

L/ bjk

ORIGINAL

Decision 88 05 039 MAY 11 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Rehearing of
Resolution No. T-12077

) Application No. 88-04-060
) (Filed April 22, 1988)

In the Matter of Resolution
No. T-12077; Commission Rejection of
Pacific Bell Advice Letter No. 15358

) Application No. 88-04-077
) (Filed April 21, 1988)

ORDER GRANTING LIMITED REHEARING TO
OMNIPHONE, INC. AND CARLIN COMMUNICATIONS, INC.

Applications for rehearing of Resolution No. T-12077 have been filed by Omniphone, Inc. (Omniphone) and Carlin Communications, Inc. (Carlin). Assemblywoman Gwen Moore tendered a late filed application for rehearing which has been rejected. However because the issues Assemblywoman Moore raises are similar to thoses put forth in the applications for rehearing of Carlin and Omniphone, the Commission will accept Assemblywoman Moore's pleading as a petition for modification to be considered with the applications for rehearing. Omniphone in its application asserts that the Commission's discussion and transaction of business regarding Advice Letter No. 15358 on March 23, 1988 violated the Bagley-Keene Act and that the Commission did not fully consider the protest that Omniphone filed on March 22, 1988 which outlined its constitutional concerns with Advice Letter No. 15358.

In regard to the Bagley-Keene Act issue, the Commission acted within its authority. On March 2, 1988, Pacific Bell submitted Advice Letter No. 15358. Under General Order No. 96-A this Advice Letter would automatically become effective on April 1, 1988 unless the Commission acted. Owing to an administrative oversight Advice Letter No. 15358 was not properly noticed for the Commission meeting on March 23, 1988. The next meeting at which it could be properly noticed was April 13, 1988. Thus if

the Commission did not act at the March 23, 1988 conference, Advice Letter No. 15358 would automatically go into effect. The Commission acting under its Government Code Section 11125.5 and P.U. Code Section 306(b) authority, put Advice Letter No. 15358 on the agenda for the March 23, 1988 meeting as an unnoticed emergency matter. Therefore, Omniphone's application for rehearing on this matter is denied.

The limited amount of time available did not give the Commission an opportunity to fully review Omniphone's March 22, 1988 protest. Given that the protest raises issues of importance regarding the First Amendment, the Commission is of the opinion that this protest should be considered. Therefore good cause exists for granting a limited rehearing for the purpose of considering the First Amendment issues raised by Omniphone's March 22, 1988 protest of Pacific's Advice Letter No. 15358 and its subsequent application for rehearing.

Carlin in its application for rehearing asserts that Resolution No. T-12077 alters or amends D.87-01-042 and that such a change can not be made without a hearing. P.U. Code 1708. Applicant has mischaracterized Resolution No. T-12077, which states that the Commission intended to "clarify that D.87-01-042 never intended that its content neutral policy would extend beyond actions taken by the Commission and dictate whether or not a utility company could institute its own policies with regard to the content of 976 messages...". Therefore, in this instance the Commission did not alter or amend D.87-01-042. Carlin's application for rehearing on this point is denied. Carlin also raises issues regarding the First Amendment similar to those put forth by Omniphone in its March 22, 1988 protest and subsequent application for rehearing. Given that the First Amendment issues were not fully addressed at the time that Resolution No. T-12077 was adopted, Carlin's application for rehearing on this point is granted.

Assemblywoman Moore in her pleading sets forth First Amendment concerns similar to those raised by the other parties.

Given this, the issues raised in Assemblywoman Moore's petition for modification will be considered during the limited rehearing granted to Omniphone and Carlin.

IT IS ORDERED that a limited rehearing of Resolution No. T-12077 is granted to Omniphone and Carlin to allow consideration of the First Amendment issues raised by these parties on rehearing Except as granted herein, rehearing of Resolution No. T-12077 is denied.

This order is effective today.

Dated MAY 11 1988, at San Francisco, California.

STANLEY W. HULETT

President

DONALD VIAL

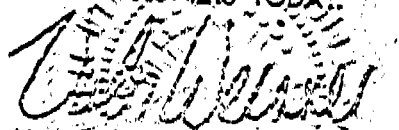
G. MITCHELL WILK

Commissioners

Commissioner Frederick R. Duda
being necessarily absent, did
not participate.

