

Decision No. 87658 AUG 2 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
PORTAL TRAVEL SERVICE, INC.,

Complainant,

vs.

THE PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY,

Defendant.

Case No. 10174  
(Filed September 16, 1976)Michael C. Bosch, for Portal Travel Service,  
Inc., complainant.Clay C. Burton, Attorney at Law, for The  
Pacific Telephone and Telegraph  
Company, defendant.O P I N I O NStatement of Facts

Portal Travel Service, Inc. (complainant) operates a well-established public travel agency in the San Francisco Bay Area, specializing in corporate and personalized travel.<sup>1/</sup> At the times relevant here, it operated out of three San Francisco locations: 560 Sutter Street, 2600 Ocean Avenue, and 350 Parnassus Street. In the operation of its business complainant substantially uses and depends upon the communication services offered and provided by

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<sup>1/</sup> For example, in November of 1975 complainant signed a contract with Wells Fargo Bank. exclusively acquiring that client's statewide travel involving a volume in excess of one million dollars a year.

The Pacific Telephone and Telegraph Company (defendant). In May 1974 complainant utilized defendant's key telephone system (KTS) in its three business locations. At about that time complainant's president Michael C. Bosch (Bosch) consulted with Gerald C. Galvin (Galvin), a communications consultant in defendant's marketing department, regarding certain operational changes and additional services Bosch desired in order to provide more flexibility in inter-office communications, including a transfer of call capability.

As a consequence of these consultations between Bosch and Galvin, defendant recommended installation of its PULSE Electronic Private Automatic Branch Exchange, Code SG-1 (PULSE SG-1), touted by defendant in its sales literature as being "...the latest word in operating convenience and efficiency". Relying upon defendant's professional recommendation, complainant on May 28, 1974 accepted that advice. In September 1974, complainant's existing KTS service was discontinued at a cost asserted by complainant to be \$500, and the PULSE SG-1 system was installed at the Sutter Street administrative office of complainant at a cost of \$2,367.71.<sup>2/</sup>

Unhappily, over the succedent months complainant's communication services utilizing the new PULSE SG-1 system were never satisfactory, and caused severe disruptions to its travel business. Specifically, there were almost constant audibility problems, scratching noises and static on the lines, particularly on WATS-800 numbers (utilized in almost 50 percent of the communications), multiple disconnections, and sporadic loss of transmission capability, including two instances when the PULSE SG-1 system ceased operating entirely.<sup>3/</sup> The actual number of service calls is

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<sup>2/</sup> See Exhibit 3 and Galvin's testimony p. 97 of transcript.

<sup>3/</sup> The system was reactivated in these latter two instances by Bosch and his vice president respectively, both of whom had been instructed by defendant's repair personnel how to open the system cabinet and reactivate the system following prior service problems.

in sharp dispute. Defendant produced extracts, purportedly derived from its records, which show 39 calls for the Sutter Street location, 14 calls for the Parnassus Street location and 16 calls for the Ocean Avenue location, all over an approximate 16-month period. However, complainant asserts that there were more; that these records list only complaint service calls made through 611 Emergency Repair; and that additional calls regarding complaints were placed through Galvin directly on many occasions. To support these contentions of complainant, Bosch, his vice president, and two office managers testified of the problems encountered by the office personnel with the balky communications package. Galvin, too, testified about calls he received, recalling that these calls were primarily connected with the telephone service at the Parnassus Street and Ocean Avenue locations, and admitted that he did not always make notations of the calls.

By the spring of 1975 continuing difficulties with the service caused Bosch to question whether he could justify retention of the unsatisfactory service which by then was costing complainant about \$1,000 a month. As a further aggravation, Galvin had been replaced as defendant's communications consultant by a Mrs. Mackey, and Mrs. Mackey was not responding to Bosch's complaint calls. Accordingly on April 1975 Bosch wrote defendant's president, Gordon L. Hough (Hough), of his problems, asking return to the original KTS service. Hough immediately responded and also acted, restoring Galvin as communications consultant to defendant, and sending a district maintenance manager to the scene. This manager after checking concluded that the troubles were primarily at the Parnassus Street and Ocean Avenue locations, and not in the PULSE SG-1 equipment. He assigned technical personnel to redesign and install new circuits in an effort to overcome the "can't hear" complaints. On May 5, 1975 Bosch again wrote, this time to Galvin, pointing out continued problems and insisting upon correction. In

June and July Bosch was out of the country. Service continued sporadically to deteriorate, particularly in Extension 22. Bosch asserts he wrote Hough again on September 15, 1975 with copy to Galvin demanding replacement or return to the original KTS system. However, neither Hough nor Galvin received such letter.

In December Bosch concluded that the PULSE SG-1 system had to go, and in conversations with Galvin asked for alternatives. Galvin testified that Bosch told him of the new arrangement with Wells Fargo Bank; that this arrangement necessitated opening a fourth location on the Wells Fargo premises on Montgomery Street; and that complainant was restructuring its business, reducing credit extensions to other clients, thereby lessening its requirements of a large administration group and billing center at the Sutter Street location with consequent reduced need for inter-office transfer flexibility and special communication features. On December 11, 1975 Bosch wrote Galvin, noting monthly telephone costs of approximately \$1,500, and concluding, "At this point my concern is not as much with service and special features as it will be with a cut-rate, bottom line, functional telephone system." Galvin proposed a KTS service which Bosch accepted. Subsequently the PULSE SG-1 system was replaced with a KTS system during the first week of January 1976.

Removal of the PULSE SG-1 system before expiration of five years had served to invoke imposition of the Basic Termination Charge of \$550.<sup>4/</sup> This irritated Bosch. On January 12, 1976 he

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<sup>4/</sup> The PULSE SG-1 PBX system contract contains a Basic Termination Charge provision should the system be discontinued or changed within the first five years after installation. The charge of \$750 is reduced 1/60th for each full month the system has been in service. Here 44 months remains of the 60-month period. Therefore the Basic Termination Charge was 44/60th of \$750 or \$550.

again wrote Hough, stating in part that complainant "...would not have taken this action if it would not have been for the enormous amount of emergency repair situations that occurred (almost on a daily basis) the lack of service, or substandard service, that we experienced from the SG-1 and the consequent system during the year", and "petitioned" defendant for a credit on the installation of the original PULSE SG-1 and the installation of the KTS. Hough turned the matter over to his district manager who on February 10, 1976 replied to Bosch, regretting problems with the telephone service but stating that it was defendant's conclusion that the switch away from the PULSE SG-1 system to KTS service "was done primarily to achieve the economic advantages of a less costly system as stated in your letter dated December 11, 1975", and declined to relieve complainant of liability for installation charges.

Thereafter on an informal basis Bosch complained to the Customer Service Bureau of the Commission. The staff discussed the problem with defendant resulting in an offer by defendant of a \$910 credit representing an adjustment of certain charges for the period April 1975 to November 1975 to cover difficulties with the Parnassus Street off-premises installation. Bosch asked that the adjustment be extended to cover the October 1974 to November 1975 period, to total approximately \$1,800. Initially defendant agreed but, after Bosch accepted, defendant backed off reverting back to its \$910 offer, contending it did not want any implication that the larger amount would be any waiver of the Basic Termination Charge or installation charge. Bosch then rejected the \$910 offer and filed this formal complaint on September 16, 1976 seeking reparations of \$5,841.68 as follows: (a) \$2,367.71 for installation of the PULSE SG-1 system; (b) \$500.00 for disconnection of the PULSE SG-1 system; (c) \$1,399.17 for reinstallation of a KTS system; and (d) \$1,575.00 for service charges for days in which the PULSE SG-1 system malfunctioned or was inoperable, alleging that defendant

violated Public Utilities Code Section 451 by failing to "...furnish and maintain adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities...", and thereby received charges which were "unjust or unreasonable", and therefore "unlawful".

After the filing of a formal complaint, the defendant reconsidered. Concluding that the difficulties at the Parnassus Street location extended from April 1975 to September 1976, defendant on November 10, 1976 offered complainant an adjustment of \$1,800. Bosch rejected this, contending that there should also be an adjustment for the difficulties encountered at the Ocean Avenue location. Defendant again reconsidered and on November 11, 1976 adjusted its offer to \$1,930 (to include something for Ocean Avenue). Bosch rejected this offer, and the parties determined to go to hearing.

A public hearing was held in San Francisco on the complaint before Administrative Law Judge John B. Weiss on January 17 and February 2, 1977. After submission of late-filed exhibits, and of a limited rebuttal brief by defendant, the matter was submitted on February 17, 1977.

