

Decision 88 10 063 OCT 26 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Alternative)
Regulatory Frameworks for Local)
Exchange Carriers.)

I.87-11-033
(Filed November 25, 1987) OCT 27 1988

(See Appendix A for appearances.)

**INTERIM OPINION ON MOTION BY
DIVISION OF RATEPAYER ADVOCATES**

On August 8, 1988 the Division of Ratepayer Advocates (DRA) filed a motion in Investigation (I.) 87-11-033 in which it asks the Commission to delete the requirement in Resolution ALJ-160 that Pacific Bell (Pacific) tender a 1990 rate case. DRA proposes instead that the Commission update Pacific's revenue requirements in Phase II of this investigation and direct Pacific and GTE California Incorporated (GTEC) to make 1990 attrition filings on October 1, 1989. Pacific and GTEC filed responses to the DRA motion; API Alarm Systems (API) filed a reply to GTEC's filing; and DRA filed a reply to both Pacific's and GTEC's responses.

DRA Motion

DRA points out that in Resolution ALJ-160 the Commission stated the following intent:

"(I)f proposals to fashion a new regulatory framework are not ready for implementation by year-end 1988, we will take further action to require Pacific Bell to file for a general rate case in the fall of 1988 using a 1990 test year."

DRA notes that the Commission currently plans to conclude Phase II of this proceeding in the first quarter of 1989. DRA asks that further instruction be given regarding the test year 1990 rate case contemplated by Resolution ALJ-160 and presents its alternative proposal.

In DRA's view, any alternative regulatory framework emanating from Phase II of this investigation should be launched for Pacific based on a "new, properly adjusted, 'current mode of operations' rate level, financial, and revenue requirement perspective." It contends that this is necessary both to assure equity to ratepayers in 1990 and to allow a clear review of the benefits of any adopted alternate regulatory framework.

DRA contemplates that adjustment of Pacific's revenue requirements could be incorporated into hearings on implementation of a Phase II decision in lieu of a test year 1990 general rate case. DRA proposes use of actual 1988 data with ratemaking adjustments. It states that by applying adopted attrition formulae to 1988 recorded results of operations the reality of current actual operations would be captured including efficiencies Pacific has implemented since 1986. DRA believes that a review of Pacific's capital structure and cost of capital in light of prevailing economic conditions would also be appropriate.

DRA contemplates that Phase II revenue requirement adjustment and implementation hearings could occur approximately in the second quarter of 1989 and a decision could be rendered early in the third quarter of 1989. Following that, Pacific and GTEC would make 1990 attrition year advice letter filings on October 1, 1989, with Pacific's filing to be based on the adopted, adjusted 1988 results of operations and GTEC's filing to be based on the revenue requirements adopted through its regular 1989 attrition procedure. DRA concludes that its proposed approach would reduce the potential for controversy and as a result would be relatively easy to implement, without the longer lead time and hearing time of a formal rate case.

Responses to DRA's Motion

Pacific agrees with DRA that Pacific should not be required to file a 1990 rate case, stating that it would be unnecessarily burdensome for parties to participate in Phase II of

this investigation and a general rate case simultaneously. Moreover, in Pacific's view, a 1990 rate case is unnecessary because the Commission plans to adopt a new regulatory framework in Phase II which could eliminate the need to pursue this traditional form of regulation.

Pacific argues, however, that both DRA's proposal to require 1990 attrition advice letter filings and its request that the 1990 attrition methodology use actual, rather than adopted, results of operations are premature, pointing out that one of the issues in Phase II is the updating mechanism which would be appropriate for each party's recommended ratemaking approach. Pacific concludes that Phase II is the proper forum to examine these aspects of DRA's motion.

While GTEC takes no position on DRA's request that Pacific's filing of a general rate case be deferred, GTEC objects strongly to DRA's proposal to insert Pacific revenue requirements issues in this proceeding, on the grounds that this would unduly delay the establishment of a new rate design for GTEC. GTEC and Pacific are both skeptical that the revenue requirements adjustments contemplated by DRA could be handled quickly. These parties fear that the unspecified ratemaking adjustments contemplated by DRA would produce contentious and extensive litigation. Pacific fears that DRA's proposal could be tantamount to a traditional rate case proceeding, except that it would be based on a prior test year.

