

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VECTREN COMMUNICATION SERVICES,  
INC., an Indiana corporation,

No. C 08-3137 SI

Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR RECONSIDERATION**

v.

CITY OF ALAMEDA, acting by and through  
Alameda Power & Telecom,

Defendant.

Plaintiff has moved for reconsideration of the portion of the Court's August 18, 2009 summary judgment order in which the Court found as a matter of law that defendant did not have a duty under the 2004 Installment Sale Agreement ("ISA") or the implied covenant of good faith and fair dealing to consider and add voice services. After review of the parties' papers, the Court agrees with plaintiff that summary judgment on this issue was not proper, as there are triable issues of fact as to the parties' intent regarding whether § 6.2 or § 6.3 of the ISA governs the improvement of adding voice services. The Court also agrees with plaintiff that if § 6.2 governs, the City was required to exercise its discretion under § 6.2 (to make additions, modifications and improvements to the Telecom system) in good faith, *see Locke v. Warner Bros. Inc.*, 57 Cal. App. 4th 354, 366-67 (1997), and that this question of fact is not suitable for summary judgment.

The Court also finds that the motion for reconsideration is procedurally proper. The distinctions raised by plaintiff in the motion for reconsideration were not addressed in the summary judgment briefing, and only first raised at oral argument. The Court has benefitted from a fuller discussion of this matter.

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Accordingly, the Court GRANTS plaintiff's motion for reconsideration. (Docket No. 89).

**IT IS SO ORDERED.**

Dated: December 28, 2009

  
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SUSAN ILLSTON  
United States District Judge