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Decision 92-08-027 August 11, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Z.I.P., Inc.,

Complainant,

vs.

Pacific Bell (U-1001-C),

Defendant.

ORIGINAL

Case 90-12-016
(Filed December 6, 1990)

INTERIM OPINION

On July 1, 1992, the Commission issued Decision (D.) 92-07-019, an interim decision and order in this proceeding which denied Pacific Bell's motion to dismiss the complaint, and which found that the tariffs upon which Pacific Bell relied in support of its motion did not obligate Z.I.P., Inc. to pay charges for the time "800" calls were held in queue in its Centrex system.

Z.I.P., Inc. has deposited a total of \$717,636.04 with the Commission, pursuant to Public Utilities Code § 1702.2(b), pending the decision in this proceeding. Agreement has not yet been reached between the parties concerning the calculation of reparations that may be due to Z.I.P., Inc., under the terms of D.92-07-019. However, the parties have filed a stipulation that provides that the funds on deposit may be distributed as soon as possible, notwithstanding the pendency of a final decision, in accordance with the following directions, and they have requested the Commission to issue an order to the Executive Director to this effect.

First, \$200,000 of the amount on deposit, plus 27.14% of the total amount of the interest accrued on all of the deposited funds to the date of distribution, should be distributed to Z.I.P., Inc.

Second, the balance of the sum on deposit, plus all remaining interest, should be distributed to Pacific Bell.

The parties have stipulated that this distribution is not intended to reflect the calculation of the actual amount due to either party, nor to resolve any other question of fact relevant to the proceeding. They have further stipulated that this distribution is not to be deemed to be an admission of any sort, nor is it to have any precedential effect. In the event that a different result is reached upon final resolution of this dispute than is called for by the foregoing distribution, the parties have agreed to make an appropriate adjustment of the payments between themselves.

The parties' stipulation is reasonable in light of the record, consistent with law, and in the public interest. Accordingly, their request is granted.

Findings of Fact

1. Z.I.P., Inc., has deposited the total sum of \$717,636.04 with the Commission, pursuant to Public Utilities Code § 1702.2(b), in relation to this proceeding.

2. The parties have stipulated that the sum on deposit, plus all of the interest thereon, should be distributed in accordance with the terms of this order.

3. The stipulation is reasonable in light of the record, consistent with law, and in the public interest.

Conclusions of Law

1. The funds on deposit with the Commission in this matter should be distributed in accordance with the terms of the parties' stipulation.

2. The order permitting distribution should be made effective immediately to prevent hardship to the parties from the retention of the deposit without cause.

INTERIM ORDER

IT IS ORDERED that:

1. The Executive Director is directed to cause the funds held in trust in this matter to be distributed to the parties as follows:

- a. The sum of \$200,000, plus 27.14% of the total amount of interest accrued on all of the deposited funds to the date of distribution, shall be paid to complainant, Z.I.P., Inc.
- b. The balance of the deposited funds, including all interest remaining after distribution is made pursuant to the preceding subparagraph, shall be paid to defendant Pacific Bell.

2. The Executive Director shall prepare and furnish to the administrative law judge and to each party an accounting of the sums distributed pursuant to this Order.

3. The distribution of funds held in trust pursuant to this Order shall not be construed as evidence of the actual amount due to either party in relation to the matters alleged in the complaint, nor as a resolution any issue of fact or law relevant thereto.

4. The distribution of funds hereunder shall not be deemed to be an admission of any sort by either party, nor be asserted by anyone to have any precedential effect.

This order is effective today.

Dated August 11, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
PATRICIA M. ECKERT
NORMAN D. SHUNWAY
Commissioners

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

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


NEAL J. SHULMAN, Executive Director
PB