

ORIGINAL

Decision No. 55133

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN FRANCIS DONOVAN, III
Plaintiff,

vs.

Case No. 5906

GENERAL TELEPHONE COMPANY,
a corporation, SANTA MONICA,
Defendant.

John Francis Donovan, III, in propria persona.

Albert M. Hart and H. R. Schneider, for defendant.

Richard Lee Hester, for the Commission staff.

O P I N I O N

By the complaint herein, filed on February 13, 1957, complainant alleges that he resides at 2907 Third Street, Santa Monica, California; that it is necessary that he have a residence telephone; that he has requested of the defendant that it install a residence telephone in his home but the defendant refuses to make such installation; and that said denial is without cause. Complainant prays that the defendant be ordered to install the residence telephone as requested.

On March 20, 1957, the defendant filed its answer. Therein, inter alia, it admits that complainant has applied for residence telephone service and that defendant has denied said application. It also sets forth two affirmative defenses as follows:

First Affirmative Defense

That on or about April 23, 1953, defendant installed residence telephone service under telephone number EXbrook 9-5392 at 2907 Third Street, Santa Monica, California, pursuant to an application therefor submitted to defendant in the name of Jeanette G. Donovan; that said Jeanette G. Donovan is the mother of the complainant herein; that said telephone service was used for the benefit of the complainant herein as well as said Jeanette G. Donovan; that on or about June 22, 1955, said residence telephone service furnished under the telephone number EXbrook 9-5392 was discontinued for nonpayment of a bill in the amount of \$101.78 and neither this amount nor any portion thereof has since been paid to the defendant and the whole thereof remains due, owing and unpaid; that Rule and Regulation No. 11-A of defendant's tariff schedules reads as follows:

"If a balance from previous bill has not been paid, service is subject to discontinuance prior to the date referred to above. If service is discontinued, restoration will not be made until the charges for which the service has been discontinued have been paid";

that such rule and regulation was on file with the Public Utilities Commission of the State of California at all times referred to in the first affirmative defense; and that said Rule and Regulation No. 11-A prohibits defendant from restoring telephone service if a balance from a previous bill has not been paid until the charges for which the service has been discontinued have been paid.

Second Affirmative Defense

For a second affirmative defense defendant realleges the allegations of the first affirmative defense relative to the telephone service being in the name of Jeanette G. Donovan, being used

by complainant, being discontinued for nonpayment of the telephone bill and the whole of the bill remaining due, owing and unpaid. It further alleges that Rule and Regulation No. 11-G reads as follows:

"G. ABUSE OR FRAUD

The Company has the right to refuse telephone service to any premises and at any time to discontinue telephone service if it finds it necessary to do so to protect itself against abuse or fraud. Abuse or fraudulent (sic) use of service also includes the use of service or facilities of the Telephone Company to transmit a message or to locate a person or otherwise to give or obtain information, other than regular information service, without payment of charges";

that such rule and regulation was on file with the Public Utilities Commission of California at all times mentioned in the first affirmative defense; that said Rule and Regulation No. 11-G gives defendant the right to refuse telephone service to any premises if it finds it necessary to do so to protect itself against abuse and fraud; and that defendant would be subject to abuse if, in view of the balance due for service rendered to complainant's household, defendant is required to furnish residence telephone service to the complainant herein, without payment of said outstanding balance having first been received.

It is clear from the said affirmative defenses that defendant bases its refusal to serve complainant upon the sole grounds that complainant's mother has an unpaid telephone bill.

A public hearing on the matter was held in Los Angeles on May 16, 1957, before Examiner Kent C. Rogers, evidence was presented and the matter was submitted. It is ready for decision.

At the outset of the hearing the defendant stipulated that, in the absence of the defendant's special defenses, the complainant is entitled to telephone service as requested, that complainant has applied for telephone service and that the

defendant has denied service to complainant. The parties were thereupon advised that pursuant to the stipulation the complainant had made a prima facie case.

Defendant's Evidence

The position of the telephone company was testified to by two of its officials as follows:

For several years complainant and his mother, Mrs. Jeanette Donovan, have owned an apartment house at 2907 Third Street, Santa Monica, California. They reside in Apartment No. 1 therein. At one time Jeanette Donovan was the subscriber to a telephone furnished by defendant at that apartment. She became delinquent in the payment of telephone bills amounting to \$101.78 and the defendant discontinued service but left the telephone in place. While the telephone was in service, numerous long distance calls were made therefrom. Some of these, as admitted by complainant, were for his benefit and some were for the benefit of Jeanette Donovan. The defendant refuses to provide service in the apartment of the complainant until the delinquent bill of Jeanette Donovan has been paid, as well as the normal advance charge of \$3.50 for the four-party line requested by complainant, and a \$4.00 service reconnection charge based on an instrument being in the apartment. The defendant refuses to provide service to complainant until Jeanette Donovan's bill has been paid. This refusal is based on the defendant's policy of not providing service for a member of a household when another member of the household residing at the same place has an unpaid bill. This policy is not included in any of the defendant's filed tariffs but is simply an unwritten policy of the defendant. In addition, defendant's Tariff Rule and Regulation 11-G gives the defendant authority to refuse service if necessary to protect itself against fraud and abuse, and defendant

contended that it would be subject to abuse if it were required to provide service for complainant without receiving payment of Jeanette Donovan's bill.

Conclusion

In our opinion complainant is entitled to have telephone service furnished to him upon the payment of one month's charges in advance and the fee for reconnecting the telephone now in his premises, disregarding any unpaid bills of Jeanette Donovan, and it will be so ordered. The evidence shows that, with the exception of a few long distance calls made by complainant, the unpaid bill of Jeanette Donovan is for telephone services for her use and benefit. Defendant's Rule and Regulation No. 11-A1., therefore, is immaterial in this proceeding as complainant has no unpaid telephone bill. The only abuse claimed by the defendant under its Rule and Regulation 11-G is that defendant has an unwritten rule that when a member of a household has a delinquent bill service will not be furnished to another member of the same household until the bill has been paid. To state the unwritten rule is to show its unreasonableness. Its authorization would permit persons, through no fault of their own, to be responsible for a bill over which they have no control. While the record shows that complainant had some use of Jeanette Donovan's telephone, nevertheless she was the subscriber thereto (General Telephone Company, Rules and Regulations, Definition 22, Cal. P.U.C. Sheet 5639-T)^{1/} and to permit complainant to be denied service until he pays Jeanette Donovan's bill is entirely unwarranted and unjustified.

1/ 22. Subscriber

The person in whose name service is furnished as evidenced by the signature on the application or contract for that service, or in the absence of a filed instrument, by the receipt and payment of bills regularly issued in his name regardless of the identity of the actual user of the service.

ORDER

A complaint having been filed, a public hearing having been held thereon, the Commission having found that the defendant should be required to provide complainant with telephone service at his residence, and based upon said finding,

IT IS ORDERED that within ten days after the effective date of this order, defendant, General Telephone Company, shall install four-party-line telephone service for complainant in complainant's residence at 2907 Third Street, Santa Monica, Apartment No. 1, such installation being subject to all duly authorized rules and regulations of the defendant and to the existing applicable law.

The Secretary is hereby directed to serve a copy of this decision upon the defendant.

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

Dated at San Francisco, California,
this 18th day of June, 1957.

[Signature]
President
[Signature]
[Signature]

Commissioners

Rex Hardy
Commissioner S C. Lyn Fox, being
necessarily absent, did not participate
in the disposition of this proceeding.