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Decision 98-01-013 January 7, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Privatenet, LLC,
for arbitration of a Pole and Conduit License
Agreement with Pacific Bell.

Application 97-06-019
(Filed June 12, 1997)

John J. Gilece, Jr., Attorney at Law, for Privatenet
LLC, applicant.
David P. Discher and Lori L. Ortenstone, Attorneys
at Law, for Pacific Bell, respondent.

ORIGINAL

O P I N I O N

1. Summary

The application is dismissed with prejudice for failure of Privatenet, LLC (applicant) to fulfill the terms of the stipulated resolution of this arbitration, as ordered in the Final Arbitrator's Report.

2. Background

On June 12, 1997, applicant filed for arbitration pursuant to the Telecommunications Act of 1996 (Act) and Commission Resolution ALJ-168. On July 7, 1997, Pacific Bell (respondent) filed its response.

An Initial Arbitration Meeting was held on July 9, 1997. Parties stipulated to facts. Therefore, no arbitration hearing was held.

Parties agreed to the arbitration of two issues, which they addressed in briefs. Positions taken in briefs suggested that the parties had essentially resolved this arbitration. A conference call was held on August 11, 1997 to explore remaining issues. No issues were presented. Parties stipulated that the arbitration may be resolved on the basis that applicant will file a registration form to become a certified California telecommunications corporation pursuant to Decision (D.) 97-06-107, and respondent

will execute a Pole and Conduit License Agreement (Agreement) with applicant once applicant is registered.¹

The Draft Arbitrator's Report (filed and served on August 15, 1997) adopted the stipulation. No comments were filed. The Final Arbitrator's Report (filed and served on September 9, 1997) adopted, and ordered execution of, the stipulation. The Final Arbitrator's Report ordered applicant to file the registration form within 45 days (by October 24, 1997). Should applicant not file by October 24, 1997, the Final Arbitrator's Report stated that a decision would be drafted for Commission adoption dismissing the application for applicant's failure to fulfill the terms of the stipulated resolution of this arbitration.

3. Discussion

Applicant did not submit a registration form by October 24, 1997. Therefore, the application should be dismissed. Moreover, it should be dismissed with prejudice, since applicant has had ample opportunity to submit a registration form in compliance with the stipulation, as ordered in the Final Arbitrator's Report. Moreover, applicant has not filed a motion asking for additional time.

Dismissal with prejudice forecloses applicant from refiling against respondent for arbitration of the same issues. Applicant may, however, at any time file a registration form to become a certified California telecommunications corporation, at which time respondent will execute an Agreement with applicant.

Findings of Fact

1. On June 12, 1997, applicant filed an application for arbitration pursuant to the Act, and Commission Resolution ALJ-168.
2. On July 7, 1997, respondent filed its response.

¹ While the parties agreed to the registration process, applicant should note that the registration process is limited to Certificates of Public Convenience and Necessity for nondominant interexchange carriers. The registration process cannot be used to obtain a certificate of public convenience and necessity to become a competitive local carrier.

3. The parties stipulated that the arbitration may be resolved on the basis of applicant filing a registration form pursuant to D.97-06-107, and respondent executing the Agreement with applicant once applicant is registered.

4. On September 9, 1997, the Final Arbitrator's Report was filed and served.

5. The Final Arbitrator's Report adopts the stipulation of the parties, orders applicant to file the registration form within 45 days (by October 24, 1997), and states that, if applicant does not file the registration form within 45 days, a decision will be prepared for Commission adoption dismissing the application for applicant's failure to fulfill the terms of the stipulated resolution of this arbitration.

6. Applicant did not file the registration form by October 24, 1997.

7. Applicant has failed to comply with the terms of the stipulation, as ordered in the Final Arbitrator's Report.

8. Applicant has not filed a motion asking for additional time.

Conclusion of Law

This application should be dismissed with prejudice.

O R D E R

IT IS ORDERED that the application of Privatenet, LLC for arbitration of a Pole and Conduit License Agreement with Pacific Bell is dismissed with prejudice. This proceeding is closed.

This order is effective today.

Dated January 7, 1998, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners