

ORIGINAL

Decision No. 53755

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EDWIN C. KIMMEL,

Complainant,

vs.

Case No. 5799

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a corporation,

Defendant.

Joseph T. Ferne, for complainant.Pillsbury, Madison and Sutro, and Lawler, Felix
and Hall, by L. B. Conant, for defendant.O P I N I O N

The complaint filed on July 12, 1956, and signed by Edwin C. Kimmel, alleges that prior to April 27, 1956, complainant was a subscriber and user of telephone service furnished by defendant under number DU 7-3522 at the Midway Cafe, 2100 West 11th, Los Angeles, California; that in addition thereto a public telephone, number DU 7-9951, was installed at said cafe; that on or about April 27, 1956, the telephone facilities of complainant and the public telephone at the above address were disconnected by defendant; that on or about April 27, 1956, one Erwin Ray Simmons was arrested on a charge of bookmaking; that complainant has made demand upon defendant to have the telephone facilities restored, but defendant refuses to do so; that said telephone facilities are needed by complainant for the conduct of his business; and that

complainant did not use and does not now intend to use said telephone facilities as an instrumentality to violate the law, nor in aiding or abetting violations of the law.

On July 25, 1956, the telephone company filed an answer, the principal allegation of which was that pursuant to Decision No. 41115, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853), defendant, on or about May 3, 1956, had reasonable cause to believe that the telephone service furnished to complainant under number DUnkirk 7-3522 at 2100 West Eleventh Street, 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 August 14, 1956, and the matter was submitted.

The complainant testified that prior to April 27, 1956, he had an employee by the name of Ray Simmons working at the described cafe premises; that he manages several other cafes and was in this one about one hour each day; that on the said date he arrived at the time said Ray Simmons was arrested; that he had no knowledge of any illegal activities on the premises; that Ray Simmons has been fired; that he needs the telephone to conduct the business; that he will not permit the telephone to be used for illegal purposes; that on the said date he had a private telephone, number DUnkirk 7-3522, and a public pay telephone, number DUnkirk 7-9951, on the premises; and that several days after Ray Simmons' arrest the telephone was removed.

A police officer connected with the vice detail of the Los Angeles Police Department testified that he entered the complainant's premises on April 27, 1956; that there was a restaurant and a separate bar on the premises; that he had something to eat in the restaurant and entered the bar; that there was a private telephone and an extension in the bar; that he heard Ray Simmons place a bet over the private telephone and thereafter put some slips of paper in an eyeglass case; that later Ray Simmons went to the cafe part of the business and returned and put out numbers over the private telephone; that he arrested Ray Simmons and took a betting marker from his possession; that there were two betting markers in the eyeglass case; that Ray Simmons admitted he was taking bets for friends; and that Ray Simmons was subsequently convicted of bookmaking. The witness further testified that complainant was not on the premises at the time the stated activities were taking place.

An employee of the telephone company presented Exhibits Nos. 1 and 2 which are letters from the Chief of Police of the City of Los Angeles to the telephone company requesting that the telephone facilities be disconnected. These letters were received by the telephone company on May 3, 1956. The witness stated that pursuant to the requests contained in these letters, the private and the public telephones were disconnected by central office disconnections. The position of the telephone company was that it had acted with reasonable cause, as that term is defined in Decision No. 411415, referred to supra, in disconnect-

ing the telephone service inasmuch as it had received the letters designated as Exhibit No. 1 and Exhibit No. 2. The telephone company's attorney stated that no person subscribed to the public telephone but that said telephone could be installed or removed at the option of the defendant. ^{1/}

After full consideration of this record, we now find that the telephone company's action was based upon reasonable cause as such term is used in Decision No. 41415, referred to supra. We further find that there is no evidence that complainant was engaged in, was directly connected with, or permitted the telephone facility to be used for bookmaking purposes. Therefore, the complainant is entitled to restoration of private telephone service. It further appears, however, that the complainant was not the subscriber to the public telephone on complainant's premises and as to that telephone the complaint must be dismissed. However, the defendant is authorized to reinstall such public telephone if it elects to do so.

O R D E R

The complaint of Edwin C. Kimmel 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,

^{1/} The Pacific Telephone and Telegraph Company tariff schedule Cal. P.U.C. No. 11-T, 1st Revised Sheet No. 6, contains paragraph 2 providing that public telephones will be installed by the telephone company at its discretion and at locations accepted by the company.

IT IS ORDERED:

(1) That the complainant's request for restoration of private telephone service be granted, and that upon the filing by complainant of an application for private telephone service The Pacific Telephone and Telegraph Company shall restore telephone service at the complainant's premises at the Midway Cafe at 2100 West 11th Street, Los Angeles, California, such restoration being subject to all duly authorized rules and regulations of the telephone company and to the existing applicable law.

(2) That the complainant's request for restoration of public telephone service be, and it hereby is, denied.

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

Dated at San Francisco, California,
this 11th day of SEPTEMBER, 1956.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]
Commissioners