

Decision 83 11 021 November 2, 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
THE PACIFIC TELEPHONE AND TELEGRAPH)
COMPANY, a corporation, for authority)
to increase certain intrastate rates)
and charges applicable to telephone)
services furnished within the State)
of California, etc.)

Application 59849
and related matters
Application 59269
Application 59858
Application 59888
OII 63
OII 81
OII 84
Application 82-10-23

DENIAL OF MOTION TO ACCEPT APPLICATION FOR REHEARING

On October 7, 1983, California Interconnect Association (CIA) tendered an application for rehearing of Decision (D.) 83-09-024 authorizing sale of 1A key telephone systems by Pacific Telephone which was issued September 7, 1983 and effective on that date. The document was rejected by the Docket Office as an application for rehearing since it was not filed before the 30th day after the date of issuance of the decision. CIA was offered the opportunity to have the document filed as a petition for modification but it declined and was advised that it could file a motion to have the document accepted as an application for rehearing. It did so on October 13, 1983.

CIA argues that its application for rehearing was timely filed under Public Utilities Code (PU Code) Section 1731^{1/} and that the clear legislative intent of Section 1731 provides for timely filing of an application for rehearing (when the Commission fixes

^{1/} Section 1731 provides, in relevant part, ". . . No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has filed application to the commission for rehearing before the effective date of the order or decision, or, if the commission fixes a date earlier than the 20th day after issuance as the effective date of the order or decision, unless the corporation or person has filed such application for rehearing before the 30th day after the date of issuance..."

an effective date earlier than the 20th day after issuance) as before the end of the 30th day after the date of issuance (emphasis by CIA). CIA argues that the Legislature clearly must have meant "on or before" or "within" 30 days. It cites AB 1932 which was enrolled on July 25, 1983 and which becomes effective January 1, 1984, amending Section 1731 to provide, among other things, that an application to the Commission for rehearing shall be filed within 30 days after the date of issuance of an order or decision, and defines "date of issuance" as that date when the Commission mails the order or decision to the parties to the action or proceeding. CIA contends that its time to file an application for rehearing is counted from the date the decision of the Commission was mailed to CIA.

Lastly, CIA cites the text California Administrative Agency Practice Section 8.57, p. 393, which states in pertinent part:

"It (the application for rehearing) must be filed before the effective date of the order or decision or the ability to appeal is lost, except when the decision is effective less than ten days after issuance. In the latter case, it must be filed within ten days of issuance." Pub. Util. Code § 1731. (Emphasis by CIA.)

Taking the last argument first, the latter case that the text refers to is that circumstance where the Commission has issued a decision effective less than 10 days after issuance. The statement that an application for rehearing of a Commission decision effective in less than 10 days must be filed within 10 days after issuance is simply incorrect. Such applications must be filed before the 30th day after issuance by the plain reading of the statute. Since the entire statement is incorrect, use of the word "within" should be given no weight in arguing for a particular interpretation of a statute.

CIA's argument that Section 1731, as presently written, contemplates counting of time from the date of mailing is totally without substance. The Commission does not presently use the

mailing date for counting time for any other party's application for rehearing and there is nothing in the code to indicate that it should. To do so for CIA would be giving it a preference not accorded to other applicants and would be manifestly unfair.

CIA's argument that because the Legislature amended Section 1731 to read "within 30 days", it clearly must have meant that the current language which reads "before 30 days" should be interpreted as meaning "on or before" or "within" 30 days. This is contrary to elementary statutory construction which holds that a legislative purpose to change the existing law will be presumed from a new enactment on the same subject. Union League Club v Johnson, 18 C 2d 175. (Emphasis added.) Since AB 1932 amends Section 1731 effective January 1, 1984, it must be presumed to change Section 1731 as it reads now. Section 1731 as it reads now is what we must apply to CIA since it is what we apply to every other applicant for rehearing.

The term "before" is defined by Websters 3d New International Dictionary as "In advance of: ahead" as the first of many meanings. Such a definition is inconsistent with CIA's interpretation that the word means "before the end of the 30th day". Statutes are interpreted using the ordinary meaning of words and presuming that the Legislature said what it meant and meant what it said.

Lastly, we note that time provisions in statutes which limit the time of appeal are considered mandatory. "Where consequences or penalties are attached to failure to observe the provision within a given time, the time provision will be construed as mandatory, so that performance of the act after the given time cannot defeat the prescribed consequences." Rosenfeld v Vosper, 70 CA 2d 217. The limitation set forth in Section 1731 concerns applicants' right to appeal the matter to the California Supreme Court. This accrues only to those who have filed applications for rehearing of Commission decisions "before the 30th day after the date of issuance." Applicant's document does not fall within

that time period and must be rejected as an application for rehearing. Applicant may still tender the document as a petition for modification.

This matter was not shown on the Commission's public agenda as required by the Government Code; however, the decision to which applicant objects and wishes to file for rehearing authorizes Pacific Telephone to begin sale of LA Key Telephone equipment to the public on November 4, 1983, and therefore our action on the motion today is necessary on an emergency basis under Public Utilities Code Section 308(b).

Therefore, for failure to show good cause,

IT IS ORDERED that the motion of California Interconnect Association to file an application for rehearing of Decision 83-09-024 on the 30th day after issuance of that decision is denied.

This order is effective today.

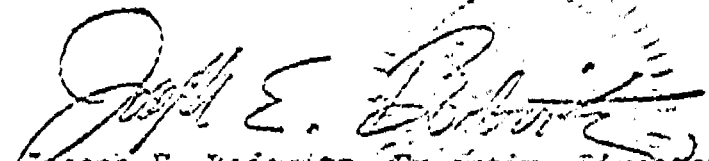
Dated NOV 2 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
WILLIAM T. BAGLEY
Commissioners

Commissioner Donald Vial, being necessarily absent, did not participate.

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


Joseph E. Bodovitz, Executive Director

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DENIAL OF MOTION TO ACCEPT APPLICATION FOR REHEARING

On October 7, 1983, California Interconnect Association (CIA) tendered an application for rehearing of Decision (D.) 83-09-024, ^{with respect to Public Utilities Code 1731 re: telephone systems for Pacific Telephone} which was issued September 17, 1983 and effective on that date. The document was rejected by the Docket Office as an application for rehearing since it was not filed before the 30th day after the date of issuance of the decision. CIA was offered the opportunity to have the document filed as a petition for modification but it declined and was advised that it could file a motion to have the document accepted as an application for rehearing. It did so on October 13, 1983.

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