

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pac-West Telecomm, Inc. (U5266C),

Complainant,

vs.

Pacific Centrex Services, Inc. (U5998C),

Defendant.

Case 07-08-026
(Filed August 24, 2007)**O P I N I O N****Summary**

On September 11, 2007, the Commission through its Docket Office served Defendant Pacific Centrex Services, Inc. (Pacific) with a copy of the above-captioned complaint together with Instructions to Answer, as required by Commission Rule 4.3. The Instructions to Answer directed Pacific to file a written answer to the complaint pursuant to Commission Rule 4.4 within 30 days of service, *i.e.*, on or before October 11, 2007. Pacific has not filed an answer or any other pleading in response to the complaint and the Instructions to Answer.

The Complaint alleges that Pacific has failed or refused to pay charges for services rendered to it by Pac-West Telecomm, Inc. (Pac-West) pursuant to Pac-West's Commission-approved intra-state tariff, Schedule Cal. CLC 1-T, Third Revised Cal. P.U.C. 1-T, Sheet No. 134, Section 12.12, established by Advice Letter No. 135, filed on September 18, 2002 and effective on September 23, 2002

(Pac-West's Intrastate Tariff). The Complaint further alleges that Pacific owes Pac-West \$133,730.06 in unpaid termination charges as of June 27, 2007, plus unspecified termination charges incurred since June 27, 2007, together with late payment charges that apply in accordance with Pac-West's Intrastate Tariff. The Complaint seeks an order directing Pacific to pay all presently outstanding termination charges and late payment charges and all future termination charges and late payment charges incurred in accordance with the terms of Pac-West's Intrastate Tariff, unless and until Pac-West and Pacific enter into an agreement superseding Pac-West's Intrastate Tariff.

Discussion

Although this Commission is not bound by the California Code of Civil Procedure (CCP), in matters for which no Commission rule has been formulated, we look to the CCP and other generally applicable state laws for guidance.

Under CCP § 585(a), a party seeking to recover money damages for breach of contract is entitled to the entry of a default judgment in its favor and award of the damages sought if the other party, having been properly served, has failed to answer or otherwise plead within the time allowed.¹ Pac-West has shown by

¹ § 585. Judgment if defendant fails to answer complaint.

Judgment may be had, if the defendant fails to answer the complaint, as follows:

- (a) In an action arising upon contract or judgment for the recovery of money or damages only, if the defendant has...been served, other than by publication, and no answer, demurrer, notice of motion to strike...notice of motion to transfer...notice of motion to dismiss...notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.10, or notice of the filing of a petition for writ of mandate...has been filed with the clerk or judge of the court within the time specified in the summons...the judge...upon written application of the plaintiff, and proof of the service of summons, shall enter the default of the defendant...so served, and

Footnote continued on next page

affidavits and exhibits that Pacific was properly served, received notice that a responsive pleading was due within 30 days, and failed to answer or otherwise plead within that time period. Were this action brought in Superior Court, Pac-West would be entitled to a default judgment and money damages upon this showing. We see no reason to reach a different result simply because Pac-West chose to file the action here as it had the right to do.

Waiver of Comments on Proposed Decision

Pacific was properly served with the Complaint in this matter, and has failed to answer or otherwise respond. Because of Pacific's default, this matter is uncontested, and comments are waived (Rule 14.6 (c)(2)).

Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Karl J. Bemesderfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Commission's Docket Office served the Complaint and Instructions to Answer in the above-entitled action on Pacific on September 11, 2007.
2. Pacific has neither answered nor otherwise pled to the Complaint.

Conclusions of Law

1. The obligation of Pacific to pay termination charges to Pac-West is governed by Pac-West's Intrastate Tariff.

immediately thereafter enter judgment for the principal amount demanded in the complaint...together with interest allowed by law or in accordance with the terms of the contract....

2. In the absence of an answer to the Complaint, the allegations of the Complaint are accepted as true.

3. Pacific owes Pac-West \$133,730.06 in unpaid termination charges as of June 27, 2007, together with applicable late fees as provided for in Pac-West's Intrastate Tariff.

4. Pacific owes Pac-West additional termination charges and related late fees in an unspecified amount for the period from June 28, 2007 until the date hereof.

5. Pacific will continue to accrue additional termination charges payable to Pac-West at the rates established in Pac-West's Intrastate Tariff from and after the date hereof until and unless it enters into an agreement with Pac-West superseding Pac-West's Intrastate Tariff.

6. Pac-West is entitled to a default judgment by reason of Pacific's failure to answer or otherwise plead to the Complaint in the time period specified.

7. No hearing is necessary.

O R D E R

1. Within five days of the effective date of this order, Pacific Centrex Services, Inc. (Pacific) shall pay to Pac-West Telecomm, Inc. (Pac-West) the sum of \$133,730.06 together with late payment charges thereon as provided in Pac-West's Intrastate Tariff.

2. Within five days of the effective date of this order, Pacific shall pay to Pac-West all charges it has incurred since June 27, 2007 under Pac-West's Intrastate Tariff and all related late payment charges.

3. Pacific shall pay to Pac-West all future charges it may incur pursuant to the application of Pac-West's Intrastate Tariff until and unless it enters into an agreement with Pac-West superseding Pac-West's Intrastate Tariff.

4. The determination to hold hearings is changed. No hearing is necessary.

5. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.