

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED
01-28-10
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Application of Calaveras Telephone Company (U1004C), Cal-Ore Telephone Co. (U1006C), Ducor Telephone Company (U1007C), Happy Valley Telephone Company (U1010C), Hornitos Telephone Company (U1011C), Kerman Telephone Co. (U1012C), The Ponderosa Telephone Co. (U1014C), Sierra Telephone Company, Inc. (U1016C), The Siskiyou Telephone Company (U1017C), Volcano Telephone Company (U1019C), and Winterhaven Telephone Company (U1021C) for Ratemaking Determination regarding Dissolution of Rural Telephone Bank.

Application 07-12-026
(Filed December 20, 2007)

**REPLY COMMENTS
OF THE DIVISION OF RATEPAYER ADVOCATES
ON PROPOSED DECISION DETERMINING RATEMAKING
TREATMENT FOR RURAL TELEPHONE BANK STOCK
DISSOLUTION PROCEEDS AND
ORDER TO SHOW CAUSE AND MOTION**

I. INTRODUCTION

DRA offers these Reply Comments on the Proposed Decision (PD) resolving how to distribute proceeds from dissolution of the Rural Telephone Bank (RTB) among the ratepayers and shareholders of the Applicant Small Local Exchange Carriers (Applicants or Small LECs). Our points are the following:

- The PD does not violate the rule against retroactive ratemaking because the proceeds were not the subject of a prior ratemaking, and because the Small LECs misled the Commission; and
- The Small LECs' claim that they "disclosed" the patronage shares in their original application is unpersuasive.

II. DISCUSSION

A. The Small LECs' retroactive ratemaking argument has no merit

The Small LECs' assertion that the PD violates the doctrine against retroactive ratemaking is contrary to law.¹ The doctrine does not bar the Commission from adjusting rates that are "unlawful, unjust, [or] unreasonable...." Pub. Util. Code § 728, *cited in So. Cal. Edison v. Pub. Util. Comm.*, 20 Cal. 3d 813, 816 (1978). Here, the Commission has never before considered the appropriate allocation of the proceeds – including patronage shares – from the RTB stock. Thus, the case falls squarely within the *So. Cal. Edison* case's requirement that "before there can be retroactive ratemaking there must at least be *ratemaking*." 20 Cal. 3d at 817 (emphasis in original).

Here, as in *So. Cal. Edison*, while the PD's adjustment to compensate for past actions "may well be retroactive in effect, it is not retroactive *ratemaking*." *Id.* at 830 (emphasis in original). Retroactive ratemaking only applies in limited circumstances, and this is not one of them. *See also City of Los Angeles v. Cal. Pub. Util. Comm.*, 15 Cal. 3d 680 (1975) (adjustment of rate base did not violate rule against retroactive ratemaking).

Of course, retroactive ratemaking is also inapplicable in the presence of fraud or nondisclosure, as we stated in our initial Response filed January 19, 2010.²

B. The Applicants' "disclosure" of their patronage shares was inadequate

In their Opening Comments, the Small LECs state that their disclosure of the existence of the patronage shares in footnote 21 of the Application was sufficient to "clearly show [that] Applicant put the Commission on notice regarding the existence and nature of the patronage shares."³ DRA disagrees.

¹ Small LEC Opening Comments, § IV(C).

² The full cite of the one of the cases DRA cited in its Opening Comments is *Wise v. PG&E*, 77 Cal. App. 4th 287 (1999), *on remand*, 132 Cal. App. 4th 725 (2004), *corrected by* 2005 Cal. PUC LEXIS 1473.

³ Small LEC Opening Comments at 29.

The "disclosure" said the following:

In addition to purchased shares, during the course of their loans the Applicants received what has been characterized as patronage shares. Patronage shares were issued to holders of a particular class of RTB stock. Upon redemption, patronage shares were paid according to par value. However, patronage shares were never included in rate base by any company and are not subject to gain-on-sale requirements.” (Applicants’ Opening Comments, p. 29, citing Application (A.) 07-12-026 at 9 n. 21.)

This "disclosure," buried in a footnote, was inadequate. The mere fact of placing the material in a footnote made the patronage shares seem small, trivial and unimportant. The footnote did not justify or explain why they were treating patronage shares differently from other RTB proceeds. The statement that "patronage shares were never included in rate base" appears to have been wrong, because according to their Opening Comments, five of the Small LECs did put shares in rate base.⁴ Finally, the Small LECs did not disclose the relatively large amount at issue. The stark contrast between the amounts the Small LECs claimed ratepayers should receive – a scant \$3,000 – and the amounts encompassed by the footnote – \$30 million – may have triggered further inquiry by the Commission. However, the Small LECs never supplied these figures until late 2009. Therefore, Applicants’ “disclosure” was insufficient and the Commission should adopt the PD as a fair and reasonable remedy.

III. CONCLUSION

DRA urges the Commission to adopt the PD as written.

⁴ *Id.* at 6.

Respectfully submitted,

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January 28, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON PROPOSED DECISION DETERMINING RATEMAKING TREATMENT FOR RURAL TELEPHONE BANK STOCK DISSOLUTION PROCEEDS AND ORDER TO SHOW CAUSE AND MOTION** to the official service list in Application 07-12-026 by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **January 28, 2010**, at San Francisco, California.

/s/ NELLY SARMIENTO

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