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

FCC 93M-505
32120

AUG 6 9 49 AM '93

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

MEMORANDUM OPINION AND ORDER

Issued: August 3, 1993 Released: August 5, 1993

1. This Memorandum Opinion and Order dismisses three late filed Notices to Take Deposition that TMC Long Distance filed on August 2, 1993: (1) The Notice to Depose J. D. Lockton - Pacific Bell's Executive Vice-President for Marketing; (2) M. L. Bandler - Pacific Bell's Vice President for Network Engineering and Planning; and (3) Dennis Wheatley - a Pacific Bell Account Executive/Marketing Rep.

Background

2. On February 27, 1989, TMC lodged a formal complaint against Pacific Bell with the Commission. Pacific Bell answered that complaint on March 31, 1989, and TMC replied on April 20, 1989. Between April 20, 1989 and June 23, 1993, both TMC and Pacific Bell engaged in substantial pre-designation discovery. They inter alia "...responded to numerous interrogatories, exchanged thousands of pages of documents, and obtained the deposition testimony of at least six potential witnesses...."

3. But, even with all that substantial discovery, both TMC and Pacific Bell indicated they wanted to engage in further discovery. See DA 93-640 released June 23, 1993 at para. 5. So, in the Prehearing Order (FCC 93M-426 released June 30, 1993) the Trial Judge authorized certain post-designation discovery provided it was initiated on July 26, 1993, conducted pursuant to 47 CFR 1.311 through 1.340 and completed on or before September 17, 1993. See FCC 93M-426, supra, at paras. 9-11. Neither TMC nor Pac Bell initiated such discovery.

4. Now, a week later, TMC signifies its intention to depose the three individuals described in paragraph 1 supra. Since TMC is tardy, it will not be permitted to do so. Both TMC and Pacific Bell were expressly admonished that "[a]ll parties must meet all of their procedural deadlines;" and "that we can't afford the luxury of procedural slippage...." Nothing can

be plainer that that.¹ TMC has had over four years to prepare for trial (see para. 2 sUptra). This makes such tardiness inexcusable.²

SO the "Notice to Take Deposition Upon Oral Examination" that TMC Long Distance filed on August 2, 1993 and directs at J. D. Lockton IS DISMISSED;

The "Notice to Take Deposition Upon Oral Examination" that TMC Long Distance filed on August 2, 1993 and directs at M. L. Bandler IS DISMISSED;

The "Notice to Take Deposition Upon Oral Examination" that TMC Long Distance filed on August 2, 1993 and directs at Dennis Wheatley IS DISMISSED; and

The depositions of J. D. Lockton, M. L. Bandler, and Dennis Wheatley WILL NOT BE TAKEN.

FEDERAL COMMUNICATIONS COMMISSION



Walter C. Miller
Administrative Law Judge

¹ On the morning of August 3, 1993, one of TMC's counsel, Charles Helein, telephoned the Trial Judge. When he was informed that the Trial Judge was drafting an Order dismissing the late-filed notices, he began arguing for reconsideration of the Order the Trial Judge had not yet issued. The Trial Judge admonished Mr. Helein that what he was doing was improper.

² Under 47 CFR 1.315, a party who intends to take depositions must give a minimum of 21 days notice in writing. TMC's notices filed August 2, 1993 only gives 15 (August 17, 1993) and 16 (August 18, 1993). So, even if they weren't tardy, TMC's notices were defective.