

ORIGINAL

Decision No. 58495

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SAM DI GIOVANNI,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Case No. 6238

Sam Di Giovanni, in propria persona.

Lawler, Felix and Hall, by A. J. Krappman, Jr., for
defendant.

Roger Arnebergh, City Attorney, by Laurence R. Corcoran,
Deputy City Attorney, for the Los Angeles Police
Department, intervenor.

O P I N I O N

In the complaint herein, filed on March 11, 1959, it is alleged that complainant's telephone at 7847 Van Nuys Boulevard, Van Nuys, California, was removed from service on January 16, 1959 without any reasonable cause to believe that its use was prohibited by law or that it was being used as an instrumentality to violate or to aid and abet the violation of the law; that on said date the police arrested on the premises a Kemel G. Daher, and that subsequently the criminal charges against him were dismissed; that at no time have the telephone facilities been used for illegal purposes; and that a telephone is necessary to operate the business conducted at said address.

On March 26, 1959, 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 22, 1959, had reasonable cause to believe that the telephone service furnished to complainant under number State 0-9066 at 7847 Van Nuys Boulevard, Van Nuys, 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, defendant was required to disconnect the service pursuant to this Commission's Decision No. 41415, supra.

A public hearing was held in Los Angeles April 14, 1959, before Examiner Kent C. Rogers.

The complainant testified that he has a cafe and cocktail lounge at 7847 Van Nuys Boulevard known as the Hen House; that prior to January 16, 1959, he had therein a semi-public telephone on the wall in back with an extension to the bar in front and another extension to a separate building in the rear; that he works in the premises part time but has two bartenders; that a friend, Kemel, came in occasionally to help the complainant cash checks; that on January 16 he came in and found Kemel (known as "Turk") under arrest, and was told that he had been caught bookmaking; that the phones were not removed then, but later the complaint against "Turk" was dismissed and then the telephones were removed; that he needs the telephone in his business and no illegal activities will be permitted if the phones are reinstated. On cross-examination it was developed that at least each Friday the complainant gave "Turk" the keys to the premises; that many calls for "Turk" came in on complainant's telephone; that complainant had been without a phone

for four months and needs it in his business.

A police officer attached to the vice detail of the Los Angeles Police Department testified that he and other officers had "Turk" under surveillance for two weeks prior to January 16, 1959; that "Turk" came to complainant's place of business daily at about 11:30 a. m.; that on January 16 the witness called complainant's business telephone from a nearby telephone booth and asked for "Turk"; that "Turk" answered the telephone and the witness placed a horse race bet with him; that thereafter the officers entered complainant's place of business and arrested "Turk"; that before the officers left the premises complainant returned; that there were no betting markers on the premises; and complainant offered to let the officers see anything on the premises.

Exhibit No. 1 is a letter, dated January 20, 1959, from the Chief of Police of the City of Los Angeles to the defendant advising that complainant's telephones were being used as instrumentalities to violate the law in that they were used to forward and receive bets. This letter was received on January 22, 1959, and the telephones were removed by the defendant on January 29, 1959 pursuant thereto. The position of the telephone company was that it had acted with reasonable cause, as that term is used 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 the 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. The evidence is conclusive that complainant's telephone was used for bookmaking purposes. However, the record in the proceeding shows that the

complainant herein was not aware that the telephone was being used for such illegal activities and that a telephone is necessary in the conduct of complainant's business. Complainant is therefore entitled to telephone service.

O R D E R

The complaint of Sam Di Giovanni 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,

IT IS ORDERED that complainant's request for telephone service be granted and that upon the filing by complainant of an application for telephone service, The Pacific Telephone and Telegraph Company shall install such telephone service at the complainant's place of business at 7847 Van Nuys Boulevard, Van Nuys, California, such installation being subject to all duly

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authorized rules and regulations of the telephone company and to the existing applicable law.

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

Dated at San Francisco, California,
this 23rd day of May, 1959.

E. J. Fox
President
W. E. [unclear]
William [unclear]
Theodore [unclear]
Robert [unclear]
Commissioners