

ORIGINAL

Decision No. 59027

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EDWIN C. KIMMEL,

Complainant,

vs.

Case No. 6286

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Sam Houston Allen, attorney for complainant.
Lawler, Felix & Hall, by A. J. Krappman, Jr.,
for The Pacific Telephone and Telegraph
Company.

Roger Arnebergh, City Attorney, by Laurence
Corcoran, Deputy City Attorney, for the
Police Department, intervener.

O P I N I O N

By the complaint herein, filed on June 12, 1959, complainant Edwin C. Kimmel alleges that he has a bar business known as "The Club" at 6211 Van Nuys Boulevard, Van Nuys; that on and prior to April 22, 1959, he was a subscriber and user of telephone service at said address under number State 5-3832; that, in addition, on said premises was a pay telephone under number State 5-9333; that on or about April 22 the telephones were removed from the premises and the services disconnected; that defendant has failed and refused to reinstall said services; that at the time the services were removed an employee of the complainant was arrested

on the premises for bookmaking; that on or about June 3, 1959, the charges against the employee were dismissed.

On June 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 April 27, 1959, had reasonable cause to believe that the telephone service furnished to complainant under number STate 5-3832 and number STate 5-9333 at 6211 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 on the complaint was held in Los Angeles, California, on August 3, 1959, before Examiner Kent C. Rogers.

Horace F. Lane, an employee of the complainant, testified that the premises are a bar; that there was a telephone in the office with number STate 5-3832, and an extension in the kitchen; that there was a pay phone number STate 5-9333 and an extension; that on Monday, April 22, 1959, he was home but was called to the bar; that when he arrived at the bar police officers were there; that he was arrested, and that he gave a key to the office to the arresting officer who entered the office; that nothing was found by the officers at that time; that officers took out the telephone with number STate 5-3832 and both non-dial telephone extensions and arrested the witness; that at a preliminary hearing the

charges were dismissed; and that at no time were any of the telephones on the premises used for bookmaking or betting purposes. The witness further testified that at the time he was arrested a customer by the name of Jack Brooks, a real estate man, was arrested; that the extension telephone in the kitchen was used by all customers and that he and the employees take telephone calls for customers; and that there had been no arrest on the premises in fourteen years.

On cross-examination the witness testified that he knows a man named Jack Brooks, also known as John Lowenbruck; that this man came on the premises; that Mr. Brooks was a customer and in The Club at the time the witness was arrested; and that he called him, as well as other patrons, to the telephone on occasions.

The parties stipulated that Exhibits Nos. 1 and 2 may be received in evidence. Both letters are from the Chief of Police of the City of Los Angeles to the telephone company. Each one advises the telephone company that the telephone at 6211 Van Nuys Boulevard had been removed by the Police Department of the City of Los Angeles for the reason that the telephone was being used for forwarding and receiving bets. Exhibit No. 1 advises that telephone number State 5-3832 and one extension were removed on April 22, 1959, and Exhibit No. 2 advises that telephone number State 5-9333 was being used for receiving and forwarding bets and that the telephone had been removed. It was stipulated that the letter marked Exhibit No. 1 was received on April 27, 1959, and that Exhibit No. 2 was also received on April 27, 1959; that

telephone number STate 5-9333 was disconnected on April 29, 1959, and telephone number STate 5-3832 was disconnected on April 30, 1959, and that neither telephone had been reconnected. It was the position of the telephone company that it had acted with reasonable cause in disconnecting said telephone services inasmuch as it had received the letters, Exhibits Nos. 1 and 2.

A Los Angeles police officer connected with the Vice Detail testified that he was familiar with The Club, located at 6211 Van Nuys Boulevard; that he visited The Club daily except Sunday for a period of several days; that on each occasion he observed John Lowenbruck seated at the end of the bar; that people talked to Mr. Lowenbruck and money changed hands; that he observed the telephone ring on numerous occasions and that the bartender, Mr. Lane, the witness herein, would answer the telephone and then call Mr. Lowenbruck to the telephone, or Mr. Lowenbruck would answer the telephone; that on April 4 the witness visited The Club, but Mr. Lowenbruck was not there; that Mr. Lane accepted a \$6 horse race bet from the witness to be given to Mr. Lowenbruck; that the witness called the telephone number STate 5-9333 thereafter from outside, and made an appointment with Lowenbruck; that later that night the witness placed a bet with Lowenbruck in a car at the rear of The Club; that Lowenbruck gave the witness the complainant's telephone number STate 5-3832, and advised him that he could place bets by calling that number, and that frequently while the officer was on the premises he saw Mr. Lowenbruck go to The Club telephone

and use it on approximately fifty occasions between March 3 and April 22, 1959.

On cross-examination the officer testified that he never placed a bet himself over either one of the telephones.

After full consideration of this record, we find that the telephone company's action was based upon reasonable cause as that term is used in Decision No. 41415, supra. The evidence in this case justifies the inference that the telephone in question has been used in connection with bookmaking and the further inference that complainant's bartender knew that such activities were being carried on.

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,

IT IS ORDERED that complainant's request for restoration of telephone service be denied, and it is further ordered that upon the expiration of thirty days after the effective date of this order, the complainant herein may file an application for telephone service and that when such application is made The Pacific Telephone and Telegraph Company shall install telephone service at the complainant's place of business at 6211 Van Nuys Boulevard, Van Nuys, 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 22nd day of September, 1959.

Ernest All Page
President
John L. Apple
William H. Deley
E. Lynn Fox
Theodore J. Ginner
Commissioners