

ORIGINAL

Decision No. 90423 JUN 19 1979

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 offset  
increased wage, salary, and associated  
expenses.

Application No. 55214

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. 9832

SUPPLEMENTAL OPINION

The purpose of this decision is to make a final dis-  
position of the method of refunding approximately \$14.8 million which  
represents an overcollection of revenues by The Pacific Telephone and  
Telegraph Company (Pacific), resulting from our failure to include  
increased directory (yellow page) advertising rates in the adopted  
test year results.

History of the Subject Matter

There have been several decisions in this proceeding on  
this subject, and a brief recapitulation of them is necessary to  
the understanding of our order in this decision.

Decision No. 85287 (dated and effective December 30, 1975, 79 CPUC 240) was our basic rate order for Application No. 55214's twelve-month test period ending June 30, 1975. The rates set in that decision went into effect on January 5, 1976. In that decision we found that the increased directory advertising rates, effective January 1, 1975, would be "insignificant" for the test period and therefore would be analyzed further in future proceedings.

We denied a petition for rehearing as to that determination (Decision No. 86541, October 26, 1976) but later, upon further consideration, granted reopening of the proceeding on this issue (Decision No. 86953, February 8, 1977).

In Decision No. 87827, our opinion on reopening (dated September 7, 1977), we found that the adopted test year estimates for Application No. 55214 should have included the effect of the increased yellow page advertising revenue. The findings on the subject of refunds flowing from this determination state:

- "8. Refunds should be ordered for the period of January 5, 1976 (effective date of revised tariffs reflecting rates increased in Decision No. 85287) to the effective date of the prospective rate reduction ordered herein. Said refund should be calculated by dividing 365 days into \$7.5 million (producing the daily overcollection) and applying the figure to the number of days from January 5, 1976 to the date rates are reduced prospectively, as ordered herein. Interest at the rate of 7 percent per annum should apply to the refunds from January 5, 1976.
- "9. Refunds calculated pursuant to Finding 8 shall be made by an adjustment to each residential and business subscriber's billing account in an equal amount."

We therefore ordered as follows:

- "4. The Pacific Telephone and Telegraph Company shall file a refund plan for this Commission's approval within fifteen days from the date hereof which will accomplish a refund, calculated in accordance with Findings 8 and 9, by refunding an equal amount to subscribers with an adjustment to each billing account for such subscribers. The refund shall be made to such subscribers within ninety days after the effective date of the rate reduction ordered herein."

Timely judicial review of this decision was sought and we granted a stay of it pending such review, and "until further order of the Commission." (Decision No. 88104, dated November 8, 1977.) Rehearing of the order granting a stay was denied (Decision No. 88145, dated November 22, 1977), and the California Supreme Court denied a petition for writ of review of Decision No. 87827 on July 13, 1978.

There are two results of these procedural developments. First: Revenues for yellow page advertising continued to be estimated for rate setting purposes at an incorrectly low level from December 30, 1975, the date of the rate order in Application No. 55214 (Decision No. 85287, supra) to the date of the basic rate order in Pacific's next rate increase application (Application No. 55492, Decision No. 88232, dated and effective December 13, 1977). The rates in Decision No. 85287 actually went into effect on January 5, 1976, and those in Decision No. 88232 became actually effective December 23, 1977. From recorded information, this means that during the 719-day period from one rate order to the other, a total overcollection of \$14,773,976.05 in rates accumulated. Second: Decision No. 87827 still remains stayed pending our further order.

During the period in which Decision No. 87827 has been stayed, the Legislature enacted Public Utilities Code Section 453.5, effective as an emergency measure on September 19, 1977. This section reads:

"453.5 Whenever the commission orders rate refunds to be distributed, the commission shall require public utilities to pay refunds to all current utility customers, and, when practicable, to prior customers, on an equitable pro rata basis without regard as to whether or not the customer is classifiable as a residential or commercial tenant, landlord, homeowner, business, industrial, educational, governmental, non-profit, agricultural, or any other type of entity.

"For the purposes of this section, 'equitable pro rata basis' shall mean in proportion to the amount originally paid for the utility service involved, or in proportion to the amount of such utility service actually received.

"Nothing in this section shall prevent the commission from authorizing refunds to residential and other small customers to be based on current usage."

