

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Jimmie Firestone)	FORMAL COMPLAINT No. 1232
1231 N. 56th Street)	
Lincoln, Nebraska 68504)	
Complainant)	
vs.)	MODIFICATION OF ORDER
)	ENTERED APRIL 16, 1991
Lincoln Telephone & Telegraph)	
Company)	
1440 M Street)	
Lincoln, Nebraska 68501)	
Defendant)	Entered: June 18, 1991

APPEARANCES:

For the Complainant:
Jimmie Firestone, Pro se.
1231 N. 56th Street
Lincoln, Nebraska

For the Defendant:
Paul Schudel, Esq.
1500 American Charter Center
Lincoln, Nebraska

OPINION AND FINDINGS

BY THE COMMISSION:

By formal complaint filed January 30, 1991, Jimmie L. Firestone, Lincoln, Nebraska, Complainant, charges that Lincoln Telephone and Telegraph Company, hereafter LT&T, has refused him service.

On February 13, 1991, LT&T filed a Statement of Satisfaction of the above referenced formal complaint, which was not acceptable to the complainant.

On March 7, 1991, LT&T filed its answer to the complaint.

After notice, a hearing was held on the formal complaint on March 13, 1991, with appearances as set forth above.

On April 16, 1991, the Commission sustained in part the formal complaint, and on April 29, 1991, LT&T moved the Commission for Rehearing of such order.

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

1. Complainant has been a subscriber of LT&T and desires service again from the company.

Formal Complaint No. 1232

Page Two

2. Defendant is a corporation organized and existing under the laws of the State of Nebraska with its principal place of business at Lincoln, Nebraska. It is engaged in the telephone business as a common carrier providing service through exchanges located throughout 23 counties in Southeast Nebraska.

3. The complaint alleges that the complainant has been a subscriber of LT&T and has a past due account in the amount of \$1,356.49 which is attributable to unpaid local service and long distance charges which LT&T has previously provided. The Complainant was formerly engaged in business as a sole proprietor and later as an officer of a corporation listed as Classic Homes, Inc. Complainant attended an alcohol drug treatment center in Norton, Kansas in February, 1990 and during that time both personal and corporate long distance calls and fees were charged to his residence account. There is no dispute that all the charges accrued on the residence account of complainant.

4. Mr. Jimmie Firestone testified in his own behalf. He is actively engaged in a rehabilitation program which includes maintaining sobriety and attending school full-time (Exhibit #5 - Letter from Valley Hope Alcohol and Drug Rehabilitation Treatment Center, and Exhibit #4 - Department of Education). He has been sober for over 13 months. He attends Southeast Community College and carries a 3.87 grade point average. He has physical custody of his 14 year old son; his 8 year old son and 6 year old daughter reside with him on weekends, usually every week. His 6 year old daughter is asthmatic (Exhibit #3 - letter from Dr. Swanson). Mr. Firestone testified that it would be helpful to have a phone back in his residence. He submitted Exhibit #2, a letter from his landlord in regard to service in case of emergency repairs. He testified that he was receiving service at 1231 N. 56th under the landlord's name, Marvin and Vera Heimsoth, until the company discontinued service. At that time his service was requested by and payment was guaranteed by his landlord.

5. Complainant testified that his monthly income has dropped to \$293.00 per month which he receives from Social Service AFDC. His ability to pay for phone services is limited to basic local service and \$5.00 per month on the past due balance until such time as he has the ability to pay more. Mr. Firestone submitted a copy of two money orders in the amount of \$5.00 each, which were sent to LT&T in the prior two months as a good faith effort on his part (Exhibit #10). Mr. Firestone agreed to accept service on a toll restricted basis, however, he requested the call waiting feature because he lives with his 14 year old son.

6. On cross examination, Mr. Firestone testified that the amount of the debt is not in dispute. He has not chosen to file for bankruptcy. He does not have the ability to borrow funds at the present time from either commercial sources or family members. He lives about a block away from a pay phone. He has had contacts

Formal Complaint No. 1232

Page Three

with the phone company in order to work out an acceptable repayment plan, however, he could not reach a satisfactory agreement. He has been advised it would be better to concentrate on going to school and concentrate on abstinence, AA work, AA meetings, and treatment at this time and not to work. The Vocational Rehabilitation office expects Mr. Firestone to graduate and find employment after July of 1992, and will assist him in finding employment.

7. Mr. Deloyd Larsen, Customer Service Director for Lincoln Telephone Company, testified on behalf of the defendant. The complainant is responsible for payment of all charges under Exhibits 11, and 12 as residential service. The total bill reflects an accumulation of service from several accounts. Mr. Larsen testified that they have made efforts in supplying information to the complainant to assist in determining the bill and in working out a payment plan. Mr. Firestone also has an outstanding yellow page ad which is not a part of this action, disconnection or refusal of service (Exhibit #14). The answer filed with the Commission outlines a recommended repayment plan which would meet with the company's approval. LT&T's repayment plan calls for monthly payments of \$226.08. The complainant's plan would take 22 1/2 years to pay off and would not include any interest.

8. The Commission finds that neither plan is reasonable. It would not be fair to the LT&T subscribers to allow the complainant 22 years in which to pay the arrears. A bad debt is absorbed in the rates and the acceptance of complainant's plan might set a precedent which would cause this type of debt to burgeon. On the other hand, LT&T's plan is clearly out of the reasonable reach of the complainant. He is currently concentrating his efforts on study and alcoholism rehabilitation and he is making excellent progress in both areas. To require him to take on the added stress of finding a job at this particular juncture simply to hasten the repayment of the arrearage seems not only harsh, but quite possibly counterproductive.

9. Mr. Firestone's recovery over the past 13 months from alcohol abuse is to be commended. His continued recovery is contingent upon carrying through all of the steps of this program. To this end telephone service is a necessary adjunct. Denial of telephone service can adversely affect this recovery.

10. The Commission finds that, while \$5.00 per month on the past due balance may be considered insignificant, it is all that Mr. Firestone can afford at the present time. The Commission further finds the required payment of \$226.08 per month would be unreasonably excessive in light of Mr. Firestone's current circumstances.

Formal Complaint No. 1232

Page Four

11. Mr. Firestone has cited State ex rel Webster v. Nebraska Telephone Company 17 Neb. 126, 22 N.W. 237 (1883) in support of his complaint. The circumstances at the time Webster was decided were much different than they are today. In Webster neither a Public Service Commission existed nor had rules been promulgated which afforded customers protection from discriminatory acts of telephone companies (Chapter 5 - Telecommunication Services, Title 291. Nebraska Public Service Commission).

12. In consideration of the forgoing, the Commission finds that, due to the specific and unusual circumstances relating to Mr. Firestone's personal and family situation as described in paragraphs 3 through 10 above, the complaint should be sustained in part and overruled in part as follows:

(a) Complainant shall receive residential service on or before May 1, 1991 at his home.

(b) Complainant shall be entitled to receive basic local service with toll restriction, however, he shall not receive call waiting.

(c) LT&T shall provide basic local service with toll restriction to complainant in accordance with its standard credit practices applicable to a residential customer who requests service, however, has not established a satisfactory credit history. Complainant shall make payment for basic local service in accordance with LT&T's standard practices in the event of late payment or nonpayment of billings. Up to one-half of the service connection charge for Complainant may be waived under the LINK-UP Nebraska program.

(d) In addition to payment for basic local service complainant shall pay \$5.00/month on the past due account. On or about September 1, 1992, the amount of payment on the past due bill will be reviewed by this Commission. Prior to September 1, 1992, the parties may mutually agree to an increased payment toward the arrears if changed circumstances warrant such an increase.

(e) This Opinion and Findings is expressly declared by this Commission to be non-precedent setting, and is specifically limited in its applicability to the unique facts of this case.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Formal Complaint No. 1232 be and it is hereby sustained in part and overruled in part.

IT IS FURTHER ORDERED THAT:

Formal Complaint No. 1232

Page Five

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(b) Complainant shall be entitled to receive basic local service with toll restriction, however, he shall not receive call waiting.

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MADE AND ENTERED at Lincoln, Nebraska this 18th day of June, 1991.

NEBRASKA PUBLIC SERVICE COMMISSION


Chairman

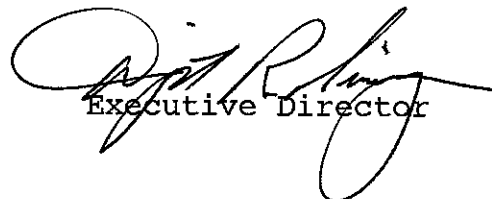
COMMISSIONERS CONCURRING:



//s//Frank E. Landis

//s//Eric Rasmussen

ATTEST:


Executive Director

COMMISSIONERS DISSENTING:

//s//Duane D. Gay