

DEC 16 1997

Decision 97-12-082 December 16, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Investigation on the Commission's Own Motion to Establish a Forum to Consider Issues Concerning the Merger of American Telephone and Telegraph Company and McCaw Cellular Communications, Inc., and to Resolve Disputes and Address Issues Regarding a Settlement Related to the Merger.

194-04-004
(Filed April 6, 1994)

ORIGINAL

FINAL OPINION

In Decision (D.) 94-04-042, the Commission acted on the application of American Telephone and Telegraph Company (AT&T) and McCaw Cellular Communications, Inc. (McCaw) to transfer control of McCaw's California subsidiaries to AT&T. (Application (A.) 93-08-035.) The Commission approved the transfer based on a settlement negotiated by many of the affected parties. The settlement recommended that the Commission open an investigation, along the lines of Investigation (I.) 90-02-047 (the Forum Oil), to provide a regulatory mechanism to bring before the Commission various matters related to the settlement and the transfer of control. The Commission followed this recommendation and instituted I.94-04-004 on the same day it issued D.94-04-042, April 6, 1994.

The term of the settlement is five years, and the Commission intended the duration of I.94-04-004 also to be five years. Ordering Paragraph 4 stated that the investigation would close on September 1, 1999, unless extended by a later order of the Commission. However, several intervening developments suggest that the investigation should be closed somewhat earlier than the Commission expected in 1994.

First, the Legislature passed and the Governor signed Senate Bill 960, which states the Legislative intent that Commission proceedings should be resolved in no more than 18 months. (Stats. 1996, ch. 856, §§ 1, 8 (adding Public Utilities Code § 1701.2(d)).) Although the new statutory deadlines do not become effective until

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January 1, 1998, the Commission is currently trying to honor the Legislative intent by closing as many old cases as possible.

Second, in the 3½ years since I.94-04-004 was opened, no one has taken advantage of this forum. Similarly, since 1993 no petition has been filed in the Forum OII that served as a model for I.94-04-004.

This lack of activity may be a symptom of a third development. The world of telecommunications has changed considerably since 1994. The wireless telecommunications market has become more competitive with the arrival of personal communications systems (PCS) as an alternative to cellular service, and the popularity of wireless technologies has far exceeded expectations. Other mergers and combinations have changed the identities and strategies of competitors. The problems that I.94-04-004 was designed to resolve either have not arisen or have been addressed elsewhere.

Fourth, the deadlines for many of the provisions of the settlement have already passed. For example, applicants' commitments to maintain McCaw's subsidiaries as separate utilities for two years or to guarantee no net job loss in California for two years have expired, and there is no further need to keep I.94-04-004 available to enforce these commitments.

Because of these developments, the Administrative Law Judge issued a ruling on October 1, 1997, proposing to modify the Order Instituting I.94-04-004 for the sole purpose of allowing this proceeding to be closed as soon as possible, rather than waiting until September 1, 1999. The ruling gave parties 15 days to object to this procedure. No one objected to the ruling's proposal. We will therefore modify the Order Instituting I.94-04-004 and close this proceeding.

Findings of Fact

1. In Decision (D.) 94-04-042, the Commission approved the transfer of control of McCaw's California subsidiaries to AT&T based on a settlement negotiated by many of the affected parties. The settlement recommended that the Commission open an investigation, along the lines of the Forum OII, to provide a regulatory mechanism to bring before the Commission various matters related to the settlement and the transfer

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of control. The Commission followed this recommendation and instituted I.94-04-004 on April 6, 1994.

2. The term of the settlement is five years, and the Commission intended the duration of I.94-04-004 also to be five years.. However, several intervening developments suggest that the investigation should be closed somewhat earlier than the Commission expected in 1994.

3. Senate Bill 960 states the Legislative intent that Commission proceedings should be resolved in no more than 18 months.

4. Since I.94-04-004 was opened, no one has taken advantage of this forum.

5. The problems that I.94-04-004 was designed to resolve either have not arisen or have been addressed elsewhere.

6. The deadlines for many of the provisions of the settlement have already passed.

7. No one objected to the Administrative Law Judge's ruling proposing to modify the Order Instituting I.94-04-004 for the sole purpose of allowing this proceeding to be closed as soon as possible.

Conclusions of Law

1. The Order Instituting I.94-04-004 should be modified to allow this proceeding to be closed.

2. I.94-04-004 should be closed.

FINAL ORDER

IT IS ORDERED that:

1. The Order Instituting Investigation 94-04-004 is modified as follows:
 - a. The second and third sentences of the first paragraph on p. 4 (slip op.) are replaced with: "However, most of the potential issues of this investigation will be raised in the early years of the settlement. This investigation should be closed before 1998."
 - b. Ordering Paragraph 4 is replaced with: "This investigation will be closed by order of the Commission before 1998."

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2. Investigation 94-04-004 is closed.

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners