

Decision No. 84167

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY,

Complainant,

vs.

SOUTHERN PACIFIC COMMUNICATIONS  
COMPANY,

Defendant.

Case No. 9728  
(Filed May 1, 1974)

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  
(Filed May 17, 1974)

Application of SOUTHERN PACIFIC  
COMMUNICATIONS COMPANY for a  
certificate of public convenience  
and necessity to operate a tele-  
phone line between San Francisco  
and Los Angeles.

Application No. 55284  
(Filed October 31, 1974)

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 service in  
order to establish a modified High  
Density - Low Density Service, referred  
to as an Exception Rate Service,  
and to withdraw the High Density -  
Los Density Service proposal which  
was the subject of Application No. 54839.

Application No. 55344  
(Filed November 26, 1974)

Robert E. Michalski and William Rowland, Attorneys at Law, for The Pacific Telephone and Telegraph Company, applicant, protestant in Case No. 9731, and complainant in Case No. 9728.

McCutchen, Doyle, Brown & Enersen, by William W. Schwarzer and Lynn H. Pasahow, Attorneys at Law, and Thormund A. Miller and Richard S. Kopf, Attorneys at Law, for Southern Pacific Communications Company, applicant, respondent in Case No. 9731, and protestant and defendant in Case No. 9728.

Richard D. Crowe, for Continental Telephone Company of California, protestant in Case No. 9731.

Kenneth F. Okel, Attorney at Law, for General Telephone Company of California, interested party.

Timothy E. Treacy, Attorney at Law, and Paul Popenoe, Jr., for the Commission staff.

#### INTERIM OPINION

These proceedings all deal with the proposed operation, intrastate, of a point-to-point microwave communications system by Southern Pacific Communications Company (SPCC) and, if the SPCC system is allowed to operate, the proposed competitive response on the part of The Pacific Telephone and Telegraph Company (Pacific).

#### History of the Proceedings

SPCC has constructed a point-to-point microwave telecommunications system, presently operating on an interstate basis pursuant to Federal Communications Commission (FCC) authority. The system is intended to provide various kinds of private line service to subscribers. The scope of the FCC authority and the physical description of the system will be discussed at greater length elsewhere in this opinion.

Intending to use this service for intrastate purposes, SPCC filed "Advice Letter No. 1" (Exhibit 6 herein) on April 15, 1974. This advice letter incorporated all the tariffs intended to go into effect for this system.

Pacific responded to this filing with its complaint in Case No. 9728 which alleges, upon various grounds discussed hereafter, that SPCC has no authority to operate such a system intrastate and that therefore there is no basis for the filing. Pacific concurrently filed a letter of protest to the tariff alleging the same grounds. SPCC moved to dismiss the complaint on May 8, 1974.

Case No. 9731 began with an Order of Suspension and Investigation of Advice Letter No. 1, filed by the Commission on May 7, 1974. This order responded to protests by Continental Telephone Company of California (Continental) and Pacific, and summarized the grounds of those protests as follows: (1) SPCC has not applied nor been granted a certificate of public convenience and necessity for intrastate service, (2) no public need has been demonstrated for the establishment of SPCC's services, (3) SPCC has presented an inadequate showing of fully allocated costs of providing the service, (4) the proposed service is a duplication of service now provided by Pacific, and (5) SPCC's projected operating losses indicate inadequate showings of cost allocations and rate computations.

The order stayed the operation and effectiveness of the tariffs to and including September 10, 1974. The Commission issued Decision No. 82904 on May 21, 1974 which denied rehearing as to the suspension, and also denied SPCC's motion for a dismissal of Case No. 9728.

On September 4, 1974 the Commission issued Decision No. 83412 which extended the period of suspension to and including March 10, 1975.

Application No. 54839 was Pacific's original competitive response to the tariffs proposed, should the Commission allow SPCC to enter the intrastate private line microwave communications field. Pacific later filed Application No. 55344 which contained modifications of the tariff structure proposed in Application No. 54839. Pursuant to the request of the applicant, Application No. 54839 was dismissed by Decision No. 84019.

SPCC filed Application No. 55284 on October 31, 1974. This application was filed "under protest" (paragraph 3 of application) and in conjunction with the motion to dismiss it. The purpose of the application, without conceding the necessity for a certificate of public convenience and necessity, was to request such a certificate for intrastate operations, if the Commission ruled that one was necessary.

The cases were consolidated for hearing by various orders of the Commission or the examiner. Hearings were held before Examiner Meaney in San Francisco from December 9 through December 18, 1974, and on February 4, 1975.

We must decide certain issues by way of interim decision because the period of suspension for Advice Letter No. 1 expires March 10, 1975. A final decision regarding rates and rate design requires additional briefing and will be postponed for further order of the Commission.

The issues to be considered in this interim decision are:

- (1) whether SPCC requires a certificate of public convenience and necessity from this Commission to commence intrastate operations;
- (2) if SPCC does require a certificate, whether it should be granted;
- and (3) whether, if SPCC is permitted to operate its proposed service intrastate, the private line tariffs of Pacific should be adjusted in any manner on an interim basis to maintain competition in the private line field.

We hold that a certificate is necessary and that, subject to certain restrictions, it should be issued. We further hold that, on an interim basis, Pacific's private line rates should not be changed but that SPCC's proposed rates should be adjusted to narrow the gap between the rates of the two companies for equivalent services.

# I. NEED FOR A CERTIFICATE

## Requirements under Public Utilities Code Section 1001

SPCC concedes it is a "telephone company" within the meaning of Public Utilities Code Section 1001<sup>1/</sup> but argues it needs no certificate to operate its system because Section 1001 regulates construction and not operations.

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1/ All code references are to the Public Utilities Code unless otherwise specified. Section 1001 reads in part as follows: ✓

"1001. No railroad corporation whose railroad is operated primarily by electric energy, street railroad corporation, gas corporation, electrical corporation, telegraph corporation, telephone corporation, water corporation, or sewer system corporation shall begin the construction of a street railroad, or of a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.

"This article shall not be construed to require any such corporation to secure such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations, or for an extension into territory either within or without a city or city and county contiguous to its street railroad, or line, plant, or system, and not theretofore served by public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business. If any public utility, in constructing or extending its line, plant, or system, interferes or is about to interfere with the operation of the line, plant, or system of any other public utility or of the water system of a public agency, already constructed, the commission, on complaint of the public utility or public agency claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable.

"The commission, as a basis for granting any certificate pursuant to the provisions of this section shall give consideration to the following factors:

- "(a) Community values.
- "(b) Recreational and park areas.
- "(c) Historical and aesthetic values.
- "(d) Influence on environment."

SPCC first invites a comparison with Sections 1007 (for-hire vessels) and 1063 (highway carriers) since these sections refer to operation while 1001 does not. This comparison is irrelevant since it would be meaningless from a regulatory standpoint to attempt to control the "construction" of vessels or of vehicles intended for highway carriage.

SPCC next cites Loperena v Fresno Mobile Radio, Inc. (1970) 71 CPUC 645 as proof that the Commission has already decided this issue in its favor since no certificate was required where the utility was able to provide the questioned service without additional construction. This case, however, involved a company already possessing valid intrastate authority and merely dealt with whether a one-way paging service was within the scope of the radio telephone utility's two-way operating authority. This opinion is not dispositive of the issue here.

The relevant cases show that this Commission has consistently enforced the certificate requirement to preclude expansion of operating rights through tariff filings or otherwise extending service without authorization. (Cf. Motor Transit Company (1924) 24 CRC 807; Auto Transit Co. v Pickwick Stages (1927) 30 CRC 32; Los Angeles and San Pedro Transp. Co. v Richards Trucking and Warehouse Co. (1927) 30 CRC 49; and Blair v Coast Truck Line (1922) 21 CRC 530.)

In Valley Natural Gas Co. v Midway Gas Co. (1917) 13 CRC 313, defendant offered to sell gas to consumers in complainant's territory and argued it had a franchise from Kern County to construct and operate gas mains and would require a certificate under Section 50 (present Section 1001) only if it should make an extension of its system. The Commission said (p. 318):

" . . . defendant's interpretation of Section 50 of the Public Utilities Act, by which it assumes that a utility can take on consumers even though they are located within territory exclusively supplied by another utility, provided that in so doing it does

not extend its physical plant or system, is not proper. The intention of this provision of the act is clear -- to prevent unregulated extension into territory already served. . . . If defendant's position in this matter were correct, a utility could evade regulation and by the mere juggling of titles accomplish indirectly that which is not legally permissible by direct means."

A similar result was reached in Dyke Water Company (1957) 56 CPUC 109 (113):

"Applicant has, in this manner, ignored and violated the provisions of the first paragraph of Section 1001 of the Public Utilities Code in that it had begun the construction of a water system in said tract 3182 'without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.' Applicant has no justification for presenting the accomplished fact as the basis for its application for the issuance of a certificate of public convenience and necessity by this Commission. Applicant has heretofore been alerted against this practice, and it is here again put on notice of the provisions of the law, violations of which will not be tolerated by this Commission."

(Cf. Magalia Water Company (1941) 43 CRC 716 which denied a certificate despite prior construction of a water system, and PT&T Co. v Cal. Valley Mutual Tel. Co. (1964) 63 CPUC 65.)

