

ORIGINAL

Decision No. 53813

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN FRANCIS DONOVAN, III,
 Plaintiff,
 vs.
 THE GENERAL TELEPHONE CO.
 of CALIFORNIA, a Corporation,
 Defendant.

Case No. 5768

John Francis Donovan, III, in propria persona.

A. M. Hart and Marshall K. Taylor, for defendant.

Richard Lee Hester, for the Commission staff.

INTERIM OPINION

The complainant herein is an individual residing at 2907 Third Street, Santa Monica, California, which is an apartment building occupied by the complainant and his mother and several tenants. Prior to May 11, 1956, there was located in the front hallway of this building a pay telephone which had been installed by The General Telephone Company under the terms of a written agreement dated July 28, 1955.

On May 11, 1956, complainant alleges that the defendant telephone company disconnected the telephone service. The instant action is one seeking restoration thereof.

The answer of the defendant, The General Telephone Company, admits that the service was disconnected on May 11, 1956, and further alleges that by letter dated November 21, 1955, the defendant telephone company notified complainant that the service would be removed effective December 22, 1955, inasmuch as defendant was not collecting enough revenue therefrom. It is undisputed that the telephone in question was a public coin box operated telephone.

Public hearing was held on July 23, 1956, before Examiner Grant E. Syphers in Los Angeles, at which time evidence was adduced.

At the hearing the complainant filed an amended and supplemental complaint which, among other things, attempted to broaden the issues of the matter by referring to a certain alleged conspiracy between the defendant and the City of Santa Monica and also to certain alleged wiretappings.

The complainant presented testimony describing the people who are living in the building in question, and pointed up the fact that there is no telephone available to any of them except in one apartment which has a private telephone. Complainant's mother, who is ninety-four years of age and dependent upon charity both for living expenses and medical attention, testified as to her need for a telephone. Likewise a tenant of the apartment house, the father of five children, testified as to the need of his family for a telephone.

The manager of the Santa Monica Exchange of defendant telephone company presented testimony as to the equipment in question, pointing out that it was a coin box operated pay telephone installed at the discretion of the company. The telephone was removed because the company had concluded that it was not realizing sufficient revenue.

It was the position of the telephone company that the complainant owes a back bill of \$101.78 and that it will install a telephone if this amount is paid, plus additional amounts for deposits and service connections.

The matter was submitted for Commission decision on two principal questions: (1) whether or not the collateral issues of conspiracy and wiretapping should be included in this matter, and (2) whether or not the complainant is entitled to a temporary restoration of telephone facilities pending the final outcome of this proceeding.

As to the first question, we now rule that this complaint is limited to a determination of whether or not the complainant is entitled to telephone service at 2907 Third Street, Santa Monica, California. The other issues raised in the complaint relative to alleged conspiracy and wiretapping are matters which are not properly before this Commission.

As to the request for temporary restoration of telephone service pending a final determination of this hearing, we find that this should be granted. Exhibit "A" attached to the defendant telephone company's answer is a copy of the agreement entered into by the parties at the time this pay telephone was installed. This agreement specifically states "Lessor hereby permits lessee to install and maintain public telephone and company booth on premises located at 2907 Third Street, Santa Monica, California, commencing upon the date hereof and continuing until terminated by either party upon thirty days' written notice to the other party."

The record shows that the defendant company did address a letter to the complainant under date of November 21, 1955, which stated that the telephone was not returning adequate revenues and concluded with this sentence, "Therefore we plan to remove the service effective December 22, 1955". However, the service was not removed on that date and, in fact, the actual disconnection was not made until four and one-half months later on May 11, 1956. We are aware that the defendant company has set out reasons for this delay, but it is undisputed in this record that there was no other notice given and, in particular, there was no notice stating the telephone would be removed on May 11, 1956.

In the light of this record we conclude, therefore, that the defendant telephone company should reinstall the telephone service. If it desires to remove this service it should do so according to its rules and the terms of the contract into which it entered

with complainant.

This order shall be interim in nature and the matter continued for the taking of any further relevant testimony as to the right of the complainant to have telephone service at the premises in question and the right of the defendant, under its filed rules and regulations, to change or remove this telephone service.

INTERIM ORDER

Complaint and answer as above entitled having been filed, a public hearing having been held thereon, the Commission being fully advised in the premises and hereby finding it to be in the public interest.

IT IS ORDERED that The General Telephone Company of California shall reinstall the same type of telephone service that existed prior to May 11, 1956, at the premises of complainant at 2907 Third Street, Santa Monica, California. This reinstallation shall be made within five days after the effective date of this order. Further proceedings in this matter may be held before such Commissioner or examiner and at such time and place as may be designated by this Commission.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 25th day of SEPTEMBER, 1956.

[Signature]
 President

[Signature]

[Signature]

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 Commissioners