This enactment presents us with the following questions on this record: (1) Is the refund provision of Decision No. 87827 inconsistent with Section 453.5? (2) If the answer to that question is "yes", what refund plan should we approve?

Lawfulness of Decision No. 87827 Refund Order

In our opinion, Ordering Paragraph 4 of Decision No. 87827 (quoted previously) does not provide for an "equitable pro rata" refund as required by Section 453.5. Toward Utility Rate Normalization (TURN), the only party opposing Pacific's suggested revised refund plan (discussed below) does not contend that the Decision No. 87827 order complies with Section 453.5, but rather that we may regard Decision No. 87827 as antedating the legislation, and, therefore, that we may vacate the suspension of Decision No. 87827 and place its refund provisions in force. TURN not only argues that this is

a possible course of action, but a necessary step to avoid an ex post facto application of Section 453.5.

We do not believe that Pacific's suggested plan results in an ex post facto application of this code section. We simply are applying (as we should) the current law, rather than old law, to a decision issued as of this date. This is an especially preferable result in this case, since the Legislature was concerned enough about the problem of refunds to declare its enactment to be an emergency measure effective immediately.

We will order into effect a refund plan which complies with Section 453.5. As the Commission itself recognized in its generic investigation of refunds (Case No. 10255, Decision No. 89106, issued July 25, 1978), the passage of Section 453.5 means that we have no authority "to require utilities to make refunds disproportionately in favor of residential customers." (Finding 2, Decision No. 89106.)

Selection of a Refund Plan

Pacific's specific proposal<sup>1/</sup> is that Finding 6 of Decision No. 87827 (quoted previously) may remain unchanged and

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<sup>1/</sup> References to Pacific's proposed refund plan are to the "alternate" refund plan attached as Exhibit B to Pacific's "Petition to Implement Refund Plan and to Modify Decision No. 87827", filed August 18, 1975.

that a refund on an "equitable pro rata" basis may be achieved by adjusting each current residential and business exchange service account's billing amount in proportion to their current monthly billing for exchange lines and trunks, as such lines and trunks are defined in the tariffs.

The cities of San Diego, San Francisco, and Los Angeles filed a joint response in which they indicate that they support Pacific's proposal, citing our views in Decision No. 89106, supra.

TURN, in a letter on the subject dated October 27, 1978, raises the question regarding whether Section 453.5 allows such a plan as Pacific's because (1) the section states that an "equitable pro rata basis" means "in proportion to the amount originally paid", (2) that the last paragraph of the section states that the Commission is authorized to refund to residential and other small customers based on current usage, and (3) that Pacific's plan does not meet the "originally paid" language because the plan is not based on the billings for the time period subject to refund.

The answers to these contentions are: (1) Section 453.5's second paragraph contains alternative phraseology, and states that "equitable pro rata basis" means "in proportion to the amount originally paid for the utility service involved, or in proportion to the amount of such utility service actually received." (Emphasis added.) Pacific's plan is intended to meet the second of the two criteria, and that is sufficient. (2) Section 453.5's last paragraph is permissive and not mandatory. (3) Pacific's plan is intended to satisfy the "service received" requirement, and does not necessarily have to be based on the precise total billings for the period (or on the "number of exchange billing accounts by customer" as suggested in TURN's letter) rather than on a basis in which the refund is calculated on current monthly billings.

No refund plan can achieve absolute accuracy. Section 453.5 requires equity, not precision. Nor does the section tie the Commission to one specific method of refund. We are convinced that Pacific's plan meets legal requirements and is essentially fair. A customer's current monthly billing for exchange lines and trunks is an "equitable pro rata" measure for making the refund, although no doubt alternate "equitable pro rata" methods could be devised. Pacific's proposal has the advantage of obviating misunderstandings and complaints by avoiding undue complexity.

Additionally, time is becoming of the essence in making the refund, since various challenges to previous orders have substantially delayed the resolution of the refund issue. While TURN has made a generally worded alternate suggestion, it did not develop any specific plan for our consideration and, as mentioned, the cities of San Diego, Los Angeles, and San Francisco support Pacific's proposal. In our opinion, the public interest is not served by further delay.

Summary

We have not discussed our basic reasons for determining that directory assistance revenues were, for a time, incorrectly estimated, or our basic determination that a refund is in order. These subjects are fully covered in our Opinion After Reopening (Decision No. 87827).

The amount of the refund is larger than it would have been had Decision No. 87827 not been challenged (and suspended before any refund was made) because, as a result of the suspension, rates continued at the excessive level until the rates

in Decision No. 88232 went into effect. Also, in Decision No. 87827 it was necessary to adjust rates prospectively because of the incorrect revenue estimates for Application No. 55214. However, rates for that application have not been in effect since Decision No. 88232's rates became effective. Therefore, we need not now make any such adjustment.

#### Findings of Fact

1. Findings 1 through 5 of Decision No. 87827 are incorporated herein by reference.
2. From January 5, 1976 to December 23, 1977, the under-estimation of directory advertising revenue in Application No. 55214's adopted results of operation caused an overcollection of revenues by Pacific in the amount of \$14,773,976.05.

#### Conclusions of Law

1. Pacific should be ordered to refund \$14,773,976.05, with interest at 7 percent per annum.
2. The refund provided for in this decision should comply with Public Utilities Code Section 453.5. Such compliance does not result in ex post facto application of Section 453.5.
3. Pacific's proposed refund plan attached as Appendix B to its petition on the subject, filed in this proceeding on August 18, 1975 (and attached hereto as Appendix A), is reasonable and lawful, and should be adopted.
4. The ordering paragraphs of Decision No. 87827, and stayed by Decision No. 88104 until our further order, should be vacated.
5. Because of the time which has elapsed since the overcollection of revenues and the importance of providing refunds at the earliest time, the effective date of the ensuing order should be the date upon which it is signed.

#### SUPPLEMENTAL ORDER

IT IS ORDERED that:

1. Decision No. 86511 is vacated.
2. The ordering paragraphs of Decision No. 87827 are vacated.



3. The Pacific Telephone and Telegraph Company shall refund the sum of \$14,773,976.05, pursuant to the refund plan attached hereto as Appendix A. ✓

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 17th day of JUNE, 1979.

John E. Byrne  
President  
George L. Stinson  
Richard D. Trumble  
Blaine T. DeLoach  
Edward M. Jones  
Commissioners

APPENDIX A  
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THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY  
Refund Plan, Directory Revenues - A.55214

A. REFUND APPLICATION

The refund amount, including interest, calculated for the period January 5, 1976 through December 23, 1977 will be applied as an adjustment to each current residential and business exchange service account's billing amount in proportion to their current monthly billing for exchange lines and trunks as defined in CPUC Tariff Schedules 4-T, 9-T, 13-T, 34-T, 100-T, 112-T, 117-T, 121-T, and 125-T. Refunds will be applied within 120 days after the effective date of a refund order.

B. REFUND CALCULATION

1. Basic Refund

The aggregate basic refund for all customers will be the total "daily overcollection" for the period from January 5, 1976 through December 23, 1977, computed as follows:

Basic Refund Period: 1/5/76 - 12/23/77 (719 days)  
"Daily Overcollection": \$20,547.95  
Total Basic Refund: \$14,773,976.05

2. Interest

Interest at the rate of 7% per annum will be applied to the total basic refund amount using an averaging convention as expressed in the following formula:

$$\text{Interest Amount} = \frac{\text{Total Basic Refund} \times \text{Annual Interest Rate}}{12} \times \text{Number of Months Retained}$$

Where: Number of Months Retained =  $\frac{A + B}{2}$

APPENDIX A  
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And: A = Whole months between January 5, 1976 and  
December 23, 1977 = 23

B = Whole months between December 23, 1977 and  
refund application date.

3. Individual Refund

Individual refunds will be calculated as follows:

$$\begin{array}{r} \text{Individual Refund} = \frac{\text{Account's Current Monthly Exchange Line \& Trunk Billing}}{\text{Total Basic Refund + Interest}} \times \frac{\text{Total Monthly Exchange Line \& Trunk Billing for All Accounts}}{\text{Total Monthly Exchange Line \& Trunk Billing for All Accounts}} \end{array}$$

C. REPORTING REQUIREMENTS

Pacific Telephone will file a refund report with the Commission within 90 days of completion of the refunds. The report will contain the following information:

1. The total basic refundable amounts plus interest due customers.
2. The total amount credited on bills either initially or through adjustment.
3. The amount of expense incurred in making refunds and accounts charged therewith.