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MAIL DATE

2/19/99

Decision 99-02-092

February 18, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

William Firschein, AIA

v.

Continental Cablevision/MediaOne.

C.97-12-019

(Filed December 10, 1997)

ORDER
DENYING REHEARING OF DECISION 98-09-007

On December 10, 1997, the complainant in this case, William Firschein, requested that defendant, Continental Cablevision/MediaOne (Cable), a cable television corporation, 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 to mitigate against any unsafe installations. Cable filed an answer to the complaint which denied all allegations. In addition, Cable filed a separate motion to dismiss. Mr. Firschein responded in opposition to the motion. In Decision (D.) 98-09-007, issued September 3, 1998, we granted Cable's motion to dismiss. Mr. Firschein thereupon filed a timely application for rehearing, to which Cable responded.

We have reviewed all of the claims of legal error made in the application for rehearing, and the arguments made in the response opposing the application, and are of the view that none of these claims warrants granting rehearing. We will, however, respond to some of the arguments raised by Mr. Firschein as a way of clarifying further the basis for our decision to dismiss his complaint.

First, we note that this complaint is about electric and magnetic fields (EMFs) produced by the infrastructure Cable had installed on a building adjacent to Mr. Firschein's residence, for the purpose of providing cable television service. Mr. Firschein appears to recognize that Cable is not a public utility over which we have regulatory jurisdiction, but then takes the position that Cable should be treated as if it were an electric public utility corporation for public health and safety purposes, because the nature of EMF radiation produced by electric corporations and cable television corporations is similar. (Application for Rehearing, pp. 3-4 and throughout.) He thus argues that Cable should be made subject to our General Orders 95 and 128 (which, respectively, establish rules for overhead electric line construction and underground electrical and communications supply systems), and to D.93-11-013 (which took some interim steps to address EMFs related to electric utility facilities and power lines). However, Mr. Firschein points to no authority which would allow us to do that, and in fact, we cannot.

We do not have regulatory jurisdiction over cable television corporations, other than through Public Utilities Code section 768.5, which, among other things, does allow us to adopt rules and set standards for cable television corporations concerning the construction, maintenance, and operation of their plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of their employees, customers, and the public. Had we adopted such rules and standards, Cable would be subject to them. As of this time, however, we have not done so. Thus there are no health and safety rules which this Commission has adopted which apply to Cable, or which Cable has violated.

Moreover, legally, we cannot simply require cable television corporations, or Cable individually, to follow rules and standards which govern electric public utilities. As we have noted, while we do have the authority through section 768.5 to adopt health and safety rules for cable television corporations, this could only be done through a quasi-legislative investigation or rulemaking which

would allow all persons and entities with a stake in the outcome to participate, not through a single adjudicatory complaint against one company.

Mr. Firschein appears to believe that we denied his request for a hearing on the procedural ground that he filed it too soon to invoke the hearing requirements of SB 960. This is not the case. Because Mr. Firschein filed his complaint before January 1, 1998, the new procedures established by SB 960 did not apply to his case. (While he did make a filing in early 1998, he filed his complaint on December 10, 1997, which is the relevant date for SB 960 purposes.) However, even if SB 960 did apply to Mr. Firschein's case, that would not have guaranteed him a hearing. SB 960 provides that as an initial matter, the Commission shall determine if a particular case requires a hearing. It could be determined from the pleadings that the complaint had stated no facts to show that Cable had violated applicable law or rules and regulations of the Commission; thus no hearing was required.

Therefore, having been presented with no legal error warranting granting rehearing, **IT IS ORDERED** that:

1. Rehearing of D.98-09-007 is denied.
2. This proceeding is closed.

This order is effective today.

Dated February 18, 1999, at San Francisco, California.

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