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MAIL DATE
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Decision 95-11-030

November 8, 1995

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
on the Commission's own motion into)
the Pacific Telesis Group's "spin-)
off" Proposal.)

I.93-02-028
(Filed February 17, 1993)

ORDER REOPENING INVESTIGATION (I.) 93-02-028 FOR REVIEW OF
DECISION (D.) 94-08-030, AS MODIFIED BY D.95-01-019,
IN LIGHT OF NEW LEGISLATION

In light of the Governor's signing of recently enacted Assembly Bill (AB) 1302 (1995-96 Regular Session, Chapter 95-0767), and the possible enactment of a companion bill, AB 1519,¹ we intend to request that the California Supreme Court lift the stay of further Commission action imposed in the writ of review issued in Assembly of the State of California and Willie L. Brown, Jr. (Assembly) v. Public Utilities Commission (S044844) so that we may reopen the proceeding under review, In the Matter of the Investigation on the Commission's own motion into the Pacific Telesis Group's "spin-off" proposal (Investigation (I.) 93-02-028]. We wish to reconsider Decision (D.) 94-08-030 (1994) __ Cal.P.U.C.2d __, as modified by D.95-01-019 (1995) __ Cal.P.U.C.2d __, to determine what changes will be required to enable our allocation of the spin-off fund to conform with the new and anticipated legislation.

1. AB 1519 had passed the Assembly and the Senate, and was awaiting the Assembly's concurrence with changes made in the Senate, when the 1995 portion of the legislative session drew to a close. The bill is eligible for further consideration during the 1996 portion of the legislative session.

Both AB 1302 and AB 1519 expressly address the spin-off fund allocated in D.94-08-030, as modified by D.95-01-019. Each of these bills, when they become operative, will order us to deposit \$17.5 million of the spin-off fund in a newly created Education Technology Trust Fund (for a total of \$35 million), and will appropriate money in that fund for various education technology improvement programs. Our implementation of this newly enacted and anticipated legislation may make moot the writ of review issued at the Assembly's request.

By their own terms, neither AB 1302 nor AB 1519 will become operative until: 1) both bills are enacted; and 2) the California Supreme Court has issued a decision in S044844, or the stay imposed in that action is otherwise lifted.

I. New Legislation

During the 1995 portion of the 1995-96 Regular Session of the Legislature, the Governor's Office worked with the Legislature to develop legislation which would allocate the spin-off money to public schools for education technology in a manner acceptable to both branches of government. This broke the legislative log jam which during the 1993-1994 Regular Session resulted in the Legislature's passage of, and the Governor's veto of SB 321, which would have required us to maintain a telecommunications consumer education program, and SB 1960, which would have appropriated \$40 million of the spin-off fund for school telecommunications technology. The signing of AB 1302, and the anticipated enactment and signing of AB 1519 during the new legislative session beginning in January, gives us encouragement that we will soon have a successful legislative resolution to the spin-off fund allocation issue that led us to adopt the creative allocation approach set forth in D.94-08-030, as modified by D.95-01-019.

While AB 1302 and AB 1519 will not distribute all of the spin-off money in precisely the manner we proposed in D.95-01-019, these bills are consistent with the our proposals to

allocate the major portion of the spin-off fund to school telecommunications technology improvements. We are pleased that the Governor has signed AB 1302, and recommend that he also sign AB 1519 once it obtains the anticipated final legislative approval early next year.

AB 1302, signed by the Governor on October 11, 1995, states, in pertinent part, that:

Sec. 18. (a) On or after January 1, 1993, the Public Utilities Commission is authorized to allocate seventeen million five hundred thousand dollars (\$17,500,000) for the purpose of telecommunications development in public schools, including the development of the infrastructure, the purchase or lease of computer hardware or the acquisition of software, and staff development, as described in the Commission's Decision, 94-08-030, issued August 3, 1994, in the Matter of the Investigation on the Commission's own motion into the Pacific Telesis Group's Spinoff Proposal (hereafter 'Commission's Decision'). The Public Utilities Commission shall order that seventeen million five hundred thousand dollars (\$17,500,000) from moneys being held pursuant to the Commission's Decision be deposited into the Education Technology Trust Fund created pursuant to Section 11602 of the Education Code....

(b) This section appropriates only those funds identified in this section and shall not become operative until the California Supreme Court issues its decision in Assembly of the State of California v. Public Utilities Commission, No. S044844, or until the court's stay in that matter is otherwise lifted.

SEC. 19. Except as to funds authorized to be allocated pursuant to Section 18 of this act and Section 2 of Assembly Bill 1519 of the 1995-96 Regular Session of the Legislature, it is not the intent of the Legislature to authorize the Public Utilities Commission to allocate any rate refunds or money derived from rate refunds for program purposes rather than to reimburse those funds to ratepayers.

SEC. 20. This act shall become operative only if Assembly Bill 1519 of the 1995-96 Regular Session of the Legislature is enacted and contains

provisions relating to the awarding of technology implementation grants to school districts and county offices of education. If Assembly Bill 1519 is not enacted, or as enacted does not contain these provisions, this act shall not become operative.

SEC 21. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide schools with classroom technology to improve pupil learning at the earliest possible time, and to make California schools competitive with those of other states that invest more in education technology, it is necessary that this act take effect immediately."

The companion bill, AB 1519, would order us to place another \$17.5 million in the Education Technology Trust Fund for telecommunications development in public schools. With minor exceptions, sections 2 through 5 of AB 1519 are identical to section 18 through 21 of AB 1302.

AB 1302 establishes the Education Council for Technology in Learning to undertake a number of tasks concerned with developing and implementing programs to improve educational technology and telecommunications networking and directs the Superintendent of Public Instruction to promote the use of educational technology. AB 1519 creates the Education Technology Trust Fund into which both bills allocate a portion of the spin-off fund; states that only the spin-off money shall be deposited into the fund and, upon appropriation by the Legislature, become available to fund grants authorized by the State Allocation Board and State Board of Education; and establishes various criteria for the division of the money in the Education Technology Trust Fund.

As noted above, neither AB 1302 nor AB 1519 will become operative until both bills are enacted and the California Supreme

Court has issued a decision in SO44844 or the stay imposed in that action is otherwise lifted.

B. Impact of AB 1302 and AB 1519 on the Commission's Spin-off Proceeding

D.94-08-030, as modified by D.95-01-019, divided the then roughly \$50 million spin-off fund among Pacific Bell's ratepayers, a modified version of the Telecommunications Education Trust (TET) established by Re Pacific Bell [D.87-12-067] (1987) 27 Cal.P.U.C.2d 1, 33-53 and Re Pacific Bell [D.88-11-030] (1988) 29 Cal.P.U.C.2d 486 [abstract only], and California's schools. Pacific Bell's ratepayers were to receive refunds consisting of \$7.9 million in refund principal and \$3.7 million in interest. The TET was to receive \$2.1 million. We allocated the remainder of the spin-off fund, then approximately \$36.3 million, to school telecommunications infrastructure improvements.²

AB 1302 and AB 1519, when they become operative, will allocate almost the same portion - \$35 million - of the spin-off fund to school telecommunications improvements. The bills differ from D.95-01-019 in that they allocate no money to the TET. However, the most significant difference between the spin-off bills and D.95-01-019 concerns the distribution of the interest which has accrued during the pendency of the Assembly's appeal.

AB 1302 and AB 1519 allocate to schools a total of only \$35 million, with the remainder of the spin-off fund being

2. D.95-01-019 did not specify just how the approximately \$36.3 million allocated to schools would be distributed, stating that we would address this issue after reviewing the Governor's recommendations. Although the Governor's recommendations have been received, the writ of review stayed us from taking further action in the spin-off proceeding. By signing AB 1302, however, the Governor has implicitly indicated his approval of the spin-off fund distribution approach taken by the Legislature.

implicitly allocated to refunds to Pacific Bell's ratepayers by language in the bills stating that the Legislature does not intend to authorize the Commission to allocate any rate refunds or money derived from rate refunds for purposes other than ratepayer reimbursements. D.95-01-019, on the other hand, gives Pacific Bell's ratepayers only the \$7.9 million principal, with interest applied to the \$7.9 million from September 1, 1983 through the date the refunds are actually distributed.³ The remainder of the interest accruing to the spin-off fund during the Assembly's appeal would go to the schools.

Thus, the legislative allocation of the spin-off fund is close, although not identical, to our proposed allocation of the spin-off fund. AB 1302 and AB 1519 will, if they become operative upon the signing of AB 1519 and the lifting of this Court's stay, meet our long-held desire for a legislative resolution of the spin-off money allocation issue.

We wish to reopen our spin-off proceeding so we can respond to the enacted AB 1302 and the anticipated AB 1519. We want to ensure that our allocation of the spin-off fund is entirely consistent with the allocation favored by the Legislature and the Governor, as expressed in AB 1302 and AB 1519. We have no intention of challenging the authority of the Legislature and the Governor to make public policy and fiscal decisions regarding the use of public money. We are only interested in furthering sound public policy relevant to our constitutional and statutory responsibilities. We believe that using public institutions such as schools and libraries as a catalyst to accelerate the development of California's telecommunications infrastructure is consistent with these responsibilities.

3. At the end of 1994, the refund interest due ratepayers under D.95-01-019 was approximately \$3.7 million.

AB 1302 and AB 1519 are double-joined so that neither bill will become operative until both bills become law. In addition, both bills contain provisions stating that they will not become operative until the California Supreme Court issues a decision in S044844 or the Court's stay is otherwise lifted. Any future decision we make to revise D.94-08-030, as modified by D.95-01-019, to reflect the spin-off fund allocation favored by the Legislature and the Governor must delay final distribution of the spin-off fund until AB 1302 and AB 1519 become operative.

If the California Supreme Court lifts the current stay on further Commission proceedings in the matter to be reviewed, the Court will fulfill one of the conditions which must be met before the bills become operative. This would also let us immediately initiate a review of D.94-08-030, as modified by D.95-01-019, and thus ensure that the appropriate distribution of the spin-off fund occurs promptly after AB 1302 and AB 1519 become operative, assuming that AB 1519 is enacted by the Legislature and signed by the Governor when the Legislature reconvenes in January, 1996.⁴

4. At an appropriate time, the Commission will need to modify its own partial stay of the distribution of the spin-off fund. In Order Denying Rehearing and Granting Partial Stay of Decision (D.) 95-01-019 [D.95-03-021] (1995) — Cal.P.U.C.2d, the Commission granted the Assembly's request for a partial stay of D.95-01-019, ordering that:

"2. The partial stay of D.94-08-030, as modified by D.95-01-019, requested by the Assembly is granted. Funds shall not be disbursed to the Telecommunications Education Trust or to any entity to fund telecommunications infrastructure development in public schools, pursuant to Ordering Paragraphs 2 and 3 in D.94-08-030, as modified by Ordering Paragraph 1 (n) and (o) of D.95-01-019, until further order of the Commission. We shall not issue such further order until after the California Supreme Court has ruled on the Assembly's petition for writ of review

(Footnote continues on next page)

For the above reasons, we intend to ask the Court to lift the stay imposed by the writ of review so that we can reopen our spin-off proceeding to review the allocation of the spin-off fund set forth in D.94-08-030, as modified by D.95-01-019, in light of the newly enacted AB 1302 and the anticipated enactment of AB 1519. Since the Legislature will not have an opportunity to enact AB 1519, and the Governor will not have an opportunity to sign, that bill until the Legislature reconvenes next January, we intend to also ask the Court to defer oral argument in the review proceeding until at least March, 1996, so that the parties and the Court can determine whether or not AB 1302 and AB 1519 will ultimately become operative law.

We will issue this order reopening our spin-off proceeding today, but will delay the effective date of the ordering paragraph reopening I.93-02-028 until the California Supreme Court acts on our request for permission to reopen the proceeding in light of the new and anticipated legislation related to the spin-off fund. The reopening order will only become effective if the Court lifts the current stay, and grants us permission to reopen our proceeding. In addition, any spin-off fund allocation order that may be issued in the reopened proceeding will make any actual allocations effective only after the Assembly has withdrawn its appeal and/or the Court has approved such further Commission action in this proceeding.

(Footnote continued from previous page)

regarding D.95-01-019 and until that Court has ruled on any appeal that may be filed in response to this decision denying the applications for rehearing of D.95-01-019 filed by the Assembly and TURN." (Slip op., at 9 (Ordering Paragraph 2.)

IT IS ORDERED that:

1. The Pacific Telesis Group Spin-off Proceeding, Investigation (I.) 93-03-028, is reopened for the limited purpose of permitting reconsideration of Decision (D.) 94-08-030, as modified by D.95-01-019, in light of the newly enacted Assembly Bill (AB) 1302 and the anticipated enactment of AB 1519, in order to ensure that the Commission's allocation of the spin-off fund is entirely consistent with the allocation favored by the Legislature and the Governor, as expressed in AB 1302 and AB 1519.

2. Ordering Paragraph 1 of this decision, which reopens I.93-02-028, will only become effective if the California Supreme Court lifts the stay on further Commission actions in the matter subject to judicial review, and grants permission to reopen this proceeding.

3. If the California Supreme Court lifts the stay on further Commission actions in the matter subject to judicial review, and grants permission to reopen this proceeding, Ordering Paragraph 1 will become effective immediately.

4. If the California Supreme Court lifts the stay and grants permission to reopen this proceeding, the Executive Director shall provide notice of the limited reopening of I.93-02-028, and any hearings therein, to all parties in the matter prescribed by Rule 52 of the Commission's Rules of Practice and Procedure.

5. Hearings in the reopened proceeding will be held at a

time and place designated by the Administrative Law Judge
Division.

This order is effective today.

Dated November 8, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners