

Decision 98-06-032

June 4, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Cook Telecom, Inc. for arbitration pursuant to Section 252 of the Federal Telecommunications Act of 1996 to establish an interconnection agreement with Pacific Bell.

Application 97-02-003
(Filed February 3, 1997)

ORIGINAL

**ORDER DENYING APPLICATION FOR REHEARING
OF DECISION 98-03-075**

I. INTRODUCTION

On February 3, 1997, Cook Telecom, Inc. (Cook) filed a timely application for arbitration of terms, conditions and rates for interconnection with Pacific Bell. In Decision (D.) 97-05-095, which was issued as an interim opinion in Phase I of the proceeding, we rejected the Arbitrated Interconnection Agreement between Cook and Pacific Bell because it failed to provide termination compensation to Cook as required by the Telecommunications Act of 1996 (the Act). In that decision, we adopted an interim termination rate to be paid by Pacific Bell to Cook, and kept the proceeding open to establish final rates (Phase II). Both Cook and Pacific Bell filed applications for rehearing of D.97-05-095. On September 24, 1997, we issued D.97-09-122 and D.97-09-123, and denied the rehearing applications of Pacific Bell and Cook, respectively. In D.98-03-075, we approved the final Conformed Paging Interconnection Agreement (Agreement) between Cook and Pacific Bell.

Pacific Bell filed a timely application for rehearing of D.98-03-075 in which it claims the Agreement unlawfully orders Pacific Bell to pay termination

compensation to Cook in violation of the Act. Pacific Bell specifically argues that Cook is not entitled to termination compensation under §251(b)(5) of the Act because Cook does not "terminate" telecommunications as defined in 47 C.F.R. §51.701(d). Pacific Bell further argues that neither the Act nor the FCC's regulations mandate that Pacific Bell pay reciprocal compensation to Cook, and that Cook is not entitled to reciprocal compensation because Cook operates a strictly one-way paging service which does not involve a mutual or reciprocal exchange of traffic or compensation, as required by §§251(b)(5) and 252(d)(2)(a)(i) of the Act. Finally, Pacific Bell argues that denying reciprocal compensation to one-way paging providers would neither be discriminatory nor against public policy.

Cook filed a timely response to Pacific Bell's application for rehearing. Cook claims that since there has been no applicable change in law since these issues were last visited in Decisions 97-05-095 and 97-09-122, Pacific Bell's application should be denied. Cook further argues that Pacific Bell's application for rehearing is untimely under Rule 85 of the Commission's Rules of Practice and Procedure.

II. DISCUSSION

1. Timeliness

We first address Cook's claim that Pacific Bell's application for rehearing is untimely. Rule 85 of the Commission's Rules of Practice and Procedure states that an application for rehearing shall be filed within 30 days of the date of issuance of a Commission order or decision. "Date of issuance" is defined as the date when the Commission mails the order or decision to the parties to the action or proceeding. In this case, D.98-03-075 was issued on March 27, 1998. The thirtieth day after March 27 was April 26, which fell on a Sunday. Rule 3.2 provides that where a Commission rule sets a time limit for performance

of an act, if the last day falls on a Saturday, Sunday, or holiday when the Commission offices are closed, the time limit is extended to include the first day thereafter. Pacific Bell's application for rehearing was filed on the next business day, April 27, and is therefore timely.

2. The Application for Rehearing

Turning to the merits of the application, we note that Pacific Bell raises exactly the same arguments in its instant application for rehearing as it did in its application for rehearing of D.97-05-095. As discussed above, we denied rehearing in D.97-09-122, finding that Pacific Bell did not establish legal error in the decision as is required by Cal. Pub. Util. Code §1732. In that decision, we found that requiring Pacific Bell to enter into a reciprocal compensation arrangement with Cook for the termination of paging calls originating on Pacific Bell's network complies with Sections 251(b)(5) and 252(d)(2)(A)(i) of the 1996 Act, the FCC's orders and regulations, and the public policy objectives set forth in the Act.

We have already addressed all of Pacific Bell's allegations of legal error in D.97-09-122. There is no need to discuss those issues again. Pacific Bell has offered no new legal authority or argument in support of its position which would compel us to reverse ourselves. As such, we find no inconsistency or violation of the Act, the FCC Regulations, or other legal error with respect to our decision in D.98-03-075.

III. CONCLUSION

We find the challenges alleged in Pacific Bell's application for rehearing are without merit and fail to establish legal error.

IT IS THEREFORE ORDERED that:

1. Pacific Bell's application for rehearing of D.98-03-075 is denied.
2. This proceeding is closed.

This order is effective today.

Dated June 4, 1998, at San Francisco, California.

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