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Decision 91-08-017 August 7, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

California Electronics, Inc., )  
 Complainant, )  
 vs. )  
 Pacific Bell (U 1001 C), )  
 Defendant. )

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**ORIGINAL**  
 Case 91-04-030  
 (Filed April 24, 1991)

OPINION

Complainant seeks damages of \$216,000 plus costs against defendant for negligence.

Complainant alleges that in May 1990 Centex Telemanagement, Inc. (Centex) entered into a written service agreement to provide complainant with telecommunication services. Pursuant to the terms of this agreement, Centex was to coordinate discontinuance of existing telephone service and implement new service for complainant. In return, complainant was to pay Centex for service rendered by Centex. At that time, Centex was told that complainant's telecommunication service was crucial to its ability to conduct business. Complainant instructed defendant and Centex that the Pacific Bell telecommunication service being provided by Centex to complainant must be installed consecutively with the disconnection of the earlier services.

On or about July 16, 1990, complainant entered into a written contract with Albert Computers whereby complainant was to provide certain computer parts to Albert Computers to comply with its production requirements. Pursuant to the terms of this contract, time was of the essence to Albert Computers in the receipt of these parts.

On October 1, 1990, at the request of Centex, complainant's telephone service was disconnected by the defendant's installation center. This caused the disruption of complainant's service on its telephone lines and fax lines and resulted in complainant's being unable to receive any incoming calls. Consequently, Albert Computers, a customer of complainant was unable to reach complainant on October 1 or 2, 1990. As a result of this, Albert Computers canceled its purchase order in the amount of \$216,600 stating that this disruption had caused it a grave setback in its production schedule.

Complainant alleges that defendant owed a duty of care to complainant to provide telecommunication services to complainant. This duty included not only the proper installation of this service but the disconnection of complainant's earlier service at the same time so that at no time would complainant be without telephone and fax service to its business. Defendant was negligent and breached these duties to complainant by disconnecting complainant's telecommunication service on October 1, 1990 and not providing complainant with its new service until October 2, 1990, resulting in complainant's customers being unable to reach complainant. Complainant could not conduct business during this period, and the disconnection caused Albert Computers to cancel its purchase order in the amount of \$216,600.

Complainant alleges that as a proximate result of the negligence of defendant, complainant has suffered damages in excess of \$216,000. Additionally, complainant alleges that it has suffered and continues to suffer additional damages in an amount to be determined at the time of trial.

Defendant moved to dismiss on the ground that the complaint fails to state a cause of action. We agree and will dismiss the complaint.

For the purpose of this decision we assume all of the facts pleaded by complainant are true.

Complainant asserts two causes of action against defendant. One is negligence and the other is negligent interference with prospective economic advantage. Complainant alleges that because defendant disconnected complainant's phone service on October 1, 1990 and did not resume service until October 2, 1990, that defendant is responsible for lost business during this time.

In a complaint before this Commission complainant can only recover a refund for the time that its service was out of order; it cannot recover consequential damages. We have no jurisdiction to grant the relief requested. Our jurisdiction is limited to reparations. (Public Utilities Code § 734.) Complainant asks for damages in the amount of \$216,000 and for attorney's fees in addition to costs incurred in bringing this suit. The Commission has held repeatedly that it is without authority to award damages or the costs of bringing suit. (Garcia v PT&T (1980) 3 CPUC 2d 534; Mak v PT&T (1971) 72 CPUC 735; King Alarm Systems v PT&T (1976) 80 CPUC 267.) Defendant asserts that it is willing to provide a full tariff refund for the time complainant's service was out of service. Complainant is not entitled to more from us.

For the reasons stated above, this complaint states no cause of action for which relief can be granted.

ORDER

IT IS ORDERED that the complaint is dismissed.

This order is effective today.

Dated August 7, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
G. MITCHELL WILK  
JOHN B. OHANIAN  
NORMAN D. SHUMWAY  
Commissioners

Commissioner Daniel Wm. Fessler,  
being necessarily absent, did  
not participate.

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

  
NEAL J. SHULMAN, Executive Director