STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

June 2, 2003

Agenda ID #2330
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 00-11-039

This is the draft decision of Administrative Law Judge (ALJ) Thomas. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

_____
Angela K. Minkin, Chief
Administrative Law Judge

ANG: cgj

Attachment

Decision **DRAFT DECISION OF ALJ THOMAS** **(Mailed 6/2/2003)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Metromedia Fiber Network Services, Inc. (U-6030-C) for its Second Modification of its Certificate of Public Convenience and Necessity to Comply with the California Environmental Quality Act.	Application 00-11-039 (Filed November 15, 2000)

O P I N I O N

I. Summary

In this decision, we dismiss without prejudice the application of Metromedia Fiber Network Services, Inc. (MFNS). MFNS has informed us that it has abandoned the proposed project the application addresses – a fiber optic network covering the Sacramento and San Diego metropolitan areas – and therefore there is no need to proceed further with the application.

II. Background

This is one in a series of applications related to MFNS' California fiber optic construction project. MFNS, now in Chapter 11 bankruptcy proceedings,[1] has in separate applications or petitions for modification sought (and received) approval of a fiber optic network in the San Francisco Bay Area;[2] sought 82 (and

[1] We take official notice of MFNS' bankruptcy filing. MFNS may respond to such notice in comments on this decision.

[2] MFNS Application (A.) 00-02-039/Decision (D.) 00-09-039.

received 80) modifications to that network;[3] sought and received permission for additional modifications;[4] sought approval of the San Diego and Sacramento portions of its fiber optic network; and in this application seeks, via a PG&E application, approval of the PG&E–attached portions of its network. The Commission also has an enforcement action pending against MFNS to determine whether MFNS' commencement of construction of the project approved in D.00-09-039 without CEQA review warrants penalties.

On January 25, 2002, MFNS sent a letter to the Commission informing it that "MFNS does not desire to proceed further with this application at this time," and asked the Commission to "hold in abeyance and defer further processing of" the application.[5] Since that time, MFNS has not indicated a desire to pursue the Sacramento and San Diego portion of its network. Rather than hold the application in abeyance, it now appears prudent simply to dismiss the application without prejudice and allow MFNS to refile its application at a later time if it changes its plans.

III. Discussion

Where a party abandons a project that is the subject of an application to this Commission, it is appropriate in some cases to dismiss the application, either with or without prejudice. While we have prohibited a party from abandoning an application where the proceeding has moved forward to a critical point and it

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[3] MFNS Petition for Modification filed November 8, 2000, granted in D.00-09-039.

[4] Petition for Modification filed June 15, 2001, granted in D.01-09-018.

[5] MFNS' letter appears as Appendix A to this decision.

appears the applicant will receive a negative decision, this is not one of those cases.

No party protested this application, and the application has essentially been in a holding pattern since its filing in November 2000. While the Commission acted on many other MFNS applications during that period, MFNS never indicated a desire to pursue this application.

While MFNS has asked us to hold the application in abeyance, we prefer not to hold proceedings open indefinitely. MFNS has not pursued this application or asked that we proceed with it since sending its letter more than a year ago. We are dismissing the application without prejudice should MFNS decide to pursue the Sacramento and San Diego aspects of its project in the future.

IV. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Sarah R. Thomas is the assigned Administrative Law Judge in this proceeding.

Comments of Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Findings of Fact

1. MFNS informed the Commission on January 25, 2002 that it did not desire to proceed further with this application. It requested that the Commission hold in abeyance and defer further processing of the application.

2. MFNS has taken no steps to pursue the application since that time, and has not requested that the Commission recommence processing of the application.

3. No party protested the application.

4. This proceeding has not moved forward to a critical point where it appears the applicant will receive a negative decision.

5. While the Commission has acted on and MFNS has pursued several other aspects of its California fiber optic project since filing this application, this application has essentially been in a holding pattern since its filing.

Conclusions of Law

1. Where a party abandons a project that is the subject of an application to this Commission, it is appropriate in some cases to dismiss the application, either with or without prejudice.

2. While we have prohibited a party from abandoning an application where the proceeding has moved forward to a critical point and it appears the applicant will receive a negative decision, this is not one of those cases.

3. It is not appropriate to hold proceedings in abeyance indefinitely.

4. Because we are dismissing the application without prejudice, MFNS is free to refile its application should it decide to proceed with the Sacramento or San Diego aspects of its fiber optic project.

O R D E R

IT IS ORDERED that the application of Metromedia Fiber Network Services, Inc. is dismissed without prejudice.

This order is effective today.

Dated _____, at San Francisco, California.