Date of Issuance 4/11/2008

Decision 08-04-020 April 10, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Bell Telephone Company, d/b/a AT&T California (U1001C), Complainant, vs. Fones4All Corporation (U6338C), Defendant.	Case 06-03-013 (Filed March 10, 2006; reopened August 9, 2007)

DECISION DENYING MOTION AND ORDERING FONES4ALL TO COMPLY WITH DECISION 07-07-031

This decision denies the motion of Pacific Bell Telephone Company, dba AT&T California (AT&T) for an order setting aside disbursements that would otherwise be owed to Fones4All Corporation (Fones4All). This decision directs Fones4All to comply with Decision (D.) 07-07-013 within 15 days of the effective date of this order or face the prospect of fines or penalties.

1. Summary of AT&T's Motion and Fones4All's Response

AT&T filed this complaint on March 10, 2006 against Fones4All to recover alleged overcharges AT&T paid to Fones4All for termination of intra-Local Access Transport Area (intraLATA) toll traffic. Following an evidentiary hearing, the Commission issued D.07-07-013, granting the relief AT&T requested in its complaint, about $2.6 million plus interest.

AT&T's instant motion, filed January 25, 2008, states that Fones4All has failed to reimburse AT&T as required by D.07-07-013. AT&T's motion states that Fones4All has recently provided evidence in Case (C.) 07-012-030, an unrelated complaint, that it is unable to pay AT&T sums it owes AT&T in the amount of $1.9 million for services AT&T has provided Fones4All.

On February 11, 2008, Fones4All filed a response opposing AT&T's motion. Fones4All argues that AT&T should not be entitled to reparations because AT&T has argued before the federal district court[1] that this Commission's proceeding is not yet final. The Commission has not ruled on an application for rehearing of D.07-07-013 filed by Fones4All. Fones4All also argues that the Commission has no authority to enforce payment of reparations and must, pursuant to Public Utilities Code Section 735, bring an action in court to enforce D.07-07-013.

2. Discussion

In July, 2007, the Commission issued D.07-07-013, which ordered Fones4All to reimburse AT&T $2,627,236.67 plus interest. Fones4All has not complied with the Commission's order. It does not dispute the requirements of the Commission's order. It does not justify its failure to comply with D.07-07-013 or state any intent to comply with the order.[2] It does, however, object to AT&T's motion.

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[1] *Fones4All Corp. v. Pacific Bell Telephone Company* d/b/a AT&T California, Case No. CV 06-1523 ER.

[2] Fones4All did, however, file an application for rehearing of D.07-07-013 on August 9, 2007, and on that same day it also filed a motion for stay of D.07-07-013. The Commission did not issue a stay order in response to this motion.

Fones4All states that AT&T is not entitled to the reparations the Commission ordered in D.07-07-013 because AT&T has told the federal court that this complaint case is still pending until the Commission has resolved Fones4All's application for rehearing of D.07-07-031.[3] Inferentially at least, Fones4All suggests that a Commission order should be suspended until its application for rehearing is resolved. Public Utilities Code Section 1735 provides that an application for rehearing of a Commission order does not stay the order or suspend a party's duty to comply with it:

> An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order, or decision of the Commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the Commission by order directs.

Fones4All seems to understand that D.07-07-013 is not stayed by the filing of an application for rehearing. It filed a motion for stay of that decision on August 9, 2007, and the Commission did not direct that the order be stayed. Under these circumstances, the statute does not provide grounds for excusing Fones4All from complying with D.07-07-013 and the fact that that AT&T argued to the federal court that this proceeding remains open does not provide additional legal authority to excuse Fones4All from compliance with that decision. We do not need to speculate about AT&T's motives for making its argument in federal court, whether or why the court may have an interest in

[3] The Commission will also consider a related item addressing the rehearing application at its meeting today.

allowing this agency's procedures to run their course. As a result, no further discussion of Fones4All's contentions is warranted here.

Fones4All also suggests that the Commission lacks authority to enforce its own orders, citing Section 735:

> If the public utility does not comply with the order for the payment of reparation within the time specified in the order, suit may be instituted in any court of competent jurisdiction to recover the payment within one year from the date of the order, and not after.

