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ORIGINAL

Decision No. 92053 JUL 15 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 20
 (Filed July 25, 1978)

ORDER MODIFYING DECISION NO. 91858
AND DENYING REHEARING

A petition for rehearing and stay of Decision No. 91858 has been filed by Ronald A. Rosberg. Allied Telephone Company has filed its opposition to the petition for rehearing and stay. We have carefully considered all the allegations of error contained in the petition for rehearing and are of the opinion that good cause for granting rehearing of Decision No. 91858 has not been shown. However, we shall modify our Discussion, Findings and Conclusions, and Ordering Paragraphs in Decision No. 91858 to reflect the fact that the proceedings in OII 20 afford no basis for the Commission to order Pacific to comply with an order contained in Decision No. 88232. Therefore,

IT IS HEREBY ORDERED that Decision No. 91858 is modified to substitute the following discussion under the heading shown:

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.

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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 service. We agree with Allied that this situation must be rectified.

However, upon review of the entire record of the Commission's proceedings in Application No. 55492 (Case No. 10001), which led to Decision No. 88232, and in OII 20, which led to Decisions Nos. 91492 and 91858, we find that the vagueness of Decision No. 88232 in a respect critical to Allied's present request, as well as the limited scope of proceedings in OII 20, makes it undesirable to now order Pacific to comply with an order contained in Decision No. 88232. The reasons for this conclusion are set forth below:

First, the proceedings in Application No. 55492 supplied virtually no evidence to support the Commission's order in Decision No. 88232, that Pacific should charge its mobile telephone service (MTS) customers for total air time used rather than conversation time. In Decision No. 88232, there was no statement, direct or indirect, that the method for measuring MTS calls was to be changed from conversation time to total air time. The only indication of this change was contained on page three of Appendix B of Decision No. 88232. (Ordering Paragraph 5 authorized Pacific to file a tariff in compliance with this Appendix.) However, the Appendix does not clearly indicate that operator-assisted calls, prior to implementation of IMTS, were to be billed on the basis of total air time rather than conversation time. We find MTS customers were given insufficient notice of this billing change in Decision No. 88232.

Second, Ordering Paragraph 19 in Decision No. 88232 ordered Pacific to inform its MTS customers of the impending change to IMTS operations. This paragraph did not order Pacific to inform its MTS customers that the basis for measuring MTS calls had been changed from conversation time to total air time. We find that Pacific's notices to its MTS customers did not in fact notify these customers of the change in measuring MTS calls. Given the fundamental nature of this change, we conclude, in retrospect, that

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Pacific's MTS customers ought to have been informed of the impending change. We note that Pacific did not implement the change to total air time usage as the basis for billing, thus making it even less likely that interested persons would complain to the Commission.

Third, although the original Order Instituting Investigation in OII 20 allowed for inquiry into the rates charged MTS customers, the scope of the hearing was subsequently limited, in a notice dated April 10, 1979, to the technical merits of Improved Mobile Telephone Service. During the subsequent hearings, Pacific's expert testified that its tariff provided for conversation time billing and that no change was planned to total air time billing. In Decision No. 91492, the Commission confirmed that the scope of OII 20 had been limited solely to the technical aspects of IMTS and made no mention at all of total air time usage as the basis for MTS charges. Decision No. 91492 discontinued OII 20.

OII 20 therefore affords the Commission no basis on which to order Pacific to comply with an order contained in Decision No. 88232.

We are sensitive to Allied's complaint that Pacific should be made to charge compensatory rates for its MTS operations, in order that Pacific will not gain a competitive advantage through cross-subsidization of its MTS operations from profits in other areas of operation. However, the record in OII 20 provides an insufficient basis for the Commission to make the necessary findings and conclusions to provide Allied with the relief which it seeks in this respect.

We note that NOI 23, Pacific's next general rate case, has just been filed. We note further that Ordering Paragraph 3 of Decision No. 91858, which we here reaffirm, requires Pacific to prepare and serve by August 1, 1980, "a fully allocated earnings study of its mobile telephone service operations" on the Commission, OII 20 parties and interested parties to its forthcoming rate application. In the forthcoming proceedings, Allied will be able to document on the record whether Pacific's rates for MTS operations remain non-compensatory (as they were shown to be, before a rate increase, in

