Decision No. 90094 MAR 14 1979.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALTFORNIA

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. 53587 (Filed September 19, 1972)

And Related Matters.

(Re Tax Reserve Matters)

Application No. 51774
Application No. 55214
Case No. 9503
Case No. 9802
Case No. 9832
Application No. 51904
Application No. 53935
Case No. 9100
Case No. 9504
Case No. 9578

OPDER DENYING PETITION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY AND GENERAL TELEPHONE COMPANY OF CALIFORNIA

The Pacific Telephone and Telegraph Company and General Telephone Company of California have petitioned the Commission to rehear Decision No. 89894 and to continue the suspension of Decision No. 87838 while Petitioners seek to resolve the question of eligibility for the federal tax benefits of accelerated depreciation and investment tax credit with the United States in the federal courts and after such determination, to decide this matter.

The Cities of Los Angeles and San Diego and the City and County of San Francisco have filed a joint reply in opposition to this petition alleging, inter alia, that the petition is procedurely and substantively defective. TURN has also filed an opposition on similar grounds.

Decision No. 87838 was issued on September 13, 1977. Petitioners have previously sought and this Commission has denied rehearing of Decision No. 87838. The California Supreme Court has three times annulled Commission approaches to treatment of the issues involved herein. By declining to grant petitioners' petitions for review of Decision No. 87838, the California Supreme Court has affirmed the treatment adopted in that decision. The United States Supreme Court has refused to grant certiorari in this matter. Thus the avenues of judicial review have been exhausted, and Decision No. 87838 has become final.

For these reasons, we conclude that petitioners' latest petition has no procedural basis and cannot be considered by the Commission and we deny it as improperly filed.

We have also reviewed the various contentions made in the petition to rehear Decision No. 89894, and after consideration are of the opinion that no good cause for granting the petition is set forth.

THEREFORE, IT IS ORDERED that the petition of the Pacific Telephone and Telegraph Company and General Telephone Company of California, filed February 6, 1979, is denied.

IT IS FURTHER ORDERED the refund plan and tariffs which are the subject of Decision No. 87838 be filed on March 23, 1979.

The effective date of this decision is the date hereof.

Dated at San Francisco, California, this ///td day of

MARCM , 1979.

President

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

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Complessioners

A. 53587, et al.

PRESIDENT JOHN E. BRYSON, Concurring

I am persuaded that Decision No. 87838 has become final and that the Commission has no further jurisdiction to consider the telephone companies' petitions.

If the Commission had continuing jurisdiction, I would explore additional approaches to limit what the Decision termed the "staggering rate increases that are foreseeable" should the telephone companies lose eligibility for accelerated depreciation and investment tax credit under the federal tax law. However, after three California Supreme Court decisions, on the one hand, and the federal 1969 Tax Reform Act, on the other, it is uncertain whether such an approach could be found.

JOHN E. BRYSON President

San Francisco, California March 14, 1979