

ORIGINAL

Decision No. 90981 NOV 6 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EXECUTONE/SOUTH BAY, INC.)
AND ALLSTATE REALTORS,)
Complainants,)

vs.)

PACIFIC TELEPHONE AND)
TELEGRAPH COMPANY,)
Defendant.)

Case No. 10759
(Filed July 10, 1979)

ORDER OF DISMISSAL

In substance, complainants allege that they purchased an Executone Telephone System, which was installed in 1977; that this system included OBX extensions to branch offices; that these OBXs have functioned at an "unacceptable level" since installation despite repeated requests that defendant bring service up to a "reasonable level"; and that continued failure to provide "reasonable service" constitutes harassment. The prayer of the complaint is for an order directing immediate provision of reasonable service and that defendant cease harassment.

On August 16, 1979 defendant filed an answer containing a motion to dismiss on the ground that the complaint failed to allege facts showing any failure to meet technical parameters of Bell System Exchange facilities or any violation or claimed violation of any provision of law or of any order or rule of the Commission.

Complainants did not amend their petition.

Public Utilities Code Section 1702 provides in relevant part that: "Complaint may be made...by any corporation or person...by written petition or complaint, setting forth an act or thing done or

omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission." Rule 10 of the Commission's Rules of Practice and Procedure provides, in part, that: "The specific act complained of shall be set forth in ordinary and concise language. The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired."

Examination of the complaint discloses that it consists entirely of conclusionary allegations. In particular, the complaint fails to allege any specifics with respect to where or how the utility's service is inadequate. Finally, it does not set forth "any act or thing done or omitted to be done...in violation or claimed to be in violation, of any provision of law or of any order or rule of the Commission." Under such circumstances the complaint should be dismissed for failure to state a cause of action. (Blincoe v PT&T (1963) 60 CPUC 432, 434.)

The Commission finds and concludes that the complaint fails to state a cause of action because it does not allege facts showing any violation or claimed violation of any provision of law or of any order or rule of the Commission. The Commission further concludes that the complaint should be dismissed without prejudice.

IT IS ORDERED that the complaint in Case No. 10759 is dismissed for failure to state a cause of action.

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

Dated NOV 6 1979, at San Francisco, California.

John E. Byrne
President
James L. ...
Richard ...
Robert ...
James ...
Commissioners