AF

Decision No. 81212

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 (Petitions for Rehearing filed August 16 and 17, 1972)
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
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 certain telephone corporations.	Case No. 9045

OPINION AND ORDER ON REHEARING

By Decision No. 78851 dated June 22, 1971 this Commission authorized The Pacific Telephone and Telegraph Company (Pacific) to increase its rates by $143,000,000 annually after settlements with the independent telephone companies; 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 v Public Utilities Commission (1972) 7 C 3d 331, 359.)

In its decision the Supreme Court concluded that "the entire increase of rates collected pursuant to the invalid order must be refunded." (7 C 3d at 359.)

Pursuant to what we considered to be the direction of the Supreme Court, we issued Decision No. 80346 dated August 8, 1972 ordering Pacific to make refunds, and ordering all the non-Pacific telephone companies (Independents) in California to make refunds of "all monies collected over and above Pacific's rate levels affecting [the Independents] in effect prior to July 23, 1971," less certain rate increments. Decision No. 80346 also established refund plans for the Independents.

The Independents petitioned for a rehearing of Decision No. 80346 on the ground that the decision was erroneous and invalid insofar as it orders refunds by the Independents because the decision in City of Los Angeles, supra, neither requires nor justifies the order of the Commission, and the Commission is without authority to order the Independents to refund. The petition for rehearing was granted and the order requiring refunds was stayed. (Decision No. 80487 dated September 12, 1972.) Rehearing was held on December 1, 1972 in San Francisco before Examiner Robert Barnett and the matter was submitted subject to the filing of briefs.

The position of the Independents is that no refunds are required; the position of the city of Los Angeles and the staff is that total refunds are required as ordered by Decision No. 80346; Pacific takes no position. The amount in controversy is approximately $10,300,000: $4,100,000 in toll revenue and $6,200,000 in multi-message unit (MMU) revenue.

Background

Telephone service in California is provided by Pacific and 28 non-Pacific telephone companies. These 28 companies are known collectively as the Independents; they range in size from the very small Bryan Telephone Company with gross annual revenues of approximately $20,000 to the very large General Telephone Company with gross annual revenues of approximately $500,000,000. Pacific's gross annual revenue is approximately $2,000,000,000.

Toll charges in California are computed on a mileage basis. To insure uniformity of charges throughout the State no matter which telephone company, or companies, is involved in a particular call, rates per mile are the same for all companies. The Commission has chosen Pacific to be the rate setting utility. By Decision No. 74917 dated November 6, 1968 in Application No. 49142 the Commission ordered all independent telephone companies to file with the Commission a concurrence in the message toll telephone tariffs of Pacific. That concurrence states:

(Independent Telephone Company) assents to, adopts, and concurs in the tariffs of The Pacific Telephone and Telegraph Company listed below, together with amendments thereto and successive issues thereof, and hereby makes itself a party thereto until this authority is revoked by cancellation of this adoption notice, for the purpose of furnishing all intrastate message toll telephone service thereunder originated at or terminated at a point of this Company.

1. Schedule Cal. P.U.C. No. 53-T, Message Toll Telephone Service - Rates and Conditions.

2. Schedule Cal. P.U.C. No. 89-T, Message Toll Telephone Service - Toll Rate Guide General Rate Regulations.

3. Schedule Cal. P.U.C. No. 90-T, Message Toll Telephone Service - Toll Rate Guide for the State of California.

4. Schedule Cal. P.U.C. No. 92-T, Message Toll Telephone Service - Supplement to Toll Rate Guide for the State of California.

In order to have an equitable division of all toll revenue, rather than have each company retain the toll that its subscriber is liable for, all of the Independents and Pacific have entered into settlement contracts for interchanged message toll traffic between the companies. These settlement contracts were in force during all times germane to this proceeding; they are on file with the Commission.

The settlement contracts established procedures by which each company is compensated for its costs of providing interchanged service. Reduced to their essence, these procedures provide that all the revenues of all companies from interchanged traffic are credited to Pacific. Each independent company then computes its cost of handling interchanged traffic, including a return equal to Pacific's return for such traffic. This establishes the settlement payment due to each independent company out of these total revenues. Pacific, in turn, calculates its return by deducting the total of all such settlement payments from the total of all revenues derived by all companies from interchanged traffic and applying the difference to Pacific's investment related to that traffic. In practice the initial computations are necessarily based upon an estimated rate of return for Pacific. When the actual return is later determined, the contracts provide for adjustment of settlement payments.

If any company's revenues attributable to the traffic being settled for are diminished, the total of all revenues is necessarily reduced. The effect is to reduce Pacific's return for settlement purposes, which causes a reduction in the independent company's costs and hence a reduction in settlement payments to the Independents. Thus, any order which requires refunds from all companies, or only from Pacific, will have an impact on settlement payments.

In addition to intercompany toll settlements Pacific has joint multi-message unit rates with General Telephone Company. The rate is set by Pacific and concurred in by General and revenues are settled between the two companies in the same manner as toll revenues.

When Pacific's toll rate schedule is authorized and when its multi-message unit rate is authorized, these rates are primarily based upon Pacific's revenue requirements and Commission policy regarding the spread of rates between classifications, not the revenue requirements of any or all independent telephone companies. Because of the concurrence of the Independents in Pacific's rates, the revenue of each independent company is affected, quite often substantially, but without relationship to the needs of the independent company.

On March 17, 1970 Pacific filed Application No. 51774 seeking an increase in annual revenues of approximately $195,000,000. Included in the rates sought to be increased were the rates for intrastate toll and interexchanged multi-message units. On April 7, 1970 the Commission instituted Case No. 9045 to investigate

the operations of all telephone utilities in the State. Case No. 9045, among other things, investigated the separation procedures affecting the toll settlements of Pacific and other California telephone utilities, and the multi-message unit rates of Pacific in the Los Angeles extended area relating to General Telephone. All independent telephone companies in California were served as respondents in Case No. 9045, and Case No. 9045 was consolidated for hearing with Application No. 51774.

Decision No. 78851 issued as a result of the consolidated hearings. The following finding from that decision is pertinent to this case:

> 11. An increase of $143,000,000 in gross annual revenues, after settlements with independent telephone companies and based upon the test year 1970, is justified. (Emphasis added.)

The effect of Decision No. 78851 on telephone rates in California was to authorize an increase in rates, including toll and MMU, filed by Pacific which would net Pacific $143,000,000, on a test year basis, after settlements with the Independents. The actual toll and MMU rates authorized were expected to produce about $10,000,000, on a test year basis, more than was necessary to meet Pacific's requirements. In accord with their concurrences all Independents raised their rates, effective concurrently with Pacific's raises.

Various parties sought review of Decision No. 78851 and petitioned the Supreme Court to stay the order. On July 21, 1971 the Supreme Court granted a stay as follows: "...the petitions for stay are granted in part as follows: All sums collected by

Pacific Telephone and Telegraph Company, the Real Party in Interest, pursuant to the rates authorized by Decision No. 78851 shall be subject to refund in whole or in part upon order of this court should Decision 77984[1/] or 78851 be annulled or modified by this court." Both decisions were annulled in their entirety.

Discussion

The Independents argue that the City of Los Angeles decision neither requires nor justifies refunds by the independent telephone companies. They argue that Decision No. 78851 authorized rates estimated to produce $143,000,000 additional revenue to Pacific; that petitions for rehearing of Decision No. 78851 did not dispute the revenues authorized for the Independents through their concurrences; and that on appeal the Supreme Court only considered the $143,000,000 revenue increase to Pacific. They argue that when a rate increase has been authorized by the Commission after hearing the revenues collected thereunder belong to the utility and may not be ordered refunded even though the rate order is subsequently annulled unless a stay has been issued.

The Independents assert that "whether or not the Court had in mind the Commission practice of fixing uniform toll and MMU rates for both the independents and Pacific in Pacific rate proceedings at a level sufficient to yield a reasonable return upon the aggregate investment in the integrated statewide network of facilities involved in those services...does not appear from the decision. In either event it is manifest that by directing only that Pacific be required to make refunds the Court could not have

1/ Decision No. 77984 was annulled by the Supreme Court in City and County of San Francisco v Public Utilities Commission (1972) 6 C 3d 119.

intended to direct refunds by the independents." They conclude by stating that this Commission has no authority to order the Independents to refund under the circumstances.

