

## CASE STUDY

# Winning a Rare Victory Against a Regulatory Agency



*“[T]he Class B shares purchased by Ponderosa were public utility assets that were owned by Ponderosa. Therefore, the Commission’s decision to credit the par value redemption proceeds of those shares to the ratepayers constituted an illegal appropriation of Ponderosa’s property.”*

*—Unanimous opinion by the California Court of Appeal, agreeing with the argument made by Pillsbury*

Client:	<b>The Ponderosa Telephone Co.</b>
Industry:	Public utility, telecommunications
Areas of Law:	Regulatory, constitutional
Venue:	California Court of Appeal
Result:	Recovered the equivalent of two years’ net income for the client



When Pillsbury agreed to challenge a decision by the California Public Utilities Commission, it faced a real uphill battle. As noted by the court itself, the CPUC is no ordinary government agency but rather “a constitutional body with broad legislative and judicial powers,” whose decisions are “presumed valid.”

But Pillsbury litigators overcame this presumption to win a huge victory on behalf of a small telephone company that provides approximately 10,000 phone lines to remote customers in California’s Sierra Nevada mountains. The firm’s advocacy helped Ponderosa Telephone recover more than \$5 million—a sum equivalent to two years’ net income for the service provider.

At issue were proceeds from stock in the Rural Telephone Bank. As a condition of receiving a loan from this federally created bank, Ponderosa purchased RTB stock equal to 5 percent of the loan amount. When Ponderosa sold its stock, the CPUC said the proceeds should be transferred to the company’s customers—despite the fact that, under an earlier CPUC decision, the stock had never been included among the “rate base” assets used to calculate what the company could charge its customers.

In the California Court of Appeal, Pillsbury overcame the high bar for reversing a CPUC decision by arguing that the commission’s action was unconstitutional under the Takings Clause. Although Ponderosa was a regulated utility company, its stock was an asset owned by its shareholders and could not simply be taken away by the government.

The California Court of Appeal unanimously agreed with Pillsbury’s argument, delivering a rare defeat to a government agency whose decisions are almost always affirmed.