

Decision 83 12 019 DEC 7 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
THE PACIFIC TELEPHONE AND TELEGRAPH)
COMPANY, a corporation, for authority)
to increase certain intrastate rates)
and charges applicable to telephone)
services furnished within the State)
of California.)

Application 59849

And Related Matters.)

Application 59269
Application 59858
Application 59888
OII 63
OII 81
OII 84

ORDER DENYING MOTION FOR ORDER TO SHOW CAUSE

On October 5, 1983 the Commission staff (staff) filed a motion asking that the Commission issue an order to show cause directing The Pacific Telephone and Telegraph Company (Pacific) to show why it should not be ordered to file an application for the transfer of assets to the American Telephone & Telegraph Company (AT&T). On October 19, 1983 Pacific responded, arguing that the staff motion should be denied.

Background

In United States v American Telephone & Telegraph Company, 55 F Supp 131 (D.C.C. 1982) the U.S. District Court for the District of Columbia approved a settlement agreement between the U.S. Department of Justice and AT&T which is now commonly known as the Modified Final Judgment (MFJ).

Under the MFJ, Pacific, among other Bell operating companies, is required to transfer customer premise equipment and interexchange switching and transmitting facilities to AT&T effective January 1, 1984. According to the staff motion, Pacific is in the process of drawing up a list of assets to be transferred to AT&T as

of midnight December 31, 1983 and is preparing the documentation for the transfer at adjusted net book value. Pacific's counsel has apparently indicated to staff counsel that on the advice of AT&T, Pacific is not going to file with this Commission the application for transfer of assets ordinarily required by Public Utilities Code §§ 701, 702, and 851 on the grounds that our jurisdiction over these transfers has been completely preempted by the federal courts.

Pacific's response argues preemption most strenuously. It states that AT&T's Plan of Reorganization (Plan) required by the MFJ was approved by the Federal District Court on August 5, 1983 and that the Plan itself stated that state commission authorization for transfers under the Plan would not be sought by Pacific or other Bell operating companies, although informational filings would be made. Pacific states that the MFJ preempted any state authorization requirements insofar as they might be applied to the specific asset transfers required by the MFJ and the Plan.

While admitting that the states may have been preempted as to the principle of the transfer of assets, staff argues that final determination of the specific assets to be transferred, as well as the following "true-up" process after divestiture may arguably still reside with the states. According to Pacific, the true-up is subject to court approval but does not permit any departure from the asset assignment prescribed by the Plan.

The gravamen of the staff argument is the fact that the assets to be transferred by Pacific are now included in its rate base on which it is earning a return authorized by this Commission and paid by Pacific's ratepayers. The ratemaking and service related effects of the transfer are thus ongoing concerns of the ratepayers and of this Commission. Staff argues that we must be involved in the transfer of specific assets, although it concedes that we may not do anything inconsistent with the principle of transfer.

Pacific believes that the final determination of how specific assets are to be transferred is made by the Federal Court

and that any attempt to participate in that transfer, other than through the Federal Court, makes federal preemption meaningless.

Discussion

We have appealed the U.S. District Court decision which approves the Plan. The matter is now pending before the U.S. Supreme Court. Notwithstanding that appeal, and Pacific's assertion that we are precluded by federal preemption from participation in the transfer, we cannot ignore our constitutional and statutory responsibilities with respect to the regulated assets of Pacific. After transfer of a portion of these assets Pacific and Pacific's ratepayers will be left with the ratemaking and service effects resulting from the transfer. Pacific notes, correctly, that the Commission is free to value these assets for ratemaking purposes. Unspoken is the assumption that it will be made whole without further examination because the transfer has occurred under federal court order. This is not correct. We place Pacific on notice that we will be very carefully scrutinizing the effects of any transfer of assets to ensure that Pacific's ratepayers are not adversely affected. Pacific is also on notice that we intend to minimize what we expect may be substantial rate and service impacts from the transfer.

Because it is late in the year, and the time for divestiture draws near, and because we wish to effect a smooth transition as Pacific moves into a divested world, we will not grant the staff motion to issue an order to show cause. Pacific should be under no illusion, however, that we will simply accept the results of the transfer without careful evaluation. To assist us to this end, we will direct Pacific to file, on January 3, 1984, the informational filing referred to in its response to the staff motion and in its Plan. Those filings should be made in original and 12 copies in Application 82-01-22 and should be served on all parties to its current ongoing general rate case and consolidated matters. The filings should contain a list of specific assets transferred, their net book value, and a statement with respect to each asset

transferred of the rate and service impacts on Pacific's customers after January 1, 1984. A similar filing shall be made at the time of the true-up process after divestiture.

Therefore, IT IS ORDERED that:

1. The motion of the staff for an order to show cause directing The Pacific Telephone and Telegraph Company (Pacific) to show cause why it should not be ordered to file an application for the transfer of assets to the American Telephone & Telegraph Company (AT&T) is denied.

2. Pacific is directed to file on January 3, 1984 an original and 12 copies in Application 82-01-22 and serve on all parties to that application and the consolidated matters a list of specific assets transferred to AT&T, the net book value of each asset transferred, and a statement with respect to each asset transferred of the rate and service impacts on Pacific's customers after January 1, 1984.

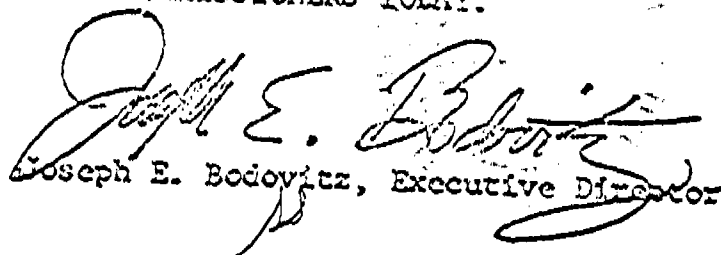
This order is effective today.

Dated DEC 7 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
FRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Bodovitz, Executive Director

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