

Decision 99-01-026 January 20, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Philip Ortega
 Complainant,
 vs.
 AT&T Communications of California,
 Inc.
 Defendant.

Centro Legal de la Raza et al.
 Complainants,
 vs.
 AT&T Communications of California,
 Inc.
 Defendant.

ORIGINAL

C. 92-08-031
 (Filed August 24, 1992)

C. 92-09-009
 (Filed September 8, 1992)

ORDER DENYING REHEARING OF DECISION NO. 98-10-023

In D. 98-10-023 (the decision) the Commission found that a prior refund period created by D.94-11-026 had not yet terminated, and ordered AT&T to reduce its payphone rates to achieve a total reduction of \$3 million. The decision was on rehearing from an earlier application also by Phillip Ortega. The Commission does not ordinarily entertain applications for rehearing of decisions on rehearing. However, such an application will be accepted where, as here, the applicant is raising, for the first time, allegations of error in the rehearing itself. The refund is to be accomplished by the reduction of AT&T's intrastate interLATA payphone rate to 25 cents per minute until such time as the refund amount has been achieved. The basis for determining the amount refunded is the difference between the refund rate, 25 cents, and the average revenue per billed minute in 1997. Although styled as an application for rehearing, the document

really seeks only clarification and modification, neither of which applicant has shown to be required.

Applicant first argues that he wishes to "raise allegations of error concerning evidence developed during the rehearing phase of the proceeding." However, he does not point to a single evidentiary error during the proceeding itself or in the decision. As such, this allegation does not meet the specifications for rehearing set forth in Public Utilities Code Sections 1731 and 1732, which require an application to state "specifically the ground or grounds on which the applicant considers the decision to be unlawful."

Applicant next argues that AT&T "could interpret the order such that 25 cents per minute is the raw-rate, and then add taxes and any surcharge to that." (Application, page 2) There is no support for this assertion. The order is unambiguous. The rate is set at a flat 25 cents per minute and there is no provision for any further taxes or surcharges. Further, how AT&T might interpret a Commission order in the future does not constitute present legal error.

Applicant next argues that the decision is ambiguous about the minimum charge for a payphone call because it does not discuss any minimum charge for the 25 cent per minute rate. Applicant points out that, although the present minimum charge for a coin call is three minutes, to maximize the refund, there should be no minimum charge at all, and that a one minute call should only cost 25 cents. Again, this does not constitute legal or factual error in the decision, but only a supposition on the decision's effectiveness, and is without merit.

Finally, applicant alleges that, while the 25 cent per minute rate will result in a reduction in the cost of short calls, it could cause an increase in the cost of longer calls of ten minutes or more. To remedy this potential problem, he suggests that the 25 cent per minute rate be for the first five minutes only, with current rates for additional minutes to remain in effect. Again, this does not constitute legal error. Applicant is simply suggesting that his preferred rate design

would better accomplish the Commission's goal to refund the overcharge to AT&T's customers. Nowhere in the decision did the Commission state that the result would always be a reduction in charges for every payphone call, no matter the duration. Rather, the intent was to achieve the refund in the simplest, most expeditious manner without redoing A&T's entire payphone rate design. The argument is without merit.

Applicant has raised no factual or legal errors in the decision, and the Application for Rehearing should be denied.

IT IS THEREFORE ORDERED that:

1. The Application for Rehearing is denied.
2. This proceeding is closed.

This order is effective today.

Dated January 20, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners