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Decision 98-03-019 March 12, 1998

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 Lease Space to PTG and PTLG.	Application 97-11-033 (Filed November 21, 1997)

OPINION

1. Summary

Pacific Bell seeks Commission approval, pursuant to Public Utilities (PU) Code § 851, to lease unused space in two Pacific Bell buildings in San Francisco to two Pacific Telesis organizations. Pacific Bell states that the lease arrangements comply with affiliate transaction rules of this Commission and of the federal government. The application is unopposed. The application is granted.

2. Background

In Application (A.) 95-10-019, filed on October 4, 1995, Pacific Bell asked the Commission to grant Section 851 authority for a number of space use arrangements with both non-affiliated parties and affiliated parties.

In Decision (D.) 96-04-045, an interim decision, the Commission approved several of the agreements that the utility has with non-affiliated parties but, at the urging of staff investigators, the Commission required additional information on the agreements with affiliates. Among other things, Pacific Bell was required to make a further showing that its charges to affiliates and other parties were proper and that the arrangements met affiliate transaction rules intended to prevent anticompetitive dealings. Pacific Bell filed the additional information requested and, in D.96-09-069, the Commission approved the space use arrangements between Pacific Bell and its affiliates.

In this application, Pacific Bell seeks authority to lease unused space in its buildings at 140 New Montgomery Street and at 430 Bush Street in San Francisco, along with associated parking spaces, to two affiliated organizations, the Pacific Telesis Group (PTG) and the Pacific Telesis Legal Group (PTLG). The application is accompanied by supporting information similar to that approved by the Commission in D.96-09-069.

According to the application, Pacific Telesis has decided to vacate its San Francisco lease at 130 Kearney Street, which is used primarily by PTG and PTLG, and to move these employees to unused space in the two Pacific Bell buildings nearby. Pacific Bell states that the leases with PTG and PTLG conform to affiliate transaction rules adopted by this Commission, including accounting directives.

3. Nature of Application

The Commission previously has granted Pacific Bell authority to lease space and transfer or lease assets to PTG and PTLG. In A.95-12-054, the company sought Section 851 authority to lease space and transfer or lease assets to these two organizations. In Interim Decision 96-11-019 and in D.97-04-022, the Commission approved these arrangements. More recently, the Commission in D.97-10-047 approved a number of space use arrangements between Pacific Bell and certain affiliates, including PTG.

Pacific Bell states that the lease arrangements here are similar to those approved earlier. PTG and PTLG will use unused space in Pacific Bell buildings to perform the same administrative functions they have provided in the past, including support for Pacific Bell.

In accordance with the Commission's direction in D.96-04-045, Pacific Bell has attached exhibits to its application with further details of the proposed leases. Exhibit A is a matrix of the proposed lease property locations. Exhibit B contains a description of the property management billing process. Exhibits C, D, E, and F contain the company's transfer pricing manuals, affiliate transaction policies and reporting requirements, along with a copy of the company's terms and conditions that will apply to the PTG and PTLG leases.

4. Affiliate Transaction Rules

Pacific Bell states that when it leases space to affiliates, it will do so under affiliate transaction agreements that comply with Commission and Federal Communications Commission affiliate transaction rules. (See, e.g., D.86-01-026, 20 CPUC2d 237 (1986); D.87-12-067, 27 CPUC2d 1 (1987); 47 CFR §§ 64.209, 32.27.) Under the Commission's rules, each affiliate pays Pacific Bell the higher of fully distributed cost plus 10%, or market rate.

5. Reasons for the Leases and Transfers

Pacific Bell states that these lease agreements will benefit the company and ratepayers. First, Pacific Bell will not have to pay a proportionate share of the lease at 130 Kearney Street. Leasing the unused space in two Pacific Bell buildings will increase the revenue that the utility receives from PTG and PTLG. Pacific Bell states that the lease and transfer arrangements will not interfere with existing operations. The company states that, because the leases comply with affiliate transaction rules, the affiliates will not be subsidized by Pacific Bell and the arrangements will not create anticompetitive effects.

6. Comments to Application

The Commission's Office of Ratepayer Advocates (ORA) filed comments on this application on December 23, 1997. ORA confirms that the application comports with requirements established by the Commission and applied in similar applications in the past. ORA states that the content of the generic lease agreement for these transactions (Exhibit F) indicates that Pacific Bell will apply the same pricing method to the lease space as has previously been approved by the Commission. (See D.96-11-019.) However, since copies of the actual lease and transfer documents are not included in the application, ORA urges that the Commission require Pacific Bell to verify that the executed agreements conform to the Commission's affiliate transaction rules.

7. Discussion

PU Code § 851 requires Commission authorization before a utility may "sell, lease, assign, mortgage, or otherwise dispose of or encumber" utility property. The purpose of the section is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRRC 56.)

Another purpose of the Commission's review is to ensure that any revenue from the transaction is accounted for properly, and that the utility's rate base, depreciation, and other accounts correctly reflect the transaction. Under the New Regulatory Framework (NRF), these items do not have the same significance as they did under traditional regulation, but they continue to be an integral part of the calculation of rate of return, which serves as a check on the results of NRF. For this reason, the Commission reviews the accounting of the transaction for conformance with its requirements.

When, as here, the transactions are with a corporate affiliate, the Commission's review also includes consideration of whether the transaction may have anticompetitive effects or result in cross-subsidization of nonregulated entities. (Re Pacific Bell (1992) 45 CPUC2d 109, 125.)

There have been no protests to Pacific Bell's application. ORA has reviewed the application and its exhibits, and it advises that Pacific Bell has complied with Commission requirements in seeking Section 851 approval of these leases.

Review of the information provided shows that these leases will not impair Pacific Bell's ability to serve the public. The company's accounting for the revenue from the leases appears to be in order. No evidence has been submitted which reveals any anticompetitive effects or cross-subsidization of nonregulated entities from these leases. Accordingly, Pacific Bell has met the requirements for authorization under PU Code § 851. At ORA's suggestion, we will require Pacific Bell to notify our Telecommunications Division in writing when the lease documents are executed, to state at that time whether the documents conform to our affiliate transaction rules, and to make the leases available for our inspection.

Findings of Fact

1. Pacific Bell seeks Commission approval, pursuant to PU Code § 851, of lease agreements with two affiliated companies.

2. Notice of this application appeared on the Commission's Calendar on November 26, 1997.

3. No protests have been filed.

4. The two affiliated companies will pay Pacific Bell the higher of fully distributed costs plus 10%, or market rate, for the leased space.

5. Pacific Bell has supplied the information required by the Commission for review of the lease agreements.

6. The ORA has reviewed the application and has raised no objection to its approval.

Conclusions of Law

1. Pacific Bell's proposed lease of space to two affiliated organizations will not impair Pacific Bell's ability to serve the public.

2. Pacific Bell's accounting for the revenue from the leases and other arrangements is in order.

3. There is no evidence of anticompetitive effects or cross-subsidization of non-regulated entities from these arrangements.

4. The application should be approved.

5. Pacific Bell should be authorized to enter into the leases set forth in the application.

6. Pacific Bell should be required to notify the Telecommunications Division when the leases have been executed, to verify at that time that the leases conform to affiliate transaction rules, and to make these documents available for inspection.

7. This order should be made effective immediately in order that the leases can be implemented promptly.

ORDER

IT IS ORDERED that:

1. Pacific Bell is authorized, pursuant to Public Utilities Code § 851, to lease unused space in Pacific Bell buildings at 140 New Montgomery Street and 430 Bush Street, in San Francisco, with associated parking spaces, to the Pacific Telesis Group and the Pacific Telesis Legal Group, on the terms and conditions set forth in this application.

2. Pacific Bell shall notify the Director, Telecommunications Division, in writing, when the lease agreements authorized herein have been executed, and shall verify at that time that the agreements conform to the Commission's affiliate transaction rules. The leases shall be made available for inspection upon request of the Commission or its staff.

3. This proceeding is closed.

This order is effective today.

Dated March 12, 1998, at San Francisco, California.

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