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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. Andrew S. Fishel, Managing Director
William E. Kennard, Esq., General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 852
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Dear Messrs. Fishel and Kennard:

Re: ET Docket No. 93-266, Review of the Pioneer's Preference Rules
Gen. Docket No. 90-314, Amendment of the Commission's Rules to Establish New Personal Communications Services

In a letter dated October 17, 1994, attorneys for American Personal Communications ("APC") accuse Pacific Telesis of improper ex parte contacts. The source of APC's complaint, however, is not a private meeting with Commission personnel -- a type of ex parte contact with which APC is quite familiar -- but a public speech that Phil Quigley (Pacific Telesis' Chief Executive Officer) delivered to a crowd of some 1500 people at the annual conference of the United States Telephone Association. In that speech, Mr. Quigley decried a rider, now attached to implementing legislation for the General Agreement on Trade and Tariffs (GATT), that would bar the Commission from reconsidering the pioneer preference awards, insulate those awards from judicial review, and give APC among others a greater discount than the Commission has provided. See H.R. 5110, 103d Cong., 2d Sess. (1994), at Sec. 13(E).

Apparently, APC is of the view that the speech offended the Commission's ex parte rules because certain Commissioners and members of their staffs attended the conference. But the idea that this speech -- delivered to 1500 people -- was somehow an ex parte contact within the meaning of the rules is simply absurd. Pacific Telesis knows of no case in which such a public speech was held to constitute an impermissible ex parte contact. Doing so would be especially inappropriate given the speech's subject matter. Although APC's selective quotations misleadingly suggest that the speech was directed to the merits of the pioneer's preference proceeding, the comments in fact were directed toward the pioneer's preference rider now appended as Section 13(E) of GATT.[1]

[1] APC also distorts the speech by relegating its central points to an appendix. See APC Letter of October 17, 1994, at 4 (App. A). As review of that appendix makes clear, most of what Mr. Quigley said was directed at the question of payment and the scope of the awards -- issues that Section 13(E) of GATT expressly addresses and that APC repeatedly has contended to be unrestricted. If APC is now changing position, then it must also confess that all of its 30 ex parte contacts in the two months preceding its receipt of a preference award violated the Commission's ex parte rules.

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Because Section 13(E) of GATT among other things confirms the preference awards to APC, Cox Enterprises, and Omnipoint Communications, comments directed to Section 13(E) by necessity have some bearing on the preference awards themselves. But surely APC does not contend that the Commission's rules, therefore, prohibit Pacific Telesis from expressing a view on Section 13(E). Such a prohibition would violate the First Amendment: The right publicly to state one's views on pending legislation is one of our most cherished rights. Besides, APC has demonstrated by its own conduct that, in its view, no such prohibition exists. APC itself has stressed the merits of its award in public commentary favoring Section 13(E) -- commentary that, no less than Mr. Quigley's speech, was "prepared beforehand, presumably with the knowledge that" FCC decision-makers "would be subjected to it, and [which] quite clearly dealt with the merits of a restricted proceeding." APC letter of Oct. 17, at 3 n.5. For example, APC took out a full page advertisement in the Washington Post in which it touted the "especially significant innovations" made by the pioneers, despite full knowledge that FCC decision-makers read the Post. See "Let's Set the Record Straight About GATT and PCS Licenses, Advertisement", Washington Post, Wednesday, Oct. 5, 1994. Similarly, Douglas Smith, President of Omnipoint Communications, testified about the virtues of his pioneering technology in a public congressional hearing, even though Mr. Kennard testified at and attended the very same hearing. See FCC's Pioneer Preference Policy in Regard to Mobile Telephone Licenses, Hearing before the House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, and the Subcommittee on Telecommunications and Finance, at 95 (Oct. 5, 1994) (preliminary transcript); see also id. at 93-94.

By citing these public statements, we do not in any way suggest that they were improper. To the contrary, in order for Congress to act reasonably and responsibly, it must have access to all perspectives and viewpoints. A gag-order that prevented APC and Omnipoint from presenting their views would interfere with that process and raise serious First Amendment concerns. So, too, with censoring the speech that Mr. Quigley delivered to a group of 1500 people. APC no doubt disagrees with the views Mr. Quigley expressed, as its October 17 letter makes clear. But that does not give APC a license to silence Mr. Quigley.[2]

Finally, we should note that APC does not ask for an investigation of the speech itself -- which, after all, is a matter of public record and cannot be said to have affected the integrity of the Commission's processes. Instead, APC contends that, because of the speech, the Commission should inquire whether "other Pacific Telesis employees attending the USTA convention also attempted to make ... ex parte presentations to Commission personnel." APC Letter of Oct. 17, 1994, at 3 (emphasis added). This request

[2] For whatever reason, APC attempts to label Pacific Telesis as anti-GATT. While Pacific Telesis' position on GATT is singularly irrelevant, it should be noted for the record that Pacific Telesis favors GATT.

makes no sense at all. It is impossible to see how the giving of a public speech before 1500 people at a convention raises an inference of behind-the-scenes lobbying. Indeed, precisely the opposite is true. Surely, if Pacific Telesis wished to lobby Commission personnel in private, it would not begin by publicly announcing its views in a speech for everyone to hear.

APC cites no evidence whatsoever that there were closed-door, secret meetings between Pacific Telesis employees and Commission personnel concerning restricted matters at the USTA conference, and with reason: No such meetings occurred. APC's contentions are thus entirely without merit.

Sincerely,

Alan F. Ciamporcero
Executive Director
Federal Regulatory Relations

cc: All Commissioners
All Parties in ET Docket No. 93-266 and Gen. Docket No. 90-314