

Decision No. 80995**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
Petition for Instructions
(Filed October 25, 1972)

And related matters.

Case No. 9036
Case No. 9042
Case No. 9043
Case No. 9044
Case No. 9045

OPINION AND ORDER MODIFYING DECISION NO. 80346

By Decision No. 78851 dated June 22, 1971 in Application No. 51774 this Commission authorized The Pacific Telephone and Telegraph Company (Pacific) to increase its rates by \$143,000,000 annually; the increased rates were effective July 23, 1971. On June 9, 1972 the Supreme Court annulled Decision No. 78851 and directed the Commission as follows:

"The decision is annulled. The commission is directed to reinstate the rates of its last lawful order preceding the instant proceeding.... The commission is further directed to order Pacific to make refunds in accordance with the views expressed herein." (City of Los Angeles vs. Public Utilities Commission (1972) 7 C 3d 331, 359.)

One of the views expressed by the Supreme Court was that "the entire increase of rates collected pursuant to the invalid order must be refunded." (7 C 3d at 359.)

Pursuant to the direction of the Supreme Court, we issued Decision No. 80346 dated August 8, 1972 directing that Pacific make refunds of "all monies collected over and above its rate levels in effect prior to July 23, 1971" and establishing a refund plan. The refund plan provided that initial refunds were to be completed within 120 days and that within 90 days thereafter Pacific was to present a proposal for disposition of any amounts which were un-refundable or unclaimed.

Under the plan, refunds of supplemental equipment charges (e.g., charges for PBXs and residence extensions) and nonrecurring charges (e.g., charges for color telephones and service connections) were to be determined by a formula because at the time the plan was prepared Pacific did not feel its records were complete enough to make specific calculations of such charges paid by each customer during the refund period. The formula consisted of the ratio of total refunds attributable to supplemental equipment and nonrecurring charges to the total supplemental equipment and nonrecurring charges billed during the refund period. This ratio, developed separately for business and residence customers, was to be applied to each customer's supplemental equipment and nonrecurring charges to determine that customer's refund.

As Pacific prepared to make refunds of supplemental equipment and nonrecurring charges, its accounting department determined that computer data were available which would permit specific calculations of the excess supplemental equipment charges paid by

each business and residence customer during the refund period. Thus it became unnecessary to compute supplemental equipment refunds by a formula; each customer could be refunded the exact amount due him instead of a proportionate share of the total supplemental equipment refund. After this modification of the refund plan, Pacific proceeded to calculate individual refunds of excess supplemental equipment charges.

Individual calculation of supplemental equipment refunds left the refund formula applicable only to nonrecurring charges. Refunds of these charges could not be individually calculated because, although Pacific has complete records of the total non-recurring charges billed to each customer during the refund period, the individual items, some of which were reductions, which make up these total bills cannot be developed from computer or machine records. In the aggregate the annulled decision had reduced non-recurring charges by \$700,000. (Table I, below.) Rather than reduce the statewide refunds by \$700,000, Pacific excluded non-recurring charges from the statewide refund and proposed to recover the loss from any unrefunded residue. Then Pacific made refunds according to the plan as modified.^{1/}

The net result of Pacific's administration of the plan has been:

1. Approximately \$175 million has been refunded, including taxes and interest. This represents the entire rate increase authorized in Decision No. 78851 with the exception of:
(1) those unrefundable amounts which will be distributed pursuant to subsequent Commission order; and (2) the amounts which are the subject matter of Pacific's Petition for Instructions.

^{1/} Pacific's modification technically violated our order. However, the modification was an improvement in the plan as it permitted exact refunds of excess supplemental equipment charges rather than estimates. Because of this improvement we will do no more than admonish Pacific that Petitions for Instructions should precede modifications, not follow.

2. \$11.9 million of supplemental equipment charges have been refunded to business and residence customers. This represents the entire increase in supplemental equipment charges authorized in Decision No. 78851.
3. No formula-computed refunds of nonrecurring charges have been made because, in the aggregate, Decision No. 78851 reduced nonrecurring charges by \$700,000. (Emphasis added.)

The cities of Los Angeles and San Diego and the California Public Interest Law Center (Center) challenged Pacific's administration of the refund plan on the ground that if the refund formula were applied to nonrecurring charges, business customers would receive an additional refund of \$1.8 million. In addition, the Center contends that Pacific has failed to maintain the billing records which were required by Decision No. 78851.

On October 25 Pacific filed its petition asking for instructions with respect to further administration of the refund plan.

Hearing on the petition was held before Examiner Robert Barnett on November 20, 1972, and the matter was submitted subject to the filing of briefs. Pending decision on this petition, time for making refunds was extended to February 9, 1973 by Decision No. 80763.

The position of Pacific is that it should be permitted to offset all reduced charges for nonrecurring charges against the aggregate refunds due business and residence customers for nonrecurring charges. The position of the staff is that reduced charges for nonrecurring charges in the business classification

should be offset against refunds due the business class, and that residence customers' refunds be similarly computed. The cities concur in the staff's proposal and also question whether any offsets for reduced charges should be made at all. The Center asserts that no offsets should be permitted.

The issues presented by Pacific's petition and those developed in the hearing of November 20, 1972 are:

1. Should the Commission (i) approve Pacific's administration of the refund plan, or (ii) require Pacific to revert to formula-computed refunds of all supplemental equipment and nonrecurring charges, or (iii) require Pacific to make an additional formula-computed refund of \$1.8 million in nonrecurring charges to business customers, or (iv) require Pacific to refund all increases in rates without setoff for decreases?
2. Has Pacific complied with the Commission's orders with respect to record retention?

To determine the issues raised at the hearing, we must understand what the Commission did in Decision No. 78851 and the effect of the Supreme Court's annulment of that decision. In Decision No. 78851, Findings Nos. 11 and 12 state:

- "11. An increase of 143 million dollars in gross annual revenues, after settlements with independent telephone companies and based upon the test year 1970, is justified.
- "12. Based upon the record herein, the increases in rates and charges authorized herein are justified; the rates and charges authorized herein are reasonable; and the present rates and charges, insofar as they differ from those prescribed herein, are for the future unjust and unreasonable."

Although the rates and charges authorized were expected to return to Pacific additional gross revenue of 143 million dollars annually, not all rates and charges were raised, some were lowered. The net effect was to increase gross revenue by 143 million dollars. The reductions that we are concerned with are charges for extension station connections installed in residences at the same time a primary station is installed: this charge was reduced from \$5 to zero; nonrecurring color set charge: this charge was reduced from \$5 to zero; and special type telephone cords: these charges were reduced by \$2.50. The total reduction in rates for these categories over the period of refund is \$9,656,000. (Some toll rates, and some minor items, were reduced. These reductions are not the subject of this petition.) Pacific wishes to offset its total refunds by that sum, and, in fact, did so in its formula for refunds of nonrecurring charges, resulting in no refunds to anyone for nonrecurring charges.

The allocation of the nonrecurring charge refund, with the offset for reduced rates folded in, is as follows:

TABLE I
Allocation of Nonrecurring Charge Refund
Millions of Dollars

| <u>Service Connection Move & Change</u> | (1) <u>Business</u> | (2) <u>Residence</u> | (3) <u>Total</u> |
|---|------------------------|-------------------------|---------------------|
| Serv. Connection | \$1.565 | \$ 6.295 | \$ 7.860 |
| Res. Extension | - | (4.185) | (4.185) |
| Move & Change | .291 | .104 | .395 |
| Color | (.420) | (1.610) | (2.030) |
| Long Cords | (.306) | (3.135) | (3.441) |
| Miscellaneous | .707 | - | .707 |
| | \$1.837 | \$(2.531) | \$ (.694) |

(Red Figure)

The effect of alternative methods of refunding supplemental equipment and nonrecurring charges is as follows:

TABLE II
Effect of Alternative Methods of
Refunding Supplemental Equipment
and Nonrecurring Charges (000)

| | <u>Business Refunds</u> | <u>Residence Refunds</u> | <u>Effect on Residue</u> | <u>Total Refunds</u> |
|--|-----------------------------|------------------------------|------------------------------|--------------------------|
| 1. Supplemental equip. and NRC refunds as administered by Pacific | | | | |
| Supp. Eq. | \$11,200 | \$700 | | \$11,900 |
| NRC | | | <u>\$(700)*</u> | <u>(700)</u> |
| Total | \$11,200 | \$700 | \$(700)* | \$11,200 |
| 2. Supplemental equip. and NRC refunds pursuant to Paragraph A.2. | | | | |
| Supp. Eq. | \$11,200 | \$ 700 | | \$11,900 |
| NRC | <u>1,200</u> | <u>(2,500)</u> | | <u>(700)</u> |
| Total | \$13,000 | \$(1,800) | | \$11,200 |
| 3. Effect of reverting to Paragraph A.2 of refund plan | | | | |
| Reverse "1" | \$(11,200) | \$(700) | \$700 | \$(11,200) |
| Implement "2" | <u>13,000</u> | <u>(1,800)</u> | | <u>11,200</u> |
| Net Difference | \$ 1,800 | \$(2,500) | \$700 | - |

*Results from the fact that application of the formula to NRC alone would increase business refunds by \$1.8 million and reduce residence refunds by \$2.5 million.

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Pacific urges that the Commission interpret the refund plan as calling for the results shown in No. 1 above. The cities assert that the result shown in No. 2 above is the proper interpretation of the refund plan. A third alternative is not to permit any adjustments for reduced charges.

