

ALJ/PAB/tcg

Mailed 9/3/98

Decision 98-09-007 September 3, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

William Firschein, AIA,

Complainant,

vs.

Continental Cablevision/MediaOne,

Defendant.

Case 97-12-019
(Filed December 10, 1997)

OPINION

On December 10, 1997, complainant, William Firschein, requested that defendant, Continental Cablevision/MediaOne (Cable), be ordered to cease and desist from engaging in unsafe television cable installations and to monitor and verify that levels of electromagnetic radiation are safe or mitigate against any unsafe installations.

Cable filed a timely answer denying all allegations and a separate Motion to Dismiss. We herein discuss and grant this motion based upon complainant's failure to state facts to show that defendant has violated applicable law or rules and regulations of this Commission as required by Rule 9(a) of the Commission's Rules of Practice and Procedure.

This complaint was filed prior to January 1, 1998 and no evidentiary hearings are scheduled. Therefore, Senate Bill (SB) 960 procedural rules do not apply to this proceeding.

Discussion

Complainant argues that defendant is subject to compliance with the Commission's General Orders (GO) 95 and 128 for overhead electric lines because Public Utilities (PU) Code § 768.5 places the safety of cable installations under the jurisdiction of this Commission.¹ This argument has no merit. GOs 95 and 128 are specifically applicable to electric supply and communications corporations and make no mention of cable television installations. In fact, the Commission has recently declined to establish rules applicable to electric utilities for electromagnetic radiation, the subject matter involved in this complaint, because its effects are unknown. The mitigation measures that were established apply to electric utilities and not cable providers. (See Decision 93-11-013.) Therefore, there are no rules promulgated by the Commission regarding this subject for defendant to violate. Since we recently investigated electromagnetic radiation and declined to establish rules for electric utilities regarding its safety, we also decline to revisit this issue as it relates to cable providers in this

¹ "Section 768.5 Cable television corporations

"The commission may, after a hearing, by general or special orders, rules, or otherwise, require every cable television corporation to construct, maintain, and operate its plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of its employees, customers, and the public, and may prescribe, among other things, the installation, use, maintenance, and operation of appropriate safety or other devices or appliances, establish uniform or other standards of construction and equipment, and require the performance of any other act which the health or safety of its employees, customers, or the public may demand.

"Nothing in this section shall be construed to either grant or deny a cable antenna television corporation the right to use the easement of a public utility."

proceeding. In addition, a complaint proceeding is not the proper proceeding in which such rules may be established since notice and opportunity to be heard is not given to all interested and affected parties.

Findings of Fact

1. Complainant inaccurately alleges that GOs 95 and 128 are applicable to the operations of cable television companies. Complainant fails to allege a violation of rules applicable to defendant's operations.

2. The Commission has declined to set rules or standards for electromagnetic radiation pursuant to its limited jurisdiction over cable television operations provided by PU Code § 768.5.

3. This complaint was filed prior to January 1, 1998 and no evidentiary hearings are scheduled.

Conclusions of Law

1. GOs 95 and 128 are not applicable to the operations of cable television companies.

2. Complainant fails to state a violation of applicable law or rules or regulations of this Commission.

3. Defendant's Motion to Dismiss should be granted and this proceeding closed.

4. SB 960 procedural rules effective January 1, 1998 do not apply to this proceeding.

ORDER

IT IS ORDERED that the Motion to Dismiss of defendant, Continental Cablevision/MediaOne, is granted and this proceeding is closed.

This order is effective today.

Dated September 3, 1998, at San Francisco, California.

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