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Decision 97-12-052 December 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Philip Ortega,
Complainant,

v.

AT&T Communications of California,
Inc.,
Defendant.

ORIGINAL
Case No. 92-08-031
(Filed August 24, 1992)

Centro Legal de la Raza et al.
Complainants,

v.

AT&T Communications of California,
Inc.,
Defendant.

Case No. 92-09-009
(Filed September 8, 1992)

**ORDER GRANTING APPLICATION FOR REHEARING,
MODIFYING DECISION NO. 97-09-060
AND DENYING REHEARING AS MODIFIED**

On September 3, 1997, we issued Decision No. (D.) 97-09-060. This decision granted limited rehearing to Applicants of D.94-11-026. On October 8, 1997, applicants filed an application for rehearing of D.97-09-060. This application alleged that the prior decision on rehearing was in error in two respects. The first is that we failed to indicate that 25 actual users of AT&T Coin Service joined in the original complaint, therefore complying with Public Utilities Code § 1702 for attacking the reasonableness of the new rates. The second allegation of error is that we overstated the degree of

preemption of pay telephone regulation by the Federal Government in the Telecommunications Act of 1996. Both points are well-taken.

AT&T has filed a response to the Application essentially stating that it has no objection to Applicants' arguments but pointing out that there can be no application for rehearing of a decision on rehearing.

On November 5, 1997, ALJ Wong issued a ruling that vacated the second application for rehearing because Section 1756 of the Public Utilities Code forecloses such an Application, citing TURN v. CPUC (1978) 22 Cal.3d 529, 536-537.

Applicant has filed a motion for reconsideration of this ruling. The basis of the motion is that the federal preemption language contained in D.97-09-060 flows from the Commission's interpretation of federal legislation that became effective after the close of the record in this proceeding, on which the parties have had no opportunity to comment.

The argument has merit. Normally a party may not file an application for rehearing of a decision on rehearing, nor is he required to do so to preserve his right to review in the California Supreme Court. However, as Applicants correctly point out, the complained of language is contained for the first time in the decision on rehearing. This is therefore the first opportunity that any party has had to appeal this issue, and thus preserve his right to further California Supreme Court review pursuant to California Public Utilities Code § 1731.

We therefore believe that the facts on this case justify an exception to the rule that rehearing may not be sought of a decision on rehearing. We will therefore grant Applicants' motion for reconsideration of ALJ Wong's ruling vacating the application for Rehearing, reinstate the application and modify D. 97-09-060 as provided below.

A review of the record in this proceeding and the Federal legislation indicates that our prior decision with regard to federal preemption was in error. At page 9 of the decision appears the following language:

"Finally, both Applications argue that the decision is in error for ordering that AT&T file an application, rather than an AL, for future increases for coin telephone service. Both parties point out that this ignores the fact that AT&T filed AL 349 which had already gone into effect before the present decision was issued subsequent to AL 254.

However, this issue has become moot. Since the close of the record in this case, the Telecommunication Act of 1996 has become effective. Pursuant to this federal legislation, this Commission will no longer have any jurisdiction to regulate pay telephone rates as of October 7, 1997. We will therefore no longer have authority to order AT&T to make filings in order to alter rates."

As Applicant points out, the only areas preempted by the Telecommunications Act relate to local pay phone calls and directory assistance. The Commission's other jurisdiction, such as the regulation of intrastate, interLATA calls remains undisturbed. We will therefore modify D.97-09-060 to correctly reflect the extent of our jurisdiction, and as modified, deny further rehearing.

Therefore, IT IS ORDERED:

1. The motion for reconsideration of the ALJ ruling vacating the application for rehearing of D. 97-09-060 is granted.
2. The application for rehearing of D.97-09-060 is granted.
3. D. 97-09-060 is modified as follows:

The third paragraph on page 9 is deleted and the following language is inserted in its place.:

"However, since the close of the record in this case, this Commission has issued further decisions with respect to the regulation of AT&T. Specifically, D.97-08-060 granted the company complete regulatory flexibility and ordered that AT&T be regulated like all other IEC's. Appendix A of the decision specifically provides for Advice Letter filings for changes in rates by those companies."

4. The Application for rehearing of D.97-09-060, as modified, is denied.

5. This order is effective today.

Dated December 3, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners