

ORIGINALDecision No. 51677

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

James W. Salmon and Ruth M. Leahy,)
)
 Complainants,)
)
 vs.)
)
 The Pacific Telephone and Telegraph)
 Company, a corporation,)
)
 Defendant.)

Case No. 5641

John J. Lank, Jr., for complainant.
Pillsbury, Madison & Sutro, John Sutro and
Dudley A. Zinke, for defendant.

O P I N I O N

Complainants allege that prior to February 11, 1955, they were subscribers and users of telephone service furnished by defendant under the number Valencia 6-9808 at 3225 Twenty-second Street, San Francisco, California; and that on said date defendant disconnected these telephone facilities upon the assertion that they were being used as an instrumentality to violate the law. The complaint further alleges that complainants have not used and do not intend to use these telephone facilities for any unlawful purpose; and that the telephone company has refused to restore service though demand has been made upon it to do so. As a result, complainants contend they have suffered and will suffer irreparable injury and great hardship.

Under date of April 19, 1955, by Decision No. 51336 in Case No. 5641, this Commission issued an order granting temporary interim relief, directing the telephone company to restore the above described service pending a hearing on the complaint.

The telephone company filed an answer on April 25, 1955, the principal allegation of which was that it has reasonable cause to believe that the telephone facilities in question were being used to violate the law and that, accordingly, the telephone company disconnected and discontinued the telephone service pursuant to Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

Public hearing was held in San Francisco on June 21, 1955, before Examiner Rowe, at which time evidence was adduced and the matter was submitted.

James W. Salmon, one of the complainants testified that he and his partner, Ruth M. Leahy, operate a bar and restaurant at 3225 Twenty-second Street, in San Francisco; that the telephone involved is semipublic being located in a booth with an extension behind the bar; that it is used in the operation of both the restaurant and bar and is necessary in complainants' business; and that he has never used it for an illegal purpose and that it has never been so used to his knowledge. He further testified that no complaint had been served on complainants charging them with any illegal act. Service was temporarily restored on April 21, 1955 pursuant to Decision No. 51336, dated April 19, 1955, in this Case No. 5641.

The position of the telephone company was that it had acted upon reasonable cause in removing the telephone inasmuch as it had received a letter from the Chief of Police of the City and County of San Francisco, dated February 9, 1955, requesting that the telephone facilities be disconnected because investigation by his office disclosed that this telephone was used in connection with bookmaking. Exhibit 2 is a copy of this letter. The introduction of this letter into evidence against complainants was objected to upon the ground that as to them it constituted hearsay. This objection was sustained and the document was received in evidence for the sole and limited purpose of justifying the action of the telephone company.

In the light of this record we find that the action of the defendant telephone company was based upon reasonable cause, as such term is used in said Decision No. 41415. We further find that there is no evidence to support a conclusion that the complainants herein have used, or now intend to use, the telephone facilities above described for any illegal purpose. Therefore, complainants are entitled to a permanent restoration of telephone service.

O R D E R

The complaint of James W. Salmon and Ruth M. Leahy against The Pacific Telephone and Telegraph Company, a corporation, having been filed, public hearing having been held thereon, the Commission being fully advised in the premises and basing its decision upon the evidence of record and the findings herein,

IT IS ORDERED that the order in Decision No. 51336 in the above numbered case, dated April 19, 1955, temporarily restoring telephone service to these complainants, be made permanent.

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

Dated at San Francisco, California, this 12th day of July, 1955.

James J. Casner
President
Paul L. Lutz
William D. Doherty
P. H. Haldy
Commissioners

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