

Decision 83 04 011 'APR 6 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of THE PACIFIC)
TELEPHONE AND TELEGRAPH COMPANY,)
a corporation, for an order)
authorizing it to enter into)
sale and leaseback transactions)
pertaining to certain real)
property.)

Application 83-01-51
(Filed January 25, 1983)

O P I N I O N

The Pacific Telephone and Telegraph Company (Pacific) requests authority, under Public Utilities (PU) Code Section 851, to sell and leaseback its Clearlake Field Operating Center (Clearlake Facility) and its Chico District Operations Center (Chico Facility). Pacific specifically requests the Commission to either:

1. Dismiss the application for lack of jurisdiction or
2. Issue an ex parte order authorizing sale of these two existing parcels of real property including building facilities and to authorize their leaseback.

Summary of Decision

This decision grants Pacific the authority to sell and leaseback the Clearlake and Chico Facilities.

Notice of the filing of the application appeared on the Commission's Daily Calendar of January 28, 1983. No protests have been received.

Pacific, a California corporation, is the sole owner of Bell Telephone Company of Nevada and is itself a wholly owned subsidiary of the American Telegraph and Telephone Company. Pacific is a public telephone utility company engaged in the business of providing local and long-distance telephone service in the State of California. Pacific's system is comprised of local and long-distance telephone lines and exchanges, buildings, rights-of-way, franchises, and equipment.

For the nine months ended September 30, 1982, Pacific reports in its Consolidated Income Statement that it generated total operating revenues of \$5,896,900,000 and a net income of \$387,200,000 as shown in Exhibit I attached to the application.

By this application, Pacific proposes to enter into sale and leaseback transactions with respect to two parcels of real property and the improvements on them. One parcel is the Clearlake Facility currently occupied by Pacific's Clearlake Field Operating Center and the other, the Chico Facility, is occupied by Pacific's Chico District Operations Center.

The Clearlake Facility is located in Clearlake. It consists of a one-story office and warehouse building, a large storage yard, and vehicle parking (for Pacific and its employees) on approximately three acres of land. The original cost of the

Clearlake Facility was \$1,157,200. It is currently occupied by Pacific's Distribution Services-Construction forces serving the Lake County area.

The Clearlake Facility was originally planned as a build-lease facility, whereby the structure would be constructed to Pacific's specifications and leased to Pacific, although actually owned by an outside investor. Contractor and investor bids were invited and evaluated in June 1981. However, in August, the prospective investor filed for bankruptcy, and the investor bid package was sent out for a second time. Apparently, due to the erratic financial climate, no investor bids were received. Pacific decided to proceed with construction on a Pacific-owned basis, with the intention of investigating a sale/leaseback transaction at a future date. Construction began on October 12, 1981, and the facility was completed on June 14, 1982.

The Chico Facility is located in Chico. It consists of a one-story office building (30,000 square feet in size) on three and one-fourth acres of land. The original cost of the Chico Facility was \$3,070,700. The building is occupied by Pacific's Switching Department and used to house the District Operations Center for the Chico district.

The Chico Facility was also originally planned on a build-lease basis. On September 29, 1981, contractor bids were opened and, on October 5, 1981, investor bids were opened. Investor bids were extremely unfavorable reflecting high interim and long-term financing costs. A study by Pacific based on these bids showed a 13% (\$478,000) net present worth of expenditures advantage at that time to Pacific owning the Chico Facility. On this premise, construction was approved on a Pacific-owned basis. Construction began on April 28, 1982 and was completed in December 1982.

Pacific alleges that major changes have taken place in the financial community relative to interest rates and investment opportunities since these build-lease projects were forced into Pacific's ownership. According to Pacific, recent contracts with large, well-known investors confirm (a) that Pacific can offer an attractive package in today's marketplace and (b) that sale/lease-back is the most economic alternative at this time. In addition, Pacific claims that a sale/leaseback proposal is attractive to a wider range of investors who would not have been interested in becoming involved in the construction phase of a build-lease process.

Pacific has completed "own versus lease" studies on each of these locations based on information received from prospective sale/leaseback investors. Results of both studies, attached to the application as Exhibit II, favor leasing by a significant margin. In the case of the Clearlake Facility, based on the net present worth of expenditures, it is less expensive to lease than to own by 10%, \$126,000. The net present worth of expenditures for the Chico Facility indicates a 20%, \$549,000, advantage in favor of leasing.

According to Pacific, there are some facilities that are better for it to own, such as central offices. Some, like field operating centers, are usually leased (a) due to the uncertainty of future needs and (b) due to the requirement for flexibility of location to meet changing customer demands. Of over 200 field operating centers operated by Pacific, less than 20% are owned. The vast majority of those owned are located in major metropolitan areas where the long-term need has been well-established and the availability of alternative locations is virtually nonexistent. Of the more than thirty district operations centers being planned for Pacific before 1985, the Chico Facility represents one of about eighteen which is tentatively planned to be located outside of central offices. Pacific states that only one of those eighteen will be in a Pacific-owned building. All others will be in leased quarters.

As a condition of the proposed sales, prospective investors were asked to bid competitively on a monthly rental rate for which they would agree to lease the property back to Pacific for a minimum basic term of ten years. This agreement should include a sufficient number of five-year renewal options to bring the total term to twenty-five years. Copies of the proposed bid packages, including the forms of grant deed, lease agreement, and purchase and sale agreement that Pacific expects to use, are attached to the application as Exhibit III.

