telephone under number Terminal 2-6551. This telephone is not involved in these proceedings. The pay telephones were on the premises under an arrangement with the telephone company whereby the complainant received a rental for the use of his property amounting to 15 per cent of the amount collected in the telephones.

An officer of the Los Angeles Police Department testified that he had checked and observed bookmakers in the San Pedro area and that the indications were that these bookmakers had used the telephones in complainant's place of business to phone in bets. He further stated that he was now of the opinion that the telephones should be allowed to remain on the premises but recommended a change of location so that they can better be observed.

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. 41115, 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.

O R D E R

The complaint of Clarence E. Harrison 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. 48451, dated April 7, 1953, in Case No. 5457, 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 22nd day of September, 1953.

[Signature]  
President

[Signature]

[Signature]

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Commissioners

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