

convenience and necessity (CPCN) from this Commission to provide long distance telephone service to the public.

Complainant alleges Vortel was not authorized to provide billing and transport service to CSA, and that Vortel's filed tariff did not include any rates, terms and conditions for the provision of such service to CSA or any other person in California. Complainant further alleges that the charges that Vortel purported to assess against CSA were unjust and unreasonable, and Vortel's service was inadequate, inefficient, unjust and unreasonable, including improper of delivery of calls and improper computation of charges to the partnership.

Complainants allege that Vortel's provision of billing and transport service to CSA violated Public Utilities (PU) Code Sections 451, 454, 491, and 532¹ and unspecified rules, regulations and General Orders (GOs) of this Commission.

Complainants seek the following relief from the Commission:

A. A determination and declaratory ruling that:

1. all billing and transport service provided by Vortel to the partnership violated PU Code Sections 451, 454, 491, and 532 and the rules, regulations and GOs of this Commission, and was, therefore, unlawful and contrary to the public interest in the State of California;
2. the alleged contract between Vortel and the partnership for billing and transport service violated PU Code Sections 451, 454, 491, and 532 and the rules, regulations and GOs of this Commission, and is, therefore, void and unforeseeable in any respect as unlawful and contrary to the public interest in the State of California; and
3. that Vortel is not entitled to pursue or request payment in any manner or in any forum from the partnership, from ASC, CSA or Woodrich, or

¹ PU Code Sections 451 and 454 generally require that public utility rates be just and reasonable and that service also be adequate and efficient. PU Code Section 491 relates to the conditions and requirements for a public utility to change any rate or classification of service. PU Code Section 532 prohibits public utilities from charging different rates than those on file and approved with the Commission.

Decision 97-09-012 September 3, 1997

SEP. 4 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

APPLIED SIGNAL CORPORATION (U-5335-C), CSA
(Communication Service America), and WILLIAM
WOODRICH,

Complainants,

vs.

VORTEL COMMUNICATIONS, INC., a California
public utility,

Defendant.

ORIGINAL

Case 94-02-044
(Filed February 25, 1994)

OPINION

By this decision, we deny the complaint in the above-captioned matter. On February 25, 1994, a complaint was filed by Applied Signal Corporation (ASC), (U-5335-C), Communication Service America (CSA)¹, and William Woodrich² (the complainants) against the defendant, Vortel Communications, Inc. (Vortel), which was a long distance telephone company at the time of the complaint filing.³

Complainant alleges that, during 1992, Vortel provided CSA billing and transport service to enable CSA to serve long distance telephone customers in California even though Vortel knew that CSA did not have a certificate of public

¹ Communication Service America (CSA) is a fictitious business name of ASC, with the same address and telephone number as ASC. CSA is a California partnership of Dennis Terrell and William Claven.

² William Woodrich (Woodrich) is the president of ASC.

³ Vortel's certification authority was revoked in February 1995 by Decision (D.) 95-02-028.

breached its contract. Defendant states that Mr. Woodrich, at the time he purchased ASC and CSA, acknowledged CSA's debt to defendant and specifically assumed CSA's debt to defendant. Defendant argues that it would be a fraud, and Mr. Woodrich would be unjustly enriched, if he were now able to use this Commission to avoid his just debts.

Discussion

We deny complainant's request for a declaration or determination that defendant, Vortel, is not entitled to pursue or request payment in any manner or forum from CSA for the service Vortel rendered under the contract.

We find unpersuasive complainant's argument that, because Vortel knew that CSA did not yet have a CPCN to provide long distance service, Vortel should be barred from enforcing payment under the contract. Irrespective of what Vortel may have known or believed to be true concerning the CSA's authority to provide retail long distance service, CSA must remain responsible for its own actions and the consequences of those actions. Complainant admits that CSA, itself, voluntarily contracted for billing and transport service knowing it was not yet certificated to provide long distance service. Equity dictates that CSA not be rewarded for its own failure to comply with the Commission's certification rules in effect at the time by being permitted to escape liability for services rendered by Vortel.

We find irrelevant complainant's claims that Vortel's filed tariffs did not include any rates, terms and conditions for the provision of the service rendered to CSA. Since the service in question was provided under contract—not under tariff—, the question of what rates, terms, or conditions were in Vortel's tariff has no bearing on the legality or enforceability of its contract with CSA.

Complainant's claim that Vortel's service was "inadequate, inefficient, unjust, and unreasonable" is unduly vague. To the extent complainant alleges only broad general defectiveness of service without identifying specific problems, we have insufficient basis to confirm the veracity of its claims. The only specific examples of service defects identified by complainant are that Vortel failed to deliver calls properly and failed to compute correct billing charges. Even in the case of these examples,

from any other person or entity for any unlawful service that Vortel purported to provided to the partnership.

B. An order requiring the Commission's staff to conduct a thorough review and audit of Vortel's operations to determine whether Vortel has: timely paid its bills to other public utilities; interrupted service to the public; fully performed all of its obligations under the PU Code and the rules, regulations and GOs of this Commission; collected and paid all surcharges and taxes as required, and filed required reports with this Commission. Complainant proposes that as a result of the audit, the Commission should determine whether Vortel is still fit and worthy to hold a CPCN from this Commission.

Defendant Vortel filed an answer to the complaint on April 7, 1994. Defendant admits that during 1992, it provided billing and transport services to the partnership known as CSA. Defendant denies, however that it violated any PU Code Sections or rules, regulations, and GOs of this Commission, or that it unlawfully assessed any charges against CSA which were improper or harmed the public interest.

Defendant claims that CSA represented to it that it was in the process of obtaining all required licenses and certificates, and, in fact, that the contract under which defendant provided those services required CSA to do so within one year of when the services were first provided to it.

Defendant's records do not establish whether or not the contract was approved by this Commission. Defendant claims, however, that its representative who prepared the contract did contact this Commission and obtained oral confirmation that it was not in violation of then existing Commission regulations or GOs. Defendant believes that before signing the contract, CSA confirmed that it had investigated and was fully aware of the applicable regulations and GOs, and that the contract was not in violation. Defendant denies the allegations that its tariff did not include any rates, terms, and conditions for the service to CSA, and that its service was inadequate, inefficient, unjust, and unreasonable.

Defendant argues that it would be an injustice if the complaint was granted, preventing defendant from seeking payment for services rendered to CSA, since CSA

of its CPCN. The Commission further directed staff to conduct an audit of Vortel to ascertain if any surcharges due to the Commission were delinquent. On November 29, 1994, the staff assigned to conduct the audit reported to the Administrative Law Judge that Vortel would not permit access to its accounting records, thereby preventing staff from conducting any audit. Staff also reported that Vortel was in bankruptcy status, and that, according to the bankruptcy trustee, Vortel had no money for creditors. By D.95-02-028, the Commission revoked Vortel's CPCN. Therefore no further action regarding Vortel is called for in this instant proceeding.

For the reasons outlined above, the complaint of CSA, ASC, and William Woodrich is denied.

Findings of Fact

1. During 1992, Vortel provided billing and transport services to CSA under the terms of a contract to enable CSA to render long distance telephone service to the public.
2. At the time of executing the contract and receiving the service from Vortel, CSA did not yet possess a CPCN as required by this Commission before long distance service can be offered.
3. Complainant seeks a Commission declaration that Vortel is not entitled to pursue or request payment in any manner or forum from CSA for service rendered under the contract.
4. Complainant's allegations that the service rendered by Vortel was inadequate, inefficient, unjust, and unreasonable is too vague and general to support findings of fact concerning specific defects in the quality of service rendered.
5. Complainant provides only two examples of service defects relating to failure to deliver calls properly and errors in computation of billing charges, but complainant fails to provide any indication of the nature, frequency or magnitude of these alleged defects.

complainant fails to provide any documentation or details regarding the nature, frequency, or magnitude of such call delivery failures or billing errors. Therefore, no determination can be made concerning the extent of Vortel's alleged service defects or the economic consequences of such defects.

Complainant does not deny that CSA willingly contracted with Vortel for billing and transport services. Moreover, there is no dispute that billing and transport services were performed for CSA by Vortel. Accordingly, even if there were instances of service-delivery failures or computation errors in charges for such services, there would still be no basis for summarily granting CSA relief of all obligation to pay for any service it has received from Vortel. Even to the extent that such alleged failures may have periodically occurred, it would be inappropriate and inequitable for this Commission to categorically bar Vortel from seeking collection from CSA of any amounts billed under the contract.

Complainant has failed to make a convincing showing in this case to support a judgment in its favor. To the extent there are outstanding disputes regarding the exact amount of payment to which Vortel is legally entitled, or the financial ability of CSA to make payment, the parties' recourse is through civil court jurisdiction.⁵

Complainant's request for a Commission review and audit of Vortel's operations to determine whether Vortel has paid other debts, complied with Commission rules, and is still fit to hold a CPCN is rendered moot as a result of the action already taken by the Commission in Case (C.) 94-02-041 (Exculine vs. Vortel). In that complaint case, the Commission found that Vortel was in violation of the reporting requirements of GO 104-A, and ordered Vortel to comply with GO 104-A within 60 days or risk revocation

⁵ On or about December 13, 1993, Vortel filed a separate complaint in the Superior Court of California, Alameda County, Eastern Division alleging that ASC, CSA, and William Woodrich were liable to Vortel for payment of the charges allegedly assessed by Vortel against the CSA partnership for billing and transport service provided by Vortel. Vortel alleged that one or more of ASC, CSA, and Woodrich, or all of them, have assumed liabilities of the CSA partnership. ASC, CSA, and Woodrich generally deny each and every allegation in the complaint filed in the Superior Court case.

6. Pursuant to D.95-02-028, the Commission revoked Vortel's CPCN following unsuccessful attempts by the Commission staff to conduct an audit of Vortel to determine if any surcharges due to the Commission were delinquent.

Conclusions of Law

1. The portion of this complaint requesting a Commission declaration that Vortel is not entitled to pursue or request payment from CSA in any manner or forum has not been shown to have merit and should be denied.

2. It would be inequitable to issue a Commission declaration permitting CSA to escape liability in any manner or in any forum for payment for services rendered by Vortel under the contract between the parties.

3. Complainant has failed to conclusively prove that, by virtue of rendering transport and billing service to CSA, defendant has violated PU Code Sections 451, 454, 491, 532, or other rules, regulations, or GOs of this Commission.

4. To the extent there are outstanding disputes regarding the precise amount of payment to which Vortel is legally entitled under civil law, or the financial ability of CSA to make payment, the parties' recourse is through civil court jurisdiction.

5. Complainant's request for a Commission review and audit of Vortel's operations to determine whether Vortel has paid other debts, complied with Commission rules, and is still fit to hold a CPCN is rendered moot as a result of the action already taken by the Commission in C. 94-02-041 (Excultine vs. Vortel).

O R D E R

IT IS ORDERED that:

1. The portion of the complaint seeking a Commission declaration that Vortel Communications, Inc. is not entitled to pursue or request payment from Communication Service America in any manner or forum is denied.

2. The portion of the complaint seeking a Commission review and audit of Vortel's operations to determine Vortel's fitness to hold a certificate of public convenience and necessity is dismissed as moot.

3. Case 94-02-044 is closed.

This order is effective today.

Dated September 3, 1997, at San Francisco, California.

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners