

MAIL DATE

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ORIGINAL

Decision 97-03-023

March 7, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of)
 TCG-San Francisco, TCG-Los Angeles,)
 TCG-San Diego and Pacific bell for)
 Approval of Three Interconnection)
 Agreements Pursuant to Section 252 of)
 the Telecommunications Act of 1996.)

A.96-07-035
 (Filed July 23, 1996)

ORDER DENYING REHEARING OF DECISION 96-10-039

A joint application for rehearing of Decision (D.) 96-10-039 was timely filed on behalf of three affiliates of the Teleport Communications Group, Inc.: (TCG-San Francisco, TCG-Los Angeles, and TCG-San Diego, collectively (TCG)). In D.96-10-039, the Commission approved three separate voluntary interconnection agreements between Pacific Bell and the respective TCG affiliates. No response to the application for rehearing was filed. Today, we conclude that the application should be denied for lack of a valid claim of legal error.

TCG's application is limited to a single allegation of legal error, to wit, that the definition in D.96-10-039 of an incumbent local exchange carrier is erroneous because it is incomplete, and therefore, inconsistent with the controlling, statutory definition contained in Section 251(h) of the Telecommunications Act of 1996 (The

Act).¹ According to TCG, the truncated definition referenced by the Commission would classify both Pacific Bell and TCG as incumbent local exchange carriers while The Act would cause only Pacific Bell to be so classified.

"This definition, unfortunately, does not comport with the 1996 Act, and, in fact, would brand TCG as an incumbent local exchange carrier, contrary to federal law." (TCG Application, page 1.)

TCG is mistaken in its claim of legal error. D.96-10-039 does not purport to provide a complete definition of incumbent local exchange carrier. On the contrary, the Decision's explanation of an incumbent local exchange carrier clearly is a paraphrase of a portion of the definition contained in The Act. It was designed to provide a point of reference for a term of art; it was not intended as the definitive citation, a fact that should have been clear from the Decision's explicit disclaimer, "defined (in critical part)".

TCG's best argument is the suggestion that the definition is misleading. However even

¹ Footnote 1 of D.96-10-039 states:

"An incumbent local exchange carrier is defined (in critical part) as one which provided telephone exchange service in a specified area on February 8, 1996, the date of enactment of the 1996 Act. (See §251 (h) (1) (A).)"

An incumbent local exchange carrier is defined in The Act thusly:

"(h) DEFINITION OF INCUMBENT LOCAL EXCHANGE CARRIER. -

(1) DEFINITION. -For purposes of this section, the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that-

(A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and

(B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601 (b)); or

(ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i)".

that claim does not constitute legal error, especially since nothing in the Decision turns on the accuracy or completeness of the challenged definition. It is dicta.

In this proceeding, it has been obvious that Pacific Bell, not TCG, is the incumbent local exchange carrier. We believe that D.96-10-039 is clear in all essential points, namely the assessment of the components contained in the voluntary agreements which we authorized in that Decision. TCG's concern about being mistaken for an incumbent local exchange carrier seems misplaced. While it is possible that the uninformed might improperly use the partial definition in a context unrelated to D.96-10-039, such an occurrence seems unlikely and this Commission cannot preoccupy itself with such errant behavior. If exposed to misclassification as a result of the the reference to incumbent local exchange carrier in D.96-10-039, TCG need only refer the confused parties to the instant decision at footnote 1 where we quote the complete definition from the Act.

We must be vigilant in our effort to ensure that the dictates of our decisions are unambiguous - that the reader knows what we have ordered, why we have done so and what is expected as a result of that order. We believe that we have achieved that clarity in D.96-10-039. Therefore, we conclude that TCG has failed to state a valid claim of legal error and that the application for rehearing of D.96-10-039 should be denied.

IT IS ORDERED that:

The application for rehearing of D.96-10-039 is denied.

This order is effective today.

Dated March 7, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners