

**ORIGINAL**

Decision No. 54481

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RAY McDADE,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELE-  
GRAPH COMPANY, a corporation,

Defendant.

Case No. 5853

David S. Casey, for complainant.

Lawler, Felix & Hall, by L. E. Conant, for  
defendant.

Frederick B. Holoboff, for the Police Department,  
City of San Diego.

O P I N I O N

The complaint herein, filed on November 21, 1956, alleges that two or three years prior to said date the San Diego Police Department removed, or had removed, from the Surf Club, 718 Ventura Place, San Diego, the pay telephone that was installed on the premises; that the Surf Club is owned and operated by complainant Ray McDade; that said telephone was removed on suspicion of bookmaking activities on said premises; that no legal proceedings of any type were instituted against the complainant or the Surf Club by any law enforcement agency; that complainant needs the telephone for the proper conduct of his business and

for the convenience of his patrons; and that complainant has suffered and suffers pecuniary loss due to the removal of the telephone.

On December 7, 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 August 8, 1952, had reasonable cause to believe that the telephone service furnished to complainant under number HUmboldt 8-9369, at 718 Ventura Place, San Diego, 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 San Diego before Examiner Kent C. Rogers on January 11, 1957, and the matter was submitted.

The complainant testified that he has been operating a public bar and restaurant at 718 Ventura Place, San Diego, for 7-1/2 years; that in 1950 he had the telephone company take out his private telephone at that address and install a semi-public telephone; that in 1952 the defendant removed the telephone and informed him that the reason for its removal was that the San Diego police informed the defendant that the telephone was being used for bookmaking purposes; that he attempted to have the telephone reinstalled, but was unsuccessful; that he had no knowledge that the telephone was being used for illegal purposes; that he needs a telephone in the conduct of his business; and that he wants a semipublic telephone installed by the defendant.

Exhibit No. 1 is a letter dated August 8, 1952, from the Chief of Police of the City of San Diego to the telephone company, requesting that the telephone facilities of complainant be disconnected. A supervising special agent of the telephone company testified that the letter was received by the defendant on August 11, 1952, and the telephone was removed from complainant's premises pursuant to that request. 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. 1.

The deputy city attorney appearing for the San Diego Police Department advised the Commission that the Police Department has no objection to the telephone service being reinstalled.

After consideration of the record we find that the action of the telephone company was based upon reasonable cause, as that term is used in Decision No. 41415, referred to supra. We further find that there is no evidence that the complainant herein was engaged in or was directly connected with illegal activities, or that complainant's telephone was used for illegal purposes. Therefore, the complainant is now entitled to a restoration of telephone service.

O R D E R

The complaint of Ray McDade 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 telephone service be granted and that, upon the filing by the complainant of an application for a semipublic pay telephone service, The Pacific Telephone and Telegraph Company shall install such telephone service at the complainant's place of business known as the Surf Club located at 718 Ventura Place, San Diego, 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 5<sup>th</sup> day of FEBRUARY, 1957.

[Signature]  
President  
[Signature]  
[Signature]  
[Signature]

Commissioners

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