The argument of the Independents is without merit. First, we need not decide whether we have authority to order refunds independently of the Supreme Court's refund order. Our order in this proceeding is in obedience to the Supreme Court's statement that "the entire increase of rates collected pursuant to the invalid order must be refunded." (City of Los Angeles v Public Utilities Comm. (1972) 7 C 3d 331, 359.) Second, Decision No. 78851 did not only find that Pacific required $143,000,000 of additional revenues, it also set rates that would yield those revenues and millions of dollars more. It was the rates that were set that were under attack both in the petitions for rehearing and in the subsequent appeal from the Commission's order after rehearing was denied. Third, in neither the petition for rehearing nor the appeal was there need to mention, as separate issues, the additional toll revenues authorized for the Independents or the added MMU revenue authorized for General, because the toll rate and the MMU rate, from which those revenues were to be derived, were integral parts of the rate increase granted to Pacific. A challenge to the total rate is a challenge to its component parts. Fourth, although the Court directed the Commission to order Pacific to make refunds, and did not mention the Independents by name, other portions of the Court's opinion make it abundantly clear that the Court expected all increased rates collected pursuant to Decision No. 78851 to be refunded. The Court said "we conclude that the entire increase of rates collected pursuant to the invalid order must be refunded." (Emphasis added, 7 C 3d at 359.) The

invalid order is the order in Decision No. 78851. Ordering Paragraph 2 of that order authorized Pacific to file the revised rate schedules attached as Appendix B. Appendix B included the increases in toll and multi-message unit rates. In the same paragraph of its opinion the Court repeated itself by stating "insofar as the rates which went into effect on May 27 reflect increases based on the invalid order before us, refunds are necessary." (7 C 3d at 359.) The Supreme Court order is clear and direct. It annulled our decision, it invalidated our order, and it concluded that the entire increase of rates must be refunded.

The Independents admit that toll rates and MMU rates are fixed as part of a proceeding involving all of the rates of Pacific but argue that the establishment of such rates to all intents and purposes is treated as a separate and distinct matter. This just isn't true. An examination of the rates authorized to Pacific in Appendix B in Decision No. 78851 does not show that the rates concurred in by the Independents are treated as a separate and distinct matter, except to the extent that toll and MMU rates are separate and distinct from business, residence, and other rates.[2/] Further, the Independents admit that when the Supreme Court annulled Decision No. 78851 and the rates set for Pacific, that the toll and MMU rates for the Independents for the future were also annulled. The Independents do not claim that the Decision No. 78851 rates are still valid as to them; they just don't wish to be required to refund the amounts collected pursuant to the invalid order.

2/ There is some discussion in the opinion portion of Decision No. 78851 of toll and MMU rates, but there is no separation between Pacific and the Independents in the rates that were increased, and it is the entire increase of rates that was annulled and must be refunded.

The Independents made no showing of revenue requirements. They admit that "the revenue impact of the rates so established [in a Pacific proceeding] upon the results of operation of any independent company can, as a matter of regulatory necessity and expediency, be considered only in a rate proceeding involving that particular company. Otherwise every Pacific rate case would require a full-blown rate case of each and every independent that has settlement arrangements with Pacific and the policy of uniform rates would be impossible of accomplishment." This quotation supports arguments in favor of a refund by the Independents. Toll and MMU rates were set in Pacific's proceeding which was appealed and which was annulled. If toll and MMU rates were set in a separate proceeding, or if they were set in proceedings involving individual independent companies, then the decisions in those separate cases could have been appealed. Regarding toll and MMU rates there was one order, one appeal, and one reversal.

The principal argument of the Independents to retain the monies collected pursuant to the invalid rates is that Decision No. 78851 was not stayed as to the Independents. Neither the Commission nor the Supreme Court directed a stay order to the Independents. They cite Pacific Tel and Tel Co. v Public Utilities Commission (1965) 62 C 2d 634, 652 for the statement that: "In at least two cases it has been held that a utility whose rates had been commission approved could not be compelled to make refunds of new and increased rates collected under a commission order set aside on appeal, where the order had not been stayed."

The two cases referred to in the quotation were Mandel Bros. Inc. v Chicago Tunnel Terminal Co. (1954) 2 Ill 2d 205, 177 N E 2d 774, and Keco Industries, Inv. v Cincinnati & Suburban Bell Tel Co. (1957) 166 Ohio St 254, 14 N E 2d 465.

The quotation from Pacific Tel and Tel Co. v PUC, 62 C 2d 634, 652 is not in point because the Independents are not "a utility whose rates had been commission approved." It was Pacific's rates that were commission approved. Neither Keco nor Mandel involved rate increases instituted automatically based upon the adoption of tariffs of another utility.

The Independents cite Southern Bell Tel and Tel Co. v Louisiana Public Service Commission (1961) 242 La 24, 134 So 2d 61, 42 PUR 3d 39, in support of their position. The Independents argue that in the Southern Bell case the Louisiana Commission "had ordered refunds of 20 percent of Southern Bell's charges for intrastate toll for a stated period of time. In subsequent proceedings it was made clear by the Commission and affirmed by the Court, with respect to traffic interchanged with Independents, that the refund would be comprised only of 20 percent of Southern Bell's revenues, even though refunds were made to customers of independent companies. The revenues received by the independent companies were not required to be refunded." Los Angeles and the staff argue that the Independents have misinterpreted the Southern Bell case and that, in fact, the case supports the California Commission's order requiring the Independents to make refunds. We agree with the staff and Los Angeles.

In Southern Bell the Louisiana Commission ordered Southern Bell to reduce its annual gross intrastate operating revenues and to accomplish that, ordered that "all intrastate toll rates and charges [of Southern Bell] shall be subject to a discount of 20 percent per call." That order was appealed and sustained on appeal. Southern Bell then proceeded to make refunds on monies collected during the

time the order was on appeal. On further investigation the Commission found that Southern Bell had made refunds on intrastate toll messages utilizing joint facilities with independent companies where such messages originate in a Southern Bell exchange as a "sent paid" message or terminate as a "received collect" message, but had not made refunds on intrastate toll messages originating in an exchange of an Independent connecting company on a "sent paid" basis or terminating there on a "received collect" basis. The Commission ordered Southern Bell to refund 20 percent of all toll charges collected by the Independents for use of Southern Bell facilities. Southern Bell appealed.

The Louisiana Supreme Court affirmed and stated "It seems quite evident from the plain language of the order that the commission did order and did contemplate that 'all intrastate toll rates and charges' of Southern Bell were subject to the discount of 20 percent, and that the order was intended to effect a reduction in toll rates collected by independent connecting companies for the account of Southern Bell. . . . If it can increase its charges with customers with whom it has no customer relations [by joint toll rates] it can also reduce its charges with those customers." (42 PUR 3d at 45.)

Southern Bell is distinguishable on its facts from the case at bar because the order directed Southern Bell to make refunds of monies paid by Independent telephone customers to Independent companies for telephone messages originating in Independent territory travelling over joint facilities.

From our understanding of settlement contracts it appears that when Southern Bell made the 20 percent refund to the Independent customers the refund would trigger a recomputation of settlement funds and necessarily a lessening of revenue to the Independents.

If we were to follow the theory of Southern Bell and order Pacific to make refunds to Independent customers the Independents' revenue would be reduced just as much as if we were to order the Independents to make refunds directly.[3/] From the ratepayer's point of view Southern Bell supports the proposition that to prevent discrimination and to maintain uniformity in intrastate toll rates when intrastate toll rates are reduced for one company (Bell) then the comparable rates for another company (the Independents) shall also be reduced for interexchanged traffic. That is the practical result of the case at bar and that is why we feel that Southern Bell supports our action.

To hold for the Independents would create discrimination among customers. During the refund period an Independent customer would have had to pay more for a telephone message between points in California and between telephone companies in California than a Pacific subscriber. And to hold for the Independents would violate the Commission policy to maintain uniformity of intrastate toll rates between all points and between all telephone companies.

3/ A witness for the Independents explained the toll settlements as follows: the Independents "turn over...all intrastate toll revenue that they collect from their customers to Pacific Telephone. In turn Pacific Telephone pays the Independents' operating cost plus a settlement rate of return on the plant assigned to the intrastate toll operation. . . ." Under these facts there seems no reason why we could not order Pacific to make the refunds to the customers of the Independents, as was done in Southern Bell.

The argument of the Independents comes down to this: If the Supreme Court had included the words "and the Independents" after the word "Pacific" in its stay order the Independents would refund $10.3 million; since the Supreme Court did not, the Independents will not. This argument has much the flavor of magic words; rate regulation should be based on a more substantial rationale than the turn of a phrase. In any event, it was Pacific's toll and MMU rates that were appealed, it was Pacific's toll and MMU rates that were stayed, it was Pacific's toll and MMU rates that were annulled, and it was Pacific's toll and MMU rates in which the Independents concurred. If the rates are considered to be those of the Independents the rates were challenged on appeal, they were annulled, and "the entire increase of rates collected pursuant to the invalid order must be refunded." The Independents sought to obtain the benefits from the rates; they must now bear the burdens.

O R D E R

IT IS ORDERED that:

1. Decision No. 80346 is affirmed.
2. The stay granted by Decision No. 80487 is dissolved.
3. The computation of time for the independent telephone companies or their customers to do any act required by Decision No. 80346 shall be computed from the effective date of this order.

The effective date of this order is the date hereof.

Dated at Los Angeles, California, this 27th day of MARCH, 1973.

President

Commissioners