

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

April 22, 1985

Anthony J. Garcia
Union City, City Attorney
Garcia, Bruzzone & Galliano
16101 East 14th Street
San Leandro, CA 94578

Re: Your Request for Advice on
Behalf of Union City
Councilwoman Delaine Easton
Our File No. A-85-031

Dear Mr. Garcia:

Union City Councilwoman Delaine Easton has requested that you seek our advice. She is an employee of Pacific Telesis, which means that she has an economic interest in that business entity under Government Code Section 87103(c) and (d). The Union City City Council will soon be considering a proposed development of 1,000 homes. It is anticipated that most of the homes will be provided with telephone service by Pacific Bell, a wholly-owned subsidiary of Pacific Telesis. You have asked whether, based upon these facts, Ms. Easton "should disqualify herself and refrain from participation in any Council action regarding his proposed development?"

ANALYSIS

The issue to be analyzed is whether the decision on the development will have a "reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on ..." Pacific Telesis. (Government Code Section 87103.) First, it is clear that the effect upon Pacific Telesis will be distinguishable from the effect upon the general public. Pacific Telesis will receive additional business through its subsidiary, Pacific Bell. The average citizen in Union City will not be affected in that manner.

However, before the effect upon Pacific Telesis will require disqualification, it must be material. The Commission

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has just adopted a new regulation (2 Cal. Adm. Code Section 18702.2) which provides guidelines for determining when an effect on a business entity will be "material." A copy is enclosed for your benefit.

The guideline is \$250,000 for an effect upon annualized gross revenues for businesses which are listed on the New York or American Stock Exchanges. Pacific Telesis is so listed. Consequently, the issue is whether it is reasonably foreseeable that the 1,000 additional homes, if approved by the Council, would increase (or decrease) annualized gross revenues of Pacific Telesis by at least \$250,000, unless Pacific Telesis is listed on the Fortune 500 lists. It is anticipated that Pacific Telesis will appear on the Fortune Magazine Service 500 list when it is next published in June. This would mean the guideline to be applied is \$1,000,000. See attached copy of introductory article for the most recent (June 1984) Fortune Service 500.

We have requested information from Pacific Telesis regarding what the anticipated increase in revenues would be for a 1,000-unit subdivision in Union City. They have advised us as follows:

1. Since the break-up of Pacific Bell from AT&T, Pacific Bell only receives revenues for basic line service, local message unit calls, long-distance calls which are within the same Local Access Transport Area (LATA) (see attached diagram showing California's 10 LATAs), and special services such as call forwarding, touch tone, etc. Pacific Bell does not receive revenues for equipment purchase or rental or for long distance calls outside the same LATA.

2. For the two calendar quarters for which data is available since the break-up, the average monthly residential telephone bill paid to Pacific Bell was:

(a) April, May, June '84	Avg./Mon. = \$17.20
(b) July, Aug., Sept., '84	Avg./Mon. = \$21.42

3. The 1980 U.S. Census reveals that 94.7% of all California households have telephone service.

4. The basic one-time "hook-up" or "installation" fee is \$34.50. In addition, there are other special charges for

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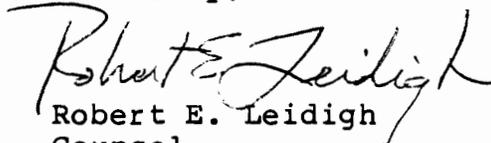
special services, totaling \$8.00, if those services are selected.

Based upon this data, and assuming a 5-year build-out period, so that no more than one-fifth of the installation charges would occur in any single fiscal year, the maximum increase in annualized gross revenues which is reasonably foreseeable would be \$250,416.88 in the fifth year when all units are occupied and 94.7% are receiving service. While that number is more than \$250,000, because we have full confidence that Pacific Telesis will be included in the soon-to-be-published Fortune Service 500 (it was not in last year's solely because there was not data available immediately following the break-up of AT&T), our advice is that the decision will not have a material financial effect upon Pacific Telesis.

In addition, if the two monthly billing averages were averaged in doing the computation, the projected fiscal year annualized gross revenue would be approximately \$23,000 less than \$250,000.

Lastly, the City Manager has advised me that Councilwoman Easton does not work in "sales" or "marketing" for Pacific Telesis. If she did, it would be necessary to ascertain whether the "nexus" test in 2 Cal. Adm. Code Section 18702(b)(3)(B) would apply. If she is employed by Pacific Telesis to increase its revenues by boosting sales, there may well be a "nexus" between her receipt of income and the decision and you should contact us for further advice.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh
Attachment



UNION CITY

34009 Alvarado Niles Rd. • Union City, California 94587
(415) 471-3232

PLEASE REPLY TO: Garcia, Bruzzone, Galliano, a
Law Corporation,
16101 East 14th Street
San Leandro, CA 94578

March 18, 1985

Legal Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, California 94807

Attention: Robert Lidig

SUBJECT: Ms. Delaine Eastin Request for Opinion Re Disqualification

Gentlemen:

This is to confirm our recent telephone conversation where you requested a 30-day extension of time to reply to the request for an opinion with respect to the disqualification of Ms. Eastin as contained in a letter addressed to General Counsel dated February 11, 1985.

Ms. Eastin has been contacted, and I am authorized to extend your time 30 days in anticipation that the Commission is going to rule on this matter more precisely early in April. It is our understanding that there may be some definitive word on this type of matter from the Commission in the early part of April. We therefore extend your time in order to obtain a more precise ruling.

Thank you for all your courtesies.

Very truly yours,

ANTHONY J. GARCIA
CITY ATTORNEY

AJG:tm

cc: City Manager Smith
Councilmember Eastin



**UNION
CITY**

34009 Alvarado Niles Rd. • Union City, California 94587
(415) 471-3232

PLEASE REPLY TO:

FEB 13 8 16 AM '85
GARCIA, BRUZZONE & GALLIANO
A Law Corporation
16101 East 14th Street
San Leandro, CA 94578
(415) 278-1172

February 11, 1985

Fair Political Practices Commission
Legal Division
P.O. Box 807
Sacramento, CA 94804

Attention: Barbara Milman, General Counsel

RE: REQUEST FOR ADVICE RE CONFLICT OF INTEREST

Dear Sirs:

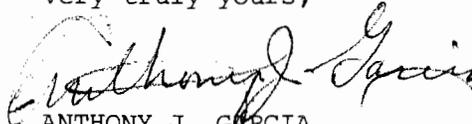
A City Councilwoman, Ms. Delaine Eastin, has asked us to request your advice on a potential conflict of interest disqualification problem.

The Councilwoman is employed by Pacific-Telesis. Within the next 30 days the City Council will be considering a proposed development of 1,000 homes. It is anticipated that each home would have a minimum of one telephone.

Should the Councilwoman disqualify herself and refrain from participation in any Council action regarding this proposed development?

Your advice in this matter is much appreciated.

Very truly yours,


ANTHONY J. GARCIA
CITY ATTORNEY

AJG:tm

cc: Councilwoman Eastin
City Manager Smith