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

FCC 93M-511
32138

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In the matter of)

CC DOCKET NO. 93-161)

CLARKSHADER, INC. d/b/a)
TMC LONG DISTANCE,)

File No. E-89-85)

Complainant,)

v.)

PACIFIC BELL,)

Defendant.)

MEMORANDUM OPINION AND ORDER

Issued: August 6, 1993 ; Released: August 9, 1993

1. This Memorandum Opinion and Order dismisses still another late filed "Notice to Take Deposition Upon Oral Examination" that TMC Long Distance (TMC) filed on August 4, 1993.¹ TMC now would depose Helga Post, an employee of Pacific Bell Telephone Company.

Background

2. This is another in what seems to be an extended series of pleadings designed to initiate late-filed discovery. The Trial Judge has informally advised both TMC and Pacific Bell that if they want to engage in agreed upon, informal discovery such as witness interviews, they can go ahead and do so. But he will not give an official imprimatur to late filed trial procedures.

3. One of the Trial Judge's duties is to (if he can) shape the trial in advance to ensure smooth progression. So he (not Pacific Bell, not TMC) must exercise appropriate pretrial control. Pacific Bell cannot be permitted to control the procedural dates, and TMC cannot be permitted to do so. One of the major causes of inefficient trials is tardy lawyers. That's regrettable, but true.

4. As FCC 93M-505 released August 5, 1993 points out: "Between April 20, 1989 and June 23, 1993, both TMC and Pacific Bell ... responded to numerous interrogatories, exchanged thousands of pages of documents, and obtained the deposition testimony of at least six potential witnesses."

5. Even with all that predesignation discovery, the Trial Judge authorized

¹ See FCC 93M-505, issued August 3, 1993 and released August 5, 1993. There the Trial Judge dismissed as late filed, three Notices to Take Deposition that TMC filed on August 2, 1993. On August 3, 1993, TMC tried to set up the deposition of C. L. Cox without filing a Notice of Deposition. They did so under the erroneous representation that the Trial Judge had already approved the taking of that deposition. See FCC 93M-506, issued August 5, 1993 and released August 6, 1993.

certain ~~FOOTNOTES~~ ^{SECTION} designation discovery provided it was initiated on July 26, 1993, conducted pursuant to CFR 1.311 through 1.340, and completed on or before September 17, 1993. Neither TMC nor Pacific Bell initiated such discovery.

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6. TMC then tried to initiate late-filed discovery on August 2, 1993. That was denied. See FCC 93M-505 supra. TMC then tried to initiate late-filed discovery on August 3, 1993. That was denied. See FCC 93M-506 supra. Then they tried again on August 4, 1993. This will be denied.^{2 3}

SO the "Notice to Take Deposition on Oral Examination" that TMC Long Distance filed on August 4, 1993 and directs at Helga Post, a Pacific Bell Telephone Company employee, IS DISMISSED; and

The deposition of Helga Post WILL NOT BE TAKEN.

FEDERAL COMMUNICATIONS COMMISSION

Walter C. Miller

Walter C. Miller
Administrative Law Judge

² Sound adjudication has procedural as well as substantive elements. The public interest comprehends both. Both orderliness and expedition in the adjudicative process are appropriate weights in the scale and reflect a public policy which has authentic claims of its own.

³ In its August 4 notice, TMC inappropriately incorporates by reference some 45 paragraphs of a Supplement to a Motion for Leave to File Notice to Take Depositions Upon Oral Examination that it filed with the Commission back on January 30, 1990. That Supplement is not part of CC Docket No. 93-161 (this docket). The Trial Judge has no idea where that Supplement is physically located, and is not inclined to conduct a search for it.