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Decision No. 8681

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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ORIGINAL

Herman Johnson, Complainant)

vs.

:

Case No. 1481

H. L. Nay Telephone Line,)
Defendant.

Alfred A. Johnson for complainant
F. G. Nay for H. L. Nay.

BY THE COMMISSION.

O P I N I O N

This case was first referred to the Commission informally and the Commission made certain suggestions to the defendant which were ignored by the defendant.

The complainant thereupon filed formal complaint.

The complainant alleges that he is a resident of Napa County and that he has been a subscriber to telephone service of the defendant, H. L. Nay's telephone line since February, 1918; that on, or about, November 25th, 1919, his telephone went out of service and remained out of service for the period of about one month thereafter, with the exception of one day when it was temporarily repaired; that despite frequent requests made upon the defendant, no attempts were made to replace the interrupted service until the end of the month of December, 1919, except one day mentioned above; that defendant refused to make any allowance in the bill rendered subsequently for service on account of the failure to provide service as outlined above; and that upon

complainant's refusing to pay the bill in full, defendant did on June 7th, 1920, and against complainant's protest, cause the complainant's telephone service to be removed.

Complainant asks that defendant be compelled to restore service and adjust and correct his bill in accordance with the foregoing facts.

Defendant, answering the complaint, admits that this line was out of order perhaps eight or nine days, owing to a very high north wind and alleges that the only lineman available was pressed into service during this period to fight forest fires.

He alleges further, that as soon as he received a letter from complainant notifying him that the line was out of order, he notified his lineman and had the line repaired, after which neither he, nor his lineman, received any further notice from the complainant that the line was out of order. He therefore asks that complainant be directed to pay his bill in full and to pay all expenses to be incurred in reconnecting complainant's line.

A public hearing was held at Calistoga on February 7th, 1921, by Examiner Satterwhite. The matter was submitted and is now ready for decision.

The testimony showed that the line in question has four or five subscribers upon it; that it was out of service for approximately one month's time, following Thanksgiving Day, 1919; that it was repaired once during this period; but remained so only one day; that three wire leads passing in front of a Mr. C. M. Wolf's house were broken and down on the ground.

Complainant testified that he had twice written defendant during this time notifying him that the line was out of order. Mr. C. M. Wolf, a witness for the complainant, testified that he is one of the subscribers on this line and that he wrote to defendant, notifying him that the line was out of order during this period.

F. G. May, for the defendant, testified that when the line was first out of order, his lineman was unable to attend to it on account of the necessity of his fighting forest fires in the neighborhood; that thereafter his lineman did repair the line and neither he nor his lineman received further notice that the line was out of order, until approximately one month had elapsed since the first day the line was out of order.

Further testimony was given, showing that the line has been out of order for short periods of time on and off for the past two years; that wherever the service is so interrupted the subscribers are supposed to notify the owner or his lineman, in order to have it repaired. Defendant's lineman testified, under cross-examination, that the poles go down every time the wind blows; that they are redwood poles only four inches by four inches in cross section.

It appears that this telephone line is not constructed or being maintained in a manner to render efficient or satisfactory telephonservice and it is our opinion that the burden of properly maintaining a telephone utility should not rest on the subscribers but on the utility, that in this respect it should be the business of the utility to inspect its lines and keep them in such condition that good and continuous service will result.

Without first making a careful inspection of the property of this defendant, the Commission cannot state as to what particular improvements should be made, but if it is a fact that by reason of age or any other reason the defendant's poles are decayed or insecurely set in the ground, they must be reset or stubbed, or replaced by poles of sufficient height and cross section; and if it is a fact that the defendant's telephone wires are subject to breaking, due either to age or interference from trees, said wires must be replaced, or trees trimmed or both.

It is our opinion that the defendant should be excused of responsibility for one week's time, during which the line in question was out of order and during which defendant's line-man was obliged to be absent for the purpose of fighting forest fires.

The defendant's request that cost of reconnecting service for complainant cannot be allowed. The evidence showed clearly that complainant notified defendant promptly of his demand for an adjustment. The discontinuance of service by defendant was made as the result of a dispute in which complaint was made against defendant's action in demanding pay for service which was not received. The complainant having made a showing that his complaint was justified, the Commission is therefore justified in requiring service restored without any payment by complainant for the cost of reconnecting.

ORDER

Herman Johnson, having filed complaint in the above entitled proceeding, a public hearing having been held thereon, the matter being submitted and now ready for decision,

The Railroad Commission hereby finds as a fact that complainant was without telephone service for a period of approximately one month beginning Thanksgiving Day, 1919;

That defendant's lines are not being maintained in proper manner to insure good telephone service;

And that defendant was not justified in disconnecting the telephone service of complainant on June 7th, 1920.

Basing its order upon the foregoing findings of fact and upon the further findings of fact set forth in the opinion preceding this order,

IT IS HEREBY ORDERED, that H. L. Nay, or his representative, forthwith restore telephone service to Herman Johnson, complainant.

IT IS FURTHER ORDERED that H. L. Nay, or his representative, render within fifteen (15) days of the date of this order, an account to complainant, billing him for unpaid continuous exchange service at the rate of \$2.00 per month up to June 7th, 1920, and for toll service incurred and unpaid to date, less \$1.53, allowed on account of no service received for 23 days, during the month of December, 1919, this bill to become due and payable upon its receipt by complainant.

IT IS FURTHER ORDERED that H. L. Nay, or his representative, proceed at once to reconstruct all of his telephone lines in accordance with the requirements of this Commission as outlined in the preceding opinion; and that this work shall be completed and a report to that effect, showing in detail what has been done, made in writing to the Railroad Commission on or before May 1, 1921.

Dated at San Francisco, California, this 30 day of March, 1921.

Frank P. DeWitt
H. J. Loveland
H. B. Bunker
Walter H. Howard

Commissioners.