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Decision No. 82904

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY,

Complainant,

Case No. 9728

vs.

SOUTHERN PACIFIC COMMUNICATIONS
COMPANY,

Defendant.

Application of THE PACIFIC TELEPHONE
AND TELEGRAPH COMPANY, a corporation,
for authority to revise rates, charges
and rate structures for intrastate
voice grade private line services to
establish a new service offering
referred to as High Density - Low
Density Service.

Application
No. 54839

In the Matter of the Suspension and
Investigation on the Commission's own
motion of tariffs filed under Advice
Letter No. 1 by Southern Pacific
Communications Company.

Case No. 9731

ORDER DENYING CEASE AND DESIST
AND
ORDER DENYING DISMISSAL

Case No. 9728, Application No. 54839, and Case No. 9731,
pertaining to private line service within California, were con-
solidated by order of the Commission dated May 9, 1974.

In Case No. 9728, complainant, the Pacific Telephone and
Telegraph Company, requested an order requiring defendant Southern
Pacific Communications Company to cease and desist from construction

of a line, plant, or system to provide intrastate private line service and from providing such service. The Commission did not rule on this request in its order of consolidation issued May 9, 1974.

On May 8, 1974 defendant filed a motion to dismiss the complaint in Case No. 9728 on jurisdictional grounds. The order of May 9, 1974 did not rule on this motion.

As to complainant's request for an order prohibiting construction by defendant, the Commission notes that the complaint does not allege that defendant has constructed, is now constructing, or will construct any additional line, plant, or system to provide service under its Advice Letter No. 1. Therefore there are not sufficient grounds to issue a cease and desist order on an ex parte basis, and the request for such order must be denied. Defendant is placed on notice that any construction of a line, plant, or system before resolution of this consolidated proceeding has been, and will be, at its own financial risk. The Commission will not be influenced in its ultimate determination of the issues in the consolidated proceeding by any expenditures made by defendant for this purpose, even though those expenditures were made in the good faith belief that no certificate of public convenience and necessity is required.

Defendant's proposed tariff in Advice Letter No. 1 was suspended by this Commission's Order of Suspension and Investigation in Case No. 9731, issued May 7, 1974. The complaint does not allege that defendant plans service to the public or any portion thereof on any basis other than the filing of defendant's Advice Letter No. 1. Thus there appears to be no need for the issuance of a cease and desist order prohibiting service by defendant, and the request will be denied.


Defendant's motion to dismiss the complaint will be denied at this time, without prejudice to its renewal at a later date. Similarly, the request for a hearing on jurisdiction will be denied. This request, of course, may be renewed before the presiding officer assigned to this matter..

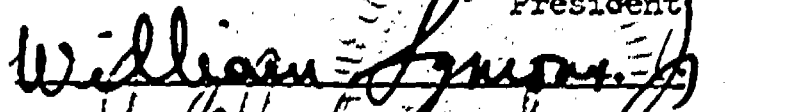
IT IS ORDERED that:

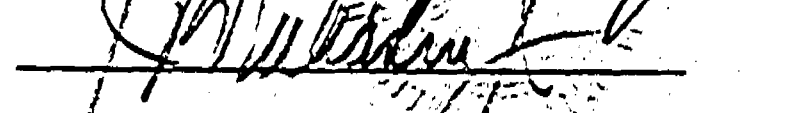
1. Complainant's request for a cease and desist order in Case No. 9728 is denied.
2. Defendant's motion for dismissal of Case No. 9728 is denied.
3. Defendant's request for a hearing on jurisdiction is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 21st day of MAY, 1974.



President




Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.