#### Discussion

Complainant here seeks substantial reparations for the alleged inadequacies of the communication services provided it by defendant. The right of recovery in a reparation proceeding is

statutory, deriving from Section 734<sup>5/</sup> of the Public Utilities Code, and complainant is entitled to reimbursement for faulty or defective telephone service (Glynn v Pacific Tel. Co. (1964) 63 CPUC 270, 273). However, this Commission has no jurisdiction to award any monetary damages which complainant believes may have accrued because of negligent or improper construction or maintenance of his telephone facilities (Postal Telegraph Cable Co. v Railroad Comm. (1925) 197 C 426 at 437).

In the instant proceeding there is no question but that complainant's problems with the equipment furnished were very real. Complainant's experience before May 1974 with defendant's KTS had been satisfactory. It was only after installation of the PULSE SG-1 that the difficulties began. Exhibit 8 in this proceeding, defendant's "Trouble History on Portal Travel Service", is ample evidence of problems with the new system as a package. And the system must be taken as a package. It was offered as a complete system. Complainant did not merely request a passel of sub-system components; he described his needs and his transfer flexibility desires to Galvin, and Galvin recommended the PULSE SG-1 system as the complete answer - a proposition that Bosch accepted. ✓

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5/ Section 734 of the Public Utilities Code, insofar as relevant here, provides:

"When complaint has been made to the commission concerning any rate for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an unreasonable, excessive, or discriminatory amount therefor in violation of any of the provisions of this part, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection if no discrimination will result from such reparation. . . ."

Defendant was the expert and complainant was entitled to and did rely upon defendant's representations. The promotional literature on the PULSE SG-1 states that it is "a pleasure to operate"; "the latest word in operator convenience and efficiency". Such certainly did not prove out in this application! The equipment was advertised as a business switching system which provides any combination of up to 80 extensions and 30 central office trunks. Complainant had less than 30 extensions at all times. Defendant was well aware before its recommendation was made and the installation made that complainant operated out of three locations so that two locations necessarily would be off-premises locations. Defendant's expert witness, analysis supervisor David J. Hogue, testified that the PULSE SG-1 is "generally not" used in remote location situations, but that it is designed for both and "...has been utilized with off-premises extensions very successfully", and "we don't have that much trouble in off-premise locations, as a rule". Hogue contended "The transmission difficulties that Portal Travel experienced were partly the result of the complex array of equipment that extended the locals from 560 Sutter Street to the Ocean Avenue and Parnassus locations." Hogue then went on to emphatically assert that transmission difficulties were not in the PULSE SG-1 itself, and that he was "...fully prepared to testify that the SG-1 provided the service that it was supposed to." But when the ALJ questioned Hogue if it were not the case that "Maybe the system itself isn't at fault, but the complex of putting it all together, maybe in their application, is at fault?", the witness responded: "Yes, sir. That was the case. We don't contest that." In our view, the service must be taken as a package, and as Hogue agreed,<sup>6/</sup> defendant must stand behind its guarantee to provide acceptable service. When

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<sup>6/</sup> Hogue testified, at page 197 of the transcript: "We guarantee the system that we sell, and we are fully confident of our ability to do that."



a customer is induced to order a system defendant offers, defendant must maintain it at a level that is satisfactory to both the customer and the utility.

There is no question but that defendant labored to make the communications package work. Both parties' witnesses attested to that fact. But we also note that it was not until seven months after installation of the PULSE SG-1, despite constant problems regarding audibility, lack of transmission capability, inoperable extensions, automatic call-backs not functioning, etc., culminating in Bosch's April 9, 1975 letter to defendant's president, that the really productive efforts began. After the intervention in April 1975 by Hough, defendant's technicians redesigned many of the off-premises circuits; nine at the Parnassus Street and Ocean Avenue locations in April, another in May, and still another in September. But even after circuit redesign steps were taken problems continued - as reference to Exhibit 7, "Trouble History Since April 1975", amply demonstrates. We will attribute these problems to the entire package.

