

ALJ/lk/mra

Decision 84 06 133 JUN 29 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a corporation
for authority to increase certain
intrastate rates and charges appli-
cable to telephone services fur-
nished within the State of
California.

Application 83-01-22
(Filed January 17, 1983)

And Related Matters.

Application 82-11-07
Application 83-06-65
OII 83-04-02
Case 82-10-09
I&S Case 83-11-06
I&S Case 83-11-07

ORDER GRANTING IN PART
MOTION FOR STAY

On June 18, 1984, AT&T Communications of California, Inc., (AT&T Communications) filed a motion for partial stay of Decision 84-06-111 in the above-captioned matters. Decision 84-06-111 established the rates and charges that Pacific Bell and AT&T Communications are authorized to charge for the provision of telecommunications services within the State of California. AT&T Communications seeks a stay of that portion of the decision which would reduce its intrastate "AT&T Long Distance" rates.

In support of its motion, AT&T Communications alleges that AT&T Communications is likely to prevail on the merits, that it and the public will suffer irreparable harm if the stay is not granted, that granting a stay will not substantially harm other parties to the proceeding, and that the public interest is served by granting the stay.

AT&T Communications further alleges that actual financial results for the first four months of 1984 (annualized) show a loss of \$13.3 million during 1984. Adding to that the effects of implementing Decision 84-06-111 would bring the estimated annual revenue loss to \$86.1 million. AT&T Communications reminds the Commission that because of the ban on retroactive ratemaking, it will not be able to recover losses caused by the rate reduction ordered by

Decision 84-06-111 after July 1, 1984, if the Commission subsequently determines that the reduction should be modified or eliminated. AT&T Communications does not object to an order which would continue its present rates but make them subject to refund if they are later found to have been excessive.

On June 19, 1984, AT&T Communications filed Application 84-06-057 requesting emergency interim rate relief. In order to allow time to evaluate the merits of this application and of AT&T Communications' allegations in this motion, we will order a partial stay of Decision 84-06-111. We will stay the portion of Decision 84-06-111 which increases certain AT&T Communications' rates as well as that part which reduces its intrastate "AT&T Long Distance" rates. The 10.32% surcharge to AT&T Communications' rates will be removed as ordered in Decision 84-06-111. In addition, to give customers the fullest protection during the stay of the rate reduction, we will make rates collected by AT&T Communications after July 1 subject to refund. However, we grant the stay with great reluctance.

Decision 84-06-111 was reached after many days of hearing and the testimony of numerous witnesses. Opposing parties presented conflicting evidence and ideas and they vigorously argued their positions. We have carefully weighed the evidence and considered the record developed by all of the parties. We have high confidence in this process and our reliance upon it gives us great faith in the reasonableness of our decision. Our normal reaction would, therefore, be to deny the stay and affirm our orders.

However, the proceeding leading to Decision 84-06-111 was our first try at ratesetting for AT&T Communications. We developed a results of operation for this company by splitting the former Pacific

Telephone & Telegraph Company (PT&T) into Pacific Bell and AT&T Communications. The estimates which were derived in this way were then "adjusted" for the effects of the divestiture of the Bell System. It is difficult to believe that we, or anyone, could with 100 percent accuracy predict these effects and their financial implication. Also, the California interLATA toll market is now the subject of intense competition so it would not be surprising to find some erosion in AT&T Communications' market share as compared to the market share formerly enjoyed by PT&T. All these factors underscore the uncertainties peculiar to these times and, in the face of these uncertainties, we believe AT&T Communications should be permitted to come forward with new evidence. Pending the consideration of any new evidence, we should not exacerbate AT&T Communications' allegedly poor financial position by permitting a rate reduction to take effect. Subjecting the company's revenues to refund will protect ratepayers while we consider AT&T Communications' showing.

Despite basing a substantial portion of its case upon the alleged inaccuracies of the adopted toll revenue and access charge expense estimates, AT&T Communications does not fully explain the inaccuracy. Moreover, AT&T Communications does not even attempt to explain how toll revenues might fall short by over twelve percent from the adopted estimate while access charges, which are designed to be usage-sensitive, are expected to differ by only eight percent from the adopted estimate. Our staff is also at a loss to explain this. In requesting a stay, however, AT&T Communications, not staff, bears the burden of proving not only the inaccuracy of the estimates adopted by Decision 84-06-111 but the reasons for the inaccuracy. AT&T Communications acknowledges that it carries this burden by admitting it must show that it will prevail on the merits before a stay should be granted but nevertheless does a poor job of sustaining that burden.

We do not find AT&T Communications' showing to be particularly compelling. We believe Decision 84-06-111 represents a reasonable disposition of the issues which concern AT&T

Communications. However, granting the stay preserves regulatory flexibility and rate design options in dealing with the AT&T Communications petition for emergency relief. We expect AT&T Communications to present a better showing in that case than we now have before us. In those hearings, we expect AT&T Communications to use the expense levels adopted in Decision 84-06-111, with the exception of billing and access charge expenses.

As a final note, we take this opportunity to remind all those who appear before the Commission that our test year ratemaking principles are not designed to guarantee profits to regulated utilities but are intended only to provide utilities with an opportunity to earn a fair rate of return. Our stay of Decision 84-06-111 should not be interpreted as a signal that utilities whose books show them to be earning less than their authorized rates of return or ratepayer groups who find utilities earning greater than their authorized rates of return should file for rate relief or adjustments. We grant the partial stay on the basis of AT&T Communications' four months of recorded data only because of the unusual circumstances surrounding this company and this industry. Those circumstances, and no other reason, persuade us that a stay is appropriate in this case. This stay should therefore not be viewed as a precedent for any other case.

This matter did not appear on our regular public agenda as required by the government Code. However, an emergency exists sufficient to justify our action under Public Utilities Code Section 306(b) since AT&T's Communications' rates will be substantially reduced on July 1 if we do not act today.

Therefore, good cause appearing,

IT IS ORDERED that the motion for a partial stay of Decision 84-06-111 filed by AT&T Communications is granted to the extent that Ordering Paragraph 2 is suspended until further order of the Commission except that the 10.32% surcharge mentioned therein shall terminate on the effective date of Pacific Bell's tariffs filed pursuant to Ordering Paragraph 1.

IT IS FURTHER ORDERED that AT&T Communications' intrastate rates collected on or after July 1, 1984 shall be collected subject to refund, with interest at the three month commercial paper rate, until further order of the Commission.

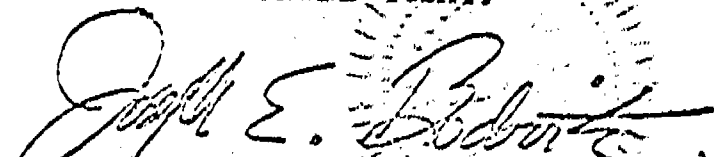
This order is effective today.

Dated June 29, 1984, at San Francisco,
California.

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

Commissioner Leonard M. Grimes, Jr.,
being necessarily absent, did not
participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director