GTEC states that most of the parties to Phase II, particularly other local exchange carriers such as GTEC, would have only limited interest in Pacific's revenue requirements issues. If the Commission grants DRA's motion, GTEC asks that the Commission recognize GTEC's urgent need for an updated rate structure and issue a decision based on the record already developed in Application (A.) 87-01-002, GTEC's 1988 test year rate case.

API rebuts GTEC's opposition to DRA's motion. First, API holds the view that GTEC would not have to participate in any hearings devoted solely to updating Pacific's revenue requirements. At the same time, API believes that the proceeding would address the revenue requirements of both Pacific and GTEC and thus that GTEC would not be a mere bystander but an active participant. API also believes that, while addressing revenue requirements issues as proposed by DRA would consume some hearing time, it would avoid the longer lead time and hearing time inherent in a full-blown rate case. Finally, API represents that GTEC itself in A.88-07-054 argues that certain central office-based services offered by GTEC are based on outdated costs, and concludes that it appears to be in GTEC's own interest to have such costs updated. API concludes that GTEC's opposition to DRA's motion is without merit and should be rejected.

In its reply, DRA states that an implementation proceeding, including a final rate design, will be necessary following Phase II in this investigation, in order to lay out precisely the steps to be taken to implement any new regulatory framework adopted by the Commission. DRA states that the Commission has already indicated its intention to complete Pacific and GTEC rate designs in such proceedings, and asserts that a necessary adjunct is to adjust the revenue requirements of these utilities at that time. DRA's view is that substantial reductions in Pacific's revenue requirements are necessary and appropriate for 1990, citing its testimony submitted in Phase II that a reduction of at least \$400 million would be appropriate. Rather than broadening the hearings, DRA asserts that its proposal is a practical and effective procedure for implementing a new regulatory framework.

DRA states that the Commission should appropriately issue an order now to provide an adequate lead time for Pacific to plan for its 1990 attrition filing based on 1988 recorded results of

example, development of a supplemental rate design or of criteria for determination of the extent of competitiveness of certain services and the lifting of entry barriers for competitive services. Alternatively, further evidence regarding the effects of specific proposals on, for example, settlements may be needed before a statewide policy can be adopted. These uncertainties buttress our conclusion that procedural steps beyond Phase II are best developed once Phase II is well underway or completed." (D.88-08-024, mimeo. p- 29.)

Nothing in DRA's motion convinces us that procedural steps beyond the currently scheduled Phase II hearing should be established at this time. If DRA continues to believe that a separate implementation proceeding is needed, it should present this as part of its Phase II testimony. We will wait until Phase II is further developed before deciding such matters.

In conclusion, DRA's motion should be granted at this time only to the extent that Pacific should not be required to file a 1990 general rate case. DRA's other proposals are appropriately considered in Phase II of this investigation.

Findings of Fact

1. DRA filed a motion in I.87-11-033 in which it asks the Commission to delete the requirement in Resolution ALJ-160 that Pacific tender a 1990 general rate case and instead to update Pacific's revenue requirements in this investigation and direct Pacific and GTEC to make 1990 attrition filings.
2. A requirement that Pacific file an application for a 1990 general rate case in the fall of 1988 could prove an unnecessary and unproductive use of parties' resources.
3. The type of updating or attrition process which should be used in conjunction with proposed regulatory changes is a Phase II issue in this investigation.
4. Consideration of DRA's proposals regarding a 1990 attrition process would be premature at this time.

CORRECTION

THIS DOCUMENT HAS

BEEN REPHOTOGRAPHED

TO ASSURE

LEGIBILITY

operations. DRA concludes that the only alternative appears to be a Commission order reaffirming its previous order that Pacific should tender its next rate case this fall.

Discussion

All parties are in agreement that Pacific should not be required to file a 1990 general rate case this fall. We agree that this could prove to be an unnecessary and unproductive use of parties' resources in light of the reconsideration of the overall regulatory approach in progress in Phase II of this investigation. Pacific will not be required to make such a filing.

