

ORIGINAL

Decision No. 53186

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DONALD T. FAGETT

Complainant,

vs.

PACIFIC TELEPHONE & TELEGRAPH
COMPANY, a corp.,

Defendant.

Case No. 5748

Vernon Bennett, for complainant.

Pillsbury, Madison & Sutro and Lawler, Felix &
Hall, by L. E. Conant, for defendant.

O P I N I O N

The complaint of Donald T. Fagett, filed with this Commission on March 21, 1956, alleges that there were two pay telephones in the lobby of the Commodore Hotel, 815 West Third Avenue, San Diego, California; that on or about January 18, 1956, on order of the San Diego Police Department, the defendant disconnected these telephones; and that the San Diego Police Department is now agreeable that the said telephone facilities be reinstalled.

On April 5, 1956, the telephone company filed an answer, the principal allegation of which was that pursuant to Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853) defendant on or about January 13, 1956, had reasonable cause

to believe that the use made or to be made of the public telephone services furnished under numbers BELmont 2-9981 and BELmont 9-9642, at the Commodore Hotel, was prohibited by law and that said services were being and were to be used as instrumentalities directly or indirectly to violate or to aid and abet the violation of the law.

A public hearing was held in San Diego before Examiner Kent C. Rogers on May 11, 1956, and the matter was submitted.

Donald T. Fagett testified that he has been the lessee of the Commodore Hotel in San Diego for four years; that he has never been arrested for any offense except traffic violations; that he does not have any connection with any bookmaker, or gambling establishments. He further testified that the telephones in question were public pay telephones provided for the use of guests and located in the lobby of the hotel; that the hotel pays nothing for such telephones, but that the entire cost thereof is paid by telephone users through the insertion of coins in the box; that he had no control over who uses the telephones; that the telephones were located three feet inside the front door of the hotel; that on or about January 18, 1956, he was advised by the defendant that the telephones would be removed for alleged violations of the law (Exhibit No. 2); and that immediately thereafter the telephones were disconnected and removed.

A sergeant in the San Diego Police Department stated that the department has no objection to the reinstallation of the telephones.

Exhibit No. 3 is a copy of a letter from the Chief of Police of the City of San Diego to the telephone company, requesting that the telephone facilities be disconnected. The parties stipulated that this letter was received by the telephone company on January 13, 1956, and that pursuant thereto the defendant removed the telephones on January 20, 1956. The position of the telephone company was that it had acted with reasonable cause in disconnecting the telephone service inasmuch as it had received the letter designated as Exhibit No. 3. The telephone company's attorney stated that no person subscribed to the telephones in the lobby of complainant's hotel, but said telephones are installed or removed at the option of the defendant ⁽¹⁾.

After consideration of this record we now find that the telephone company's action was based upon reasonable cause as that term is used in Decision No. 41415, referred to supra, and that there is no evidence that complainant was engaged in, was directly connected with, or permitted the telephone services to be used for any illegal purposes. It further appears, however, that the complainant was not the subscriber to the telephone services in question, that these services were public pay telephones maintained by defendant on the complainant's premises, and that, therefore, the complaint must be dismissed. The defendant may, if it is so advised, reinstall public telephones in the

(1) The Pacific Telephone and Telegraph Company tariff schedule Cal. P.U.C. No. 11-T, 1st Revised Sheet 6 contains paragraph 2 reading as follows: "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."

Commodore Hotel, 815 West Third Avenue, San Diego, California,
subject to the applicable rules and regulations on file with
this Commission.

O R D E R

The complaint of Donald T. Fagett 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 on the evidence of record and the findings herein,

IT IS ORDERED that the complaint of Donald T. Fagett against The Pacific Telephone and Telegraph Company be, and the same hereby is, dismissed.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California,
this 4th day of June, 1956.

[Signature] President
Justice F. Calves
Raymond L. Winters
[Signature]

 Commissioners

Commissioner Matthew J. Deoley, being necessarily absent, did not participate in the disposition of this proceeding.