Contrary to Fones4All's argument, Section 735 does not bar the Commission from enforcing its own orders. Section 735 is permissive, giving the option to bring an action before a court and providing a timeframe for doing so. This Commission has routinely enforced its own orders and may do so in a variety of ways, for example, by suspending or terminating a utility's authority to operate, reducing a utility's revenue requirement or penalizing it with a lower rate of return. Fones4All's suggestion that the Commission must rely on the courts to enforce its orders is a self-serving proposal that ignores decades of legal precedent.

The Commission has authority, and indeed an obligation, to enforce its orders. However, in this particular set of circumstances, we do not have authority to take this step. The only Commission-administered funds received by Fones4All are those in the Universal Lifeline Telephone Service (ULTS) Trust Administrative Committee Fund. Fones4All receives revenues from that fund as compensation for providing discounted service to qualifying low-income customers. The use of these funds is governed by Public Utilities Code Section 277, which provides in pertinent part that these funds "shall be utilized exclusively by the commission for the [ULTS] program." AT&T asks us to disburse funds from the ULTS fund for the purpose of compensating AT&T for

overcharges relating to access services provided by Fones4All. Because that use of ULTS funds would not be related to the ULTS program, Section 277 does not permit us to disburse the funds to AT&T as it requests.

Notwithstanding our denial of AT&T's motion, we expect Fones4All to comply in a timely manner with our orders. Failure to do so will subject Fones4All to the penalties and fines the Commission is authorized to impose, including those authorized pursuant to Section 2107. Fones4All has not complied in a timely manner with D.07-07-031. We herein direct Fones4All to reimburse AT&T within 15 days of the effective date of this order. This order puts Fones4All on notice that failure to comply with this order may subject it to any and all fines or penalties the Commission is authorized to impose.

3. Comments on the Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.3 of the Commission's Rules of Practice and Procedure. AT&T filed comments on April 1, 2008. Fones4All filed reply comments on April 7, 2008. This decision does not make any substantive changes to the proposed decision in response to the comments.

4. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Kim Malcolm is the assigned Administrative Law Judge.

Findings of Fact

1. D.07-07-013 ordered Fones4All to reimburse AT&T $2,627,236.67 plus interest. AT&T here alleges that Fones4All has not complied with D.07-07-013

and Fones4All does not deny the allegation or state an intent to comply with D.07-07-013.

2. The Commission administers and disburses certain funds on behalf of ratepayers for various telecommunications programs. Fones4All receives revenues from the ULTS Fund.

3. AT&T asks the Commission to disburse ULTS Fund revenues to it as compensation for overcharges levied by Fones4All for access services provided by Fones4All.

4. The Commission has a duty to enforce its orders on behalf of the public interest and has authority to fine Fones4All for its failure to comply with a Commission order.

Conclusions of Law

1. Section 1735 provides that an application for rehearing of a Commission decision does not automatically stay that decision or excuse a party from complying with its terms.

2. The Commission may not ignore Section 1735 on the basis that AT&T has made certain legal arguments before a federal court.

3. Section 735 does not limit the Commission's authority to enforce its orders but merely provides one avenue for such enforcement.

4. Section 277 prohibits the Commission from disbursing ULTS Fund revenues for any purpose except costs related to the ULTS program. The Commission has no authority to disburse ULTS funds to AT&T to compensate it for Fones4All's overcharges, as described in D.07-07-013.

5. The Commission has authority under Section 2107 to fine Fones4All for its failure to comply with D.07-07-013, this order or any other order of the Commission.

O R D E R

1. Fones4All shall, within 15 days of the effective date of this order, comply with Decision (D.) 07-07-013 by paying to Pacific Bell Telephone Company, d/b/a AT&T California (AT&T) $2,627,236.67 plus interest as set forth in D.07-07-013. The amount owed to AT&T shall include interest at the rate reported in Federal Reserve Statistical Release H.15 effective on the date of D.07-07-013. Interest shall accrue beginning March 10, 2006 and continue until full payment is rendered to AT&T, consistent with D.07-07-013.

2. Fones4All's failure to comply in a timely manner with Ordering Paragraph 1 of this order will constitute a violation of a Commission order and potentially subject Fones4All to any and all penalties the Commission is authorized to impose.

3. AT&T's motion is denied.

4. Case 06-03-013 is closed.

This order is effective today.

Dated April 10, 2008, at San Francisco, California

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners