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Decision No. 91489 APR 2 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EXECUTONE/SOUTH BAY, INC.
AND CENTURY 21 - GROVE WAY,

Complainants,

v.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY,

Defendant.

Case No. 10788
(Filed September 25, 1979)

ORDER OF DISMISSAL

In substance, complainants allege that they purchased an Executone Telephone System, which was installed in 1978; that this system included OPX extensions to branch offices; that these OPX's have functioned at an "unacceptable level" since installation despite repeated requests that defendant bring service up to a "reasonable level", and that complainants consider this continued failure to provide "reasonable service" constitutes harassment. The prayer of the complaint is for an order directing immediate provision of reasonable service, refunding of all leased line costs and that defendant cease harassment.

On November 2, 1979 defendant filed an answer containing a motion to dismiss on the ground that the complaint filed to allege facts showing any failure to meet technical parameters of Bell System Exchange facilities or any violation or claimed violation of any provisions 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 any 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 instant 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 instant 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.

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IT IS ORDERED that the complaint in Case No. 10788 is
dismissed ^{WITHOUT PREJUDICE} for failure to state a cause of action.

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

Dated APR 2 1980, at San Francisco, California.

John E. Bryan President
Joseph L. Steinberg
Robert W. Howell
Ronald W. Quinn Commissioners

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