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Volcano Telephone Company v. Public Utilities Commission

Court of Appeal, Third District, California - March 13, 2025 - Cal.Rptr.3d - 2025 WL 798955

Telephone company and its internet service provider (ISP) affiliate petitioned for writ of review, challenging Public Utilities Commission (PUC) decisions in telephone company's general rate case, arguing that PUC's implementation of broadband imputation constituted an unconstitutional taking and conflicted with federal law, and challenged the service quality reporting requirements as outside the scope of the proceedings, preempted by federal law, an abuse of discretion, and unsupported by necessary findings.

The Court of Appeal held that:

- Telephone company's rate of return under its approved rate was not clearly confiscatory due to PUC's imputation of company's internet service provider (ISP) affiliate's revenue to company, and thus broadband imputation did not constitute an unconstitutional taking;
- Ordering paragraph in PUC's rate-making decision, which required company to submit its ISP affiliate's broadband service quality metrics, did not exceed scope of company's rate case;
- Requirement that company submit its ISP affiliate's broadband service quality metrics was supported by PUC's findings of facts and record evidence;
- PUC's use of National Exchange Carrier Association's (NECA) inflation factors in setting expense caps and operating expense figures in telephone company's general rate case was not an abuse of discretion;
- Federal Communications Commission's (FCC) order did not expressly preempt PUC's rate decision; and
- FCC order did not preempt PUC's decision under conflict preemption.

Telephone company's rate of return under its approved rate was not clearly confiscatory due to Public Utilities Commission's (PUC) imputation of company's internet service provider (ISP) affiliate's revenue to company because it allowed ISP to use its broadband-capable facilities, for purpose of determining company's revenue requirements so that PUC could determine the amount of subsidy company needed to cover costs of providing services to rural areas, and thus broadband imputation did not constitute an unconstitutional taking; calculating company's revenue requirement without considering ISP's profits from company's broadband-capable facilities resulted in an inaccurate picture regarding company's true needs.

Ordering paragraph in Public Utilities Commission's (PUC) rate-making decision for telephone company, which required company to submit its internet service provider (ISP) affiliate's broadband service quality metrics, did not exceed scope of company's rate case, where company's opening brief before PUC addressed whether expansion of service quality reports to ISP operations was appropriate and PUC's scoping memorandum stated that rate case would address necessity of plant improvements for providing safe, reliable, and high-quality voice and broadband services, and company was not prejudiced by any departure from the scoping memorandum.

Public Utilities Commission's (PUC) decision to include ordering paragraph requiring telephone

company to submit its internet service provider (ISP) affiliate's broadband service quality metrics in its rate-making decision for telephone company was not an abuse of discretion, despite fact that it did not include such a requirement in three previous rate-making decisions for other providers, where first two other decisions were issued before COVID-19 pandemic, after which the need for high-quality broadband services increased, and third decision reflected a contentious discovery dispute and rejected a similar argument that provider was not required to provide information related to service quality of its ISP affiliate.

Ordering paragraph in Public Utilities Commission's (PUC) rate-making decision for telephone company, which required company to submit its internet service provider (ISP) affiliate's broadband service quality metrics, was cognate and germane to PUC's regulatory authority over company and over subsidies for providing services to rural areas, and thus PUC had authority to exercise limited jurisdiction over ISP for purpose of ordering paragraph, under statutes giving PUC authority to do all things necessary and convenient in the exercise of its power to regulate public utilities and directing PUC to set company's rates, include reasonable investments in broadband-capable facilities in company's rate base, and ensure that subsidization of company's provision of services to rural areas was not excessive.

Ordering paragraph in Public Utilities Commission's (PUC) rate-making decision for telephone company, which required company to submit its internet service provider (ISP) affiliate's broadband service quality metrics, was supported by PUC's findings of facts and record evidence; PUC explained that broadband service quality and the funding anticipated to go toward company's infrastructure upgrades were appropriate elements of company's revenue requirement and rate design and that annual reporting would provide a consistent record to allow PUC to evaluate broadband service quality over time and between rate cases in preparation for the next general rate case.

Ordering paragraph in Public Utilities Commission's (PUC) rate-making decision for telephone company, which required company to submit its internet service provider (ISP) affiliate's broadband service quality metrics, satisfied statutory requirement that every PUC decision contain separately stated findings of fact and conclusions of law on all issues material to the order or decision, where PUC explained that it ordered company to submit reports on ISP's service quality to help ensure company's investments in broadband-capable facilities were reasonable, and to, in turn, set reasonable rates and subsidy amounts for company.

Public Utilities Commission's (PUC) use of National Exchange Carrier Association's (NECA) inflation factors in setting expense caps and operating expense figures in telephone company's general rate case was not an abuse of discretion, despite fact that PUC had recognized that NECA's inflation factors were two years in arrears and not used by NECA to project future inflation; PUC explained that NECA's inflation factors being in arrears did not affect its adopted methodology, which relied on NECA's approved inflation factors and adjusted the inflation factor each calendar year.

Federal Communications Commission's (FCC) order, which forbore state public utilities commissions from enforcing certain requirements of Telecommunications Act insofar as they arose from reclassification of broadband internet access service, did not expressly preempt California Public Utilities Commission's (PUC) rate decision that imputed company's affiliated internet service provider's (ISP) revenue to company and required company to submit ISP's broadband service quality metrics; PUC was not regulating ISP's rates directly or indirectly and FCC did not indicate a desire to preempt any attempt to obtain information concerning broadband service quality.

It was not impossible for telephone company to comply with Federal Communications Commission's (FCC) order, which forbore state public utilities commissions from enforcing certain requirements of

Telecommunications Act insofar as they arose from reclassification of broadband internet access service, at the same time as California Public Utilities Commission's (PUC) rate decision that imputed company's affiliated internet service provider's (ISP) revenue to company and required company to submit ISP's broadband service quality metrics, nor did PUC's decision stand as an obstacle to implementation of FCC order, and thus FCC order did not preempt PUC's decision under conflict preemption; PUC decision did not regulate ISP's rates or regulate ISP's service quality.

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