

Decision 97-03-003 March 7, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell
(U 1001 C) for Authority pursuant to Public Utilities
Code Section 851 to ground lease property located at
148 Natoma Street, San Francisco, California.

Application 96-11-043
(Filed November 25, 1996)

O P I N I O N

ORIGINAL

Summary

This decision approves a lease of a parking lot from Pacific Bell to the San Francisco Museum of Modern Art (Museum) for the construction of a multilevel parking structure adjacent to the Museum.

Background

On November 25, 1996, Pacific Bell filed an application seeking Commission authorization, pursuant to Public Utilities (PU) Code Section 851, to lease its parking lot located at 148 Natoma Street, San Francisco to the Museum. Pacific Bell provided additional information regarding the lease by letter to the assigned Administrative Law Judge on January 3 and 6, 1997.

No protests or requests for hearing have been filed.

Description of the Property

The property to be leased consists of an asphalt paved parking lot of approximately 19,000 square feet, located behind and adjacent to Pacific Bell's office building located at 140 New Montgomery Street. Pacific Bell currently uses the property for 68 parking spaces, 28 of which are leased to Pacific Bell affiliates. See Decision 96-09-069.

Description of the Lease

The Museum intends to construct a seven-story parking garage on the leased property, with an elevated walkway to the Museum. The Museum plans to construct a

sculpture garden on the top deck of the parking structure as an enhancement to the Museum.

Pursuant to the lease agreement, the Museum will assume all responsibility for constructing, operating, and maintaining the parking structure, including insurance, repair, and taxes. During the construction stage, the Museum will provide Pacific Bell with 68 parking spaces at a nearby location and, when the structure is complete, the Museum will allow Pacific Bell the use of 68 parking spaces.

The rental payment for the lease is one dollar per year plus 50% of the net proceeds. The Net proceeds are the difference between the revenues from operation of the garage less operating expenses, as specified in Section 3c of the lease.

The term of the lease is 25 years from the date of substantial completion of the parking structure or 27 years from the date the lease was signed, whichever occurs first. At the end of the term of the lease, the property, including the improvements, reverts to Pacific Bell.

Discussion

PU Code Section 851 requires Commission authorization before a utility may "sell, lease, assign, mortgage, or otherwise dispose of or encumber" utility property. The Commission reviews these transactions to ensure that the transactions will not impair the utility's ability to provide service to the public. The Commission must also ascertain whether the transactions are accounted for properly. This requires ensuring that any revenue from the transactions are accounted for correctly, and that the utility's rate base, depreciation, and other accounts accurately reflect the transactions. The Commission will also consider benefits to the utility's customers and the public from the proposed lease.

A. *Impairment of the Ability to Serve the Public*

In its application, Pacific Bell asserts that the lease will in no way impair its ability to serve its customers. As the terms of the lease show, Pacific Bell will continue to use the property for 68 parking spaces, as it is now. Thus, it is apparent that Pacific Bell's ability to serve the public will not be impaired by this lease.

B. Proper Accounting

In its application, Pacific Bell stated that the original cost of the land is \$118,807 and the current book value is \$381,938. The property is presently included in Pacific Bell's rate base and the improvements are reflected in its depreciation accounts. Pacific Bell will credit revenue from the lease to account 5240.1 (Rent Revenues—Land and Buildings), an above-the-line account. Thus, all revenue from this lease will flow through to shareholders, unless the sharing mechanism is triggered.

C. Benefits to the Public

Pacific Bell states that the proposed parking garage and sculpture gardens will provide valuable assets to the community at large. Given the notorious dearth of parking space in San Francisco, it is apparent that the automobile-driving community will benefit from these additional spaces. The benefits of the sculpture garden will remain, of course, subject to the eye of the beholder.

In conclusion, as Pacific Bell will retain its use of the leased property such that its ability to serve the public will not be impaired, the accounting appears to be in order, and the public will benefit from the proposed lease, the lease meets the Commission's standards for PU Code Section 851 approval. Accordingly, Pacific Bell is authorized to enter into this lease.

Findings of Fact

1. Notice of this application appeared on the Commission's Calendar on December 2, 1996.
2. No protests were filed and no hearing is required.
3. Pacific Bell represented that the leased property will continue to serve its current function, i.e., 68 parking spaces, to Pacific Bell such that its ability to serve the public will not be impaired.
4. Pacific Bell represented that its accounting for this transaction is in conformance with the Commission's decisions and accounting rules.

5. No evidence has been presented that would support a finding that the proposed lease would impair Pacific Bell's ability to provide service to the public or that the accounting was not in order.

Conclusions of Law

1. Pacific Bell's lease with the Museum meets the Commission's standards for PU Code Section 851 approval.
2. Pacific Bell should be authorized to enter into the lease with the Museum.

O R D E R

IT IS ORDERED that:

1. Pacific Bell is authorized, pursuant to Public Utilities Code Section 851, to enter into the lease with the Museum of Modern Art.
2. This proceeding is closed.

This order is effective today.

Dated March 7, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners