

ORIGINALDecision No. 54297

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN FRANCIS DONOVAN, III,
Plaintiff,

vs.

Case No. 5768

GENERAL TELEPHONE COMPANY OF
CALIFORNIA, a corporation,
Defendant.John Francis Donovan III, in propria persona.Marshall K. Taylor and A. M. Hart, for defendant.Richard Lee Hester, for the Public Utilities
Commission staff.O P I N I O N

By decision No. 53813, dated September 25, 1956, in Case No. 5768 this Commission issued an Interim Order directing General Telephone Company of California to reinstall on the premises of complainant at 2907 Third Street, Santa Monica, California, the same type of telephone service that existed prior to May 11, 1956.

Further public hearings were held in this matter on November 16, 20 and 21, 1956, in Los Angeles, before Examiner Grant E. Syphers at which times evidence was adduced and the matter now is submitted.

At the hearing on November 16 the defendant telephone company presented evidence relative to the revenue which the telephone company had received from the pay phone in question. This disclosed that it had received an average of \$13.50 per month for the period from August 5, 1955, to May 29, 1956. The testimony also disclosed instances when the pay phone in question,

EXbrook 9-9977, was used for periods longer than those permitted by the initial coin deposit and that additional monies had not been deposited for these overtime uses. A company witness described the facilities at the apartment in question, pointing out that the principal telephone is located in the hall and is a public pay phone. There is an extension connected with this phone which leads into a room adjoining the hallway. Incoming calls can be received on this extension telephone but outgoing calls cannot be made thereon. Furthermore, the telephone will not operate properly if the extension telephone is left off of the receiver. It was the opinion of the company witness that on occasions the telephone service was inoperative because someone had left the telephone off the receiver on the extension line.

It was further testified that the original installation was made in August of 1955 and that the extension to the public pay phone was installed by the serviceman through mistake. When the company sent the serviceman back to remove this extension, the occupant of the premises refused to permit him to do so.

It should be noted that subsequent to the issuance of Decision No. 53813, supra, the complainant in this matter filed a request asking this Commission to cite the defendant telephone company for contempt for disregard of the order in that decision.

An analysis of the testimony and of the allegations discloses the essential facts in this connection as follows: Decision No. 53813 was dated September 25, 1956, effective twenty days thereafter. On September 28, 1956, an installer for the defendant telephone company reinstalled the facilities including the public pay telephone and the extension thereto. The service order which the installer had did not call for the reinstallation of the extension but nevertheless he made such reinstallation at

the request of the tenant. Subsequently the installer, upon instructions from his superiors, disconnected the extension. This was on October 1, 1956, at 9:35 a.m. That same afternoon the Commercial Department of the telephone company requested the extension to be reconnected and this was done in the afternoon of October 2, 1956.

It is the position of the complainant that the disconnection of the extension phone on October 1, 1956, constitutes contempt of the Commission's order. However, it should be noted that this disconnection was made prior to the effective date of Decision No. 53813 and as of the date of the last hearing in this proceeding the pay telephone and extension were both connected.

The position of the telephone company is that the notice which it gave to defendant under date of November 21, 1955, and which is discussed in Decision No. 53813, supra, constitutes an adequate notice to permit them now to remove the telephone. The essential facts appear to be the same as were summarized in Decision No. 53813. The notice was dated November 21, 1955, and stated that the service would be removed "effective December 22, 1955." The service was not removed until May 11, 1956. It was reinstalled as a result of Decision No. 53813, supra, as hereinabove set out. In the light of this record we reaffirm our findings in Decision No. 53813, supra.

There was some testimony relative to complainant's right to have individual telephone service. However, this is not a matter before us in this proceeding.

It should be noted that subsequent to the hearing on November 16, 1956, the matter was continued until November 20. On that date the complainant did not appear at the hearing but

forwarded a letter asking that the matter be continued due to the illness of his wife. Specifically the letter stated: "Because of the illness of my young wife at Ojai Cal I find it impossible to be present on November 20/56 to conclude the hearing Donovan vs. Gen Tel of SM. May I ask this go over till the following day."

The matter was continued until the following day, November 21, 1956, at which time the complainant did not appear and the matter was submitted.

The failure of the complainant to appear on either November 20 or 21 in no way prejudices his rights in this matter since the ensuing order will reaffirm the order of Decision No. 53813, supra, and the complainant will be left in the position of having the telephone facilities installed subject to the contract between complainant and the telephone company and the existing rules and regulations of that company and the applicable law.

O R D E R

This Commission having entered an Interim Opinion and Order by Decision No. 53813, dated September 25, 1956, further hearings 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 order of Decision No. 53813,
supra, be and it is hereby affirmed.

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

Dated at San Francisco, California, this 18th day
of DECEMBER, 1956.

Peter E. Mitchell
President

Ray C. Waterman

Michael J. Doolan

P. J. Hart

E. J. ...
Commissioners