

Decision 99-04-048 April 22, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell
(U 1001 C) for Authority Pursuant to
Public Utilities Code Section 851 to Lease
Space to Affiliates.

Application 98-11-017
(Filed November 10, 1998)

O P I N I O N

ORIGINAL

1. Summary

Pacific Bell (Pacific) seeks to withdraw its application to lease unused space to its affiliates. This decision dismisses the application. It also requires that any future applications to lease space to affiliates clearly identify any proposed leases of space at central office locations.

2. Background

In Application (A.) 95-10-019, filed on October 4, 1995, Pacific asked the Commission to grant Section 851 authority for a number of space use arrangements with both non-affiliated parties and affiliated parties.

Pacific originally sought authority to lease unused space at 69 locations to its affiliates. Timely protests to this application were filed by the Office of Ratepayer Advocates (ORA), Sprint Communications Company, L.P., (Sprint) and jointly by Accelerated Connections, Inc., AT&T Communications of California, Inc. (AT&T), ICG Telecom Group, Inc. (ICG), MCI Telecommunications Corp. (MCI), Nextlink California (Nextlink), and Northpoint Communications, Inc. (Northpoint). The protests addressed the proposed leases of central office locations. As a result, Pacific filed an amendment to its application in

December 28, 1998. Pacific represented that the amendment removed the proposed leases of central office space.

On January 27, 1999, a joint protest to the amended application was filed by all of the above parties except ORA (Joint Protestants). ORA did not file a protest to the amended application. Joint Protestants claimed that the amended application still included central office space and recommended that it be rejected.

On February 8, 1999, Pacific filed a notice of withdrawal of the amended application. It agreed with protestants that the amended application still included central office space. It decided to withdraw the application and stated that it will file a new application after an internal review is completed. We will treat the notice as a motion.

On February 23, 1999, Joint Protestants filed a response to the notice of withdrawal noting that they agreed with the withdrawal subject to certain conditions.

3. Joint Protestants Proposed Requirements

In their February 23, 1999 filing, Joint Protestants stated that they did not object to Pacific's motion to withdraw the application provided that the Commission require that, when Pacific seeks approval of central office location leases pursuant to California Pub. Util. Code § 851, Pacific should:

- List all leases by street address and CLII code, if applicable;
- Submit floor plans for each central office where Pacific proposes to lease space to affiliates and state whether Pacific utilizes any telecommunications space for administrative activities directly associated with telecommunications space;

- If a proposed central office lease does not involve telecommunications space, demonstrate that Pacific moved all administrative activities not specifically related to activities directly associated with telecommunications space into the proposed lease space prior to Pacific leasing that space to an affiliate;
- If a proposed lease involves telecommunications space, demonstrate that there is a sufficient amount of central office space remaining such that Pacific will not be limited or precluded from providing reasonably priced collocation to competitive local exchange carriers (CLECs) in the future; and if and when there is not sufficient space to accommodate collocating CLECs in the future, Pacific agrees to terminate the leases with affiliates using telecommunications space for administrative purposes not related to collocation, and make that space available to non-affiliated collocators;
- Submit information concerning collocation at the central office including: number of existing collocators, number of pending applications, whether space has been denied previously, amount of space utilized by affiliates and amount of space available for future use;
- Provide an analysis addressing whether the proposed leases are discriminatory, and therefore anti-competitive, and
- Provide authority for reserving administrative or any non-collocation space for affiliate use based on forecast of affiliate's future space needs.

Joint Protestants asserted that the above requirements are necessary to ensure that Pacific's leases to affiliates for administrative or non-collocation purposes do not lead to denial of CLEC collocation. Joint Protestants also asserted that imposing the requirements will help expedite future § 851 filings. Joint Protestants did not request hearings on their proposed requirements.

4. Discussion

Pacific's proposed withdrawal of the application is unopposed except that Joint Protestants propose that certain requirements be imposed on future filings. Therefore, we will dismiss the application.

As to the proposed requirements, we will not impose them at this time. In connection with future applications to lease space, Joint Protestants may conduct appropriate discovery and pursue the issues addressed in the requirements. We will, however, require Pacific to clearly identify any proposed leases of space at central office locations.

5. Categorization and Need for Hearings

In Resolution ALJ 176-3005, dated December 3, 1998, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary. Applicant has moved to withdraw the application. It is necessary to alter the preliminary determination that hearings are necessary. No hearings are necessary.

6. Pub. Util. Code Section 311(g)(1)

Pursuant to Pub. Util. Code Section 311(g)(1), the Administrative Law Judge's draft decision was filed and served on all parties to allow for comments.

On April 12, 1999, comments on the draft decision were filed by ORA and Joint Protestants. On April 19, 1999, Pacific filed reply comments. The comments and reply comments offer recommended language changes. These recommendations are consistent with the positions previously taken by the parties. No changes were made to the draft decision.

Findings of Fact

1. A.98-11-017 was filed on November 10, 1998 and amended on December 28, 1998.
2. Notices of the application and amendment appeared on November 20, 1998 and January 7, 1999, respectively.
3. Timely protests to the application and the amendment were filed by Sprint, Accelerated Connections, Inc., AT&T, ICG, MCI, Nextlink, and Northpoint. ORA filed a protest to the application but not the amendment.
4. On February 8, 1999, Pacific filed a notice of withdrawal of the application.
5. Joint Protestants filed a timely response to the notice of withdrawal which did not object to the withdrawal but proposed requirements to be applied to future filings.
6. The proposed requirements may be addressed through discovery in future applications and the issues they raise may be pursued in future applications.
7. Proposals to lease space at central office locations may raise issues concerning CLEC collocation.

Conclusions of Law

1. A.98-11-017 should be dismissed.
2. In any future applications to lease space to affiliates, Pacific should clearly identify any proposed leases of space at central office locations.
3. No hearings are necessary.

O R D E R

IT IS ORDERED that:

1. Application 98-11-017 is dismissed.
2. In any future applications to lease space to affiliates, Pacific Bell should clearly identify any proposed leases of space at central office locations.
3. This proceeding is closed.

This order is effective today.

Dated April 22, 1999, at San Francisco, California.

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