

NW/EW

Decision No. 77811

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATSON-ROOTER CORPORATION OF
AMERICA, a California corporation,)

Complainant,)

vs.)

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a corporation,)

Defendant.)

Case No. 9053
(Filed April 23, 1970)

Loveless, Simon & Migdol by Norman
W. Loveless, for Watson-Rooter
Corporation of America, complainant.
Robert E. Michalski, for Pacific
Telephone & Telegraph Company,
defendant.

O P I N I O N

Watson-Rooter Corporation of America (complainant) seeks damages of \$137,218.40 from the Pacific Telephone and Telegraph Company (defendant). Defendant moved to dismiss the complaint on the ground that it fails to state a cause of action within the jurisdiction of this Commission. The motion was heard by Examiner Robert Barnett on July 30, 1970 at Los Angeles.

For the purposes of the motion the complaint alleges, in substance, that:

(1) Complainant operates a business in defendant's service area which requires substantial use of telephones and equipment supplied by defendant. Although complainant makes extensive use of all such equipment, complainant is not knowledgeable regarding newly developed and more efficient equipment and complainant relies on defendant to supply complainant with the latest, most modern and most efficient equipment. At all times mentioned in the complaint defendant knew that complainant operated an emergency service business and was dependent upon and could not operate without having operable and efficient telephonic and related equipment supplied by defendant;

(2) In 1965 complainant contacted defendant and requested that its equipment and service be reevaluated and updated. Defendant sent its representatives to complainant's facilities on several occasions at which time complainant discussed the matter with such persons, advised them of the nature of complainant's business and requested that the whole system supplied to complainant be reviewed and reevaluated with the primary purpose of eliminating inefficient, obsolete and excessive equipment and facilities and replacing them with modern and efficient equipment at the lowest possible cost to complainant. In each instance, the representative of defendant reviewed the system in depth, or so it appeared to complainant, and made only minor recommendations which resulted in no modernization of complainant's equipment or facilities nor any reduction in cost to complainant;

(3) In the latter part of 1967 complainant hired Tel-Plan, a consulting service, which made a complete survey of complainant's facilities and equipment, and during the next succeeding several months recommended changes and the installation of new and more modern equipment which increased complainant's efficiency while reducing telephone charges more than \$650 per month;

(4) Defendant is a monopoly in its field and in the area in which complainant conducts its business. Defendant has a duty to furnish its customers service and equipment most suited to their needs. Defendant holds itself out as expert in the field of communications and particularly in the special areas in which it supplies services and equipment to its customers. As new and more efficient equipment and usage are developed, defendant has a duty to make such equipment and usage known to and available to its customers. Defendant has a duty to supply its services to its customers at the least possible cost based on its established rates; and defendant has a duty to truthfully and honestly evaluate its customer's needs and to truthfully, honestly, and fully advise its customers regarding all such equipment as developed and how its customers may utilize such equipment efficiently at the lowest cost; all such matters being peculiarly within the knowledge of defendant;

(5) Defendant's conduct constituted fraudulent conduct or willful misconduct in failing to evaluate adequately complainant's requirements and failing to advise complainant of the means to utilize defendant's services and equipment with the greatest efficiency and at the lowest cost to complainant;

(6) Defendant failed to supply complainant with modern and efficient equipment at the lowest cost when requested and thereby discriminated against complainant by charging complainant rates higher than necessary for the service rendered and higher than other customers who had been supplied with proper, efficient, and modern equipment;

(7) Defendant's advice to complainant after installation of the equipment, facilities, and service supplied by defendant and after inspecting equipment so installed, that defendant could not supply any better, more efficient, or more modern services constituted fraudulent representations upon which complainant relied to its damage in the sum of \$30,000;

(8) Complainant paid Tel-Plan \$7,218.40 for its consulting services rendered in investigating, analysing, reporting, and supervising the revamping of complainant's telephonic equipment and services supplied by defendant;

(9) Defendant did the things herein alleged with intent to defraud complainant, and said acts were done maliciously and oppressively; therefore, complainant is entitled to exemplary or punitive damages in an additional sum of \$100,000;

(10) Complainant prays for \$37,218.40 general damages, \$100,000 exemplary or punitive damages and costs.

Complainant's allegations sound in tort for fraud; complainant requests general and exemplary damages. On this motion to dismiss the facts stated in the complaint are assumed to be true. Based upon those facts the Commission concludes that the complaint

does not state a cause of action within the jurisdiction of this Commission and that the complaint should be dismissed. This Commission has consistently held that we do not have jurisdiction to award general and exemplary damages. (Jones v. PT&T Co. (1963) 61 CPUC 674; Schumacher v. PT&T Co. (1965) 64 CPUC 295; Palm Springs Panorama v. Rancho Ramon Water Co. (1964) 62 CPUC 686; see Vila v. Tahoe Southside Water Utility (1965) 233 Cal App 2d 469.)

Complainant was given an opportunity to amend its complaint to attempt to allege a cause of action for reparations. Complainant stated that it wished to stand on its complaint and refused to amend.

ORDER

IT IS ORDERED that the complaint is dismissed.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 14th day of OCTOBER, 1970.

[Signature]
Chairman
[Signature]
William J. ...
[Signature]
Vernon L. Sturgeon
Commissioners