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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :  
v. :  
Commonwealth Telephone Company :

I-00920020

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SECRETARY'S OFFICE  
Public Utility Commission

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ORDER

On April 2, 1992 the Commission initiated an investigation, at Docket No. I-00920020, into the current earnings of Commonwealth Telephone Company ("Respondent"/"CTCO"/"Company") i.e., "Commonwealth Telephone Company may have posited an inaccurate earnings position . . ." ". . . to gather additional information relative to a comprehensive calculation of return on common equity capital." Thereafter, by Commission Order entered July 19, 1992 ("Order") this earnings investigation was expanded and continued for the purposes of examining ". . . the appropriateness of Commonwealth's affiliated transactions, in particular the Parent Corporation Management Service Fees" and all related affiliated interest charges. See Order at 2.

On July 9, 1992, AT&T Communications of Pennsylvania, Inc. ("AT&T") filed a Complaint at Docket No. I-00920020 against the intrastate carrier access charges of Commonwealth.

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On July 23, 1992 the matter was assigned to this administrative law judge and a prehearing conference was scheduled for and held before the undersigned on August 6, 1992.

On July 29, 1992 CTCO filed an Answer to the Complaint of AT&T ("Answer") wherein it substantially denied the allegations of the Complaint. CTCO, pursuant to this Commission's Rules of Administrative Practice and Procedures, 52 Pa. Code §5.101(a), filed a Motion to Strike or Dismiss, with prejudice, the Complaint of AT&T ("Motion"). In its motion CTCO alleges that the AT&T Complaint should be stricken or dismissed because, inter alia, the subject matter of the Complaint and the relief requested is beyond the scope of this investigation proceeding.

At the August 6, 1992 prehearing conference, CTCO attorneys argued that the I-920020 docket is an investigation directed at a particular type of affiliate fee, namely the Parent Corporation Management Service Fees and that any review of CTCO's earnings are only to be undertaken after a review of affiliated transactions and, only if the review of these affiliated transactions reveal irregularities. Therefore, argues CTCO, earning may not even be an issue in this proceeding and there is no incentive whatsoever of restructuring CTCO's rates or any notice to the parties that the Commission is considering revising CTCO's rates.

We allowed the parties to address the narrow construction argued by CTCO in written memoranda presented on August 17, 1992. OTS, OCA and AT&T presented Answers to the Motions. We agree with the positions advanced by these parties.

Commonwealth contends that its earnings will only be at issue if the review of affiliated transactions shows irregularities. Commonwealth also contends that there is no notice to the parties that the Commission is considering revising Commonwealth's rates and that this investigation is not a legally permissible vehicle by which to revise Commonwealth's rates. Commonwealth is mistaken.

The Opinion and Order states:

Upon the circumstances, we believe that a further investigation into the appropriateness of Commonwealth's affiliated transactions, in particular the Parent Corporation Management Service Fees, is warranted consonant with Section 331(a) of the Public Utility Code, 66 Pa.C.S. §331(a). Therefore, we conclude that it is necessary for us to obtain additional detailed information about this increase as well as the total annual payment of Management Service Fees by Commonwealth to its parent corporation.

Ratemaking principles resist examining an isolated expense item without considering other relevant adjustments that may impact earnings. The parties should focus initially on the affiliated transactions expenses incurred by Commonwealth, and the ALJ should make specific findings regarding the appropriate level of the affiliate expenses incurred by Commonwealth. Then the parties should explore all relevant earnings

information to determine whether Commonwealth's return (incorporating pro forma adjustments consistent with ratemaking principles) is reasonable in light of existing market conditions, or whether an adjustment is appropriate. This means that Commonwealth as well as other parties will be able to present all relevant adjustments that impact earnings (in addition to any potential affiliates expense adjustment).

Order at 2 (Emphasis added)

The Order clearly provides that CTCO's earnings are to be analyzed in this proceeding:

4. That the parties should investigate the Parent Corporation Management Service Fee expense and all related affiliated interest charges, and following that analysis, Commonwealth's earnings should be analyzed.

In fact, Ordering paragraph 5 directs that we make specific findings of fact concerning CTCO's affiliated interest charges and overall earnings.

5. That the presiding ALJ be, and hereby is, directed to make specific findings of fact concerning Commonwealth's affiliated interest charges and overall earnings; and

Also, as noted above, the Commission specifically states that "[r]atemaking principles resist examining an isolated expense item without considering other relevant adjustments that may impact earnings." Thus, the Commission clearly does not want affiliated charges to be examined "in a vacuum" to determine whether such charges are reasonable.

Furthermore, contrary to Commonwealth's assertions, the parties have already been put on notice that the revising of Commonwealth's rates is a possible outcome of this investigation. On page 2 of the Commission's July 9 Opinion and Order, the Commission states as follows:

. . . [T]he parties should explore all relevant earnings information to determine whether Commonwealth's return (incorporating pro forma adjustments consistent with ratemaking principles) is reasonable in light of existing market conditions, or whether an adjustment is appropriate.

Emphasis added.

Finally, as argued by OTS, this investigation is a legally permissible vehicle by which to revise Commonwealth's rates. Despite Commonwealth's contentions, the Commission does not have to specifically cite Section 1309 in its Opinion and Order initiating an investigation in order to provide for the remedy of rate reductions. The Commission cited Section 331(a) of Public Utility Code, 66 Pa.C.S. §331(a), since the appropriateness of Commonwealth's affiliated transactions, as well as the cost of these transactions, is to be examined in this proceeding. Section 331(a) of the Public Utility Code generally provides for investigations into the condition and management practices of public utilities. However, the citing of Section 331(a) does not somehow limit this proceeding to a fact-finding expedition when the Commission specifically stated that the

earnings of Commonwealth are to be examined and that an earnings adjustment is appropriate in the event of excessive earnings. Since the Commission's July 9 Order clearly mentions an adjustment in rates as a possible outcome of this proceeding, Commonwealth has been put on notice of this possibility. Section 1309 simply provides the statutory authority for the Commission to effectuate an adjustment to earnings (i.e. rate reduction) in the context of this on-the-record proceeding. The Public Utility Code provides that:

The express enumeration of the powers of the Commission in the past shall not exclude any power which the Commission would otherwise have under any of the provisions of the past. 66 Pa.C.S. §501(a)

We see no difference between the investigation docket and an Order to Show Cause involving the possibility of adjustments to existing rates.

Therefore, we will deny the Motion, consolidate the Complaint, reject CTCO's interpretation of the scope of this proceeding and direct that CTCO cooperate with discovery pursuant to this Commission's regulations.

THEREFORE, IT IS ORDERED THAT:

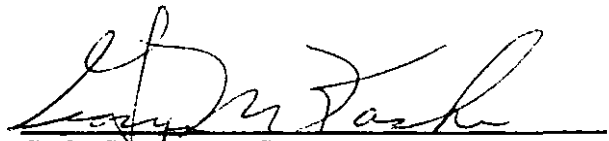
1. The Motion of Commonwealth Telephone Company, together with its construction of the Commission's July 9, 1992 Order, be and is hereby denied.

2. Commonwealth Telephone Company take notice that the Commission may revise the rates of said company if its is determined through the proceeding that the present rates are unjust and unreasonable.

3. Commonwealth Telephone Company participate in discovery as with any rate case investigation.

4. A further prehearing conference be scheduled forthwith.

Date: Dec 18, 1992

  
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GEORGE M. KASHI  
Administrative Law Judge