

ORIGINAL

Decision No. 53302

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ALFRED AND HELEN RACK,
 Complainants,
 vs.
 THE PACIFIC TELEPHONE AND TELEGRAPH
 COMPANY, a corporation,
 Defendant.

Case No. 5756

Alfred Rack for complainants.

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

O P I N I O N

The complaint of Alfred and Helen Rack of 1510 East Florence Avenue, Los Angeles, California, filed on April 25, 1956, alleges that on February 9, 1956, the telephone of the complainants at the above address was removed by order of the Los Angeles County Sheriff's Office; that trial on the alleged charges was held in Huntington Park, California, on February 8, 1956; and that the case was dismissed for lack of evidence.

On May 2, 1956, the defendant 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 February 9, 1956, had reasonable cause to believe that the telephone service furnished by defendant under number

LUDlow 6-9516 at 1510 East Florence 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 May 22, 1956, and the matter was submitted.

Complainant Alfred Rack testified that he resides at 6926 Compton Avenue; that on or about July 1, 1955, he and his wife, Helen Rack, purchased a cocktail bar at 1510 East Florence Avenue, Los Angeles, California; that the prior owner's name was Charles Bulot; that the telephone under the name of Charles Bulot, with telephone number LUDlow 5-9516, remained in the premises and he paid the bill therefor; that the telephone service consisted of a dial telephone on the wall and an extension at the bar; that on February 9, 1956, at about 2:30 p.m., he was sitting at the bar, the telephone rang, the bartender answered it, made some notes on a sheet of paper and started to hand it to the complainant; that some man grabbed the slip of paper and arrested the complainant and the bartender; that the telephone was removed; that the complainant was not booked and the charges against the bartender were dismissed; and that the telephone was not used for bookmaking purposes.

On cross-examination the complainant testified that he later saw the slip of paper and that it contained the names of two horses.

A deputy sheriff of Los Angeles County testified that on January 28, 1956, at about 2 p.m., he and another deputy went

to the complainant's cocktail bar; that Mr. and Mrs. Rack and the bartender were present; that the telephone rang, Mrs. Rack answered it and told the bartender to answer and write down what was said; that the bartender picked up the telephone and wrote on the back of an envelope; that the witness's partner listened in on the wall telephone and heard a female voice place a \$2 to win bet on a named horse; that the complainant was sitting at the bar reading a sporting news section; that the bartender handed complainant the envelope he had written on, and the officers appropriated the envelope and placed the complainant and the bartender under arrest; and that the envelope contained the name of a horse and the number of a race. The officer asked the bartender what he was going to do with the information he had received and he said he did not know. The officers found a slip of paper in Mr. Rack's wallet with the name of a horse running at Pimlico. The telephone extension was removed. The officer stated that the District Attorney refused to issue a complaint against Mr. Rack and that the complaint against the bartender was dismissed at the preliminary hearing. The officer testified on cross-examination that in his opinion the envelope was a betting marker.

Exhibit No. 1 is a letter from the Sheriff's Department received by the defendant telephone company on February 2, 1956, requesting that the telephone facility be disconnected. The position of the telephone company was that as a result of the receipt of this letter, it acted with reasonable cause as that term is defined in Decision No. 41115, referred to supra, in disconnecting and refusing to reconnect the service.

In the light of this record we find that the action of the telephone company was based upon reasonable cause, as such term is used in Decision No. 41415, referred to supra. We hereby find that the telephone facilities in question were not used for unlawful purposes. Therefore, the complainants are now entitled to a restoration of telephone service.

O R D E R

The complaint of Alfred and Helen Rack 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 complainants' request for restoration of telephone service be granted, and that, upon the filing by the complainants, or either of them, of an application for telephone service, The Pacific Telephone and Telegraph Company shall install telephone service at complainants' bar at 1510 East Florence Avenue, Los Angeles, California, such installation being

subject to all duly authorized rules and regulations of the tele-
phone 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 26th day of June, 1956.

W. E. Mitchell
President

Justin J. Calmes

Ralph L. Linterman

Walter B. Book

Commissioners

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