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ORIGINAL

Decision 82 08 059 AUG 4 - 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumers Lobby Against Monopolies)
David L. Wilner, in pro per.,)

Complainant,)

vs.)

THE PACIFIC TELEPHONE AND)
TELEGRAPH COMPANY, a)
California corporation,)

Defendant.)

Case 10066
(Filed March 9, 1976)

ORDER MODIFYING DECLARATION OF TRUST
AND DENYING REHEARING OF
DECISION (D.) 82-05-009

An application for rehearing of D.82-05-009 has been filed by the Pacific Telephone and Telegraph Company (Pacific). We have reviewed each and every allegation of error and are of the opinion that the Declaration of Trust adopted in D.82-05-009 should be modified so as to more clearly conform the language of the Declaration of Trust with the criteria for the Advocates Trust Fund as set forth in Decision 93251, issued June 30, 1981. By so modifying the Declaration of Trust we believe the objections raised by Pacific will be completely disposed of.

The modified portions of the Declaration of Trust are appended to this decision. Therefore,

IT IS HEREBY ORDERED that:

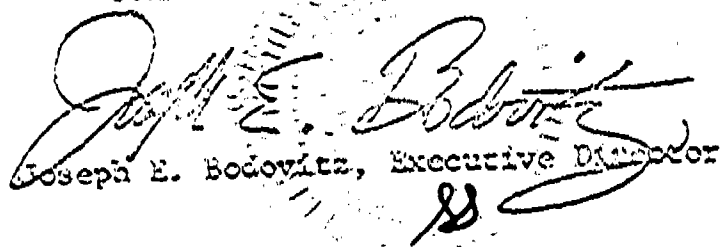
1. The Declaration of Trust adopted by D.82-05-009 is modified as shown in the appendix to this opinion.
2. Rehearing of D.82-05-009, as modified above, is denied. This order is effective today.

Dated AUG 4 1982 , at San Francisco, California.

JOHN E. BRYSON
President
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
COMMISSIONERS

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.

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


Joseph E. Bodovitz, Executive Director

Appendix

The appendix contains modifications to Declaration of Trust of the Advocates Trust Fund of the California Public Utilities Commission previously adopted by Decision 82-05-009.

1. The first unnumbered paragraph of the Declaration of Trust is modified to read as follows:

THIS TRUST AGREEMENT, made this _____ day of _____, 1982, by and between the Pacific Telephone and Telegraph Company, a California corporation (hereinafter referred to as the "Donor"), and _____ (hereinafter referred to as the "Trustee"), creates an ADVOCATES TRUST FUND for the purposes and under the conditions fully set out below.

2. Paragraph 1.2 of the Declaration of Trust is modified to read as follows:

1.2 The specific purpose for which this Trust is created is to receive, hold and, from time to time, disburse funds from either income or principal solely to defray expenses, including attorney fees and expert witness fees directly related to litigation or representation of consumer interests in "quasi-judicial complaint cases," as defined in Consumers Lobby Against Monopolies vs. Public Utilities Commission, 25 Cal.3d 891 (1979) where the California Public Utilities Commission (hereinafter the "CPUC"), has jurisdiction to make attorney fee awards.

3. Paragraph 1.3 is renumbered 1.5.

4. A new paragraph 1.3 is added to read as follows:

Attorney fees may be awarded only where it is clearly and convincingly demonstrated that

the private party has made a direct, primary and substantial contribution to the result of the case. Fees will be awarded from the advocates trust fund where complainants have generated a common fund but that fund is inadequate to meet reasonable attorney or expert witness fees, where a substantial benefit has been conferred upon a party or members of an ascertainable class of persons but no convenient means are available for charging those benefitted with the cost of obtaining the benefit, or where complainants have acted as private attorneys general in vindicating an important principle of statutory or constitutional law, but no other means or fund is available for award of fees.

5. A new paragraph 1.4 is added to read as follows:

An award will be based upon consideration of three factors: (1) the strength or societal importance of the public policy vindicated by the litigation, (2) the necessity for private enforcement and the magnitude of the resultant burden on the complainant, and (3) the number of people standing to benefit from the decision. No award will be made without a specific finding by the Commission of what would be a reasonable amount for advocates', attorneys', or expert witness fees, in view of the time spent, expenses proved, level of skill shown, and comparable fees paid to others practicing public utility law. No award should be made where a party's own

economic interest is sufficient to motivate participation.

6. Paragraph 3.1 is deleted.

7. Paragraph 3.2 is renumbered 3.1 and modified to read as follows:

This Trust is created with an initial contribution from the Donor in an amount in excess of \$160,000, as specified in Decision (D.) 93251 of June 30, 1981 before the California Public Utilities Commission, Case No. 10066 (Filed March 6, 1976), in cash, receipt of which is hereby acknowledged by the undersigned Trustee(s). The Trustee is authorized to receive, from time to time, additional donations from the Donor or from any other source, in cash or in other property acceptable to the trustee. All donations so received, together with the income therefrom, shall be referred to as the Trust Fund and shall be held, managed, administered and paid out by the Trustee pursuant to the terms of this Agreement and for no other purposes.

8. Paragraphs 3.3 and 3.4 are renumbered 3.2 and 3.3, respectively.

9. Paragraph 8.2 is modified to read as follows:

This trust may be terminated at any time pursuant to order of the PUC, after notice to all parties to Case No. 10066 and an opportunity to be heard. Upon such termination, the assets of the Trust shall be distributed by the Trustee as and when directed by the Committee in accordance with the order of the CPUC. Until final distribution of the Trust assets, the Trustee shall continue to have all the powers provided under this Agreement as are necessary and expedient for the orderly liquidation and distribution of the assets of the Trust.

10. The title of the donor subscription at the conclusion of the trust document is modified by deleting the name "EARL NICHOLAS SELBY" and inserting the name "PACIFIC TELEPHONE AND TELEGRAPH COMPANY".

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