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Decision 90-12-080 December 19, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell, a corporation, for authority to increase certain intrastate rates and charges to telephone services furnished within the State of California.

ORIGINAL

Application 85-01-034 (Filed January 15, 1985)

And Related Matters.

I.85-03-078  
OII 84  
C.86-11-028

O P I N I O N

In this decision, we deny the petitions of the state's small and medium-sized local exchange telephone companies to suspend indefinitely certain provisions of the California High Cost Fund (CHCF). Those provisions require a "phase-down" of CHCF funding beginning in 1991. The petitioning utilities have not shown why they should be entitled to maximum revenues from the fund. We are concerned that, under the existing rules, the utilities may draw from the fund when they are making above their authorized rates of return. This decision also denies a petition for modification filed by the Division of Ratepayer Advocates (DRA) which seeks suspension of the phase-down in 1991.

Utility Petitions for Modification

On September 17, 1990, CP National, Evans Telephone Company, GTE-WestCoast Incorporated, Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, and Tuolumne Telephone Company filed a joint petition for modification of Decision (D.) 88-07-022. A similar petition was filed, on September 24, 1990, by Calaveras

Telephone Company, California-Oregon Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Hornitos Telephone Company, Ponderosa Telephone Company, Roseville Telephone Company (Roseville), Volcano Telephone Company (Volcano), and Winterhaven Telephone Company (Winterhaven). On September 27, Contel of California, Inc. filed a similar petition. Finally, Citizens Utilities Company of California (Citizens) filed a petition for modification of D.88-07-022 on October 4, 1990.

The petitioners ask that the Commission suspend the "phase-down" of CHCF funding for utilities that have not undergone a rate case review. They ask that the Commission continue the suspension until the year following the final implementation of rate restructuring in this proceeding.

Under existing rules set forth in D.88-07-022, funding from the CHCF is reduced to 80% of full funding beginning January 1, 1991 for companies which have not initiated a general rate proceeding by December 31, 1990. The rules anticipate that companies which had not filed a general rate proceeding by December 31, 1991 would qualify for only 50% of funding in 1992.

The petitioning utilities comment that they seek relief from these provisions in response to D.90-08-066 which stated:

"The local exchange carriers have a valid point regarding timing of future rate reviews. We today lay out policies which would lead to a significant restructuring of rates in the implementation phase in this proceeding. As a result, we reluctantly agree that commencement of their rate cases before that restructuring is effected is probably impractical. As a result we would entertain petitions for modification of D.88-07-022, to suspend the phase-down of the CHCF."

**Division of Ratepayer Advocates' (DRA)  
Petition for Modification**

On October 11, 1990, DRA filed a petition for modification of D.88-07-022. DRA concurs with the utilities that

the CHCF phase-down should be suspended in 1991. It recommends, however, that beginning in 1992, utilities seeking relief from the CHCF be subject to a "means test" so that the utility's earnings do not exceed the utility's most recently authorized intrastate rate of return.

DRA cites D.90-08-066 in which we commented that many local exchange carriers earned well in excess of authorized returns and have not had rate reviews since the early 1980's. DRA argues that without a means test continued CHCF support will result in extraordinary earnings and unfairly burden interexchange carriers and their customers who currently fund the CHCF.

On October 16, 1990, DRA filed a response to the utilities' petitions. The response further clarified its proposal and position.

#### Discussion

The CHCF was created by D.88-07-022 in response to concerns of the Commission and the California Legislature that local exchange rates of companies in high cost and rural areas of the state remain reasonable at a time when industry changes could put upward pressure on those rates. In D.88-07-022, we set forth the purpose of the CHCF:

"We have consistently expressed our belief that there is a fundamental public interest in maintaining stable and reasonable basic exchange rates. That is why we authorized the CHCF in D.85-06-115 which permits the continuation of a policy of statewide uniform toll rates while protecting ITC customers from the effects of shifting a greater burden for NTS and other costs into their local rates..."

Because of the way the CHCF has been implemented, funds are not used to reduce rates for the customers of beneficiary utilities or even to assure that utilities remain financially sound. Although the purpose of the CHCF is to assure low and stable local rates, its implementation would provide funding to

utilities whose rates would not otherwise increase, and whose returns exceed those authorized by the Commission. We recognized this problem in D.90-08-066:

"We find interesting DRA's submittal of rates of return earned by the smaller companies in 1989, ranging from 9% to a high of 31.47%. DRA reports that, of the twenty companies (excluding Pacific and GTEC), nine earned rates of return over 15 percent in 1989; at least sixteen of the twenty earned in excess of their authorized rates of return. Many of these companies have not had rate reviews since the early 1980s.

"Without detailed information on the reasons for these earnings levels, on their face the numbers imply that the current web of support, including the settlements pools, the common pooled surcharge, EAS cost recovery arrangements, the CHCF, and the federal high cost fund, have overshot their intended mark, at least in 1989, which was to protect these companies' ratepayers by providing reasonable affordable telephone service in rural and high cost areas."