Pacific seeks confirmation from the Commission that it will exercise no jurisdiction over the proposed leases under PU Code Sections 816 through 830, but will authorize the proposed sale and conveyance of the improved real property under PU Code Section 851.

The Commission has generally held in past decisions that it does not have jurisdiction over transactions in which a utility is a lessee. This was the case in Pacific Gas & Electric Company's Decision (D.) 82-10-046 dated October 20, 1982 in Application (A.) 82-07-66 (a lease of improved real property); Pacific's D. 93699 dated November 3, 1981 in A. 60928 (a computer equipment lease); Pacific's D. 85874 dated May 25, 1976 in A. 56467 (a computer equipment lease); and Pacific's D. 83333 dated August 20, 1974 in A. 55095 (a lease of improved real property).

In the current proposed transactions, Pacific would be a lessee under true leases as distinguished from an obligor under contracts for the purchase of real property or from an issuer of other indebtedness. Under the leases, Pacific would not act as guarantor, endorser, or surety with respect to the financing of the investors' purchases of the properties, nor would the leases constitute bonds, notes, or other evidences of indebtedness. Pacific would not, in connection with the consummation of the transactions, issue any stock or similar evidence of interest or ownership, and would not, through its lease payments, acquire any ownership, equity, or reversionary interest in the facilities.

There is a clear line of decisions holding that the Commission does not have jurisdiction over transactions in which a utility is a lessee. The transactions proposed here are routine. In the circumstances, the Commission confirms its prior holdings that routine lease transactions of public utilities are not subject to its jurisdiction under PU Code Sections 816 through 830. The Commission believes it should not assert jurisdiction over the leases under PU Code Section 701 where no special circumstances or conditions exist requiring its regulatory approval.

The proposed real property conveyances are subject to the Commission's jurisdiction under PU Code Section 851. Approval of the conveyance transactions is required before the balance of the transactions may be consummated. The real property conveyances are in the public interest and should be authorized.

The Commission's Revenue Requirements and Communications Divisions have reviewed Pacific's application and recommend the proposed transactions be approved. The divisions have concluded that Pacific's sale and leaseback transactions of its Clearlake and Chico Facilities would not be adverse to the public interest. The Revenue Requirements Division reserves its right to reconsider the reasonableness of these transactions in future rate proceedings.

Pacific is put on notice that the proposed sale/leaseback transactions shall be recorded on its books of account in accordance with the system of accounts prescribed for telephone utilities. We will also require Pacific to file with the Commission the accounting entries to record the proposed transactions. We will require the entries within a reasonable time after consummation of the proposed transactions. We put Pacific on notice that the gains realized from the proposed transactions should be amortized as a reduction to the cost of the leases.

Because of the constant fluctuations in the money market and the need for prompt closing of escrow with respect to the proposed transactions, this order will be effective on the date of signature.

Findings of Fact

1. Pacific, a California corporation, operates as a public utility under the jurisdiction of this Commission.

2. Pacific has need for external funds for the purpose set forth in the application.

3. Pacific's proposed sale and leaseback of its Clearlake and Chico Facilities as discussed in the application and provided for under PU Code Section 851 are reasonable and not adverse to the public interest.

4. There is no known opposition and no reason to delay granting the authority requested.

Conclusions of Law

1. A public hearing is not necessary.

2. The Commission has jurisdiction over the sale of utility property described in the sale and leaseback transactions.

3. The application should be granted to the extent set forth in the order which follows.

This authorization is for the purpose of this proceeding only and is not to be construed as indicative of the amount of expenditure (if any) under the sale and leaseback transactions which shall be approved as proper operating expenses in proceedings for the determination of just and reasonable rates.

The following order should be effective on the date of signature to permit Pacific to proceed with the transactions and agreements to sale and leaseback its Clearlake and Chico Facilities expeditiously.

O R D E R

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company (Pacific), on or after the effective date of this order, may convey the improved real properties covered by Pacific's proposed application upon terms and conditions substantially consistent with those set forth in the application.
2. In all other respects, the application is denied.

3. Pacific shall file one copy each of the leases, grant deeds, and purchase and sale agreements with the Commission within 15 days after their execution.

4. Within 90 days after consummation of the sale and leaseback authorized, Pacific shall file with the Commission the accounting entries to record the proposed transactions. The entries shall include a description of the accounts, the account numbers, and the amounts to be included in each account.

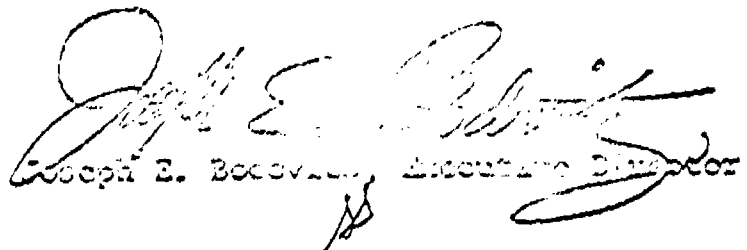
This order is effective today.

Dated APR 5 1983, at San Francisco, California.

LEONARD M. GRIVES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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


Joseph E. Boscovick, Executive Director