The Supreme Court in annulling Decision No. 78851 said that "The entire increase of rates collected pursuant to the invalid order must be refunded" (City of Los Angeles vs. Public Utilities Commission (1972) 7 C 3d 331, 359). If this statement is interpreted as meaning that only those rates which were increased must be refunded, but that no action is to be taken on the rates which were decreased, the result would be that Pacific would refund approximately \$9.6 million plus interest more than it collected. This result is clearly inequitable. The Supreme Court's language could be interpreted to mean that the refund applies to the net increase of rates collected by Pacific, but the Supreme Court's decision did more than require Pacific to make refunds. Because the increased rates are invalid each ratepayer is entitled to refunds of amounts he paid in excess of the lawful rates: those in effect prior to July 23, 1971. In this posture, the closest approach to certainty in having Pacific refund all that it obtained through the invalid order would be for Pacific to refund every dollar it collected in increased rates and back-bill its customers for every dollar that should have been paid had some rates not been reduced. However, for the reasons stated below, a "net increase" result, while equitable for Pacific, would not be equitable for certain customers.

In our opinion the solution of back-billing is not appropriate. First, the Supreme Court did not order back-billing; second, Pacific has disclaimed any intention of back-billing and for back-billing purposes Pacific's records are not in a form that would permit expeditious back-billing; third, back-billing would be unfair to those customers who ordered certain equipment relying on the low rate; and fourth, we are not sure that back-billing would be lawful under the circumstances of this case.^{2/} Therefore, we will not order back-billing, but shall seek another solution.

^{2/} Under the view we take of this case we need not decide this question. Suffice it to say we do not believe applicable the rule that although a utility charges less than the lawful rate the ratepayer must pay the lawful rate. ✓

Recognizing the inequity in back-billing and recognizing the inequity in having Pacific absorb the entire amount of reduced rates, Pacific proposes that the reduced rates be offset against the increases attributable to nonrecurring charges. If this were done there would remain a deficit of \$700,000 which Pacific proposes to set off against unrefunded amounts. This result is shown on Table II, No. 1.

If the Commission were to find that Pacific's modification of the refund plan in Decision No. 80346 by refunding excess rates on supplemental equipment dollar for dollar was erroneous, and we were to require the application of the Decision No. 80346 refund formula to all supplemental equipment and nonrecurring charges, the result would be that:

1. Residence refunds would be reduced by \$2.5 million and business refunds would be increased by \$1.8 million (Table II, No. 2);
2. The now completed refund of \$700,000 to residence subscribers for supplemental equipment charges would be eliminated (and presumably rebilled by Pacific);
3. Instead of individually calculated refunds to each business and residence customer, refunds of supplemental equipment charges would be prorated among customers, a less equitable result; and
4. The total amount to be refunded would be unchanged.

For the reasons stated in Nos. 2 and 3 in the preceding paragraph we find that it would be unreasonable to revert to formula-based refunds for supplemental equipment and nonrecurring charges.

The staff proposes that Pacific should be ordered to make refunds of \$1.8 million in nonrecurring charges to business customers (Table 1, Column 1) without setoff for the \$2.5 million reduction in rates to residence customers (Table 1, Column 2). Pacific asserts that this proposal is unreasonable and unlawful because:

1. It will require a refund of \$1.8 million in nonrecurring charges to business customers without reduction of refunds to residence customers, thereby requiring Pacific to refund amounts in excess of the rate increases which were annulled; and

2. To require \$1.8 million in business refunds without reduction of residence refunds would be to reinstate pre-July 23, 1971 nonrecurring charges for business customers without reinstating pre-July 23 nonrecurring charges for residence customers.

Argument No. 2 misconceives the effect of the staff's proposal. The pre-July 23 nonrecurring charges for residence customers are reinstated. It is only because the setoff for reduced charges is greater than the increased charges that no refund is proposed.

Regarding argument No. 1, as stated it is a nonsequitur. It may be unlawful to require a refund of \$1.8 million in non-recurring charges to business customers without a reduction of refunds to other customers, but it is not unlawful to require the refund without a reduction of refunds to residence customers. And this, to us, is the crux of this case. Pacific has given no reason, and we can think of none, why the reduction in rates for nonrecurring charges to residence customers must be offset by the increase in rates for nonrecurring charges to business customers. To pick the classification "nonrecurring charges to business customers" for the offset appears to us to be arbitrary. Any other classification could as easily have been suggested. Rather than select one classification for offset treatment it is more equitable to make the offset against the entire system refunds. This can most equitably be done by permitting Pacific to offset any losses from reduced rates first against increased rates in the same classification, and then against amounts unrefunded and amounts not claimed. At the hearing Pacific estimated that the total of these latter two classes would be approximately \$1.6 million.^{3/} If this proves true Pacific will have to absorb approximately \$.9 million of loss because of reduced rates.^{4/} Under all the circumstances of this case we feel that this result is not inequitable. When equities are considered from the point of view of the ratepayer Table I shows, for instance, that business customers are entitled to a refund of \$1.565 million for service connections and that residence customers benefited by \$4.135 million in reduced rates for residence extensions. We can think of no reason why a business customer should be deprived of his refund because a residence customer ordered an extension telephone.

^{3/} \$795,000 in hotel, motel, and coin box collections (only \$300 of this sum was claimed as of the hearing) and \$800,000 in checks returned undelivered and in checks uncashed.

^{4/} \$2.5 million overall reduction in rates for residence nonrecurring charges off set by \$1.6 million referred to in footnote 3.

Although we will permit offsets for reduced rates against the refund for increased rates within the class of business customers' nonrecurring charges and within the class of residence customers' nonrecurring charges as shown in Table I, the same problem of setoff applies between customers within the class. That is, a residence customer who is entitled to a refund for a service connection charge should not have to have his refund offset by the reduced rate given to a different residence customer on a residential extension charge. However, we will not order Pacific to automatically refund all residence and business overcharges without setoff because in almost all instances the reduced rates benefited those persons who would be getting the refund. The staff witness pointed this out when he testified "The overall rate change generally benefited the same customers. That is, a residence extension phone as applied here, the amount of reduction you had was only applicable in those cases where you were having a main station installed at the same time, so that in effect the reduction also applied to the same customer that paid the increase. And generally speaking, on color phones they would be installed at the same time. And also long cords would generally be associated with station movement. So I perceive it as all part of the same charge to the same customer or the same group of customers."

The staff witness proposed the following formula:

Each customer will receive an individually computed refund using the following formula. The total accumulated amounts will be separated between business and residence accounts.

$$\frac{\text{Total NRC refund}}{\text{Total NRC accum. for all customers}} \times \frac{\text{Accum. Amt. NRC this customer}}{\text{Total NRC accum. for all customers}} = \text{NRC refund}$$

In those instances where the charge for higher rates did not go to the same customer as the reduction in rates we will provide that any customer who feels that his bill was offset by a reduced rate from which he did not benefit shall be permitted to claim against Pacific for the total amount of excess charges computed individually. This would apply to business as well as residence customers.

We wish to commend Pacific for the promptness and efficiency it has shown in refunding approximately \$175,000,000 to California ratepayers over a period of less than ninety days. Pacific has been in substantial compliance with the refund order and where it deviated from the refund order it improved upon that order. All motions by the Center regarding the enforcement of Decision No. 80346 are denied.

Findings

1. Pacific's method of making refunds of supplemental equipment charges was reasonable and is approved.
2. Pacific is entitled to offset increased rates by amounts lost through reduced rates over the refund period by using the formula proposed by the staff and making refunds accordingly.
3. Pacific shall make total refunds of all increased rates to any business or residence customer who can show that as to him offsets were made for equipment or services not received.

4. Any deficit incurred by Pacific in making refunds shall be offset by any unrefunded amounts due under the refund plan or by any amounts unclaimed under the refund plan, and in no other way.

The Commission concludes that Pacific should be instructed as follows:

Pacific shall apply the refund plan as set forth in Decision No. 80346 as modified by the order which follows.

O R D E R

IT IS ORDERED that:

1. Decision No. 80346 is modified by deleting paragraph A.2. from Appendix A.

2. Refunds for supplemental equipment and nonrecurring charges shall be computed as follows:

(a) Each business and residence customer will receive an individually computed refund for supplemental equipment based on specific calculations for each customer.

(b) Each customer will receive an individually computed refund for nonrecurring charges using the following formula. The total accumulated amounts will be separated between business and residence accounts.

| | | | | |
|---|----------|---|-----|---------------------|
| $\frac{\text{Total NRC refund}}{\text{Total NRC accum. for all customers}}$ | \times | $\frac{\text{Accum. Amt. NRC this customer}}{\text{NRC this customer}}$ | $=$ | NRC refund |
|---|----------|---|-----|---------------------|

3. Any business or residence customer who can show that as to him offsets were made for equipment or services not received shall be entitled to a full refund for all excess charges.

4. Any deficit incurred by The Pacific Telephone and Telegraph Company in making refunds pursuant to Decision No. 80346 and this decision shall be offset by any unrefunded amounts due under the refund plan or by any amounts unclaimed under the refund plan, and in no other way.

5. The time within which to comply with paragraphs D and E of Appendix A of Decision No. 80346 shall be computed from the effective date of this order.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 30th day of JANUARY, 1973.

William J. Symons, Jr. President
W. J. Symons, Jr.
W. J. Symons, Jr.
W. J. Symons, Jr.
W. J. Symons, Jr. Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.