In response to this concern, D.90-08-066 proposed that funding from CHCF be considered in the context of the utility's total earnings, a policy comparable to the means test proposed by DRA in its petition for modification.

Four California utilities--Roseville, Citizens, Winterhaven, and Volcano--have filed advice letters (AL) seeking CHCF relief for 1991. (Roseville filed AL No. 293 and supplements to request \$5,026,182; Citizens filed ALJ No. 486 and supplement to request \$8,028,654; Winterhaven filed AL No. 16 and supplements to request \$312,371; and Volcano filed AL No. 169 to request \$26,452.) The advice letters assume 100% funding from CHCF, rather than the 80% anticipated by D.88-07-022. The funding request for the four companies totals about \$13.4 million.

We are concerned that approving the requests of these companies may be unreasonable. D.90-06-015 determined that

Roseville and Citizens earned more than their authorized rates of return for 1989. After reviewing the annual reports of the four applicant utilities, the Commission Advisory and Compliance Division estimates that three of these companies earned more than their authorized rates of return in 1989 and would earn substantially more than their authorized rates of return if their requests were to be granted. Although these are unconfirmed estimates, they raise the possibility that CHCF relief would do no more than bolster earnings over and above those which the Commission has found to be reasonable in the prevailing environment.

In D.90-08-066, we considered that general rate cases may be "impractical" at this time. We have not changed this view. On the other hand, we are not prepared, without a showing of need, to increase utility earnings by almost \$14 million on the grounds that our organizational resources may otherwise become strained. The increased revenues would not promote efficient operation of utilities that are already earning in excess of their authorized returns. Moreover, CHCF funding comes directly from access rates charged to interexchange companies by local exchange companies; our approval of increased CHCF funding to companies who make more than their authorized returns would therefore impose an unreasonable transfer of money from interexchange company customers to shareholders of local exchange companies.

We will not grant the utilities' petitions. Accordingly, the 80% funding level will go into effect January 1, 1991. This would still permit the utilities to draw about \$11 million from the fund. Because of our concerns that this funding may not be efficiently or fairly allocated, we intend to hold a hearing in January, 1991 to determine whether funding should be continued during the remainder of 1991 and in future years for companies whose rates of return exceed those last authorized by our decisions. In the event, however, that the utilities who have

applied for relief withdraw their requests, or modify them so that funding will not permit earnings above those most recently authorized, we will defer a final policy determination on this matter to our decision in Phase 3 of I.87-11-033.

Findings of Fact

1. Revenues from the CHCF are collected from access rates charged to interexchange companies by local exchange companies.
2. The existing CHCF rules do not require CHCF funding to be used to reduce local exchange company rates, and may permit companies to draw from the fund whose earnings are in excess of the rates of return authorized by the commission.
3. The CHCF rules, set forth in D.88-08-022, would reduce CHCF relief to 80% beginning in January 1991 for utilities which have not initiated a general rate proceeding.
4. D.88-07-022 determined that the purpose of the CHCF is to assure "stable and reasonable basic exchange rates" in rural and high cost areas of the state.
5. The petitioning utilities have not shown why they should receive full funding from the CHCF if they are earning in excess of their authorized rates of return and have not undergone general rate case review.

Conclusions of Law

1. The Commission should deny the utilities' petitions to modify D.88-07-022.
2. The Commission should deny DRA's petition to modify D.88-07-022 to the extent that granting it would suspend the phase-down in 1991.
3. In light of the advice letters filed by Roseville, Citizens, Winterhaven, and Volcano seeking revenues from the CHCF, the Commission should consider as soon as possible whether any CHCF revenues should be disbursed to utilities whose rates of return are in excess of those authorized by the Commission.

O R D E R

IT IS ORDERED that:

1. The petitions for modification of Decision (D.) 88-07-022 filed by CP National, Evans Telephone Company, GTE-WestCoast Incorporated, Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, and Tuolumne Telephone Company, Calaveras Telephone Company, California-Oregon Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Hornitos Telephone Company, Ponderosa Telephone Company, Roseville Telephone Company, Volcano Telephone Company, Winterhaven Telephone Company, Contel of California, Inc., and Citizens Utilities Company of California are denied.

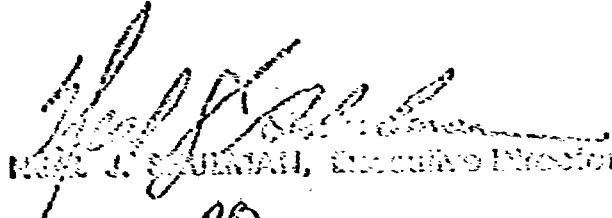
2. The petition for modification of D.88-07-022 filed by the Division of Ratepayer Advocates is denied.

This order is effective today.

Dated December 19, 1990, at San Francisco, California.

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

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

  
NEIL J. SZYMANSKI, Executive Director  
PB