Parties disagree, however, on whether the utilities' revenue requirements should be updated for 1990 as part of implementation of any regulatory changes adopted in Phase II of this investigation. Pacific correctly points out that the type of updating or attrition process to be used in conjunction with any changes in regulatory approach is a Phase II issue. We agree with Pacific that consideration of DRA's proposals regarding a 1990 attrition process would be premature at this time. DRA should make its proposals in Phase II.

DRA also states that additional proceedings will be necessary to implement any regulatory changes adopted in Phase II. While this may be DRA's position, the issue has not been resolved. In D.88-08-024, we stated that:

"It is our hope that any regulatory changes adopted in Phase II can be implemented directly as a result of Phase II. We require that parties specifically address whether their regulatory proposals can be implemented following Phase II or whether a followup proceeding, as envisioned by DRA, would be needed.

"Independent of parties' positions, there is no certainty in this regard until the record is developed. It is conceivable that we would conclude at the end of Phase II that an overall framework should be adopted but that implementation of some or all of it should be delayed pending further proceedings. It could be that full implementation would require, for

example, development of a supplemental rate design or of criteria for determination of the extent of competitiveness of certain services and the lifting of entry barriers for competitive services. Alternatively, further evidence regarding the effects of specific proposals on, for example, settlements may be needed before a statewide policy can be adopted. These uncertainties buttress our conclusion that procedural steps beyond Phase II are best developed once Phase II is well underway or completed." (D.88-08-024, mimeo. p. 29.)

Nothing in DRA's motion convinces us that procedural steps beyond the currently scheduled Phase II hearing should be established at this time. If DRA continues to believe that a separate implementation proceeding is needed, it should present this as part of its Phase II testimony. We will wait until Phase II is further developed before deciding such matters.

In conclusion, DRA's motion should be granted at this time only to the extent that Pacific should not be required to file a 1990 general rate case. DRA's other proposals are appropriately considered in Phase II of this investigation.

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1. DRA filed a motion in I.87-11-033 in which it asks the Commission to delete the requirement in Resolution ALJ-160 that Pacific tender a 1990 general rate case and instead to update Pacific's revenue requirements in this investigation and direct Pacific and GTEC to make 1990 attrition filings.
2. A requirement that Pacific file an application for a 1990 general rate case in the fall of 1988 could prove an unnecessary and unproductive use of parties' resources.
3. The type of updating or attrition process which should be used in conjunction with proposed regulatory changes is a Phase II issue in this investigation.
4. Consideration of DRA's proposals regarding a 1990 attrition process would be premature at this time.

Conclusions of Law

1. Pacific should not be required to file a 1990 general rate case.
2. Except to the extent granted herein, DRA's motion filed August 8, 1988 should be denied.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Bell is relieved of the requirement imposed in Resolution ALJ-160 that it file for a general rate case in the fall of 1988 using a 1990 test year.
2. To the extent not otherwise granted by this order, the Motion by the Division of Ratepayer Advocates to Defer the Filing by Pacific Bell of a 1990 Ratecase and in Lieu Thereof to Consider Certain Revenue Requirement Issues During Phase II of the Regulatory Framework Proceeding filed August 8, 1988 is denied.

This order is effective today.

Dated OCT 26 1988 in San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
JOHN B. OHANIAN
Commissioners

Commissioner G. Mitchell Wilk
being necessarily absent, did
not participate.

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


Victor Weitzer, Executive Director

APPENDIX A
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List of Appearances

Respondents: Davis, Young & Mendelson, by Jeffrey F. Beck, Attorney at Law, for CP National, Evans Telephone Company, GTE West Coast Incorporated, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, Sierra Telephone Company, The Siskiyou Telephone Company, Tuolumne Telephone Company, The Volcano Telephone Company, and Winterhaven Telephone Company; Thelen, Marrin, Johnson & Bridges, by Ellen Deutch and Andrew Mulitz, Attorneys at Law, for Citizens Utilities of California; Orrick, Herrington & Sutcliffe, by Robert Gloistein, Attorney at Law, for Contel of California, Inc.; Kim C. Mahoney, for CP National; Daniel J. McCarthy and Michael D. Sasser, Attorneys at Law, for Pacific Bell; Kenneth K. Okel, Peter K. Plaut, and Robert N. Herrera, Attorneys at Law, for GTE California Incorporated; Pelavin & Norberg, by Alvin H. Pelavin, Attorney at Law, and Cooper, White & Cooper, by E. Garth Black and Mark P. Schreiber, Attorneys at Law, for Calaveras Telephone Company, California-Oregon Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, and The Ponderosa Telephone Company; Cooper, White & Cooper, by E. Garth Black and Mark P. Schreiber, Attorneys at Law, for Roseville Telephone Company; and D. C. Williams, for Evans Telephone Company.

