

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Billy R. Torrence and Dorothy	)	Formal Complaint No. 1084
Torrence, Omaha, Nebraska,	)	
Complainant	)	
v.	)	SUSTAINED
Northwestern Bell Telephone Company,	)	
Omaha, Nebraska,	)	
Defendant.	)	Entered: August 19, 1974

APPEARANCES: For the Complainant  
 Duane L. Nelson, Attorney  
 420 Sharp Building  
 Lincoln, Nebraska

For the Defendant  
 A. L. Grauer, Attorney  
 100 South 19th Street  
 Omaha, Nebraska

OPINION AND FINDINGS

BY THE COMMISSION:

By formal complaint filed May 10, 1974, Billy R. Torrence and Dorothy Torrence, Omaha, Nebraska, charge Northwestern Bell Telephone Company, Omaha, Nebraska, with disconnection and refusal of service.

A copy of the complaint was served upon the defendant by certified mail on May 14, 1974, and defendant's answer was filed on May 22, 1974.

Pursuant to notice required by law, public hearing was held on the complaint on July 16, 1974, at 9:30 a.m. in the Commission Hearing Room, Lincoln, Nebraska with appearances as set forth above.

Upon consideration of the formal complaint, the answer, the evidence adduced at the hearing and being fully advised, the Commission is of the opinion and finds that:

1. Complainants are individuals residing at 11122 North 48th Street, Omaha, Nebraska, in Douglas County, Nebraska, outside the city limits of Omaha, Nebraska.
2. Defendant is a common carrier providing telephone service in Omaha and the surrounding area and is under the jurisdiction of this Commission.
3. The complaint alleges that on or about April 15, 1973, the defendant discontinued telephone service to the complainants and have since that time refused to provide them with such service.
4. Defendant's refusal of service is based upon the following provision of its tariff on file with and approved by this Commission:

USE OF SERVICES FOR UNLAWFUL PURPOSES - The service is furnished subject to the condition it will not be used for an unlawful purpose. Service will not be furnished if any law enforcement agency, acting within its jurisdiction, advises that such service is being used or will be used in violation of 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 either discontinue or deny the service or refer the matter to the appropriate law enforcement agency.

5. The evidence shows that on April 6, 1973, officers of the Omaha Police Department armed with a search warrant arrested Billy R. Torrence and removed four telephones from the premises at 11122 North 48th Street. Defendant was advised of this action by letter of the Chief of Police dated April 10, 1973. In that letter and in a further letter dated June 22, 1973, the Chief of

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Police requested that defendant refuse telephone service to the complainant or other persons at the 11122 North 48th Street address.

6. Complainant, Billy R. Torrence, has been convicted in Douglas County and is now in custody at the Nebraska Penal Complex.

7. Dorothy Torrence testified that subsequent to the arrest of Billy R. Torrence, her son was told by the telephone company that telephone service could not be provided upon orders of the Chief of Police and that since that time she has been unsuccessful in obtaining telephone service.

8. Complainant contends that telephone service was discontinued without notice or an opportunity to present evidence or challenge the alleged unlawful use of the service.

9. Defendant cites as its defense the tariff quoted above and the provisions of Paragraph 1084(d) of Title 18 of the United States Code as follows:

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 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.

10. Defendant further claimed that complainant owed an outstanding bill in the amount of \$180.85. The evidence indicated that this bill was paid on July 11, 1974.

11. The evidence indicates that complainant's telephone service was disconnected by the action of the Omaha Police Department in connection with his arrest; that defendant's refusal to re-establish such service was in accord with its approved tariff quoted above and for the further reason of the unpaid bill.

12. The evidence adduced in this matter indicates a conflict between the defendant's tariff and the provisions of the Federal Statute in that there is no provision in the tariff for notice to the subscriber, whereas the statute quoted above provides for "reasonable notice to the subscriber" of the disconnection of service.

13. Defendant should be required to file with the Commission for its approval an appropriate amendment to the tariff provision quoted herein which will make reasonable and adequate provision for notice to subscriber.

14. The evidence indicates that Billy R. Torrence is no longer at the 11122 North 48th Street address. Dorothy Torrence was not arrested or convicted on the same charge. She still resides at the above address and needs telephone service because of a heart condition. It is evident that the facts have changed since the Police Chief's letter of June 22, 1973, which directed the refusal of service to Billy R. Torrence or any other person at that address for an indefinite period.

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15. The record contains no evidence showing any present or future unlawful use of the service at the time of hearing. Telephone service should be reconnected for Dorothy Torrence unless such present or future unlawful use is established in the court having jurisdiction over the alleged unlawful use of service.

16. The formal complaint should be sustained.

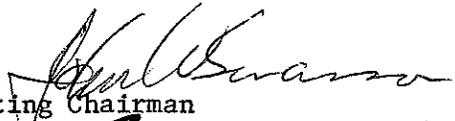
ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Formal Complaint No. 1084 be and it is hereby sustained and the Northwestern Bell Telephone Company be and it is hereby ordered to reconnect telephone service for Dorothy Torrence unless present or future unlawful use of such service is established in a court having jurisdiction over the alleged unlawful use of service.

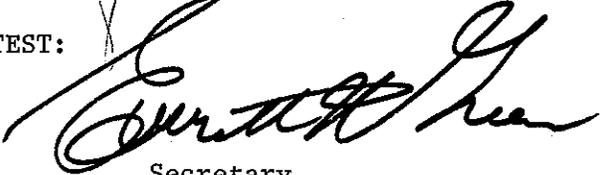
IT IS FURTHER ORDERED that defendant, Northwestern Bell Telephone Company file with the Commission for its approval an appropriate ammendment to the tariff provision set forth in the Opinion and Findings, which by this reference is made a part hereof, which will make reasonable and adequate provisions for notice to the subscriber.

MADE AND ENTERED at Lincoln, Nebraska, this 19th day of August, 1974.

NEBRASKA PUBLIC SERVICE COMMISSION

  
Acting Chairman

ATTEST:

  
Secretary

COMMISSIONERS CONCURRING:

