

Decision 90 11 030 NOV 08 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Michael M. Murray, William Behrman,
and Gerald LeTendre,

Complainants,

v.

Communication Services, Stanford
University, and Pacific Bell,

Defendants.

ORIGINAL

Case 90-05-023
(Filed May 11, 1990)

**ORDER MODIFYING DECISION 90-06-065
AND GRANTING LIMITED REHEARING**

Michael Murray, William Behram, and Gerald LeTendre (students) have filed an application for rehearing of Decision 90-06-065, in which we dismissed the students' complaint for lack of jurisdiction. In Decision 90-06-065 we determined, among other things, that a "special relationship" exists between Stanford University (Stanford) and its' students, that Stanford's telephone network is not a telephone corporation, that Stanford has not dedicated any portion of its telephone network to the public, that the shared tenant service guidelines set forth in *Re Pacific Telephone and Telegraph Company* (1987) 23 Cal.P.U.C.2d 554, our Decision 87-01-063, as modified by Decision 87-05-009, are not applicable to Stanford's telephone network and that the evidence presented on this matter did not support the issuance of a cease and desist order.

In their application the students allege, among other things, that they are members of the public, that Stanford has purchased property already dedicated to public use, that Pacific Bell conveyed public utility property without first having obtained the Commission's permission in violation of Public Utilities Code section 851, that the conveyance of such property is void, that Stanford's telephone network is a shared tenant

service pursuant to Guideline 6 of Decision 87-01-063, or, in the alternative, is a telephone corporation subject to the Commission's regulation, that Stanford will not be providing "lifeline" telephone service in violation of the Public Utilities Code, that the challenged decision permits Stanford to violate antitrust laws, that the Stanford telephone network will not permit the students access to various telephone exchanges they now receive in violation to various Commission decisions, and that the decision violated the students' constitutional rights of due process and equal protection under the laws.

We have carefully considered all of the allegations of error raised in the application filed by the students and conclude that many of their arguments have merit. We are particularly troubled that Pacific Bell has executed agreements with Stanford for the sale of property dedicated with a public use without first filing an application in accordance with Public Utilities Code section 851 and obtaining our permission. Because of Pacific Bell's noncompliance with section 851, the transaction between it and Stanford is void until we are able to act on a proper application. Although it appears that there was error in not granting the cease and desist order, it also appears that now ordering Pacific Bell to reconnect the cables at issue could create an unfair impact on Stanford and Pacific Bell. We shall, therefore, order Pacific Bell to file a section 851 application within 30 days.

On further reflection, we believe that the outcome of Decision 90-06-065 may be in conflict with our Decision 87-01-063. Therefore, we shall order a rehearing of Decision 90-06-065 and shall order Decision 90-06-065 modified to clarify that we have not altered our guidelines for the provision of shared tenant services, including their application to residential premises. On rehearing, we invite the parties to present legal

argument on how Stanford's proposal may be affected, if at all, by Guideline 8 of Decision 87-01-063. We also invite the parties to present legal argument on the following specific questions: 1) whether the Stanford students living in campus housing are members of the public, 2) whether Stanford's proposed telephone network renders it a public utility subject to our jurisdiction, 3) whether Public Utilities Code section 741.2 effects the interpretation of section 234, 4) whether Stanford's proposed system should provide a "lifeline" type service, and 5) whether Stanford's system should provide its recipients with 900, 950, 976 or 10-XXX access. Without being exhaustive, we further invite the parties to address the following decisions in their briefs: *Richfield Oil Corp. v. Pub. Util. Com.* (1960) 54 Cal.2d 419; *California Water & Tel. Co. v. Public Utilities Commission* (1959) 51 Cal.2d 478; *Camp Rincon Resort Co. v. Eshleman* (1916) 172 Cal. 561; *City and County of San Francisco v. Western Airlines* (1962) 204 Cal.App.2d 105; *Slater v. Shell Oil Company* (1940) 39 Cal.App.2d 535; *People v. Orange County Farmers' and Merchants' Association* (1922) 56 Cal.App. 205; and *Application of Public Utilities California Corporation* (1944) 45 Cal.P.U.C. 462.

We find no merit in the students' allegations of error concerning a violation of Public Utilities Code section 453, violation of their constitutional rights of due process and equal protection of the laws, in the Administrative Law Judge's denial of their motions for telephonic testimony and joinder, nor to the allegation that Stanford is acting as a "company town;" and no rehearing shall be granted on those grounds. We further find that no adequate evidence was introduced to sustain a ruling on the antitrust issue alleged by the students and shall deny rehearing on that issue and modify Decision 90-06-065 accordingly. We will consolidate the rehearing and Pacific Bell's application proceedings.

THEREFORE, for good cause appearing,
IT IS HEREBY ORDERED:

1. That the application for rehearing of Decision 90-06-065 filed by Michael Murray, William Behrman and Gerald LeTendre is granted in part as set forth herein.

2. That Decision 90-06-065 is modified as follows:

a. Delete the second full paragraph on page 15 through the first full paragraph on page 16.

b. Delete in its entirety, the first full paragraph on page 20, beginning with "Finally, we do not"

c. Add the following as Finding of Fact number 8:

"No adequate evidence was introduced to sustain a ruling on the antitrust allegation offered by the students."

d. Delete in its entirety Conclusion of Law number 4.

e. Renumber Conclusions of Law numbers 5-7 in sequence beginning with Conclusion of Law number 5.

f. Add the following as Conclusion of Law Number 7.

"Complainant's allegation of anticompetitive impacts from Stanford's actions in this matter are unsupported by any evidence."

3. That Pacific Bell is ordered to file and serve on all parties in this case within 30 days of the date of this order an application pursuant to Public Utilities Code section 851 for conveyance of the property in question to Stanford University.

4. That the hearing on Pacific Bell's application under section 851 and the rehearing of Decision 90-06-065 shall be consolidated.

The Executive Director shall serve a copy of this order on the parties to Case 90-05-023.

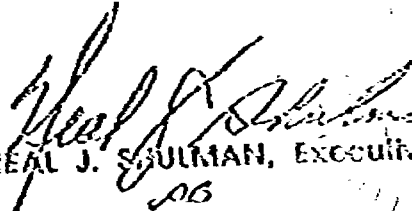
This Order is effective today.

Dated NOV 09 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Stanley W. Hulett,
being necessarily absent, did
not participate.

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


NEAL J. SULMAN, Executive Director