

ORIGINAL

Decision No. 65702

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
motion into the rates, tolls, rules,
charges, operations, practices,
contracts, service and facilities of
THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY.

Case No. 7409
(Filed July 26, 1962)

ORDER ON MOTION
FOR INTERIM RATE REDUCTION

The Commission has considered the motion of counsel for the City of Los Angeles and counsel for the City and County of San Francisco for an interim order immediately reducing the gross rates and charges of The Pacific Telephone and Telegraph Company in the amount of approximately \$15,363,000 on an annual basis, and is of the opinion and so finds that the motion should be denied at this time without prejudice, therefore,

IT IS ORDERED that the motion by the City of Los Angeles and the City and County of San Francisco for an immediate interim rate reduction of approximately \$15,363,000 be and the same is denied at this time without prejudice.

Dated at San Francisco, California, this 9th
day of July, 1963.

[Signature]
President
[Signature]
[Signature]
Commissioners

CONCURRING OPINION OF COMMISSIONERS HOLOBOFF AND GROVER.

The Commission has this day issued an order denying certain motions for interim rate reductions without any explanation of the reasons therefor. The matter was extensively argued and briefed and is of sufficient importance to warrant an explanation of the action taken.

The Commission instituted the above-entitled investigation for the purpose of determining the reasonableness of the rates, tolls, rules, charges, operations, practices, and contracts and the adequacy of the service and facilities of The Pacific Telephone and Telegraph Company, respondent. On March 15, 1963, the eleventh day of public hearing, counsel for the City of Los Angeles and counsel for the City and County of San Francisco moved that the Commission issue an interim order immediately reducing the gross rates and charges of respondent in the amount of approximately \$15,363,000 on an annual basis and that such reduction be made in the following manner:

1. Rates for intrastate message toll service be reduced in the amount of \$4,286,000.
2. Basic exchange rates be reduced in the Los Angeles extended area in the amount of \$5,877,000 so that the ultimate basic rates for each main station by class, type and grade of service will be the same throughout such extended area.
3. Basic exchange rates be reduced in the San Francisco - East Bay extended area in the amount of \$5,200,000, with this reduction applied in the basic manner as requested for the Los Angeles extended area.

Counsel for the City of Los Angeles and counsel for the City and County of San Francisco urged that the Commission staff's exhibits demonstrate that a rate reduction of some \$32,000,000 is warranted; that the great majority of the people of the state live in the Los Angeles extended area and in the San Francisco - East Bay extended area where respondent's return on investment is 8.47 percent and 8.36 percent, respectively, by far the highest return on investment of any areas of the state; that the investment tax credit, estimated at \$12,000,000 per year, is a windfall expense deduction to the respondent which equity demands the ratepayers benefit from immediately; that the Western Electric adjustment, estimated at \$7,000,000, has been expressly approved by the Commission in past decisions concerning respondent; and that the investment tax credit and the Western Electric adjustments alone are larger than the total amount of the interim reduction presently sought by the Cities. The Cities further urged that they were asking for only a minimum interim decrease; that the rate relief should be accorded the areas where the highest returns are being earned; that retroactive rate reductions are not contemplated under existing law; and that with each passing day respondent continues to enjoy excessive income which can never be returned to the ratepayer.

The motion was supported by the President of the Utility User's League of California. Counsel for the City of San Diego while supporting an interim decrease in rates urged that the \$15,363,000 amount was too conservative and that any interim rate reduction should be made across-the-board statewide. The representative of the California Farm Bureau Federation took the position that if any interim rate reductions were made, they should be on a statewide basis.

Respondent opposed the motion on the following grounds:

1. There is no statutory authority in the Public Utilities Code or otherwise for such action.

2. No circumstances exist which would justify such action.

3. The respondent has not had an opportunity to be heard and before completion of the company's entire showing, there will be no full hearing on the issues which it is necessary for the Commission to determine before any extensive rate changes will have been warranted.

4. A rate reduction order, on the abbreviated hearing and limited issues which an order to show cause would contemplate, would deprive respondent of its property without due process of law in violation of the Constitution of the United States.

Respondent urged that the Commission as the public's representative can consent to a utility's application for an interim rate increase to protect the utility's means of operation, but where a utility like the respondent herein does not consent to a reduction of its rates, a full hearing of all of respondent's evidence and contentions is required before any order properly may be issued.

Respondent further urged that the motion be denied; that no interim order should issue; and that the case should proceed in its regular course to a full and final determination after a full hearing of all issues.

Counsel for the California Independent Telephone Association and counsel for General Telephone Company of California supported respondent in urging denial of the motion.

The motion was taken under submission on April 4, 1963, following receipt of memoranda of points and authorities and replies thereto on the question of the authority and jurisdiction of the Commission to issue interim orders ordering reductions in rates.

The points and authorities cited on the question of the authority and jurisdiction of the Commission to order interim rate reductions do not clearly answer the question as it is presented in this case. There is, of course, substantial precedent for such reductions. In view of other considerations and the result reached based thereon, we find it unnecessary to deal with the jurisdictional question at this time.

At the close of the twenty-eighth day of hearing, on May 3, 1963, counsel for the City of Los Angeles and counsel for the City and County of San Francisco renewed their motion of March 15th for an immediate rate reduction of some \$15,363,000 based upon the entire record received into evidence as of that time and on the following four grounds:

1. Exhibits 2, 3, and 4 presented by the Commission staff and Exhibits 28 through 34 presented by the Cities of Los Angeles and San Francisco have been received into evidence. Said exhibits give the Commission complete opportunity to study the presentations by the staff and the Cities.

2. The cross-examination of all testimony and exhibits presented by all staff, city and major witnesses has been completed.

3. Briefs and reply briefs have been received by the Commission on the point of an interim rate reduction.

4. The hearings are now extended into their fifth month, and the rate consumer is the only person who is continuing to suffer.

Counsel for the City of San Diego again urged an across-the-board type of decrease on an interim basis.

Respondent opposed the renewed motion urging that there was no lawful, appropriate or fair basis for granting the motion and that the case should proceed through the hearing of the respondent's case in full before any action to reduce rates is taken by the Commission.

Counsel for California Water & Telephone Company and for General Telephone Company of California supported respondent in its opposition to the renewed motion.

The evidence as to earnings presented by the Commission staff is related basically to the results for the 12 months ended September 30, 1962. The staff's estimated results are:

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY
California Intrastate Operations
Test Year Twelve Months Ending September 30, 1962
Source: Exhibit 43 Table 1

Operations	Total Revenues	Total Expenses And Taxes	Balance Net Revenue	Average Rate Base Depreciated	Rate of Return
Total California Intrastate	\$867,785,000	\$720,343,000	\$147,442,000	\$1,975,690,000	7.46%
Intrastate Toll	222,354,000	189,119,000	33,235,000	379,411,000	8.76
Total Exchange	645,431,000	531,224,000	114,207,000	1,596,279,000	7.15
San Francisco-East Bay Extended Area	191,025,000	154,183,000	36,842,000	417,174,000	8.83
Other No. Calif. Exchange	97,981,000	85,661,000	12,320,000	330,829,000	3.72
Total No. Calif. Exchange	289,006,000	239,844,000	49,162,000	748,003,000	6.57
Los Angeles Extended Area	278,402,000	225,205,000	53,197,000	631,103,000	8.43
San Diego Extended Area	33,388,000	28,512,000	4,876,000	91,487,000	5.33
Other So. Calif. Exchange	44,635,000	37,663,000	6,972,000	125,686,000	5.55
Total So. Calif. Exchange	356,425,000	291,380,000	65,045,000	848,276,000	7.67

Respondent took exception to a number of items reflected in the above staff test year results including items affecting revenues, expenses, depreciation, taxes and rate base. Although the presentations and cross-examination thereof of the staff and principal parties other than respondent essentially has been completed,

respondent has not made its presentation. It did have marked for identification, however, at the hearing on May 3rd three exhibits (Nos. 49, 50 and 51) indicating substantially different test year results from those sponsored by the staff. For example, respondent's exhibits 49 and 50 marked for identification indicate the following test year rates of return:

	Test Year (12 Months Ending September 30, 1962)	
	<u>Total California Operations</u>	<u>California Intrastate Operations</u>
Unadjusted	6.66%	6.53%
Recast by Respondent	6.38	6.26

Respondent's recast rate of return for California intrastate operations of 6.26 percent may be compared with the staff's figure of 7.46 percent.

While the above set forth Commission staff results would indicate that a gross annual revenue reduction of some \$31,208,000 would be required to yield a 6.75 percent rate of return last found reasonable by this Commission for respondent's intrastate operations and that a gross annual revenue reduction of some \$53,536,000 would be required to yield a 6.24 percent rate of return recommended in this proceeding by the City of Los Angeles, the City of San Diego and the City and County of San Francisco, virtually no reduction would be indicated under respondent's recast results in Exhibit 50 for identification even to yield the 6.24 percent rate of return recommended by the Cities.

A granting of the Cities' motion to reduce rates by some \$15,363,000 in the manner sought would reduce by some .35 percentage points the test year intrastate rate of return, or to 7.11 percent using the above staff results,^{1/} or to 5.92 percent using respondent's recast results in Exhibit 50 for identification.

^{1/} Intrastate toll operations would be reduced to 8.25 percent. San Francisco-East Bay extended area operations would be reduced to 8.27 percent. Los Angeles extended area operations would be reduced to 8.01 percent.

With the indicated levels of earnings for intrastate toll and for exchange operations in the San Francisco-East Bay and Los Angeles extended areas contained in the staff's test year results, the Cities justifiably have shown concern about obtaining reductions in rates in these areas at the earliest opportunity. It is, of course, true as the Cities assert, that the clear duty of the Commission in these circumstances is to protect the interests of the ratepaying public. It is equally true, as respondent asserts, that the Commission must do so with due regard to the constitutional rights of respondent.

In this case the staff's estimates of revenue excesses on a test year basis result from certain ratemaking adjustments which the staff applied to the recorded test-year results. For the most part, these adjustments, such as the adjustment on account of Western Electric purchases and the treatment of working cash, are based upon Commission precedent. There are others, however, such as the adjustment to the pension interest rate which were not considered by the Commission in its decision on the last general rate proceeding of respondent. All of these adjustments are vigorously protested by respondent and respondent has not had an opportunity to be heard fully with respect to any of them. To order reductions based upon such adjustments would in effect be a prejudgment of such issues. Accordingly, considering the present state of the record, the wide differences between the staff's and the indicated results of respondent's test-year results of operation, and the fact that the direct presentation by respondent commenced on June 12, 1963, we agree that the Cities' motion should be denied at this time.

In addition to the issues raised by the respective estimates of test-year results of operation, there are numerous other issues present in this case such as those relating to rate spread, proposals for expanded calling areas, and settlement methods with

independent telephone companies. These issues are broad in scope and deeply complex, and will require a great amount of time to fully explore and properly resolve. They are issues, however, which can be decided independently of the issues raised by the respective estimates of test-year results. Having in mind the considerable time which will be required to conclude the hearings on all such other issues, it would not be in the public interest or otherwise necessary to withhold a determination on respondent's test-year revenue requirements for ratemaking purposes and the extent, if any, of excessive intrastate earnings until the conclusion of hearings upon all such other issues. If, based upon the foregoing determinations, rate reductions are found to be warranted, they can and should be made, or the ratepayers' interests otherwise safeguarded by appropriate means, even though the hearings are not concluded on all other phases of the case.

Accordingly the public interest would best be served by proceeding with respondent's direct evidence dealing particularly with its revenue requirements in the test year, completing cross-examination thereon and taking under submission for decision at as early a date as practicable the issue of revenue requirements.

Dated at San Francisco, California, this
9th day of July, 1963.

Frederick B. Holoboff
 FREDERICK B. HOLOBOFF

George G. Grover
 GEORGE G. GROVER