

ORIGINAL

Decision No. 57815

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HENRY KERLEY,

Complainant,

vs.

Case No. 6194

THE PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY, a corporation,

Defendant.

Henry Kerley, in propria persona.  
Gray, Cary, Ames and Fry, by Alfred Lord, for  
defendant.

J. F. Du Paul, City Attorney, by Frederick B. Holoboff,  
Deputy City Attorney, for the Police Department  
of the City of San Diego, intervener.

O P I N I O N

By the complaint herein, filed on October 20, 1958, Henry Kerley alleges that he is doing business as Kerley's Barber Shop at 5019 Newport Avenue, San Diego, California; that without his knowledge the telephone was sometimes used for illegal purposes and was, therefore, ordered removed by the San Diego Police Department; that the absence of the telephone has proven a handicap in conducting the business; and that the Police Department has no objection to the restoration of the telephone service.

On November 5, 1958, the telephone company filed an answer, the principal allegation of which was that the telephone company, pursuant to Decision No. 41415, dated April 6, 1948, in

Case No. 4930 (47 Cal. P.U.C. 853), on or about January 31, 1958, had reasonable cause to believe that the telephone service furnished to complainant under number Academy 3-0839 at 5019 Newport Avenue, 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, and that, having such reasonable cause, it was required to disconnect the service pursuant to Decision No. 41415, supra.

A public hearing was held in San Diego on December 1, 1958, before Examiner Kent C. Rogers, and the matter was submitted.

The complainant testified that sometime six or seven months ago he used the telephone in the shop to call a friend who was going to Mexico, and placed a horse race bet with him; that a police officer was in one of the barber chairs and overheard this; that subsequently complainant was requested to go to the police station and was then asked if he used the telephone for betting purposes; and that about a week later the telephone company removed the telephone. The complainant testified that he needs the telephone in his business.

The intervener's attorney stated it had no objection to the restoration of complainant's telephone service.

Exhibit No. 1 is a copy of a letter from the Chief of Police of San Diego to the telephone company advising that complainant's telephone was on January 25, 1958, being used for the purpose of disseminating horse racing information which was being used in connection with bookmaking in violation of Section 337a of the

Penal Code, and requesting that defendant disconnect said service. An employee of the telephone company testified that this letter was received on January 31, 1958, and that, pursuant thereto, a central office disconnection was effected on February 10, 1958, and the telephone was removed the same day. The position of the telephone company was that it had acted with reasonable cause, as that term is defined in Decision No. 41415, supra, in disconnecting the telephone service inasmuch as it had received the letter designated as Exhibit No. 1.

After full 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, supra. We further find that there is no evidence that complainant's telephone was used for illegal purposes. Therefore, the complainant is entitled to a restoration of telephone service. The service will be ordered restored.

#### O R D E R

The complaint of Henry Kerley 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 him of an application for telephone service, The Pacific Telephone and Telegraph Company shall install telephone service at complainant's place of business at 5019 Newport Avenue, 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 16th day of JANUARY, 1959.

S. L. Fox  
President  
W. L. [unclear]  
W. L. [unclear]  
Theodore [unclear]  
Commissioners