In considering this question, it is important to remember the purpose of a certificate, which was succinctly stated by the California Supreme Court in Motor Transit Co. v Railroad Commission (1922) 189 Cal 573, 580:

"The certificate of public convenience and necessity is the means whereby protection is given to the utility rendering adequate service at a reasonable rate against ruinous competition. The person or corporation obtaining a certificate must operate at the times and in the manner prescribed by such certificate, thus furnishing uniform and efficient service to the public. If anyone else would be at liberty to operate without such a certificate he might operate at his own pleasure and only under favorable conditions, thus making it impossible for the holder of a certificate to successfully carry on

his business. It is the public interest in efficient service which is being safeguarded by the requirement of a certificate. (Oro Electric Corp. v. Railroad Commission (1915) 169 Cal. 466, 475 [147 Pac. 118]; Public Utilities v. Garviloch 54 Utah, 406 [181 Pac. 272, P.U.R. 1919E, p. 182].)"

Pacific's fears as to what the situation would be if this purpose is not observed are not groundless. An exception to certification requirements would be created which would be almost as large as the rule. Previously constructed private communications systems could be placed in public service with no control except over service and rates. A system constructed without even color of any lawful purpose could be dumped into the Commission's lap, with no way for the Commission to evaluate public need via the certification process.

SPCC's interpretation, if anything, directly invites subterfuge. It must be well remembered that SPCC is not the only specialized communications common carrier in existence, that the evidence is undisputed that the market for such specialized services is growing, and that we can expect more applications in this field. SPCC's interpretation of Section 1001 is an invitation to partial deregulation and general confusion which, as a result of our order herein granting a certificate to SPCC, would work as much mischief against SPCC as against Pacific.

We agree with Pacific's contention that Section 1001, in speaking to "lawfully commenced operations" and in providing that construction which will interfere with the "operation of the line, plant, or system of any other public utility" may be made subject to reasonable terms and conditions, shows that its drafters considered construction and operation interwoven. The particular language of the first paragraph of the section, when read with the whole section, must be taken to emphasize the time when application for a certificate should be made rather than to separate construction from operation and to create the kind of exception claimed by SPCC.



In so interpreting Section 1001, we recognize that there are situations where a system may be lawfully constructed without a certificate for purposes other than intrastate public utility service, but it is clear from our review of the purposes of Section 1001, that even in such event, a certificate from this Commission is necessary prior to commencing intrastate public utility operations.

We need not consider arguments regarding whether, assuming the inapplicability of Section 1001, Section 1002 would then apply.

SPCC's Interstate Authority

SPCC next argues that the FCC authorized both interstate and intrastate service over its line, and that therefore this Commission has no jurisdiction to consider certification. We reject this contention.

We are well aware of general principles of federal supremacy under Gibbons v Ogden (1824) 9 Wheat. 1, 6 L ed 23 and derivative cases, but in determining the applicability of such supremacy, we must look to what authority was given to the FCC by Congress. FCC v American Broadcasting Co., Inc. (1954) 347 US 284, 98 L ed 699; G.T.E. Serv. Corp. v FCC (2d Cir 1973) 474 F 2d 724; American Tel. & Tel. Co. v FCC (2d Cir 1971) 449 F 2d 439; Sterling Manhattan Cable Television, Inc. v New York Tel. Co. (1973) 38 FCC 2d 1149.

In the Communications Act of 1934 (Act), Congress clearly reserved to the states exclusive jurisdiction over intrastate communications services. Section 2(b) of the Act states, in pertinent part:

"Subject to the provisions of Section 301<sup>2/</sup> of this title, nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with

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<sup>2/</sup> Concerning radio licenses.

respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier..." (47 U.S.C. § 152(b).)

The legislative history of the Act underscores Congressional intent that such jurisdiction is reserved to the states. The Senate report accompanying the bill which became the Act explains Section 2:

"Section 2: Provides that the act is applicable to the regulation of all radio stations and to interstate and foreign communication, but reserves to the States exclusive jurisdiction over intrastate telephone and telegraph communication." (S. Rept. 78, 73d Cong., 2d Sess., p. 3.)

When Section 2(b) was amended in 1954, the Senate report accompanying this amendatory legislation incorporated the following comments of the FCC:

"This bill would amend Sections 2(b), 3(u) and 221(b) of the Communications Act to further clarify the jurisdiction of the Commission with respect to the common carrier regulation of certain communications activities. Specifically, it would amend Section 2(b) (1) of the act to make explicit that intrastate communication service, whether 'by wire or radio', will not be subject to the Commission's jurisdiction over charges, classifications, practices, services, or facilities."

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"The present proposal represents the joint efforts of the Commission, the United States Independent Telephone Association and the National Association of Railroad and Utilities Commissioners to clarify the extent of Commission common carrier jurisdiction in circumstances where radio facilities are used by such carriers in lieu of wire lines and where, under the existing language of the Communications Act, it would be clear that the Commission would not have regulatory jurisdiction over the services in question had they in fact been conducted by wire." (S. Rept. 1090, 83d Cong., 2d Sess., 1954, U.S. Code Cong. & Admin. News, pp. 2133, 2135-2136.)

Case law repeatedly recognizes state jurisdiction over intrastate communications. (Radio Telephone Comm., Inc. v South-eastern Tel. Co. (Fla. 1965) 170 So. 2d 577; Doniphan Tel. Co. v A.T.&T. (1962) 34 FCC 950; aff'd. (1963) 34 FCC 1963; Mobile Radio System of San Jose, Inc. v Vogelmann (1969) 69 CPUC 333, 336.

The California Supreme Court recognizes our jurisdiction over intrastate communications. The court said, in Com'l. Communications v PUC (1958) 50 C 2d 512, 526 [cert. den. 359 US 341]:

"The respondent commission held that the provisions of section 2, subdivision (b) and section 3, subdivision (e) of the Communications Act of 1934 as amended (47 U.S.C., Sections 152, 153) make it clear that the federal commission has no jurisdiction, except under the radio licensing provisions of the act, over intrastate communications service by radio, and that 'interstate communication by radio' does not include communication between points in the same state if such communication is regulated by a state commission. . . . The commission's ruling would appear to be correct."

SPCC's reliance upon Postal Telegraph-Cable Co. v Railroad Commission (1927) 200 Cal 463, for the proposition that intrastate certification would here inhibit federally granted authority, is misplaced. This case decided, under the federal acts with which is was concerned, that a state certificate could not be required for construction of a certain telegraph line. Postal Telegraph-Cable Co. was operating pursuant to a federal franchise under a Congressional Act of 1886 which specifically precluded exercise of state authority. Since this act implemented the constitutional grant of power to Congress to establish post offices and post roads (Art. I Sec. 8), the court held that Postal Telegraph-Cable Co., in

exercising its franchise "became an agency of the federal government for the transaction of its postal business" (200 Cal at 469).<sup>3/</sup>

The FCC's power to grant certificates is derived from the commerce clause and not the postal clause. SPCC is not an instrumentality of the Federal Government under the Act. The petitioner in Postal Telegraph relied on this very distinction in its opening brief (p. 16):

"Unlike the Commerce Clause, the power of the National Government to establish post offices and post roads is not so limited as to exclude authority over communications which are purely intrastate. The authority of the National Government, under the Federal Constitution, covers the entire field of postal communications - intrastate, as well as interstate and with foreign nations."

SPCC counters by arguing that the point involved is not the source of the federal authority but its effect (reply of SPCC to Pacific's brief in opposition to rehearing, filed June 1, 1974, p. 10). This proposition cannot stand. Sources of constitutional power must be considered in determining the effect of federal statutes enacted under various clauses of the Constitution. This has ever been the rule. As the U.S. Supreme Court stated long ago:

"That the people have an original right to establish, for their future government, such principles, as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles, therefore,

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3/ SPCC argues that respondent in Postal Telegraph (the Railroad Commission) conceded that the State could not require a certificate as a prerequisite to constructing an interstate line even though potentially usable for intrastate purposes, and that therefore it is immaterial whether Pacific is correct in distinguishing Postal Telegraph from the present situation. This argument overlooks the fact that the concession was made with the particular statutes then in effect in mind and not while considering the present Communications Act of 1934.

so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

"This original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments.

"The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act." (Marbury v Madison (1803) 1 Cranch 137, 2 L ed 60, 73; emphasis added.)

Reliance on Postal Telegraph is, for the reasons stated above, inappropriate. There is, additionally, a strong presumption against federal pre-emption of state authority. Maurer v Hamilton (1940) 309 US 598 84 L ed 969; California v Zook (1949) 336 US 725, 98 L ed 1005; Head v New Mexico Board of Examiners (1963) 374 US 424, 10 L ed 2d 983.

SPCC maintains that the "only apparently relevant restriction" on the FCC's authority is found in Section 152(b) of the Act, which provides:

"Subject to the provisions of Section 301 of this title [governing radio transmissions], nothing in this chapter shall be construed to apply or give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications service by wire or radio of any carrier. . . ." (Emphasis added.)

SPCC claims that since this section deals only with regulation of authorized service and not certification, state jurisdiction to regulate charges and service is saved, but the FCC's power to authorize construction and operation of lines is in no way limited. It is claimed that Section 214 governs construction and operation of lines and the specific language of Section 214(c) makes it clear no other approval is necessary.<sup>4/</sup>

The short answer to this argument is that Section 152(b) by its own language is an express limitation on the entire Act. The phrase "in this chapter" in Section 152(b) can refer to nothing other than Chapter 5 of Title 47, U.S. Code (entitled "Wire or Radio Communication") which includes Sections 151 through 609.

The FCC was well aware of the limits of its jurisdiction and did not grant SPCC a certificate for interstate and intrastate operations. After SPCC's West Coast applications had been filed with the FCC, petitions were filed to deny the applications. One ground urged was that state certificates were required as a condition precedent to providing the intrastate service SPCC was apparently considering. SPCC denied this, stating:

"Southern Pacific's applications seek only interstate authority from the Commission to provide a fully viable interstate operation. Should Southern Pacific also determine to provide intrastate service, it will submit appropriate applications for intrastate operations to the state authorities having jurisdiction, but its pending applications to this Commission in no way rely upon or require the grant of any intrastate authority." (Opposition to Petitions to Deny Applications of Southern Pacific Communications Company For

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<sup>4/</sup> Section 214(c) reads, in part:

"After issuance of such certificate [of public convenience and necessity applied for under Section 214(a)] . . . the carrier may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction [and] operation . . . covered thereby." (Emphasis added.)

Construction Permits for a Fixed Point-to-Point Microwave Radio System between Seattle, Washington, and San Diego, California, and Intermediate Stations, File Nos. 4502-C1-P-70 through 4558-C1-P-70, p. 17, emphasis added.)

SPCC later submitted to the FCC a letter from our staff addressed to SPCC dated January 10, 1972 which stated in part:

"This is in response to your letter of January 6, 1972 inquiring as to the necessity of securing from the California Commission a certificate of public convenience and necessity prior to commencing construction in 1972 of the first segment (San Francisco-Los Angeles) of an interstate specialized communications common carrier system extending from Seattle to San Diego and from Los Angeles to East St. Louis, Illinois..."

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"On the basis of the foregoing representations and the federal statute referred to it is concluded that it is not necessary that you file a separate application for a certificate of public convenience and necessity from this Commission for authority to commence construction of the San Francisco-Los Angeles segment of the interstate line. It will be necessary, however, to file a tariff with this Commission before operations commence, to establish rates for intrastate communication services performed with the subject facilities." (Emphasis added.)

"The foregoing is an informal expression of staff opinion. The Commission itself does not issue opinions except after formal proceedings."

SPCC seizes upon this letter to claim that regardless of whether the last sentence of the second paragraph is correct, it "opened the way" to a grant of unrestricted (i.e., interstate/intrastate) operating authority. SPCC would in effect give this letter the force of a decision binding on the Commission. Even without the last paragraph disclaimer, there is no basis for this.

In any event, it is unreasonable to interpret the FCC Memorandum Opinion and Order which followed<sup>5/</sup> as granting such authority. The issue before the FCC was whether state authority was necessary as a condition precedent to exercising intrastate authority it apparently sought (which caused SPCC, as mentioned, to deny it sought such authority). Paragraph 5 of that FCC order, addressed to this particular issue (and certainly not to the issue of whether the FCC had the power to, and therefore should, issue intrastate authority notwithstanding state requirements) reads:

"5. With respect to the need for state authorization, SPCC has submitted a staff letter from the Public Utilities Commission of California which states that application for a state certificate is not required for construction of the Los Angeles - San Francisco segment of the proposed Seattle - San Diego system, and that intrastate service may be commenced upon the filing of a tariff with that Commission. We conclude, therefore, that neither of these questions raised by General poses any problem."

To the extent that the staff letter indicates that no certificate from this Commission is necessary to commence intrastate operations, it is in error. But the only effect of that error insofar as the FCC's order was concerned was to cause the FCC to rely upon misinformation in disposing of the precise issue in front of it. It did not cause the FCC to issue a certificate for intrastate service binding upon this Commission (or, for that matter, to issue any intrastate certificate, binding or otherwise).

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5/ In Re Applications of Southern Pacific Communications Company, File Nos. 4532 et al, adopted September 13, 1972 (Exhibit "A" to SPCC's Motion to Dismiss Complaint in Case No. 9728).



Existence of a Separate Intrastate System

SPCC argues that no specific intrastate system was constructed or is planned and that there is, in effect, nothing for us to certificate.<sup>6/</sup> We do not agree.

Preliminarily, we believe it is clear that SPCC's system includes "lines" within the meaning of Public Utilities Code Section 1001. Section 233 defines lines to include:

"...all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires." (Emphasis added.)

SPCC's intrastate connections are "lines" within this definition. They will be composed of channel segments of their own and of other carriers. SPCC would, as far as traffic is concerned, "control, operate, and manage" these segments. Therefore, SPCC cannot logically claim it built nothing but an interstate system. To argue that "but for" the interstate system the intrastate lines would not exist is to ignore both the history of SPCC's system and common sense.

Nor is it necessary to be able to physically identify or separate pieces of the system.<sup>7/</sup> No telephone corporation would ever build tandem interstate-intrastate systems. The waste involved would be monumental. The "lines" must be regarded as they would in any telephone company, from a point of view of their usage and allocation, and the lines such segments would form.

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<sup>6/</sup> We do not question, nor is there any issue over the FCC's exclusive jurisdiction to assign radio, including microwave frequencies, under Title III of the Act.

<sup>7/</sup> Nor should SPCC be put to the work of filing applications for each "line". Our certificate will specify a service territory.

Pacific apparently invites us to make a line-by-line analysis. This would be pointless, since the usage of any particular line could change from time to time. For example, a customer could originally wish interstate service and later request an intrastate connection, or vice versa. We must analyze the system as a system.

The testimony of SPCC's witness Hunich and the remainder of the evidence shows that SPCC overbuilt the system from the start to anticipate the total California demand, interstate and intrastate. There is no basis for regarding intrastate service as an afterthought,<sup>8/</sup> and the only inference which may reasonably be drawn from the history of SPCC's system is that it was always the objective of SPCC to allocate a substantial portion of its plant to intrastate demand.

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<sup>8/</sup> Although the question is not directly presented, even if the intrastate use of the system were an afterthought, it would still be subject to certification. As we stated, Section 1001 must be read as a whole. Its first paragraph does not create a loophole and is designed to stress the time when an application should be made. There is no basis for any argument that the Act, which reserves state authority over intrastate communications, makes such reservation except for systems which were originally interstate.

## II. THE APPLICATION FOR A CERTIFICATE

### Specialized Communications Carriers - General Considerations

As mentioned, SPCC filed Application No. 55284 "under protest" requesting the Commission to dismiss it if no certificate were required, and to issue a certificate if necessary. Pacific, and General Telephone Company of California (General) protest the grant of a certificate.

The testimony of the policy witnesses for General and Continental Telephone Companies indicates a desire for us to adopt a policy of excluding specialized carriers. A discussion of the general problem of such entry is essential.

We believe that a policy which categorically forbids entry of specialized carriers would be contrary to our duty to protect the public interest, and would fail to consider actual and potential anticompetitive aspects of a developing market. In Northern California Power Agency v PUC (1971) 5 Cal 3d 370, 96 Cal Rptr 18, it was held that this Commission must consider anticompetitive facets of applications before it. (Cf. Phonetele, Inc. v PUC (1974) 11 Cal 3d 125.) We hold that the Commission must consider applications for specialized entry into the California intrastate telecommunications field on an individual, case-by-case basis, and cannot adopt a policy of categorical exclusion of such carriers. This is not to say, of course, that we may not deny particular applications, in whole or in part, or grant them subject to whatever conditions are appropriate, when such a course of action is in the public interest. After such entry is allowed, the Commission must of course exercise its regulatory powers to protect the public interest and assure competitive fairness.

Additionally, while we are not bound to follow policies enunciated by the FCC, we should consider such policies carefully and take notice of major nationwide developments in the industry. Recent actions of the FCC show that that agency has relaxed the principle of

regulated monopoly in favor of allowing limited competition. The FCC has found that the waste, if any, in duplication of facilities was found to be outweighed by the advantage of offering certain classes of consumers a choice.<sup>9/</sup> The FCC has decided that:

"...a general policy in favor of the entry of new carriers in the specialized communications field would serve the public interest, convenience, and necessity." (29 FCC 2d at 920.)

This determination was attacked in Washington Utilities and Transportation Commission v FCC, and a companion case, National Association of Regulatory Commissioners v FCC, (USCA, 9th Circ., Nos. 71-2919 and 72-1198, respectively). The court issued an extensive opinion on January 20, 1975, which inter alia, upheld the FCC in this policy determination.

At least one state has now adopted such a policy on an intrastate basis (United Video, Inc., Oklahoma Corporation Commission, Cause No. 24892, Order No. 108727 dated November 14, 1974).

The FCC has relied in part on the fact that there is an ever-growing market for specialized communication needs, and has reached the conclusion that competition would stimulate "rapid introduction of new technology" (Establishment of Policies, etc., Docket No. 18920, First Report and Order, released June 3, 1971, paragraph 35). The evidence in our proceeding shows a rapidly growing private line market (about 10 percent per year) ever since World War II. We should not adopt a flat policy which might have the effect of retarding technological advances in the California intrastate telecommunications market.

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<sup>9/</sup> On the development of the specialized telecommunications industry generally, through 1971, see "Specialized Common Carriers" by Philip M. Walker and Stuart L. Mathison, October 15, 1971 edition of Telephone Engineer and Management.

We note in this connection Pacific's argument that an applicant seeking to "invade territory served by an existing utility must sustain the burden of proof that the existing utility either is not providing or cannot provide adequate service within that territory" (Pacific's brief opposing certification, citing San Gabriel Valley Water Company (1950) 50 CPUC 406; Washington Water & Light Co. (1947) 47 CPUC 280, S.C. Brooks, et al. (1932) 37 CRC 672; and California Pacific Utilities Co. (1960) 58 CPUC 278).

These cases relate to a situation where the "invasion" concerned competition for service generally within the territory. We have a new situation here which does not fit the mold of traditional "inadequacy of service" cases. In an area where rapid technical advancements can be made, and new and different specialized services may be offered, to apply the traditional "inadequacy of service" concept would be to place the Commission in the position of having to find inadequacy as to an existing service before it allowed a new service to begin. This would be an illogical approach, since the market for a new service is not always firmly established and there is not a 100 percent relationship between the demand for the existing and the new services (concededly, there may well be an overlap in demand between an existing and a new service when the new service is not totally different).<sup>10/</sup> Strict and literal adherence to such a theory would mean no new services could be certificated until the existing ones were being furnished inadequately.

#### SPCC's Proposal

We turn now to specific arguments relating to issuance of a certificate to SPCC for the services it proposes. We believe the preponderance of the evidence shows that, while not 100 percent novel, the services proposed are different enough to be considered innovative. One hundred percent novelty is not required. We also believe that public demand has been demonstrated.

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<sup>10/</sup> We believe that counsel for SPCC's "concession" regarding adequacy of service (tr. 268) must be taken in this light.

The testimony of C. Gus Grant, president of SPCC, presented a general picture of the development of the company. The interstate network, presently operating under FCC authorization, begins at San Francisco, goes through Los Angeles, then leaves the state, eventually terminating at points in the East. The microwave transmission system employed by SPCC is also used by all other telecommunications carriers for intercity toll circuits. SPCC's microwave system was originally conceived for use in connection with transportation operations of Southern Pacific Company (later transferred to Southern Pacific Transportation Company).

The service consists basically of (1) intercity channels of various bandwidths and data speeds for either analog or digital signals, including measured time service, (2) network terminals, and (3) local distribution facilities. SPCC will offer only private line service, not standard telephone exchange-type service; that is, one of its customers could not call to another SPCC subscriber (unless a specific separate private line for that purpose was arranged).

The proposed rates (discussed hereinafter) are considerably below Pacific's. The witness felt that, primarily, SPCC's business will not result from diversion from Pacific but from new business because of the types of service offered. The witness conceded that there is no technical or engineering reason why Pacific could not provide the services offered by SPCC; however, Pacific is not providing these services at present. The "network terminals" will be provided to customers for special applications such as video. The distribution facilities are "local loops" rented from the appropriate telephone company. If service were requested where there were no existing distribution available from a telephone company, what would be done to connect the customer to the system would depend upon the size of the customer, but he said the most readily available solution would probably be a microwave circuit.

He stated that the facsimile transmission (FAX) services proposed to be offered are superior to those in existence because they are part of a complete package and not offered as a do-it-yourself project. SPCC will do all the maintenance and the entire package will be available on a rental basis. The witness conceded that Advice Letter No. 1 did not contain the FAX tariff or other intrastate tariffs for some of these services.<sup>11/</sup>

The coast-to-coast transmission-of-data system was described as similar to the digital data service offered by the Bell System in seven cities in the east, but not in this area. SPCC has filed a tariff with the FCC to offer this particular service, interstate, from coast-to-coast.

The witness indicated that while surveys were done concerning the "routes of commerce" in the State of California (meaning the main and most heavily traveled routes which coincide, in the witness's opinion, with Southern Pacific's railroad lines) no surveys were done for the purpose of establishing the need for this service in other areas. He stated he considered the fact that the interstate customers are buying the service indicates that it would succeed on an intrastate basis. The witness gave considerable weight to the advantage of furnishing one customer with both inter- and intrastate communications service in one package.

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<sup>11/</sup> Advice Letter No. 1 does not contain complete descriptions of the services offered and described in Exhibits 15 and 16. Since SPCC based much of its argument on the public need for such services, this is a major deficiency. We will order SPCC to file a report on these services, in order that we may, by subsequent order, require SPCC to augment its tariff filings.

The incremental cost, he said, would be small, and admittedly if SPCC were required to serve the whole state, as is done by Pacific, this would present a different incremental cost picture. He denied, however, that the benefits available to the persons living in the area to be served would have a negative effect on those outside this area (that is, those served by Pacific in areas in which SPCC would not be competing). He explained that the communication business as a whole is growing, and denied that the growth in favor of specialized systems would be primarily at the expense of message telephone service (MTS) or wide area toll service (WATS). While private lines have certain advantages, customers would still need MTS and WATS lines for other purposes. His opinion was not based on any specific study showing what shift there would be from MTS or WATS service to private line service. The studies for these new services were based on what the witness called "value pricing" and not upon a comparison with Pacific's tariffs.

The witness felt that there would be no significant diversion (meaning less than one percent) from regular message toll service, since customers still have a need to call other destinations besides those which would be on the private line. He stated that in the interstate operation, while there was not a completely consistent pattern, most customers would take the private line service but keep WATS and MTS.

The witness stated that 60 percent of its interstate service backlog was for service not offered in Bell System tariffs. SPCC's chief marketing targets are customers with multi-plant or multi-office operations who would need private lines. The witness did not know how many of these customers are or were Bell private line customers.

The witness felt that if the rates of Pacific and SPCC were exactly the same, SPCC could compete on quality alone except for the problem of a catastrophic loss, since in Pacific's system it is possible to reroute the signals in such an instance.



He reiterated his belief that the primary impact of the service would be to generate new service and not simply to divert business from Pacific. SPCC's average customer, he said, will not discontinue Pacific's toll service because SPCC's service is point-to-point.

John N. Albertson, a vice president and general manager with SPCC, furnished the Commission with a technical description of the system.

The microwave equipment is solid state and of the latest designs. Towers are spaced at varying lengths between 20 and 75 miles apart. If commercial power fails, emergency standby generators provide power for periods up to two weeks. If the standby generators also fail, the radio and multiplex equipment will operate from batteries for a period of up to eight hours.

At the terminals, the system is interconnected to local telephone terminals for distribution to the customer. If the customer requires substantial bandwidths or a large number of telephone channels, SPCC would furnish microwave communications to the customer's premises.

As Mr. Hunich had testified, no additional equipment will be necessary to commence intrastate operations. The system is now built to capacity with 1,800 channels, several hundred of which are now in use. Connection to the system is similar to connecting any new telephone service--wires are simply connected between SPCC's terminal block and Pacific's terminal block.

The system was "overbuilt" from the start in order to allow for expansion at the least possible cost. The design criteria were similar to that for the Southern Pacific Transportation Company. Since the interstate network started functioning, experience has indicated a 99.96 percent error-free system. In designing the system SPCC attempted to exceed the Pacific's standards for noise control,

and the witness believed that SPCC's "space diversity" system gives slightly better performance than the Pacific's microwave system. The design criteria also included raising certain tower heights and providing high performance antenna in certain areas. After investigation, frequencies were adjusted to avoid conflicts with other microwave users.

The system is continuously monitored by a computer-controlled alarm system. The company maintains a staff of technicians for maintenance and repair, and also contracts for certain services in this connection.

John J. Geier, SPCC's vice president, Western Area, furnished the Commission with a description of the various services and what SPCC believes to be their marketing advantages. According to this witness's testimony, there are two basic facets of SPCC's service: (1) customized channels or transmission facility service and (2) innovative communications service. The objective is to provide the customer "with services that precisely match his requirements." This is possible since SPCC would specialize in private line service and would be better able to take into account the needs of each customer, according to the witness. He summarized examples of service which could be provided, as follows: (Exhibit 13, Answer 10).

- "1. SPCC will provide a facility during a specified time frame and meter the use of that facility to determine total charges. This is called Scheduled Metered Time Service.
- "2. SPCC allows as many subscribers as can cooperate successfully to share a communications channel.
- "3. SPCC allows a mixture of different bandwidths in the same channel.
- "4. Duplex operation (simultaneous two-way transmission capability) is standard at SPCC, so no extra charge is made for this service.

- "5. SPCC has no restriction on the simultaneous use of a channel for more than one purpose. For example, SPCC permits voice-plus-data transmissions on a single voice-grade channel.
- "6. SPCC does not restrict interconnection with a private microwave system of a customer or other carrier. Only when SPCC must lease facilities from Pacific will there be a restriction on our customers, the restriction imposed by Pacific.
- "7. SPCC has no restriction on the interconnection of customer owned equipment, and does not require the installation of special coupling devices.
- "8. SPCC allows customers to colocate equipment on its premises, including its towers."

In addition, he said, SPCC has announced, and in the near future will file tariffs concerning these additional services:

- "1. A sub-minute, controller operated, multi-point facsimile system. This is a packaged offering including equipment, service and maintenance and there is not now a similar offering by any common carrier in the industry.
- "2. Videovoice service. This is a packaged service consisting of slow scan video equipment coupled with adequate communication channels to multi-points in a customer organization. The package includes an SPCC maintenance agreement."

The witness thought that these new services would primarily generate new private line business, rather than accomplish diversion from Pacific. He stated: "Pacific has a built-in competitive advantage, because everyone must deal with the telephone company. Not everyone will be willing to split their communications business between two companies. Those willing to do so would be primarily users who are unable to fill their communication needs through Pacific's offerings."

He stressed that because of SPCC's relatively unknown position in the communications field, positive promotional steps were being taken to acquaint potential customers with the services, and

that in his opinion this contrasted to Pacific's approach which simply acquaints the customers with the available tariffs. The biggest problem in promotional efforts, he stated, was lack of intrastate tariffs to match the interstate offerings. Customers are frequently unwilling to divide their business between inter- and intrastate, and they cannot be informed definitely of what tariffs will be placed in effect.

Mr. Geier stated that he was aware that Pacific had a measured time service in operation for 38 years but recently withdrew it. In his opinion, this was caused by the pricing policies and certain other restrictions in the tariff.

The witness stated it was not his position that it would be impossible for Pacific to provide such innovative services but simply that they are not doing so. He was aware of the Pacific tariff entitled "Special Assembly Services on Channels for Miscellaneous Experimental Purposes" (Tariff 111-T) and also a tariff providing for special assemblies of equipment (Tariff 83-T). These tariffs, in the witness's opinion, provided alternatives for large customers but not for small customers. The witness defined a small customer as a business customer having three, four, or five message toll lines, and one with a sales volume of \$50 million or less. (From the testimony of the public witnesses which will be discussed later, it does not appear that Pacific is using the above mentioned tariffs on a promotional or competitive basis.)

The corresponding interstate tariff for measured time service (Exhibit 20) contains a 10-hour-a-day schedule and eliminates a 2-hour-a-day schedule "due to lack of demand". The witness was nevertheless of the opinion that there is an intrastate demand for a 2-hour schedule, based upon customer contacts.

The witness was aware of certain competitive products of Pacific such as digital data service. He stated that he considered this service a competitive response to similar systems offered by small competitors since the technology to introduce it was available for a long time. He characterized "hi-pak" (bulk pricing of large groups of communications facilities) as a competitive response to competition in the private line field as well.

For a summary, Mr. Geier presented Exhibit 23 which outlined all the services offered by SPCC which in his opinion were innovative. He had estimated the demand for these services based upon a rate structure similar to that allowed by the FCC, which rates are considerably below those of Pacific for the closest type of service. He was not prepared to state what the effect would be if the rates were to be the same as those of Pacific.

Gerry A. Young, manager of Rates and Economic Analysis for SPCC, testified regarding the rate structure, which he described as fully compensatory. The "required net income" was calculated on the basis of a 12 percent return on the average investment of SPCC over its depreciable life, using a straight-line method of depreciation. The allocations to the California system were made on a usage basis with the exception of depreciation, interest, ad valorem taxes, maintenance and operation, and marketing expense. The maintenance and operation reflect, generally, charges applicable to California specified by agreement between SPCC and Southern Pacific Transportation Company. Regarding marketing, the allocation was made on a revenue basis on the assumption that the magnitude of the marketing effort is proportionate to the revenue to be derived.

The witness projected a profitable total California year in 1975 although the return would be only 3.7 percent. The intrastate portion of the California operation, however, was forecasted to show a \$25,000 surplus over the revenue necessary to earn a 12 percent rate

of return. He stated that the reason for this difference is that the intrastate channels in 1975 show a higher revenue per channel mile than the interstate channels, primarily because the preponderance of bulk traffic (that is, traffic sold in quantity at lower mileage rates) is interstate.

The attachments to the witness's prepared testimony (Exhibit 16) show that in his opinion total California profitability will be reached in 1976 and that there would be about a \$10,000 overall loss in 1975 based upon the rate structure proposed.

The witness later produced Exhibit 58, a forecast of net income, which shows a predicted company-wide loss for 1975 (a negative rate of return of minus 6.66 percent). The witness explained that this would be due primarily to the fact that much of the system in the eastern states would still be under construction for that year.

The company began California interstate operations in the last month of 1973, for which period there was a negative rate of return. The witness explained he expected a negative 1974 rate of return but had not calculated it specifically yet. The witness stressed that for California intrastate operations, the cost sheets attached to his Exhibit 16 were prepared on a fully allocated and not an incremental basis.

Several public witnesses testified in support of SPCC's California intrastate operation. The witnesses stressed the advantage of being able to buy only as much time as needed for private line activity and to select hours of the day. Some of the witnesses spoke in favor of the various combinations to be offered.

All of the witnesses favored competition in the communications industry because they thought it would mean more aggressive marketing of new approaches to communications. The witnesses indicated that they had been offered either very little or no explanation of the previously mentioned Pacific tariffs relating to special packages or experimental communications combinations.

Some of the witnesses indicated that price was the primary or exclusive consideration while others indicated that even if the rates were the same as Pacific's, they would still subscribe to one or more SPCC's offerings if a certain communications problem would be solved. For example, the communications manager for Air California testified that presently Air California uses MTS and WATS service for regular and special reservations functions. The private lines are shared and billed through Aeronautical Radio Incorporated (ARINC) which acts as an agent for many airlines in acquiring communications channels, so that the channels can be shared. With the present Pacific connections, when using a foreign exchange service there is a 12 db loss which causes problems in communicating. Pacific has constantly worked on the problem but it apparently cannot be completely solved due to design limitations. The service which could be supplied to Air California through ARINC by SPCC, in addition to being less expensive, would apparently rectify this voice problem.

Other public witnesses, primarily interested in ordinary private line service on less than a full-time basis, explained that it would be more cumbersome to split their communications business between two carriers if there was no price advantage.

A representative of the Tele-Communications Association representing businesses of various sizes and individuals primarily in California and other western states, introduced a resolution of that organization supporting SPCC's application, and explained that this resolution was the result of a membership vote at a general meeting.

#### Pacific's Protest and Proposed Competitive Response

Pacific opposed the granting of a certificate and took the position that if it is granted the rates for SPCC's services should be set at levels which would be the same as those of Pacific, or in the alternative, that Pacific should be given authority to charge its exception rates proposed in Application No. 55344 on an interim basis to compete with SPCC, pending final resolution of this problem.

Glen J. Sullivan, Pacific's revenue planning staff director, testified in opposition to Southern Pacific's proposal on the ground that private line service offered by Pacific is adequate at present and that SPCC does not actually offer new services. "The differences are semantical rather than substantive," he said.

The witness described intrastate message toll service, wide area telephone service, and private line service, explaining the appropriate uses for each. MTS is priced relative to distance, duration, time of day, and method of dialing. This service produces revenues in excess of costs and contributes to rate of return. WATS provides volume discounts to heavy users of message toll telephone service although limiting the access to the network. The cost savings resulting are the basis for the discount. WATS is even more productive than message toll in contributing to rate of return on a percentage basis.

He said that there are several types of private line service, the most common being voice grade service between two or more telephone locations. Sophisticated applications of this are possible in the form of equipment which permits the "dedicated" facilities between two geographical points to be extended to multiple points at each location. Certain forms of data transmission can be handled over these facilities as well.

Customers having PBX equipment may subscribe to tie lines connecting PBX services at different locations. The voice grade circuits may also be used for data transmission, teleprinter services, and signaling and remote telemetering services within certain channels.

The witness emphasized that in his opinion, marketing research techniques were being employed to provide new products and that Pacific was in everyday contact with customers regarding their future needs. He stated that Pacific can design services pursuant to the aforementioned special assembly or experimental tariffs to fit the need and provide it to the customer.



The witness described, relating to Application No. 55344, the proposed offering of "point-to-point private line service" between eight metropolitan exception exchanges at a flat 70 cents per mile with appropriate channel, terminal, and local loop charges.<sup>12/</sup> He also described the use of foreign exchange service, which may be of value to some customers who do not need 24-hour-a-day private line service.

During the past several years that measured time private line service was offered, the witness stated it did not offer any advantage over a 24-hour service since message toll service at certain numbers of minutes per day would be less expensive, and this is probably why the customer representatives did not attempt to sell this service.

The shared channel use available through Pacific is not directly related to a similar service offered by SPCC, he said. Shared use under Pacific's tariffs concerns either the type of service mentioned by the witness for ARINC (one organization buying all the time and billing its own members) or joint use in which there is a primary subscriber who is responsible for the bills.

The witness disagreed on the value of the voice plus data service below 300 hertz because based upon Pacific's engineering evaluations, there is a loss in the quality of voice transmission using this simultaneous voice and data service. However, he stressed that a customer might provide its own multiplexing equipment which would accomplish this. He was unsure whether such equipment was always compatible with Bell System equipment.

Telpak offerings (60 channels or more) are offered by Pacific at a lower rate than the equivalent bulk offering of SPCC, the witness stated. This is true both for the present interstate and intrastate Bell System tariffs.

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<sup>12/</sup> This proposed service will be considered in our subsequent opinion.

Mr. Sullivan stated that, in the experience of the Bell System, as WATS and private line revenue of the Bell System increased, message toll revenue did not decrease but also continued to increase. The growth of WATS private line and MTS revenue was accompanied by an increase in the toll calls per telephone. This he said is a phenomenon of growth independent of the fact of cross-elasticity of service.

Counsel for SPCC showed the witness Exhibit 54 which indicated two periods for increases in message toll WATS and Telpak services, 1951-61, and 1961-71. The increases in message toll service revenues for those periods was well in excess of 100 percent, but of course included revenue increases as well as system growth.

The witness was challenged on his opinion regarding meeting all competition head-on and was shown an excerpt from a magazine article in the PTM Magazine (September-October 1973) in which the author, a products and service manager, states:

"The competition we are experiencing is really symptomatic of us not providing the proper products and services to meet our customers' desires. Our competition has recognized these customer needs and can offer him a wide variety of equipment and services. Unfortunately for us, our customers are finding this equipment increasingly attractive when they make their buying decision."

The witness stated he disagreed with this opinion.

The witness explained the difference between the original high density/low density application and the latter application. He said the original application "completely tips the scale. It takes approximately 22 points in the State of California, costs out the plant at those locations, and between those locations comes up with a cost per circuit mile that is very low. The remaining points in the State where there is low density traffic and high cost plant, relatively high cost plant, remain to be served. And we have to serve them. The final competitive response that we have suggested is a compromise, if you will, between the two extremes. We retain the

rate averaging of the stepped-rate schedule ordered in Decision No. 83162, with some adjustment in rate levels, and we meet competition by providing exceptions on just eight of the major points as opposed to trying to meet on all the points that we think other carriers will attempt to serve."

The witness explained that it was general company policy to price optional services at a higher level than the allowed rate of return in order to help offset those services which may be priced below the rate of return.

Pacific presented the testimony of William A. Kent, the director of Communications Technology for Quantum Science Corporation, Palo Alto. The witness presented Exhibit 60, a study made for Pacific concerning the entry into the private line service field of SPCC. The study, consisting of 91 pages, took into account both telephone and personal responses from numerous interviewed customers, as well as economic data.

The study came to various "major conclusions" which, in a most abbreviated manner, may be stated as follows: No new service requirements were identified; the only major difference between Pacific's services and those offered by SPCC is the lower rates of SPCC; on the high density Los Angeles to San Francisco Bay Area route, 55 percent to 79 percent of the circuits would be switched to SPCC at a 30 percent rate differential; Pacific will experience a "severe loss" in private line service revenue as well as erosion of revenues from MTS and WATS if the competitive private line service rates were reduced by 30 percent or more; if all carriers offered private line service for 15 percent below current Pacific rates, between 24 and 41 percent of the customers would substitute private line service for MTS and between 6 and 29 percent of the customers would substitute private line service for WATS; if all carriers offered private line service for 30 percent below current Pacific private line service rates, between 27 and 53 percent of the private

line service customers would substitute the private line service for MTS and between 6 percent and 32 percent of the customers would substitute private line service for WATS. The survey indicated that few customers would change to another carrier at equivalent rates.

The survey is of limited usefulness in disposing of this case. The questionnaires used did not inquire into the particular services offered by SPCC and were basically concerned with whether a customer would switch from one kind of service already offered under Pacific's tariffs if certain rate differentials were introduced. While the survey clearly demonstrates and adequately supports the fact that certain shifts in customer demand would occur if certain rate changes are introduced, inspection of the questionnaires shows that no particular effort was made to determine what new or different services customers might wish. Under the circumstances it is small wonder that the first conclusion of Exhibit 60 is that no new service requirements were identified. The report does ask, "What new uses of private line service would you provide for your firm given a 40 percent (and various other percentages of) rate reduction from another carrier?" Such a question throws into the customer's lap the job of thinking up new and different services for himself.

It appears that the survey actually supports the conclusion that SPCC would have a great deal of difficulty entering the market at equal rates because of the rerouting incapability. The witness indicated that he was aware of the fact that Pacific maintains a sales force and assumes that it would try to educate the customers as to the differences in capability of rerouting in case of disaster. There is also the problem of paying installation charges if one switches to a new carrier, which would be an added problem in switching carriers if the rates were equal.

The witness's opinion was called into question by previous statements of his own regarding the need for specialized carriers which appeared in an informational brochure entitled "Quantum Views"

published in September of 1973 (Exhibit 64). The entire edition was devoted to the specialized common carriers.

The brochure points out the losses that are likely to occur to the general communications carriers with the advent of special carriers charging lower rates. Additionally, however, the text indicates a need for specialized services. On page 1 there is the statement "no one can dispute that AT&T (and the independent telephone operating companies) haven't done a good job in providing diverse services to their customers through the decades." On page 4 there is the statement:

"The need for more diverse and cheaper transmission services has been well established by the traditional private line customer and the data communications oriented users. The demand for service by the private business community has outpaced the established telephone operating company's facilities. The high cost of adequate transmission facilities-bandwidth, switching, and distribution has thwarted such developments as data oriented network information systems, videophone, facsimile, and electronic mail."

Below this statement, the services provided by the specialized common carriers are listed as part-time or time-of-day discounts, antenna tower and station site shelter space for customer-owned equipment, increased reliability of data transmission, channel sharing by different customers on a given bandwidth segment, lower holding time, such as less than a one minute minimum charge time, and a wider range of data transmission speeds.

On the following page the text states that in summary, the emerging competition by the special carriers has "spurred AT&T into a series of competitive reactions, such as their proposed digital data service (DDS)".

In response to a question by the examiner, the witness indicated that it was still his opinion, as expressed in Exhibit 64, that there was a need for specialized common carrier today, particularly in providing cheaper transmission services. He stated

the growth of communication services in general is about 10 percent a year.

Protests of other Telephone Companies

Mr. Richard L. Ohlson, a vice president of General Telephone Company (General), testified against the application, stating that if Pacific's exception rates have to go into effect, General could need as much as \$1.50 per year additional revenue from each residential customer. He explained that General shares in settlement revenues with Pacific. His testimony indicates that to the extent that MTS and WATS revenue is diverted as a result of the private line offerings, General's revenue would be adversely affected. He stated, however, that if Pacific were to offer private line service under the exception rates, he would expect Pacific's business in this category to increase.

General apparently has made no studies of the amount of contribution to revenue requirements that would be lost upon SPCC's entry into the market. He stated, that to the extent that business over the most profitable routes are lost, contribution would also be lost. The \$1.50 a year impact to the residential telephone user was a "possible impact" and apparently not a firm determination that such an impact will actually occur.

This witness pointed out that if a company such as General were to make available various short-term private line services, since there is a peak demand during the daytime and many customers do not use the private lines at night, the entire private line pricing structure would have to be rearranged in order to earn the same return.

He explained that a telephone company offering general service would not be able to economically switch channels on and off to accommodate short-term use, but admitted it would be possible to arrange the equipment so that if a customer bought something less than a 24-hour channel, a service could be offered under which a telephone company provided one rate for certain specified hours and a higher rate for use outside of those hours.

Richard D. Crowe, a vice president of Continental Telephone Company, also testified against the application. He indicated his company was opposed to the entrance of specialized carriers in the field on the ground that customers' needs were being met at present.

Revenue Effect of Exception Rates

Mr. Sullivan's testimony explained the net revenue effect of the rates proposed in Pacific's application, which, he said, would cause an annual revenue increase of \$1,854,000.

The witness described in detail the studies done under his direction showing the impact competitive private line service would have in California, with and without the introduction of the exception rate plan (high/low rates). It was his belief based upon surveys that if private line service were available at rates 30 percent below Pacific's, 64 percent of the customers would switch carriers; that between 68 and 100 percent of the MTS users would replace that service with private line service, and that 49 percent of the WATS subscribers would change to private line service. At identical rates, it was his opinion that only about 7 percent of Pacific's private line customers would make the switch to a new carrier.<sup>13/</sup>

The witness stated he inspected various company records to reach his conclusion that no latent or previously unexpressed demand was being fulfilled by SPCC offerings. In response to a request from SPCC, the witness produced various company records upon which he stated he relied.

In summary, Mr. Sullivan felt that granting the application would erode the broad base necessary for rate averaging. Exception rates would have, he explained, a negative economic effect on the remaining telecommunications ratepayers in California.

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<sup>13/</sup> This witness's testimony on elasticity of demand will be covered in greater detail in our final opinion.

Staff Recommendations

The staff presented the testimony of Paul Popenoe, Jr., assistant communications engineer. In his prepared testimony in Exhibit 69 he recommended certain "safeguards to reduce the shift of cost burden to exchange rate payers." Specifically, he proposed:

- "1. That SPCC be required to operate at rates for channel mileage no lower than those of the telephone utilities for equivalent service.
- "2. That terminal equipment charges be based upon the full computed costs of providing the service using the computation method developed by the Commission staff.
- "3. That rates for any service which combines channel and terminal functions be based upon the rates of the previous two recommendations. ✓
- "4. That any direct connection of private line circuits to the exchange network be strictly prohibited. This includes any connection similar to foreign exchange service.
- "5. That any tie line connections to PBX switchboards be arranged in such a way as to prevent through calls to be made to or from the exchange network at either or both ends."

The witness said that based upon the staff's analysis of Pacific's fully allocated costs for 12 months ended December 31, 1973, the private line services of Pacific earned only a 2.72 percent rate of return, compared with the 8.85 found reasonable for the overall operation. He explained this was due to the fact that Pacific serves many high-cost-to-serve customers in areas out of the main business corridors. The result of eliminating statewide averaging of private line rates, he said, would be to shift the burden of costs to different customers than are now carrying it. Substitution of private line service for MTS would result in reduced toll revenues (offset to some extent by a corresponding decrease in exchange costs assigned to toll).



Another effect, according to the witness, is a decrease in exchange earnings due to the reduction of exchange costs assigned to message toll under the separations procedures.

The third effect, he said, is a further reduction of exchange earnings which will result if the private line messages are permitted to enter the exchange network as local calls as with tie line or foreign exchange service.

Lastly, the exchange loss is increased even further due to message stimulation resulting from removal of time and distance charges on each message.

These effects result from separation procedures whereby costs are divided between message toll and exchange operations generally in proportion to the relative minutes of use of toll and exchange service. Thus, according to the witness, the real effect of diverting message toll service to private line service is to place an increased cost burden on the local exchange telephone user.

The witness believed that sufficient restrictions should be applied by the Commission to prevent cutthroat competition and diversion of message toll business, in order to minimize the shift of the cost burden. The recommendations mentioned above were made in order to carry this out. He conceded that there would be rate reductions on the longer haul routes, but in his opinion the predominant number of customers would be those using the short-haul routes who would receive increases.

He stated it was his opinion that during the interim period, if SPCC were to go into business with its rates as proposed there would be a large diversion of Pacific's business. During that period the effect on Pacific's earnings, he said, would be negligible but other issues besides the immediate effect on earnings would have to be

considered. Customers might have substantial increases at the end of the interim period, and then would be in a situation where, having switched to SPCC, they would not have achieved the rate advantage upon which they relied.

Mr. Popenoe stated that in his opinion SPCC's own evidence indicates the rates proposed will not be compensatory during an initial period, and that it may be a number of years before such rates become compensatory.

Mr. Popenoe was not of the opinion that SPCC would operate at a disadvantage if its rates were the same as Pacific's, because SPCC already had interstate customers who would look to one carrier to provide the private line needs, and also, because SPCC offers a number of package arrangements attractive enough to some customers without a rate differential. He pointed out that for many years Western Union has been operating at comparable rates with Pacific and yet has managed to obtain intrastate California customers.

Regarding measured time private line service rates, he said that there is not any comparable Pacific rate and therefore such rates would have to be "factored on some appropriate basis".

#### Discussion

While recognizing that the grant of a certificate and the tariff problems presented in these proceedings are interwoven, we believe that public need for the services proposed has been demonstrated, and that therefore, in this interim decision, we should grant SPCC a certificate of public convenience and necessity which will allow it to perform its proposed services within a certain specified service area, but that interim rates for SPCC should be such that Pacific's rates will not have to be adjusted during the interim period.

The innovative nature of the SPCC services was seriously questioned. All of these services are not as novel as SPCC suggests but they do not simply copy Pacific's.

Pacific is not now offering a packaged multi-point facsimile system, nor a videovoice service. Such systems could be pieced together under Pacific's special or experimental tariffs, but the evidence of the public witnesses establishes without question that these tariff provisions are not being promoted or explained by Pacific's sales force and very little use is made of them.

Voice plus data transmission is not offered by Pacific, although a customer may buy his own multiplexing equipment. There is an obvious advantage to a packaged offering in this regard.

The remainder of SPCC's proposed services involve primarily the different arrangement of lines, services, and tariffs to produce different usage results. This does not render them non-innovative. For example, different bandwidths are available on a single channel. Customers may lease from SPCC all equipment and facilities necessary to derive a variety of sub-voice grade bandwidths on a single circuit. Additionally, this may be used in conjunction with SPCC's shared channel offering, permitting two or more users at diverse locations simultaneous use of a single line for data transmission.

A closer question is presented by the offering of scheduled time service (12-hour time periods) and scheduled metered time service (2, 4, 6, or 8 hour periods). Although these proposed services represent no technological advances, we believe they are "innovative" in the sense that they meet a demand for low-cost part-time transmission. The extent of this demand is not known, but the evidence preponderates that Pacific made no particular recent effort to tap it. Formerly, a tariff of this sort was on file but was withdrawn. Pacific indicates there was no demand for it, but some of the public witnesses who were in the communications field for several years indicated they never heard of it.

Furthermore, although Pacific and other similarly situated carriers cannot set up a system where such lines are physically shut off (as is the case with SPCC), it is perfectly possible to arrange

automatic equipment so that transmissions occurring outside of the hours selected would be billed at a high rate, discouraging off-hour use. There appears to have been no investigation by Pacific or General of any demand for low-cost, off-hour use of private lines.

Twenty-four hour private line service is, of course, not innovative of itself at all, but we believe SPCC should be permitted to institute it so that customers wishing to take 24-hour advantage of the various package arrangements offered may do so.

We believe there is no serious challenge to the quality or adequacy of the proposed services. In addition, the protestants raised no issues as to technical feasibility of the proposed system, economic feasibility, technical competence, financial responsibility, or environmental impact.

We believe, however, that the exact demand for the services, in terms of quantity, is speculative. We agree with much of the criticism of SPCC's forecasts. The advertisements which solicited responses stressed lower cost. Sales summaries show only the number of interstate circuits sold. The SPCC presentation in this regard furnishes the Commission with inadequate information regarding how many potential customers want new and different services, and how many simply want lower cost private lines.<sup>14/</sup>

The same problem exists with the SPCC forecasts of profitability and revenue requirements. We will discuss this topic at greater length in our final decision, but we will state here that the optimistic forecast regarding 1975 intrastate profitability based upon the proposed rates is speculative. Understandably, SPCC's forecasts can rely upon little recorded information and appear to have considered the demand for SPCC's service which would be generated by using SPCC's proposed rates against Pacific's existing rates (a situation which would produce maximum diversion from Pacific).

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<sup>14/</sup> We will consider Mr. Sullivan's studies and other "elasticity" evidence, including effect on exchange revenue, more fully in our final decision.

We are mindful, above all, that if interim rates are to be allowed, they must consider the differing responsibilities of different types of carriers. While Pacific must, under its authority, offer general service over a wide area of varying density and service cost, a specialized carrier such as SPCC selects a high-density, high-profit area. In this case, it is the urban spine running from San Francisco to Los Angeles.

Because of these differing responsibilities, we must consider, both here and in our final decision, the effect of entry of specialized carriers upon low density and exchange customers. These customers are entitled, to reasonable and adequate, but not absolute, protection against changes in the industry. In other words, we believe that excessive diversion of revenues from MTS, WATS, and private line revenues must be controlled through proper rate and tariff regulation, rather than forbidding the entry of specialized private line carriers. Also, we agree with the staff witness that low rates which might later be the subject of a substantial increase are undesirable.

For the above reasons interim rates should be set which will minimize rate differentials and encourage SPCC to concentrate upon expanding its business by offering new approaches to its potential customers, rather than by stressing large differences in rates.

### III. INTERIM RATES

Since we believe SPCC has proved a public demand for its services, and since a major investment is involved, we believe the setting of interim rates is appropriate.

Two options are open to us: (1) allow SPCC to file its proposed rates and then permit Pacific to place its exception rate plan into effect, or (2) keep Pacific's rates as they presently stand and allow SPCC interim rates which are the same or similar to Pacific's.

We choose the second alternative. An exception rate plan is a drastic change and results in rate increases for so many customers outside the exception rate areas that no such plan should be adopted on an interim basis. Pacific's previously filed private rates carry a presumption of reasonableness. A major change in the structure of such rates should await our final determination after the issue is fully briefed.

During the interim period, we believe, as we have stated, that it is reasonable for SPCC to rely primarily upon the innovative nature of its services rather than upon a large price differential to expand its business. We will therefore authorize interim rates for SPCC which will set the 24-hour rates at the same level as Pacific's for equal mileage blocks. SPCC's authorized rates for shorter time periods will be in the same proportion to the authorized 24-hour rates as the proposed short-hour rates were to the proposed 24-hour rates. SPCC will thus still retain some competitive advantage in pricing since Pacific is not now offering less-than-24-hour private line service. This is reasonable for the interim period because the evidence shows that SPCC will function under certain competitive disadvantages:

1. There is no rerouting capability in case of catastrophic loss to the system;
2. Certain resistance to SPCC's service will be caused by the fact that a customer, to meet all its communication needs, will have to deal with two carriers; and
3. SPCC is smaller and less well known, at least at present, as a carrier than Pacific.

SPCC has at present applied for less-than-24-hour rates between San Francisco and Los Angeles only. At least until our final decision, we will prohibit any filing of tariffs for such rates to the other points authorized to be served without first filing an application for authority to do so.

During this interim period we will order certain reports to be filed, as indicated in the order, designed to give the Commission more information on the demand for the different services. As mentioned, we will also order SPCC's tariffs augmented to describe the various services offered and to include any incidental or miscellaneous charges connected therewith.

The remainder of the staff witness's recommendations regarding rates and connections (listed as Nos. 2, 3, 4, and 5 on page 40, above) are sound policy and should be adopted. We reserve judgment on their final adoption until our final decision.

Findings

1. SPCC, a subsidiary of Southern Pacific Company, has constructed a point-to-point microwave telephone system from San Francisco to Los Angeles and to points out of State, currently operating on an interstate basis pursuant to FCC authority.

2. The system is designed to operate on both an interstate and an intrastate basis, and was originally designed and built with the total California demand for private line service in mind.

3. SPCC holds no authority from this Commission to operate as a telephone corporation.

4. SPCC will offer only private line service and no standard telephone service between San Francisco and Los Angeles.

5. While present private line services and tariffs of Pacific are adequate from a standpoint of reliability and for the purposes for which they are intended, there is a public need for the new services and tariffs proposed by SPCC.

6. Some of the demand for SPCC's service is due to the novelty of its services; some of it is due to proposed lower rates. While a preponderance of the evidence shows a public demand for the new services, it is not possible at this time to determine what percentage of it is attributable to the need for the new services as against the percentage caused by the proposed offering of lower rates.

7. Forecasts of profitability for 1975 California intrastate service are speculative and are based upon SPCC's proposed rates against Pacific's present rates; therefore, we should order the filing of certain financial data as specified in the order.

8. Interim rates for SPCC should be set to achieve competitive parity between SPCC and Pacific, insofar as possible. The issue of "exception rates" should be deferred until the final decision in these proceedings. SPCC's proposed tariffs previously filed under its Advice Letter No. 1 should be rejected.

9. SPCC has the technical competence and financial responsibility to perform the proposed services.

10. Undue diversion of revenues from MTS, WATS, and private line revenues of Pacific and similarly situated companies should be controlled through proper rate and tariff regulation. The need for the new services outweighs the advantage of offering existing carriers absolute protection against loss of revenues by way of denying entry into the specialized private line market by SPCC. ✓

11. SPCC should be ordered to augment its tariffs by filing tariff descriptions of all services presented to us in the testimony and evidence herein.

12. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.



13. Public convenience and necessity require the services set forth in the following order.

Conclusions

1. SPCC holds no authority from the FCC which would allow it to operate its proposed services intrastate in California.
2. SPCC requires a certificate of public convenience and necessity from this Commission to commence its proposed California intrastate service.
3. SPCC's system includes "lines" as that term is used in Public Utilities Code, Section 1001.
4. This Commission should not adopt a policy of categorically excluding specialized communications carriers from the California intrastate market.
5. SPCC should be granted a certificate of public convenience and necessity to perform the services it proposes, subject to the conditions in the order and under the interim rates specified.

INTERIM ORDER

IT IS ORDERED that:

1. Southern Pacific Communications Company is granted a certificate of public convenience and necessity authorizing it, as a public utility, to establish intercity private line communication service for voice and data transmission, between the cities of Bakersfield, Fresno, Los Angeles, Merced, San Francisco, and Stockton, including but limited to the Exchange Areas contained in the Description of Local Distribution Areas as identified on Sheet No. 8-T of its Advice Letter No. 1 dated April 15, 1974.
2. Southern Pacific Communications Company is authorized to file, on or after the effective date of this order, and in conformity with General Order 96-A, tariff schedules based upon interim rates specified in Appendix A hereto, together with interim tariff provisions and rules conforming to those included in Exhibit 6. Such rates and tariff schedules shall be made effective on not less than five days' notice to the public.

3. The proposed rates, rules, and tariff schedules of Southern Pacific Communications Company filed under its Advice Letter No. 1 dated April 15, 1974 are rejected.

4. For purposes of allowing the Commission to augment SPCC's tariff filings by further order, Southern Pacific Communications Company shall submit, within 45 days after the effective date of this order, a report on the services described in Exhibits 13, 14, and 15. This report shall contain a complete description of each of the services, the proposed rates, charges, and tariffs therefor, and the cost support for each rate or charge. In addition, the probable market for each service for each of the first five years of service offering shall be stated, together with the estimated total revenue to be derived therefrom in intrastate service.

5. Future filings for terminal equipment charges shall be based upon the full computed costs of providing the service using the computation method developed by the Commission staff.

6. Rates for any service which combines channel and terminal functions shall be based upon the rates authorized herein and subject to the provisions of Ordering Paragraph 4.

7. Any direct connection of private line circuits to the exchange network is prohibited. This includes any connection similar to foreign exchange service.

8. Any tie line connections to PBX switchboards shall be arranged to prevent through calls from being made to or from the exchange network at either or both ends.

9. Southern Pacific Communications Company shall file with this Commission copies of all its annual reports made to the Federal Communications Commission.

10. Pending our final decision, Southern Pacific Communications Company shall not file any tariffs for less-than-24-hour service other than those authorized herein, for any points authorized to be served, without first applying for authority to do so.

11. Southern Pacific Communications Company shall maintain its accounting records in conformance with the Uniform System of Accounts for Class A and Class B Telephone Companies prescribed by the Federal Communications Commission as set forth in Part 31, Volume VIII, Rules and Regulations, and subsequently adopted with certain modifications by this Commission, and shall file with this Commission, on or before March 31 of each year, an annual report of its operations in such form, content and number of copies as the Commission, from time to time, shall prescribe.

12. Southern Pacific Communications Company shall determine accruals for depreciation by dividing the original cost of the depreciable utility plant, less estimated future net salvage and less depreciation reserve, by the estimated remaining life of the depreciable plant. The utility shall review the accruals as of January 1 following the date service is first furnished to the public as authorized herein and thereafter when major changes in depreciable utility plant composition occur, and at intervals of not more than three years. Results of these reviews shall be submitted to this Commission.

13. Within 30 days after the end of each month, subsequent to the date service is first rendered to the public as authorized herein, applicant shall file a written report of the earnings results of its intrastate operations separated from its total business. The report shall include revenues by types of service, expenses by each major class of operating expense, operating taxes, depreciation, the amount of depreciation reserve, and the plant and other assets devoted to public service. The separation of accounts between total operations and intrastate operations shall be made in accord with the NARUC.

separations manual, Part 67 of the FCC rules. The monthly report shall also include the number of end-of-period customers and the miles of equivalent private line voice circuits in operation segregated by revenue producing and non-revenue producing circuits. The form of monthly statement to be filed is attached hereto as Appendix B.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 4th  
day of MARCH, 1975.

*I will file a  
written concurrence  
Leonard Ross*  
Commissioner

*James L. Flanagan*  
President  
*William J. ...*  
*[Signature]*  
Commissioners

APPENDIX A  
Page 1 of 2

Southern Pacific Communications Company  
Authorized Interim Rates

Schedule G-1, Intercity Channels for Data Transmission

RATES

Data Transmission

Speed - Baud

Low Speed

Up to 75  
Up to 110  
Up to 150  
Up to 200  
Up to 300

Rate per Mile  
per Month

\$0.20  
.25  
.31  
.37  
.61

Medium Speed

0-9600  
(Each channel equal to one  
voice grade channel or 4,000 Hz)

Same Rates as in  
Schedule G-2, Intercity  
Channels for Analog Transmission

Schedule G-2, Intercity for Analog Transmission

RATE

Rate per Mile per Month

Each Voice Grade Channel Equivalent

First	15 miles	\$4.00
Next	10 miles	3.75
Next	25 miles	3.25
Next	50 miles	2.75
Next	50 miles	2.25
Next	150 miles	2.00
Next	300 miles	1.25

Schedule No. G-3, Network Terminals

The rates and charges set forth in Schedule No. G-3 of Exhibit 6 are authorized.

Schedule No. G-4, Local Distribution Facilities

The rates and charges set forth in Schedule No. G-4 of Exhibit 6 are authorized.

Schedule No. G-5, Scheduled Time Use

The discounts provided for in Schedule No. G-5 of Exhibit 6 are authorized.

APPENDIX A  
Page 2 of 2

Schedule No. G-6, Shared Channel Use

The rates and charges set forth in Schedule No. G-6 of Exhibit 6 are authorized.

Schedule No. G-7, Miscellaneous Equipment and Services

The rates and charges set forth in Schedule No. G-7 of Exhibit 6 are authorized.

Schedule No. G-8, Intercity Channels for Schedule Metered Time Service

The following rates and charges are authorized for service between San Francisco and Los Angeles:

Schedul Consecutive Hours	Voice Channel		Conditioned Channel	
	Minimum Bill/Month	Rate Per Hour	Minimum Bill/Month	Rate Per Hour

Daytime (8 a.m. - 6 p.m.)

2 hrs/day	\$170	\$19.60	\$210	\$22.10
4 hrs/day	240	14.45	280	16.45
6 hrs/day	305	9.35	345	11.35
8 hrs/day	425	7.20	465	9.20

Nighttime (6 p.m. - 8 a.m.)

4 hrs/day	170	6.80	210	6.80
6 hrs/day	255	6.80	295	6.80
8 hrs/day	340	6.80	380	6.80

Other Tariff Provisions

Rules, conditions and other tariff provisions set forth in Exhibit 6 are authorized.

## APPENDIX B

Southern Pacific Communications Company  
 Monthly Earnings Statement to be Filed  
With the California Public Utilities Commission

	: Month of _____ :	12 Mos. Ended _____ :	
	: Total :	: California :	: Total :
	: Oper. :	: Intrastate :	: Oper. :
			: Intrastate :

Revenues

Private Line Revenues  
 Miscellaneous Revenues  
 Uncollectible Revenues  
 Total Revenues \_\_\_\_\_

Expenses & Taxes

Maintenance  
 Traffic  
 Commercial  
 General & Other  
 Depreciation Expense  
 Taxes Other than Income  
 State Income Tax  
 Federal Income Tax  
 Total Oper. Exp. & Taxes \_\_\_\_\_

Net RevenueAverage Net Plant & Working Capital

Plant in Service  
 Property Held for Future Use  
 Working Cash  
 Materials & Supplies  
 Total Plant & W.C. \_\_\_\_\_

Depreciation Reserve  
 Other Reserves  
 Net Plant & W.C. \_\_\_\_\_

Percent Return (Annual basis)End of Month Statistics

Number of Customers

Decision No. 84167

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY,

Complainant,

vs.

SOUTHERN PACIFIC COMMUNICATIONS  
COMPANY,

Defendant.

Case No. 9728  
(Filed May 1, 1974)

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  
(Filed May 17, 1974)

Application of SOUTHERN PACIFIC  
COMMUNICATIONS COMPANY for a  
certificate of public convenience  
and necessity to operate a tele-  
phone line between San Francisco  
and Los Angeles.

Application No. 55284  
(Filed October 31, 1974)

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 service in  
order to establish a modified High  
Density - Low Density Service, referred  
to as an Exception Rate Service,  
and to withdraw the High Density -  
Low Density Service proposal which  
was the subject of Application No. 54839.

Application No. 55344  
(Filed November 26, 1974)

CONCURRING OPINION OF COMMISSIONER ROSS

I concur with the decision of the Commission, but would prefer  
a more explicit and permissive policy toward the applicant's rate filings.  
Southern Pacific Communications Company - or any applicant for service  
competing with a monopoly telephone company - should be allowed to charge



rates as low as it wants if it will promise to keep those rates in effect for a reasonable time. (Or, alternatively, the applicant in some cases might be allowed to stipulate a maximum range of price increase over a given period). The telephone company should, in turn, be permitted to reduce its rates to or below the level established by the new competitor, provided that the company can demonstrate that such rates do not fall short of the long-run incremental costs of providing such service.

This policy would maximize the opportunity for competition in telephone communications. It would, to be sure, require deviations from a rate structure based on average or fully allocated costs of service. But such a structure has little economic rationale; if it is appropriate at all (and in many cases it may be), its primary justifications are administrative convenience and long-run stability. These considerations are, in my opinion, outweighed by the paramount importance of introducing competition wherever feasible into regulated monopoly industries. In some cases competition may amount simply to "cream-skimming" -- but I doubt whether such cases can be identified by regulatory agencies except at the cost of a process so cumbersome as to discourage all potential competition.

Price reductions are rare enough these days. The Public Utilities Commission should not put unnecessary obstacles in the way of any company that offers lower prices.

  
\_\_\_\_\_  
Commissioner

San Francisco, California  
March 11, 1975