Interested Parties: C. Hayden Ames, Attorney at Law, for Chickering & Gregory; Steven J. Anderson, for Centrex User Group of Northern California; Jerry Appleby, for Security Pacific Automation Company; Mark Barmore, Attorney at Law, for Toward Utility Rate Normalization (TURN); Blumenfeld, Cohen & Waitzkin, by Jeffery Blumenfeld, Attorney at Law, for Centex Telemanagement, Inc.; Jackson, Tufts, Cole & Black, by William H. Booth and Joseph S. Faber, Attorneys at Law, for California Bankers Clearing House Association and Telecommunications Association; Stephen P. Bowen, Attorney at Law, for MCI Telecommunications Corporation; Robert Bral, for Bittel Telecommunications Corporation; Roger R. Bruhn, for Lockheed Missiles & Space Company; Peter A. Casciato, Attorney at Law, for Cable & Wireless Communications, Inc.; Randolph W. Deutsch and Richard A. Bromley, Attorneys at Law, for AT&T Communications; Blooston and Mordkofsky, by Ben H. Dickens, Jr., Attorney at Law, for API Alarm Systems; Paul Fadelli, for Senator Herschel Rosenthal; William G. Irving, for County of Los Angeles; James L. Lewis, Attorney at Law, for MCI Telecommunications Corporation; Graham & James, by Martin A. Mattes and Rachelle Chong, Attorneys at Law, for Centex Telemanagement, Inc. and California Cable Television Association; Robert Jacobson and Carolyn Veal, for Assemblywoman Gwen Moore; Michael A. Morris, Janice F. Hill, and William M. Winter, Attorneys at Law, for California Cable Television

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Association; Jerry O'Brien and Diane Martinez, for API Alarm Systems; Shea & Gould, by Alan Pepper, Attorney at Law, for Western Burglar & Fire Alarm Association; Barry A. Ross, for California Telephone Association; August Sairanen, for State of California, Telecommunications Division; Earl Nicholas Selby, Attorney at Law, for Bay Area Teleport; Cecil O. Simpson, Jr., for U.S. Department of Defense and All other Federal Executive Agencies; Shelley Ilene Smith, Attorney at Law, for City of Los Angeles; Louise Renne, City Attorney, by Leonard L. Snaider, Deputy City Attorney, for the City and County of San Francisco; Nancy Thompson, for Bakarat, Howard & Chamberlin; James Wheaton and Robert Fellmeth, Attorneys at Law, for Center for Public Interest Law; Phyllis A. Whitten, Attorney at Law, for US Sprint Communications Company; John Witt, City Attorney, by William Shaffran and Leslie J. Girard, Deputy City Attorneys, for City of San Diego; Brobeck, Phleger & Harrison, by Robert N. Lowry and Gordon E. Davis, Attorneys at Law, for the Dun & Bradstreet Corporation, Reuben H. Donnelley Corporation, and Donnelley Information Publishing, Inc.; Armour, St. John, Wilcox, Goodin & Shlotz, by Thomas J. MacBride, Jr., for Long Distance Telephone Companies and Telephone Answering Services of California; Alannah Kinser, for Public Advisor's Office; Robert Gnaizda, Attorney at Law, for Public Advocates; Kuichi Okumura, for the Division of Consumer Advocacy, State of Hawaii; and Edward Duncan, William Victor, and Sidney J. Webb, for themselves.

Division of Ratepayer Advocates: Rufus G. Thayer, Attorney at Law, Louis Andregg, David Gamson, Tom Lew, David Shantz, William Thompson, and Emily Marks.

Commission Advisory and Compliance Division: Kevin P. Coughlan.

(END OF APPENDIX A)

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