

Mailed

Decision 91-09-074 September 25, 1991

SEP 26 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of Winterhaven Telephone
 Company to modify Resolution T-14029
 that was issued pursuant to
 D.88-07-022 in A.85-01-034 regarding
 1990 revenue requirements from the
 California High Cost Fund (CHCF).

ORIGINAL
 Application 91-04-005
 (Filed April 2, 1991)

OPINIONStatement of Facts

Winterhaven Telephone Company (Winterhaven), a California corporation, by Decision (D.) 88-06-023 issued June 8, 1988 was granted a certificate of public convenience and necessity to operate as a telephone corporation. D.88-06-023 also approved an agreement between Winterhaven and Pacific Bell (PacBell) whereby Winterhaven would acquire PacBell's local telephone exchange in Winterhaven, California. This exchange covers 73 square miles in Imperial County in the extreme southeastern corner of California across the Colorado River from Yuma, Arizona, and as of October 31, 1990 serves approximately 1,196 subscribers.

Following capitalization, Winterhaven became a wholly-owned subsidiary of National Telephone and Telegraph Company (National), a Delaware Corporation (D.88-06-023). By D.89-10-045 issued October 26, 1989, Telephone and Data Systems, Inc. (TDS), an Iowa Corporation, through its wholly-owned subsidiary TDS Acquisition Corp. (Acquisition Corp.) was authorized to acquire control of National. TDS is a diversified telecommunications company serving selected local markets with 78 telephone companies in 27 states. By D.91-04-005 issued April 10, 1991, TDS Telecommunications Corporation (TDS Telecom), a Delaware corporation and wholly-owned subsidiary of TDS, was authorized to acquire control of Winterhaven through assignment of all shares of

1992 1993 1994 1995

10-1, 20-1, 20-2 470-90-10 vol:100C

RECEIVED BY THE DIRECTOR OF THE FBI ON 06-18-1975

1 Prior to divestiture of the Bell System, such cross-state boundary serving arrangements were common and did not require special expense and revenue sharing agreements between the operating Bell companies in adjacent states, due to their common ownership. Since divestiture, however, PacBell has no common ownership with Mountain Bell.

The California High Cost Fund (CHCF) adopted by D.85-06-115 on June 12, 1985, was established to assure that independent telephone company (ITC) exchange rates remain within a reasonable range of PacBell's exchange rates in comparable neighboring exchanges.² It is designed to mitigate the effects of certain regulatory changes on the local rates of utilities in rural and high-cost areas of the state. PacBell administers the fund which is obtained from access charges paid by interexchange carriers. Total statewide funding requirements are determined each year by PacBell based on the funding requirements identified in the advice letters filed by each rural and small metropolitan exchange telephone company to implement the tariff necessary to collect on a "flow through" basis the settlement effects revenue impact specified for such company (see Paragraphs A and B in Appendix A to D.91-05-016 issued May 8, 1991). Each exchange carrier remits monthly to PacBell for the CHCF that portion of the carrier common line charges collected from the CHCF access charge increment, and Pacific makes disbursements monthly to each recipient local exchange carrier from the fund.

D.85-06-115 provided that funding for a local telephone company would be considered "only after a revenue requirement has been determined (for the company) which would 'weed out' "

2 PacBell's rural subscribers benefit from a substantial degree of rate averaging in the setting of exchange rates in PacBell's service area. In D.89-06-115, the Commission determined that the same principle of rate averaging could be applied to provide relief to small and medium-sized local exchange telephone companies for losses due to regulatory changes. By this determination a portion of residential local exchange revenue requirements would not be met from higher exchange rates, but would instead come from the CHCF, thus maintaining exchange rates within a range of comparability with PacBell's exchange rates in similar neighboring exchanges. The beneficiaries of the CHCF therefore are not the independent telephone companies, which receive no greater income, but rather their rural ratepayers.

imprudently incurred costs." Accordingly, rate case review was required as a prerequisite to CHCF support to prevent utilities from drawing unnecessarily from the fund.

A later decision, D.88-07-022 issued July 8, 1988, established a phase-down of CHCF support for local exchange companies which had not filed general rate case applications under which 80% of funding would be available in 1991 and 50% of funding would be available in 1992, with funding eliminated in 1993 for companies that had not initiated a general rate case proceeding. D.91-05-016 issued May 8, 1991, limited funding to levels not to exceed a company's most recently authorized rate of return. The decision noted that Winterhaven, then receiving CHCF revenues, did not have an authorized rate of return upon which to base CHCF funding. Accordingly, the decision provided that until Winterhaven's first general rate case is resolved, Winterhaven's CHCF draw would be limited to an amount which would produce a rate of return no greater than the highest authorized rate of return for a California local exchange company.

On October 1, 1989, in compliance with Appendix B of D.88-07-022 which required each local exchange company to file an advice letter incorporating the net settlement effect upon it of regulatory changes ordered by the Commission and the Federal Communications Commission, Winterhaven filed its Advice Letter 10, followed on November 13, 1989 by Supplemental Advice Letter 10A reflecting updated information. These resulted in a determination of net settlement from the 1990 CHCF of \$7,449 for Winterhaven, as set forth in the Appendix A Summary of the 1990 CHCF authorized by Commission Resolution No. T-14029 adopted December 18, 1989.

On February 4, 1991, Winterhaven submitted Advice Letter 19 by which it requested a change to its 1990 CHCF revenue requirements, stating that because at the time of filing (which had to be submitted by October 1, 1989, the day after its participation in the intrastate interLATA settlements pools ended) it could not

include the intrastate impacts of changing from settlements to bill-and-keep access. Thus there was no historical data available on traffic, separations, and access at the time of filing. Winterhaven's modification reflects a 1990 revenue requirement of \$228,182 from the CHCF.

On February 25, 1991, AT&T Communications of California (AT&T) protested on the grounds that granting the request would constitute retroactive ratemaking and constitute a troubling precedent. AT&T noted that Winterhaven in Advice Letters 10 and 10A had not stated it was leaving the settlements pools or required additional time to collect the data needed to produce a more appropriate estimate of 1990 needs occasioned by the change. Finally, AT&T stated that any retroactive grant should require a petition to modify Resolution No. T-14029.

On April 2, 1991, Winterhaven filed Application 91-04-005, its Petition to Modify Resolution T-14029 (withdrawing its Advice Letter 19 on April 5, 1991). In its petition, Winterhaven repeated the history leading up to its new central office, and stated that the regulatory changes ordered by the Commission in D.88-06-023 caused settlements effects for Winterhaven in 1990 following its departure from the settlements pools. Based on historical data on traffic, separations, and access now available, Winterhaven sought to update its 1990 CHCF revenue requirement, and attached a worksheet supporting this request.

Notice of Winterhaven's application appeared on the Commission's Daily Calendar of May 8, 1991. No protests have been received and there is no need for a public hearing.

Discussion

The Commission shares the concern of AT&T that no precedent be established for retroactive funding of CHCF revenue requirements merely because a local exchange company may obtain more accurate or actual data to justify such a request.

particularly if that company earned a low rate of return. We note, however, as established in D.91-05-016, that funding from the CHCF is not ratemaking and does not result in any rate changes. The first question presented here, then, is whether special circumstances merit granting Winterhaven's funding request. As discussed below, we conclude that the unique facts of this case do warrant an exception justifying authorization of the requested funding.

In D.88-06-023, when we authorized Winterhaven to operate in Imperial County, we also noted that by December 31, 1989 or 90 days after its cutover and transfer of operations to a projected new central office in California, whichever occurred earlier, Winterhaven would not be participating in any intrastate interLATA settlement pools. Thus its only settlement impacts as a new California local exchange company in CHCF would be net interstate expense adjustments. Since its 1990 CHCF forecast had to be submitted by October 1, 1989, its only known impact by that submission date was the \$7,449 forecast based on its net interstate expense adjustments. As of that October 1, 1989 date, Winterhaven's new central office had been in service less than four months, and as yet there was no historical data obtained on traffic, separations, and access.

AT&T argues that nowhere in Advice Letter 10 or 10A did Winterhaven indicate that it was leaving the settlement pools in 1990 or that it required more time beyond October 1, 1989 to collect data to produce a more appropriate estimate of its 1990 CHCF needs based on its departure September 30, 1989 from the intrastate interLATA settlement pools. But the agreement between Winterhaven and PacBell set forth in Application 88-04-045 and approved by D.88-06-023 provided that by December 31, 1989 or possibly earlier, Winterhaven was to leave any intrastate interLATA settlement pools. Thus there was no concealment or failure to disclose. Winterhaven did what it was required to do, submitted

the data it had, and as a result Resolution No. T-14029 was issued in timely fashion on December 18, 1989 authorizing 1990 CHCF revenue requirements for 20 local exchange carriers including Winterhaven's net settlement effect for 1990 of minus \$7,449.

