

**ORIGINAL**

Decision No. 91858 JUN 3 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the rates, rules, charges, operations, practices, service and facilities associated with mobile radiotelephone service provided by The Pacific Telephone and Telegraph Company and General Telephone Company of California.

OII No. 20  
(Filed July 25, 1978)

ORDER EXTENDING TIME

The Pacific Telephone and Telegraph Company (Pacific), by letter dated May 8, 1980, requests an extension to no later than June 13, 1981 to comply with this Commission's orders directing Pacific to convert its existing manually operated mobile radio-telephone system with improved mobile telephone service (IMTS). This conversion was originally ordered by Decision No. 88232, dated December 13, 1977, which directed Pacific to make the conversion within 24 months of the effective date of the order. Decision No. 90658, dated August 14, 1979, granted an extension of time to June 13, 1980. Pacific's program and the date of June 13, 1980 was reaffirmed by Decision No. 91492, dated April 2, 1980, in OII-20. Copies of Pacific's letter of request for extension of time have been served upon all parties to OII-20.

In support of its request, Pacific alleges that, during June 1978, Pacific placed an order with an outside supplier for a July 1979 delivery of two switching devices. This supplier notified Pacific of a delay in manufacturing that necessitated Pacific's petition to the Commission that resulted in Decision No. 90658.

Once again, this outside supplier has notified Pacific of an additional delay in the manufacture of the switching devices. In the event the current supplier fails to deliver tested, proven and accepted switching devices during the third quarter of 1980, Pacific intends to reengineer its IMTS serving arrangement, compress installation intervals, and obtain switching apparatus from an alternate supplier in time to convert to IMTS by June 13, 1981. In the alternative, if the current supplier resolves its manufacturing delays, Pacific will convert to IMTS as soon as possible, well in advance of June 13, 1981 or any other date granted by the Commission.

On May 14, 1980, attorneys for Allied Telephone Companies Association (Allied) directed a letter to the Commission protesting Pacific's request for extension of time. Allied represents a large number of radiotelephone utilities in California who compete directly with Pacific in the furnishing of mobile telephone service. In support of its opposition, Allied alleges:

"The request raises serious questions involving manifest unfairness to the radiotelephone utilities who are members of Allied and who compete directly with Pacific in offering mobile telephone services to the public. As was acknowledged by the Commission itself in Decision No. 91492, Ordering Paragraph 19 of Decision No. 88232 was 'dictated' by the economics of Pacific's mobile telephone offering. As of 1977, Pacific was projected to lose in excess of \$1.5 million annually on its mobile telephone offering. There was accordingly an express finding made by this Commission in Decision No. 88232 that the offering was non-compensatory and that Pacific should be ordered immediately to increase

its rates and to convert to IMTS. The rationale for the Commission's decision was that IMTS would make possible savings in labor costs which, together with the higher rates, would render the service compensatory.

"Allied's members have an obvious interest in the enforcement of Decision No. 88232. So long as Pacific, a company with resources infinitely greater than those of its radiotelephone utility competitors, is permitted by this Commission to cross-subsidize its mobile telephone offering, and to charge an artificially low rate to its customers, Allied members are severely and irrevocably prejudiced. It was therefore with considerable anxiety that Allied learned during OII 20 that Pacific's revision of its Tariff Sheet 41-T (effective July 8, 1979) did not comply with the Commission's order in Decision No. 88232 to bill for the total time spent by the customer on the air, but rather continued Pacific's former practice of billing for conversation time only. It was with even greater concern that notwithstanding the close relationship between the non-compensatory nature of Pacific's manual service and the Commission's order to convert to IMTS, OII 20 was confined to the so-called 'technical aspects' of conversion.

"Now Pacific has asked for a second extension of time in which to comply with Ordering Paragraph 19 of Decision No. 88232. Pacific's request also indicates that due to delays at the manufacturing level, it may completely re-engineer its IMTS serving arrangement, thus rendering moot the many days spent by the Commission in investigating the 'technical aspects' of the proposal.

"Allied opposes Pacific's request, unless it can be granted together with an order protecting Allied's members from the anticompetitive implications of the proposal. In December, 1977, this Commission found that Pacific's mobile telephone operations were being conducted on a non-compensatory basis, and that only conversion to IMTS offered any hope for remedying the situation. Commission staff in its Statement filed in OII 20 emphasized this fact, recommending that 'if conversion to IMTS is not to be undertaken, the scope of OII 20 should be immediately broadened to provide for the rate increases necessary to make manual mobile service a fully compensatory offering.' OII 20 declined to grant such relief on the assumption that conversion to IMTS would be complete by June, 1980. Now, however, Pacific asks for authorization to continue its non-compensatory, manual offering for an additional 12 months.

"Cross-subsidization of a non-monopoly offering is clearly anticompetitive, as are predatory pricing policies. Pacific has for at least five years continued its manual offering on a non-compensatory basis to the clear prejudice of radiotelephone utilities which compete with it but which do not have the same opportunities for cross-subsidization. This Commission has an obligation to consider the antitrust implications of what it does (Northern Cal. Power Agency v. P.U.C., 5 C. 3d 370 (1971)), and should do so in evaluating Pacific's latest request.

"Allied therefore requests that Pacific's Petition for Extension of Time be denied, or that, if granted, such grant be made subject to the initiation of an expedited proceeding designed to insure that Pacific's mobile telephone service rates are revised so as to render its mobile offering compensatory for the period preceding conversion to IMTS, as well as thereafter."

Discussion

Because of the inability of its suppliers to meet Pacific's time frame for conversion to IMTS, it is obvious that Pacific is unable to comply with the Commission's previous orders on a timely basis. Accordingly, we must grant the extension of time requested by Pacific. However, Allied alleges that Pacific has not fully complied with the Commission's previous orders with respect to the method of applying rates for mobile telephone usage. We agree with Allied that this situation must be rectified. Accordingly, we will provide by this order that Pacific immediately take steps to charge its mobile telephone service customers for actual air time used rather than conversation time. With respect to overall rate levels for Pacific's mobile telephone service, we take note of Pacific's tendered notice of intention to file a general rate increase application. In order that the Commission and the parties to such proceeding may have meaningful evidence on mobile telephone rates and earnings, we will direct Pacific to prepare and file a fully allocated earnings statement on its mobile telephone service operations in its forthcoming rate case.

Findings and Conclusion

The Commission finds that, for reasons beyond its control, Pacific is unable to comply with the Commission's earlier orders for conversion of its mobile radiotelephone service to IMTS and that an extension of time is warranted. This extension of time will be conditioned upon Pacific complying in all other respects with the Commission's previous orders with respect to measurement of time for charging purposes. In addition, it is reasonable that Pacific should prepare and file with the Commission, and furnish to interested parties, a statement of fully allocated earnings of its mobile telephone service operations. Since the conversion date specified by previous order is June 13, 1980, the order herein will be made effective on ten days' notice.

The Commission concludes that the relief requested by Pacific should be granted and that the order herein is appropriate in the premises. A public hearing in this matter is not required.

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company is granted an extension of time to no later than June 13, 1981 to comply with Ordering Paragraph 19 of Decision No. 88232 as modified by Ordering Paragraph 1 of Decision No. 90658 and as reaffirmed by Decision No. 90658.
2. Pacific shall, on and after the effective date of this order, apply the total air time used by mobile telephone customers in computing the radio link charge as provided by Ordering Paragraph 5 and Appendix B of Decision No. 88232.

3. Pacific shall prepare and file with this Commission, by August 1, 1980, a fully allocated earnings study of its mobile telephone service operations. Copies of this study shall be served upon each party of record to OII-20 and upon interested parties to its forthcoming rate application. ✓

The effective date of this order shall be ten days after the date hereof. ✓

Dated JUN 3 1980, at San Francisco, California.

John E. Guya  
President

Robert W. Howell

Lawrence M. Smith  
Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.