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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93M-506
32125

In the Matter of)	CC DOCKET NO. 93-161
)	
Clark-Bader, Inc., d/b/a)	
TMC Long Distance)	
Complainant,)	
)	
v.)	File No. E-89-85
)	
Pacific Bell,)	
Defendant.)	

BY

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FCC MAIL SECTION

MEMORANDUM OPINION AND ORDER

Issued: August 5, 1993 ; Released: August 6, 1993

1. This Memorandum Opinion and Order denies a "Request for Subpoena Ad Testificandum" and the accompanying subpoena for C. L. Cox of the Pac Tel Corporation.¹ TMC Long Distance (TMC) filed those materials on August 2, 1993.²

Discussion

2. The Request is premised on an erroneous premise; i.e., that "[i]n his Prehearing Order . . . the Presiding Judge granted TMC's motion to depose Mr. Cox" The Presiding Judge did no such thing. See FCC 93M-426, released June 30, 1993, at paragraphs 9-11.

3. In the Prehearing Order, the Trial Judge authorized further discovery³ provided that such discovery was initiated on July 26, 1993, conducted pursuant to 47 C.F.R. 1.311 through 1.340 and completed on or before September 17, 1993. So the Trial Judge never granted TMC's motion to depose Mr. Cox.

¹ This Order is issued pursuant to 47 C.F.R. 1.335. That section provides that "[p]rompt notice, including a brief statement of the reasons therefor, will be given of the denial, in whole or in part, of a request for subpoena or of a motion to quash."

² The Trial Judge received his copy on the morning of August 4, 1993.

³ It must be kept in mind that the parties have had over four years to perfect their trial preparations. So the guidelines set out in the Prehearing Order were extremely liberal.

4. Secondly, TMC's August 2, 1993, request was late-filed. In the Prehearing Order, both TMC and Pacific Bell were expressly admonished that "all parties must meet all their procedural deadlines" and that "we can't afford the luxury of procedural slippage." And since TMC has had over four years to prepare for trial (since April 20, 1989), its unexplained tardiness is inexcusable.

5. Third, TMC's subpoena for C. L. Cox is without a legal foundation. TMC hasn't filed any notice to take C. L. Cox's deposition. 47 C.F.R. 1.333(e) states that "[r]equests for issuance of a subpoena ad testificandum to enforce a notice to take depositions . . . shall not be granted until the period for the filing of motions opposing the taking of the depositions has expired" Since no notice has been filed, the other parties (Pac Bell and the Common Carrier Bureau) don't know when to file any notice opposing the taking of C. L. Cox's deposition. This is no way to proceed.

6. Fourth, and finally, TMC's August 2, 1993, request fails to comply with 47 C.F.R. 1.315(a)'s time requirements. Under that subsection any party who intends to take depositions must give a minimum of 21 days notice in writing. The face of the subpoena to C. L. Cox indicates that he must appear on August 19, 1993, 17 days notice.

7. TMC is certainly aware that they had to file an appropriate notice to take C. L. Cox's deposition. On August 2, 1993 (the same day they filed their request for Subpoena Ad Testificandum), TMC filed notices to take the depositions of three other potential witnesses: J. D. Lockton, M. L. Bandler, and Dennis Wheately. So it isn't that they don't know what the legal requirements are. See FCC 93M-505, released August 5, 1993.⁴

SO the "Request for Subpoena Ad Testificandum" that TMC Long Distance filed on August 2, 1993, IS DENIED, and the accompanying Subpoena (FCC Form 766) WILL NOT BE SIGNED.

FEDERAL COMMUNICATIONS COMMISSION



Walter C. Miller
Administrative Law Judge

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⁴ In the package of materials that TMC submitted to the Trial Judge are some predesignation discovery materials dated January 29, 1993. Those obsolete materials have been ignored.