Subsequently, Winterhaven ascertained that the regulatory changes ordered by the Commission in D.88-06-023 caused settlements effects for Winterhaven in 1990 in the amount of \$228,182. The components which make up this revised CHCF revenue requirement for 1990 are set forth in a revised worksheet included in A.91-04-005 as Exhibit 1. Winterhaven also shows that this modification can be made without any increase in the increments on the carrier common line access element used to fund the CHCF. The \$228,182 funding for Winterhaven could be made from the existing \$1,146,582 1990 CHCF surplus reported by the administrator of the CHCF on March 5, 1991 (see Exhibit 2 to A.91-04-005).

The question next arises whether this \$228,182 funding would be within the limits established by D.91-05-016, which decision modified the rules adopted in D.88-07-022 to limit a utility's CHCF funding to amounts which produce rates of return no higher than those most recently authorized by the Commission. As Winterhaven has had no rate proceeding, D.91-05-016 provided that it would be eligible for CHCF support in amounts which would permit it to earn up to the prevailing highest authorized rate of return for a California local exchange company until such time as the Commission authorizes a rate of return for Winterhaven.

The Commission's Telecommunications Branch of the Advisory and Compliance Division (Branch) on June 29, 1990 reported on the intrastate rates of return for all 20 independent local exchange companies involved in the CHCF. Foresthill Telephone Company with a last authorized rate of return of 13%, authorized in 1983 by Resolution No. T-10692, was the highest authorized rate. Applying this 13% rate to the December 31, 1990 net telephone plant investment by Winterhaven of \$3,513,485 we determine that the

resulting \$456,793 exceeds the \$228,182 funding sought by Winterhaven.

Accordingly, we will authorize a modification to the Appendix A Summary of the 1990 CHCF of Resolution No. T-14029 to provide a net settlement effect for the utility of \$228,182.

Findings of Fact

1. Winterhaven is an independent California local exchange company subject to the jurisdiction of this Commission.
2. Pursuant to the requirements of Appendix B of D.88-07-022, in October of 1990, Winterhaven submitted its advice letter (subsequently modified) which set forth its 1990 net settlement effect and request for 1990 CHCF support.
3. Winterhaven was included in the 1990 CHCF Revenue Requirement net settlement effects, Appendix A of Resolution No. T-14029 issued December 18, 1989.
4. With a new California central office, and no available historical data on traffic, separations, and access, the original 1989 filing on 1990 requirements which had to be submitted by October 1, 1989 (the day after Winterhaven's participation in the settlements pools ended) could not include the intrastate impacts of changing from settlements to bill-and-keep access; however, this data now exists.
5. Based on this later acquired data, Winterhaven seeks to update its 1990 CHCF revenue requirements to reflect settlement effects in 1990 caused by regulatory changes ordered by the Commission in D.88-06-023.
6. The updated CHCF 1990 revenue requirement of \$228,182 is supported by the worksheet attached to the application as Exhibit 1.
7. The \$228,182 revenue requirement is within the limit prescribed for Winterhaven in D.91-05-016.
8. The \$228,182 funding for Winterhaven can be made from the existing 1990 CHCF surplus.

Conclusions of Law

1. Resolution No. T-14029 issued December 18, 1989 should be modified to reflect substitution of this decision number for the Winterhaven Advice Letter Number in Appendix A to the Resolution, and to indicate a Net Settlement Effect of \$228,182 for the utility.

2. A public hearing is not necessary.

O R D E R

IT IS ORDERED that Resolution No. T-14029 issued December 18, 1989 is modified to reflect that the 1990 revenue requirements from the California High Cost Fund for Winterhaven Telephone Company are \$228,182.

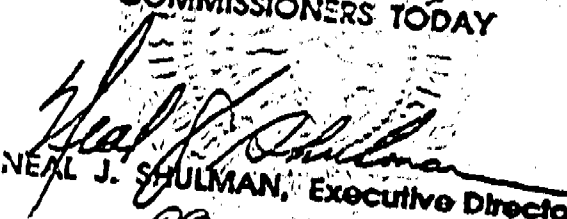
This order becomes effective 30 days from today.

Dated September 25, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

I abstain.

/s/ G. Mitchell Wilk
Commissioner

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

NEAL J. SHULMAN, Executive Director