We note that Bosch and his witnesses testified as to loss of patronage incurred when clients were unable to maintain communications with complainant. Bosch contends that this loss was substantial and in response to the ALJ's request submitted detailed office by office daily reports from August 1974 through August 1976. No comparison figures for a period prior to August 1974 were available. Because of unexplained and substantial distortions in the Sutter Street administration location figures, the overall corporate gross sales figures submitted for a span of years are of limited utility. However, these submissions overall do demonstrate that the sales of the Parnassus Street and Ocean Avenue locations did generally trend downward, with allowance for seasonal fluctuations, after August 1974 until advent of the Wells Fargo business early in 1976. Defendant correctly deprecates substantial reliance upon this data in the context of this problem,

noting its deficiencies as well as the overall general decline in business activity in that period, supporting its arguments with economic indicator data from defendant's chief economist. Bosch testified that one segment of his custom, that from the U. C. Medical Center across the street from the Parnassus Street office, tended to be relatively stable and immune to the depressed business cycle. We conclude that despite the fact of a general business decline, some unspecified portion of the decline in complainant's patronage was the result of its communication difficulties. The sporadic and intermittent loss of communications resulted in loss of business and customers to complainant.

The parties are in sharp dispute over the reason complainant ordered disconnection of the PULSE SG-1 system in December 1975 and returned to a KTS service. Defendant contends that the service problems on the PULSE SG-1 were largely solved or in hand to be solved by then, and that complainant changed primarily to achieve the economic advantages of a less costly system which became feasible following acquisition of the Wells Fargo business, and the consequently adopted changes in complainant's credit and billing practices vis-a-vis its other business. Complainant, on the other hand, asserts that these conclusions are wrong; that defendant places an undue importance on the changes in complainant's mode of business, and insists that it would not have taken the action to cancel the PULSE SG-1 system had it not been for the enormous amount of emergency repair situations that had occurred, and the lack of service, or substandard service, experienced from the PULSE SG-1. We note that at the time cancellation was ordered circumstances had generally changed. It is true that redesign of the circuitry on Extension 22 was under way, but complainant was experiencing fewer service problems and these were of a more minor nature. It is also clear from the record that after

the April 1975 redesign of much circuitry there had been no further trouble reports on 65 percent of the off-premises extensions (the primary troublemakers), and in others the number of trouble reports were substantially reduced. On balance, we find that by the time the PULSE SG-1 system was canceled by complainant in December 1975<sup>7/</sup>, service at last was generally acceptable (excluding the Extension 22 circuit) or shortly would have been; that complainant's business practices with consequent requirements had changed, and that accordingly complainant had determined to make do with a "cut-rate, bottom line, functional telephone system". In view of this finding, complainant must be liable for the then unexpired portion of the Basic Termination Charge on the PULSE SG-1 service as invoked by defendant.

We now address the question of reparations for the period September 1974 to January 1976 during which the PULSE SG-1 system was in service, albeit not performing satisfactorily. We will divide this service period into two segments for reparations payments. During the first seven-month period, September 1974 through April 1975, the communications service furnished complainant was to a substantial extent unsatisfactory. It is not necessary to repeat the litany of complaints again, it suffices to quote as follows from the testimony of defendant's witness Hogue: "...in some of the extensions it was determined through transmission testing that it would be wise and advisable and

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<sup>7/</sup> The PULSE SG-1 was disconnected as of January 5, 1976 and a KTS was installed on defendant's Service Order 433701 completed January 8, 1976. The decision and order to discontinue the PULSE SG-1 was made between December 11, 1975 and December 18, 1975.

certainly in accordance with the customer's wishes and our own intent to redesign the circuit to see if there wasn't a better way to improve and redesign, reestablish a circuit that would be effective." This redesign was undertaken the latter part of April 1975 after the intervention of defendant's president and in response to Bosch's April 5, 1975 letter. During the second segment, the eight-month period, May 1975 through December 1975, service gradually improved although as defendant's "Trouble History on Portal Travel Service" (Exhibit 7), a listing only of the recorded items, indicates, the litany of complaints continued, albeit to a lesser and diminishing degree. During this second segment there were redesigns of the circuitry of two additional extensions and the troubles with Extension 22 never were corrected.

As we indicated earlier, we view the entire communications system as a package for reparations purposes, not as divisible components. Therefore, we will award reparations based upon the average monthly cost to complainant of the entire system, including the PULSE SG-1 PBX. In April 1976, during conversations with the Commission staff over possible adjustments which might be made, defendant furnished the staff with a basic monthly service charge figure of \$778 for the entire communications package including the PULSE SG-1 furnished complainant.<sup>8/</sup> We will use this amount.

