

JUN 5 1979

ORIGINAL

Decision No. 90366

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 telephone service rate increases to cover increased costs in providing telephone service.

Application No. 55492  
(Filed February 13, 1975;  
amended April 19, 1975 and  
January 16, 1976)

Investigation on the Commission's own motion into the rates, tolls, rules, charges, operations, costs, separations, inter-company settlements, contracts, service, and facilities of THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a California corporation; and of all the telephone corporations listed in Appendix A, attached hereto.

Case No. 10001  
(Filed November 12, 1975)

OPINION AND ORDER DENYING  
MODIFICATION OF DECISION NO. 88232

On February 15, 1979, William L. Knecht (petitioner) filed a "motion for correction" of Decision No. 88232 issued December 13, 1977. Since the "motion" does not deal with mere clerical error, if we are to consider the filing at all, we must regard it as a petition for modification (Rule 43).

Petitioner appeared as counsel for the California Farm Bureau Federation prior to the issuance of Decision No. 88232 (which is our main rate order for the test year in this proceeding).<sup>1/</sup> However, he now for the first time files an appearance "on behalf of all private line customers of the Pacific Telephone and Telegraph Company" (Pacific) requesting that we modify Decision No. 88232 so that it contain an order

1/ Certain special issues such as license contract funding and interstate-intrastate separations remain outstanding, but all other "results of operation" issues were submitted prior to Decision No. 88232 for decision at that time.

requiring a three-month limitation on back-billing of private line customers. Petitioner points out that the staff made such a recommendation and no other party opposed it. (Exhibit 167, page 2-11.)

In our opinion, the petition is untimely. Another complete rate increase proceeding for Pacific (Application No. 58223 filed July 14, 1978, and OII 21) has been heard and is now under submission.

Further, new appearances after a proceeding is submitted should be permitted only in extreme emergency, and when no more orderly remedy is available. Here, any aggrieved party (and the petition contains no name of any private line customer allegedly aggrieved by Decision No. 88232) has alternate remedies by way of filing an independent complaint on the subject or by appearing and introducing evidence on the issue in a future rate proceeding of Pacific's.

Finally, there is no merit to the petitioner's request for a "nunc pro tunc" order which would retroactively change the provisions of a tariff. A nunc pro tunc order is one which is, in effect, back-dated so that it is treated as effective on an earlier date. While there are certain uses for such orders (see Witkin, California Procedure, Second Edition, pages 3222-3223), their purpose is to make the record show that something was actually done at a previous time and therefore may be treated as done at that time, not to declare something done at a previous time which was not done. (City of Los Angeles v Superior Court (1963) 264 CA 2d 766.) The entry of such an order for the purpose intended by the petitioner would result in retroactive ratemaking by effectively wiping out lawfully collectible private line arrears back to the date of the order. We have not previously issued such orders and can find no authority for them in the Public Utilities Code or our Rules.

We express no opinion on the advisability of a back-billing cutoff for private line customers. As we have stated, this issue may be raised by a proper party at the proper time. In any large rate increase proceeding, there can be hundreds of points raised by dozens of parties. A decision specifically discussing each point would in many

instances be excessively cumbersome. Unless by some patent inconsistency a decision demonstrates that there is an omission of an intended finding or order, our silence on a subject should be deemed a determination on our part not to make such a finding or not to issue such an order.

Findings

1. The staff exhibit in this proceeding concerning the subject of rates and charges recommended that private line tariffs be revised to provide that billing for private line charges be limited to charges for service provided no more than three months prior to the bill. (Exhibit 167, page 2-11.)

2. Decision No. 88232, our rate order for the test year in Application No. 55492 (issued December 13, 1977), is silent on this recommendation.

3. Since the date of Decision No. 88232, another rate increase application for Pacific for a more recent test year has been heard and is now under submission (Application No. 58223 filed July 14, 1978, and OII 21).

4. Petitioner filed no appearance for "all private line customers of the Pacific Telephone and Telegraph Company" in this proceeding until he filed the petition which is the subject of this decision on February 15, 1979.

Conclusions

1. The petition is untimely.

2. The petition does not demonstrate why we should permit a new appearance at this time on an issue which was the subject of a rate proceeding culminating in a decision issued in December of 1977.

3. The Commission has no jurisdiction to issue "nunc pro tunc" orders having a retroactive effect on tariff provisions.

4. The petition should be denied.

IT IS ORDERED that modification of Decision No. 88232 is denied.

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

Dated at San Francisco, California, this 5<sup>th</sup> day of JUNE, 1979.

*J. S. Guyer* President  
*William L. Stinson*  
*Charles D. Howell*  
*Walter J. ...*  
*Edward ...* Commissioners