Commissioner John B. Ohanian
being necessarily absent, did
not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weissert, Executive Director

Decision 88 05 039 MAY 11 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Rehearing of
Resolution No. T-12077

) Application No. 88-04-060
) (Filed April 22, 1988)

In the Matter of Resolution
No. T-12077; Commission Rejection of
Pacific Bell Advice Letter No. 15358

) Application No. 88-04-077
) (Filed April 21, 1988)

ORDER GRANTING LIMITED REHEARING TO
OMNIPHONE, INC. AND CARLIN COMMUNICATIONS, INC.

Applications for rehearing of Resolution No. T-12077 have been filed by Omniphone, Inc. (Omniphone) and Carlin Communications, Inc. (Carlin). Assemblywoman Gwen Moore tendered a late filed application for rehearing which has been rejected. However because the issues Assemblywoman Moore raises are similar to thoses put forth in the applications for rehearing of Carlin and Omniphone, the Commission will accept Assemblywoman Moore's pleading as a petition for modification to be considered with the applications for rehearing. Omniphone in its application asserts that the Commission's discussion and transaction of business regarding Advice Letter No. 15358 on March 23, 1988 violated the Bagley-Keene Act and that the Commission did not fully consider the protest that Omniphone filed on March 22, 1988 which outlined its constitutional concerns with Advice Letter No. 15358.

In regard to the Bagley-Keene Act issue, the Commission acted within its authority. On March 2, 1988, Pacific Bell submitted Advice Letter No. 15358. Under General Order No. 96-A this Advice Letter would automatically become effective on April 1, 1988 unless the Commission acted. Owing to an administrative oversight Advice Letter No. 15358 was not properly noticed for the Commission meeting on March 23, 1988. The next meeting at which it could be properly noticed was April 13, 1988. Thus if

the Commission did not act at the March 23, 1988 conference, Advice Letter No. 15358 would automatically go into effect. The Commission acting under its Government Code Section 11125.5 and P.U. Code Section 306(b) authority, put Advice Letter No. 15358 on the agenda for the March 23, 1988 meeting as an unnoticed emergency matter. Therefore, Omniphone's application for rehearing on this matter is denied.

The limited amount of time available did not give the Commission an opportunity to fully review Omniphone's March 22, 1988 protest. Given that the protest raises issues of importance regarding the First Amendment, the Commission is of the opinion that this protest should be considered. Therefore good cause exists for granting a limited rehearing for the purpose of considering the First Amendment issues raised by Omniphone's March 22, 1988 protest of Pacific's Advice Letter No. 15358 and its subsequent application for rehearing.

Carlin in its application for rehearing asserts that Resolution No. T-12077 alters or amends D.87-01-042 and that such a change can not be made without a hearing. P.U. Code 1708. Applicant has mischaracterized Resolution No. T-12077, which states that the Commission intended to "clarify that D.87-01-042 never intended that its content neutral policy would extend beyond actions taken by the Commission and dictate whether or not a utility company could institute its own policies with regard to the content of 976 messages...". Therefore, in this instance the Commission did not alter or amend D.87-01-042. Carlin's application for rehearing on this point is denied. Carlin also raises issues regarding the First Amendment similar to those put forth by Omniphone in its March 22, 1988 protest and subsequent application for rehearing. Given that the First Amendment issues were not fully addressed at the time that Resolution No. T-12077 was adopted, Carlin's application for rehearing on this point is granted.

Assemblywoman Moore in her pleading sets forth First Amendment concerns similar to those raised by the other parties.

Given this, the issues raised in Assemblywoman Moore's petition for modification will be considered during the limited rehearing granted to Omniphone and Carlin.

IT IS ORDERED that a limited rehearing of Resolution No. T-12077 is granted to Omniphone and Carlin to allow consideration of the First Amendment issues raised by these parties on rehearing Except as granted herein, rehearing of Resolution No. T-12077 is denied.

This order is effective today.

Dated MAY 11 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
G. MITCHELL WILK
Commissioners

COMMISSIONER Frederick R. Duda,
being necessarily absent, did
not participate.

Commissioner John B. Charnian,
being necessarily absent, did
not participate.