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<sup>8/</sup> The Commission takes official notice of the letter dated April 30, 1976 from defendant's N. E. Gash to Stephen Pepler of the Commission staff wherein, among other matters, defendant stated the basic monthly service charge for the eighth month of service to be \$778.05. While Galvin's letter to Bosch of June 7, 1974 provides a total monthly charge to be \$725.15, there were numerous additions to the package thereafter. For purposes of this decision we adopted the figure used by defendant in its compromise proposal to the staff.

Accordingly, we find that a reasonable reparation to which complainant is entitled for faulty and defective or deficient communications services furnished it by defendant during the periods indicated would be \$2,566, obtained as follows:

- (1) Period September 1974 through April 1975, 30 percent of equipment charges of \$5,446, or \$1,633 reparations.
- (2) Period May 1975 through December 1975, 15 percent of equipment charges of \$6,224, or \$933 reparations.

As of the close of hearing, February 2, 1977, complainant had advanced a total of \$11,425.34 to the Commission as a deposit in connection with its disputed service with defendant. Of this amount, the sum of \$2,566 will be disbursed to complainant as reasonable reparations for faulty and deficient service suffered by complainant during the periods specified; the remainder sum of \$8,859.34 will be disbursed to defendant. Defendant will credit complainant's account with the full \$11,425.34.

#### Findings

1. Defendant is, and, at all times referred to in the complaint, was a public utility telephone corporation rendering service in and about the San Francisco Bay Area.
2. At all times mentioned in the complaint complainant was a subscriber to defendant's telephone service.
3. During the period around May 1974 complainant sought the advice and assistance of defendant in recommending a communications service which would meet the particular requirements of complainant's business.
4. Defendant recommended, complainant accepted, and defendant in September 1974 installed a complete communications system featuring a PULSE SG-1 business switching system.

5. Throughout the period September 1974 through April 1975 the telephone and associated services furnished to complainant by defendant were faulty and defective in that there were almost constant audibility problems, scratching noises and static on the lines, particularly on WATS-800 numbers, multiple disconnections, and sporadic loss of communication capability, including instances in which the PULSE SG-1 system ceased operations entirely.

6. This failure of defendant's telephone and associated facilities to provide satisfactory service caused complainant to frequently, formally and informally, complain to defendant.

7. Defendant attempted to correct the many problems when advised of the deficiencies, including redesign of extension circuitry on numerous circuits in April, May, and September of 1975. The circuitry on Extension 22 was never satisfactory.

8. After circuitry redesign in April 1975, and throughout the period May 1975 through December 1975, the telephone and associated services furnished complainant by defendant continued on a sporadic basis to be faulty and defective for many of the same reasons as earlier, but on a decreasing level, until by January 1976 the service, except for Extension 22, was generally satisfactory.

9. The duration of the periods when specific equipment was not furnishing satisfactory service cannot be determined with preciseness as records were not kept by either party of all the service complaints.

10. The inadequacies of service and defendant's delayed ability to correct the faulty and defective service caused loss of patronage to complainant. The degree or extent of such loss is impossible of exact determination.

11. Complainant is entitled to reparations for faulty and defective service throughout the period specified, and 30 percent of the equipment service charge for the entire equipment package

for the period September 1974 through April 1975, and 15 percent of the equipment service charge for the entire equipment package for the period May 1975 through December 1975 is a reasonable sum to be paid complainant by defendant as reparations.

12. Complainant deposited the total amount of \$11,425.34 with the Commission in connection with its disputed services with defendant.

13. Complainant determined to discontinue the complete communications package featuring the PULSE SG-1 business switching system in December 1975, primarily as a consequence of its changed business requirements. The package was replaced between January 5, 1976 and January 8, 1976 by a KTS package.

Conclusions

1. Complainant is liable for the unexpired portion of the Basic Termination Charge as invoked by defendant.

2. Complainant should be awarded reparations in the total amount of \$2,566.

3. In all other respects, the complaint should be denied.

O R D E R

IT IS ORDERED that:

1. The sum of \$2,566, part of the \$11,425.34 deposited with this Commission by Portal Travel Service, Inc. in connection with disputed service, shall be disbursed to Portal Travel Service, Inc. as reparations.

2. The remainder of the sum on deposit in connection with disputed service, to wit, \$8,859.34, shall be disbursed to The Pacific Telephone and Telegraph Company.

3. Complainant is entitled to no other relief.

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

Dated at San Francisco, California, this 2nd day of AUGUST, 1977.

Robert Batimuel  
President  
William J. Spence Jr.  
Vernon L. Sturgeon

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Commissioners

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.