

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

XL Fire Protection,

Complainants,

vs.

WTI Communications (U-6684-C.),

Defendant.

(ECP)

Case 12-12-020

(Filed December 27, 2012)

Laura Himmelberg, for XL Fire Protection, Complainants.  
Tony Rodriquez and Pal Lengyel-Leahu,  
for WTI Communications, Defendant.

**DECISION GRANTING IN PART AND DENYING IN PART  
THE COMPLAINT BY XL FIRE PROTECTION**

**1. Summary**

Complainant XL Fire Protection (XL) requests the return of \$3,659.41 on deposit with the Commission and a refund of \$3,165.45 from Defendant WTI Communications (WTI) for service interruptions and overbilling.

The request for relief is granted in part and denied in part as discussed below. This proceeding is closed.

**2. Positions of the Parties**

XL is a contractor that designs, installs and repairs fire sprinkler systems in residential, commercial, and industrial facilities. On April 1, 2009, XL entered into a two-year service agreement with WTI for the provision of one T-1 voice

line, one T-2 Internet line, two bundles of 2,500 minutes, three toll-free numbers, one Customer Premises Equipment and two analog lines. The monthly recurring cost for service was quoted as \$991.73.<sup>1</sup> XL requests the return of \$3,659.41 on deposit with the Commission for the outstanding balance on its last bill, including \$1,025.38 in finance charges, and a refund of \$3,165.45 from WTI for overbilling and services contracted for but not received.

XL claims that WTI promised credit for various service outages, but only \$200.58 was credited to XL's account. XL states that several times WTI claimed that problems with XL's phone service were due to XL's antiquated internal phone system. However, on one occasion XL paid its repair service to correct a call-forwarding issue that was due to WTI's incorrect installation of the service. On another occasion, on WTI's recommendation, XL paid its repair service to replace the software in its phone system, but the problems persisted. XL cites other instances of service interruptions, but states that most service problem reports were done by phone, so only a few text messages and emails regarding the service problems were included as part of the documentation in the complaint.

WTI's answer to XL's complaint states that the complaint should be denied because XL failed to provide evidence that WTI did not meet its contractual obligations, even though WTI went above and beyond in providing excellent service to XL. WTI also claims the complaint should be denied because XL failed to provide evidence that WTI did not offer to negotiate credits for service interruptions and XL refused an offer of \$500 goodwill credit to settle the matter.

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<sup>1</sup> XL Complaint, Attachment 1A.

WTI further claims that the complaint should be denied because XL did not meet the service agreement requirement that all disputed sums must be paid in full with written notice of the dispute provided within 30 days. WTI also states that the complaint should be denied because XL switched service providers while still under contract, clearly demonstrating that XL never intended to fulfill its contractual obligation. Finally, WTI claims that most service problems were caused by XL's antiquated internal phone system.

### **3. Discussion**

The relationship between XL and WTI was troubled from the start. There is basic disagreement between the parties as to when internet and phone service with WTI actually started. It is undisputed that problems with XL's phone service started almost immediately after XL's service was switched over. The parties disagree over the root of the problems and whether or not XL is entitled to a refund of any amount.

WTI's claim that XL failed to provide evidence that WTI did not fulfill its contractual obligation is without merit. Even though most repair requests were made by phone, XL produced emails and text messages between XL and WTI personnel to sufficiently document service interruptions and WTI's difficulty getting to the root of the problems and resolving them.

WTI asserts that the complaint must be denied because XL failed to provide evidence of WTI's offer to negotiate credits for service interruptions and XL refused a \$500 offer to settle the complaint. WTI's offer to settle and XL's rejection is not dispositive. Apparently WTI made a settlement offer of \$500 and XL rejected it. Failure to mention it in the complaint is not a basis upon which to deny XL's complaint.

WTI also asserts that XL never intended to fulfill its two-year contractual obligation. This claim is also without merit. XL stayed with WTI from June 2009 until August 2012, more than 2 years, therefore fulfilling its contractual obligation. In addition, on WTI's recommendation XL called BC Telecom to replace system software or provide other repair service and paid for the service calls. Bob Cooper of BC Telecom appeared at the May 21, 2013, hearing on behalf of XL and stated in a letter attached to the complaint that although he had been called to make repairs, the problem was never related to XL's phone equipment.<sup>2</sup> Therefore, contrary to WTI's claim, we find XL's willingness to make recommended changes to its phone system, at its own expense, and staying with WTI for more than two years, adequate evidence of XL's intent to fulfill its two-year contractual obligation.

WTI claims that XL did not follow the terms of the service agreement with regard to payment of disputed charges. Section 2.3 of the service agreement requires that customers pay disputed amounts and then seek refunds by providing a written basis for the disputed charges. XL deducted disputed amounts and paid the difference. Neither party followed all the terms of the service agreement. WTI did not provide service according to the service agreement, and XL deducted disputed amounts rather than paying the bill in full and filing a claim in writing for the disputed amount. However, WTI was aware of service downtime due to XL's numerous repair service requests. In an email responding to XL's request for a \$200 refund for phone service downtime, a WTI representative offered a credit of \$117.25 for an 11-hour service outage and

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<sup>2</sup> XL Complaint, Attachment 8A.

stated, "I wish we could do more however we have to comply with our service level agreement."<sup>3</sup> The service agreement provides the terms and conditions upon which minimum refund amounts are determined. However, WTI may, at its discretion, provide any amount of customer credit or refund above the minimum for service outages.

Finally, WTI argues that service problems were caused by XL's antiquated phone system which could not support the services installed by WTI. If the system was too old to support the service installed by WTI, WTI should have known that at the time of the install. WTI should have either declined to provide the service or informed XL of the possible problems. WTI did neither. And as cited above, Bob Cooper of BC Telecom stated at the hearing and in writing that the problems with XL's phone service were never customer equipment issues.

For all the above reasons XL's request to have \$3,659.41 on deposit with the Commission returned, is granted and WTI should refund an additional \$126.89. The \$3,786.30 represents refunds of;

- \$544.96 for the first month of internet service;
- \$232.50 for the December 15, 2011, BC Telecom service call;<sup>4</sup>
- \$1,025.38 in finance charges; and,
- \$1,983.46 for two months of recurring charges at \$991.73 per month.

However, we deny XL's request for the balance of \$3038.56 as we cannot verify additional actual damages associated with this amount.

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<sup>3</sup> XL Complaint, Attachment 9A.

<sup>4</sup> XL Complaint, Attachment 6B.

**4. Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Linda A. Rochester is the assigned Administrative Law Judge in this proceeding.

**O R D E R**

**IT IS ORDERED** that:

1. The sum of \$3,659.41 currently held by the Commission in the impound account established for this proceeding shall be disbursed to Complainant, XL Fire Protection.

2. WTI Communications shall refund XL Fire Protection \$126.89 for service outages, finance charges, repair services and over billing that exceeds the funds held in impound.

3. All relief not granted in Ordering Paragraphs 1 and 2 is denied.

4. Case 12-12-020 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.