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Decision No. 79447

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of
THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation, for authority
to increase certain intrastate rates and
charges applicable to telephone services
furnished within the State of California.

Application
No. 51774
(Filed March 17, 1970)

William M. Bennett, Consumer Spokesman,
and Consumers Arise Now, an association,

Complainants,

vs.

The Pacific Telephone and Telegraph
Company, a corporation,

Defendant.

Case No. 9036
(Filed April 13, 1970)

144 SPANISH-SPEAKING TELEPHONE SUBSCRIBERS
FROM SAN FRANCISCO, SONOMA, AND IMPERIAL
COUNTIES, THE SPANISH SPEAKING/SURNAMED
POLITICAL ASSOCIATION, THE MEXICAN-
AMERICAN POLITICAL ASSOCIATION, THE
HEALDSBURG AND WINDSOR LOCAL ACTION
COUNCILS,

Complainants and
(Proposed) Protestants,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant and Applicant in
Proposed Rates Increase #51774.

Case No. 9042
(Filed April 2, 1970)

WILLIAM M. BENNETT, Consumer Spokesman,
and Consumers Arise Now, an association,
Complainants,

vs.

Western Electric Company, joining Pacific
Telephone and Telegraph Company and
American Telephone and Telegraph Company
as Interested Parties,

Defendants.

Case No. 9043
(Filed April 6, 1970)

A. 51774 et al. it

Investigation on the Commission's own motion into the rates, tolls, rules, charges, operations, separations, practices, contracts, service and facilities of the Pacific Telephone and Telegraph Company.

} Case No. 9044
(filed April 7, 1970)

Investigation on the Commission's own motion into the rates, tolls, rules, charges, operations, separations, practices, contracts service and facilities of the telephone operations of all the telephone corporations listed in Appendix A, attached hereto.

} Case No. 9045
(filed April 7, 1970)

SUPPLEMENTAL ORDER

On November 30, 1971 this Commission issued an Order Reopening Proceeding in the above entitled matters for the stated purpose of considering lawful alternatives to the method found reasonable and lawful by the Commission in Decision No. 77984 to calculate income tax expense for ratemaking purposes and for the further purpose of receiving evidence regarding possible refunds ascribable to said method of calculating income tax expense.

At the time of issuance of the Order Reopening Proceeding this Commission had before it a pleading entitled "Petition for Immediate Refunds" submitted by Consumers Arise Now and William M. Bennett. Said Petition alleged that the opinion of the Supreme Court of California "set aside Decision No. 77984 and invalidated Decision No. 78851". The Petition refers to the increased rates which became effective on July 23, 1971 as a consequence of Decision No. 78851 and which continued in effect as of the date of the Petition (November 26, 1971) and asks this Commission to order refunds "at once", apparently of petitioners' estimate of the full amount of the rate increase for the stated period rather than that increment in the total increase which is ascribable to the method used by the Commission to calculate income tax expense.

After issuance of the Order Reopening Proceeding two additional documents have been filed with this Commission, as follows:

A petition by the City and County of San Francisco which claims that the effect of the Court's opinion is to annul Decision No. 78851 in its entirety as well as Decision No. 77984. San Francisco then asks that the Commission order immediate refund of the entire amount of the increases collected since July 23, 1971 and that the rates in effect prior to that date be reestablished until such time as a new and valid rate order can be issued by the Commission.

The Association of California Consumers has filed a document which also takes the position that annulment of Decision No. 77984 "wipes out" Decision No. 78851 and that immediate refund must be made of all increased charges resulting from Decision No. 78851. The Association also requests that the cost of making any refunds ordered should not be allowed as an operating expense for ratemaking purposes, but should be borne by Pacific's shareholders.

Basic to the claims that Decision No. 78851 must fall in its entirety due to the Court's annulment of Decision No. 77984 and that immediate refunds are now necessary of the entire amount of the rate increases in effect since July 23, 1971 is the following language appearing in an order of the Supreme Court of California in this matter (S.T. Nos. 22828 and 22794) issued July 21, 1971, and ruling upon petitions for stay of Decision No. 78851:

"It appearing from the specific facts shown by the verified petitions for stay and the verified affidavits filed in support thereof that irreparable damage will otherwise result, the petitions for stay are granted in part as follows: All sums collected by the Pacific Telephone and Telegraph Company, The Real Party in Interest, pursuant to the rates authorized by Decision 78851 shall be subject to refund in whole or in part upon order of this court should Decisions 79984 or 78851 be annulled or modified by this court."

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Pacific has filed a response to the petitions and motion set forth above alleging that there can be no refund at this time of any rate authorized in Decision No. 78851 since that decision has not been annulled; that until the reopening proceeding is concluded it cannot be determined that refunds are even required, or the amount thereof, since in Pacific's view the Court's opinion still leaves open to Commission consideration the alternative of normalization; that immediate refunds would have the effect of prejudging the reopened proceeding; and that, in any event, the Court's opinion is not final until 30 days from November 26, 1971, the date of filing of the Court's opinion.

As stated in our Order Reopening Proceeding, petitions for writ of review of Decision No. 78851 are still pending before the Court. At this point this Commission recognizes no possible infirmity in Decision No. 78851 beyond that raised by the annulment of Decision No. 77984, to wit, the method used in Decision No. 78851 to calculate the allowance for income tax expense for ratemaking purposes. The Court's order above provides for refund of excess charges in "whole or in part upon order of [the] court". The Court has not ordered that a refund be made; however this Commission has acted in its Order Reopening Proceeding to proceed to further hearing, not only to receive evidence of lawful alternatives to the method found reasonable in Decision No. 77984 for calculating income tax expense and utilized for that purpose in Decision No. 78851, but also to develop a record upon which the amount of any refunds which may be due can be determined. In response to the pleas for immediate refund, we conclude that in the event of a refund a refund plan with provision for payment of appropriate interest would prevent inequity. We conclude further that the request of the Association of California Consumers that the costs of implementing and carrying out refunds be borne by the shareholders of Pacific and not be included in the cost of service


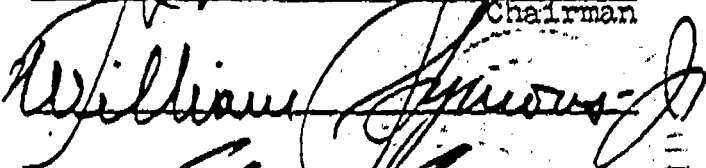

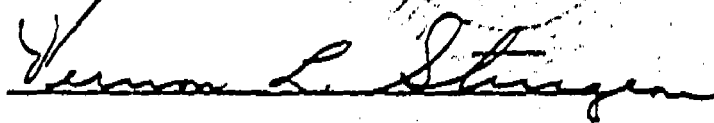

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for ratemaking purposes would best be resolved in any further Commission decision ordering refunds and prescribing the refund plan; therefore,

IT IS ORDERED that the petitions filed by Consumers Arise Now and William M. Bennett, and the City and County of San Francisco and the motion filed by the Association of California Consumers are hereby denied without prejudice.

The Secretary is directed to cause this order to be mailed to all parties herein.

Dated at Los Angeles, California, this 14th day of DECEMBER, 1971.


Chairman




Commissioners