

ORIGINAL

Decision No. 52849

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EVELINE BENSON,

Complainant,

vs.

Case No. 5712

THE PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY,

Defendant.

Eveline Benson in propria persona. Pillsbury,  
Madison & Sutro, and Lawler, Felix & Hall, by  
L. B. Conant, for defendant.

O P I N I O N

The complaint of Eveline Benson, 2226 South Union Avenue, Los Angeles, California, filed on January 12, 1956, alleges that on September 28, 1955, the police removed her business telephone, number Richmond 9-6854, and in November had removed the public telephone, number Richmond 8-8143; that the reason given was book-making; that Walter Benson was acquitted in November; and that a public telephone is essential, attracts customers, and is a source of income.

On January 27, 1956, the telephone company filed an answer, the principal allegations of which were that pursuant to Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853), defendant, on or about September 28, 1955, had reasonable cause to believe that the telephone service furnished by defendant under number Richmond 9-6854, at 2226 South Union Avenue,

Los Angeles, California, was being or was to be used as an instrumentality directly or indirectly to violate or to aid and abet the violation of the law; and that defendant, on or about October 18, 1955, had reasonable cause to believe that the public telephone furnished by defendant under number Richmond 8-8143, at 2226 South Union Avenue, Los Angeles, California, was being or was to be used as an instrumentality directly or indirectly to violate or to aid and abet the violation of the law.

A public hearing was held in Los Angeles before Examiner Kent C. Rogers on March 2, 1956, and the matter was submitted.

The complainant Eveline Benson testified that she has a beer tavern at 2226 South Union Avenue, Los Angeles, California; that Walter Benson is her husband; that there was a public telephone in a booth on the premises and a private telephone under the bar on the premises; that on September 28, 1955, her husband was arrested for suspicion of bookmaking on the premises, and the private telephone was removed; that she was not present at the time of the arrest; that the police ordered the defendant to remove the public telephone and subsequently the public telephone was removed; that her husband was acquitted of the charges; that the neighborhood where the bar is located is residential and many of the bar customers used the telephone; and that a telephone is essential in the bar in the event of trouble.

No law enforcement officers appeared at the hearing.

Exhibit No. 1 is a copy of a letter from the Commander of the Administrative Vice Division of the Los Angeles Police Department advising the defendant that the private telephone under number Richmond 9-6854, at 2226 South Union Avenue, was being used

in connection with bookmaking, requesting that the telephone service be disconnected and advising the defendant that the instrument had been confiscated. Exhibit No. 2 is a copy of a letter from the Acting Chief of Police of the City of Los Angeles advising the defendant that the public telephone furnished by it under number Richmond 8-8143, at 2226 South Union Avenue, was being used as an instrumentality to violate and to aid and abet the violation of the law. A supervising special agent of the telephone company testified that Exhibit No. 1 was received on September 28, 1955, and a central office disconnection of number Richmond 9-6854 was effected forthwith; and that Exhibit No. 2 was received on October 18, 1955, and the public telephone under number Richmond 8-8143 was forthwith removed from complainant's premises. The position of the telephone company was that in each instance it had acted with reasonable cause in disconnecting the respective telephone services in that it had received the letters designated as Exhibits Nos. 1 and 2. In addition, the telephone company's position was that the public telephone service furnished under number Richmond 8-8143 was not a telephone to which the complainant subscribed or on which she paid any charges, and hence the telephone company could remove it at any time it saw fit.

After consideration of the record herein, we now find that the telephone company's actions were, in each instance, based upon reasonable cause as that term is used in Decision No. 41145, referred to supra. We further find that there is no evidence that complainant was engaged in, was directly connected with, or permitted the telephone services referred to herein to be used for

bookmaking or other illegal activities. We further find that the public telephone under number Richmond 8-8143, formerly located at 2226 South Union Avenue, Los Angeles, California, was not a telephone service furnished to or for the complainant and hence it is optional with the defendant whether or not it replaces said public telephone on said premises. We find that the complainant is entitled to a restoration of her private telephone service at 2226 South Union Avenue, Los Angeles, California.

O R D E R

The complaint of Eveline Benson against The Pacific Telephone and Telegraph Company, a corporation, having been filed, a 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 complainant's request for restoration of her private telephone service be granted, and that, upon the filing by the complainant of an application for telephone service, The Pacific Telephone and Telegraph Company shall install telephone service at complainant's premises at 2226 South Union Avenue, Los Angeles, California, such installation being subject

to all duly authorized rules and regulations of the telephone company and to the existing applicable law.

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

Dated at San Francisco, California,  
this 3rd day of April, 1956.

John E. Mitchell  
President  
Justin J. Caswell  
Roy L. Vitarelli  
Walter J. Dooly

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Commissioners

Commissioner Rex Hardy, being necessarily absent, did not participate in the disposition of this proceeding.