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Mrs. Bernyce Paltani, testified that she and her son, Thomas, are the officers and sole stockholders of the Complainant, Paltani, Inc., and that her son Edward Paltani is not an officer or stockholder in Paltani, Inc. That Edward was bar manager or bartender at the Paltani restaurant and lounge. That telephone service was discontinued about Thanksgiving time 1977; she was not exactly sure of the date. Further that neither she nor her son Thomas had been notified by the Respondent that they were going to discontinue the service as a result of a request by the Chief of Police of Omaha, Nebraska. She stated that her son Edward is no longer employed by Paltani, Inc. and has no connection with the restaurant and lounge. She testified that quite a few elderly people use the restaurant and the lack of a telephone was a great inconvenience. Further that employees have no way of contacting their home in case of emergency. Also that quite a few doctors use the restaurant and lounge because it is convenient to Veterans Hospital and phone service is a necessity for these doctors. Further she testified that business has fallen off considerably since the disconnection of the phones. She stated that the closest telephone is the filling station next door which closes around 6:00 P.M. and that the closest phone after that is about two blocks to a public telephone. She has completely ceased doing a catering of food business because of the lack of phone service. She had a private phone as well as a pay phone on the premises and both phones have been disconnected and removed. She stated she had no knowledge of a notice from the Respondent concerning a discontinuance of service nor of the court case pending in District Court seeking a restraining order. She stated that her son, Edward, apparently had received the notice and had initiated court action, without her knowledge and had never discussed the problem with her.

Mrs. Eloise Scholz testified that she is the bartender at the Paltani Lounge and Restaurant, that she is greatly inconvenienced by not having a phone since she has seven children and all of the employees are upset as well as many customers because of the lack of a phone on the premises. She stated that the business has diminished since the phone service was disconnected.

Chief Richard R. Anderson of the Omaha Police Division testified that on November 10, 1977, he sent a letter to the Respondent, Northwestern Bell, requesting that service be terminated at Paltani Lounge and Restaurant. He stated two phones were involved and the reason for this request was that as a result of an investigation, officers of the Omaha Police Division have been able to verify that Edward Paltani had used these telephones for illegal gambling activities. He further stated that routine check on Edward Paltani listed him as manager of Paltani's Lounge at 4503 Center Street, Omaha, Nebraska, and that from certain financial documents, Mr. Ed Paltani has been listed as President of Paltani, Inc., or a representative thereof. Chief Anderson stated that he considered the illegal gambling offenses of more than a one person violation because there were other voices besides Edward Paltani's, including a female voice, on the wire tap used by his officers. He would not agree to returning telephone service to this establishment under its present corporate structure.

The Respondent, Northwestern Bell, called Mr. Robert G. Reigle, business office manager, to the stand to testify that he is well acquainted with the telephone tariffs concerning discontinuance of service for unlawful purposes and stated what telephone service the Complainant had prior to November 10, 1977, on which date he received a letter from Chief Anderson requesting that telephone service be disconnected to those numbers at Paltani Restaurant and Lounge. He notified the Complainant concerning the pending disconnection. The letter was mailed November 15, 1977 stating that the service would be discontinued on November 22, 1977. However, because of the Restraining Order from District Court temporarily restraining Respondent from discontinuing telephone service was delayed until November 30, 1977; unless the restraining order was dissolved and that service was actually disconnected on December 2, 1977 and has remained disconnected since that date. He stated that, in his opinion, he would need direction from either the Omaha Police Division or the Public Service Commission to reinstate service. He stated that the rules and regulations or tariffs approved by the Commission and the Federal statutes were very clear concerning disconnection of telephone service for illegal gambling activities. However, they were silent concerning reconnection of service.

DISCUSSION AND CONCLUSIONS

The Respondent's tariff approved by this Commission provides under the general rules and regulations applying to telephone service as follows:

"USE OF SERVICE FOR UNLAWFUL PURPOSES - The service is furnished subject to the condition that it will not be used for an unlawful purpose. Service will be discontinued, upon five days written notice, if any law enforcement agency, acting within its jurisdiction, advises that such service is being or will be used in violation of the law. If the telephone company receives other evidence giving reasonable cause to believe that such service is being or will be so used, it will, upon five days notice, deny the service or refer the matter to the appropriate law enforcement agency."

This tariff provision is derived from 18 USCA Section 1084(d) which provides:

"(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State, or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this

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section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal Court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored."

There is no question in this case that the Respondent acted correctly in this matter upon receipt of the Chief of Police letter requesting discontinuance of service. It would appear from a review of some of the case law that restoration of service would be proper under the facts in this case where we have a former employee who has been charged with illegal gambling and is no longer employed and further, where the lack of telephone seriously hampered the conduct of the business, see Knapp v. New York Telephone Co. (1948) 77 PUR NS 273, 83 New York S 2nd, 919. Further, under the facts of the present case, the health and safety of the patrons and employees are jeopardized by the lack of telephone service. In case of fire or emergency health problems by one of the elderly patrons, the lack of telephone service could cause a tragedy. Therefore, it is the opinion of this Commission that the Respondent should be ordered to restore a pay telephone service located in the public area with no extensions. The Complainants and its officers and stockholders have not been charged with an offense, and have been without a telephone for three months.

Under the circumstances in this case, the Formal Complaint No. 1117 should be sustained, see Cyprus v. New York Telephone Co 84 NYS 2d 114 (1948) 77 PUR NS 277.

After consideration of the evidence in the record, and the applicable statutes and tariffs, we are of the opinion and find:

1. That Paltani, Inc., a Nebraska Corporation, filed a Formal Complaint with the Nebraska Public Service Commission requesting that Respondent, Northwestern Bell, restore telephone service to its place of business at 4503 Center Street, Omaha, Nebraska.
2. That on or about December 2, 1977, the Respondent discontinued telephone service to the Complainant at the above address at the request of the Chief of Police, Omaha, Nebraska, and has continued at all times since to refuse to provide such telephone service.
3. That Edward Paltani was an employee of the Complainant, Paltani, Inc. However, he is no longer an employee nor has he been since sometime in November, 1977.
4. That Edward Paltani is not an officer or a shareholder in Paltani, Inc.
5. That Paltani, Inc. has been without telephone service for approximately three months.
6. That this Commission has a duty to protect the public interest and under the facts of this case it would appear that the health and safety of the patrons and employees of Paltani, Inc. are jeopardized by the lack of telephone service.

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7. That in view of our findings, we order the Respondent to restore a pay telephone in the public area without extensions for use by the public and employees.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Formal Complaint No. 1117 be, and it is hereby, sustained and that the Respondent, Northwestern Bell Telephone Co. is hereby ordered to restore a pay telephone service in the place of business of Complainant, Paltani, Inc.

IT IS FURTHER ORDERED that the Complainant shall be subject to such terms, conditions, and limitations which have been or may hereafter be prescribed by this Commission.

MADE AND ENTERED at Lincoln, Nebraska this 6th day of March, 1978.

NEBRASKA PUBLIC SERVICE COMMISSION

Duane D. Gray
Chairman

ATTEST:

Everett H. New
Secretary

COMMISSIONERS CONCURRING:

Harold D. Simpson

Jack Romars