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Decision No. 91115 DEC 18 1979

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 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)

SUPPLEMENTARY OPINION AND ORDER
(License Contract Issues)

Decision No. 90362 in the license contract phase of this proceeding, issued June 5, 1979, disposed of all license contract issues and determined that for ratemaking purposes, the license contract expense account of The Pacific Telephone and Telegraph Company (Pacific) should be reduced from \$40,219,000 to \$32,606,000 for the test year in this proceeding. Such an adjustment was found to convert into a gross revenue reduction of \$5,817,000 based on the adopted test year results for Application No. 55492.

Our main rate order in this proceeding for the test year in Application No. 55492 was Decision No. 88232 dated December 13, 1977, (83 CPUC 149). The rates allowed became effective on December 23, 1977, subject to refund should we determine a rate reduction in order at the conclusion of our license contract investigation.

Since we have decided that Application No. 55492 rates should be reduced in the gross annual amount of \$5,817,000 from the date they went into effect, we must calculate the refund to be made and determine its method of distribution.

The license contract decision (No. 90362) specifically provided for Pacific to file a proposed refund plan and a proposed rate adjustment plan, with an opportunity for other parties to respond with plans of their own or to comment on Pacific's proposals.

Prospective Rate Adjustment

Pacific initially filed and served upon the parties a proposed rate design which reduced toll rates. Continental Telephone Company of California (Continental) and General Telephone Company of California (General) both protested a rate reduction plan which would negatively affect toll settlement revenues among companies. The Administrative Law Judge directed Pacific to file an alternate plan for our consideration which would have no effect on toll settlement revenues. In response, Pacific made a filing served upon the parties which explained that the rate reductions could be achieved by a "negative surcharge applied against each customer's basic exchange billing."

For future reference in such matters, we will state that it is our normal policy to adopt rate reduction plans which have

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no negative impact on other companies. However, in this case a prospective rate reduction is no longer necessary because we have now issued Decision No. 90919 in Pacific's Application No. 58223 (dated October 10, 1979, and effective on that date) and the rates set in that decision went into effect on October 30, 1979.

Refunds

Pacific proposes a refund plan (with interest) calculated from December 23, 1977, (the effective date of the rates authorized in Decision No. 88232) to the effective date of the rates authorized in this decision and 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 the applicable tariffs.

The staff, in its filed comments, indicates that it has no objection to Pacific's proposal.

The California Interconnect Association (Interconnect) and ComPath propose an alternate plan in which funds would be made available for another license contract investigation and to remedy alleged service deficiencies. Toward Utility Rate Normalization (TURN) concurs in principle, favoring the use of some of the amount for a license contract investigation.

We consider another full-scale license contract investigation premature at this time. But, in any event, the funds involved belong either to Pacific or to the ratepayers of Pacific, not to the State of California. Additionally, the California

Supreme Court has recently held that Public Utilities Code Section 453.5, concerning refunds, does not permit us to divert refund sums into balancing accounts, even assuming that the purpose of such an account is otherwise lawful. (California Manufacturers Association v PUC (1979) 24 Cal 3d 836.)^{1/} Clearly, to follow the suggestion of ComPath and Interconnect would violate the court's interpretation of Section 453.5. We believe this is true of any interest involved as well as the principal sum.

Computation of Interest on Refunds

Pacific's original refund proposal included interest at 7 percent per annum. TURN criticizes such a rate as artificially low, stating that the current prime rate was 12 percent,^{2/} and that in 1978, an amendment to Article 15 of the California Constitution was ratified which increased the maximum rate of interest for judgments. The pertinent paragraphs of Article 15, Section 1, read:

"The rate of interest upon a judgment rendered in any court of this state shall be set by the Legislature at not more than 10 percent per annum. Such rate may be variable and based on interest rates charged by federal agencies or economic institutions, or both.

"In the absence of the setting of such rate by the Legislature, the rate of interest on any judgment rendered in any court of the state shall be 7 percent per annum."

Since TURN filed its comments, the people of the state have enacted Proposition 2, effective November 7, 1979. The above quoted provisions remain unchanged, however. The Legislature has not acted to raise the "judgment" rate of interest above 7 percent.

1/ ComPath and Interconnect filed their proposal with us one day prior to the court's decision.

2/ Since TURN filed its brief the rate has continued to increase.

We agree that 7 percent may be too low an interest rate in today's market. We have repeatedly stated that we are not a "court", and that our decisions are not "judgments". However, we do not wish to apply a new and higher interest rate selectively, and we feel that we do not have the proper information on this record to decide what any new rate should be. We will, therefore, order this refund made with an interest rate of 7 percent per annum, compounded monthly. TURN and other parties are assured that we will consider our general policy regarding interest rates promptly.

Attorney Fee Questions

Without making a specific request for an attorney fee, TURN requests that we "retain" 25 percent of the accrued interest for payment of "fees and costs". No summation of claimed fees and costs is presented.

In TURN v PUC (___ Cal 3d ___, S.F. 23868, December 6, 1979) the Supreme Court held, regarding previous issues raised in this very proceeding, that we may not award attorney fees in ratemaking matters. As we pointed out in Decision No. 90362, supra, the license contract investigation, initiated by the Commission, is simply part of the ratemaking issues in this general proceeding.

However, the issue raised here is not attorney fees themselves but whether we may set aside refund monies anticipating an attorney fee award. As we understand the Supreme Court's recent interpretation of Public Utilities Code Section 453.5, we cannot "retain" refund monies, regardless of whether we are to use a "balancing account" or some other device. (See discussion, above, of California Manufacturers Association v PUC.) Therefore, regardless of how one is to characterize the license contract phase of this proceeding (as a "ratemaking matter" or otherwise) we cannot take the action TURN requests.

Findings of Fact

1. The total "refund calculation", including interest at 7 percent per annum, and the "reporting requirements" proposed in Pacific's original refund proposal are reasonable.

2. Another full license contract investigation of the scope conducted in this proceeding and culminating in Decision No. 90362 dated June 5, 1979, is premature.

Conclusions of Law

1. We should adopt Pacific's refund calculation submitted in its initial filing of the subject, including the calculation of interest, and the reporting requirements.

2. We cannot retain sums to be refunded in this proceeding, or the interest on such sums, in balancing accounts, or by the use of any method or device which substitutes for a balancing account, for the purposes recommended by ComPath, Interconnect, or TURN.

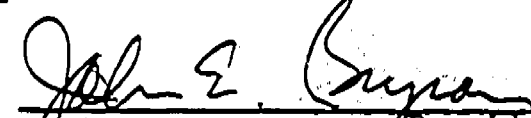
IT IS ORDERED that:

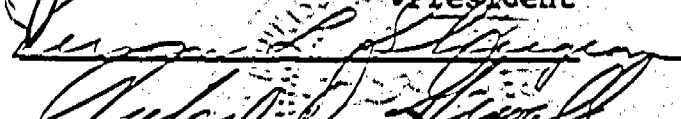
1. The Pacific Telephone and Telegraph Company shall refund that amount calculated according to the refund plan attached to this decision as Appendix A, for the period December 23, 1977, to the effective date of the rates authorized in Decision No. 90919 (October 30, 1979), based upon a reduction in gross revenue requirement of \$5,817,000 for the test year in Application No. 55492 (which amounts to a principal sum of \$12,027,000 plus interest at seven percent per annum compounded monthly).


2. The license contract phase of this proceeding is closed.


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

Dated DEC 18 1979, at San Francisco, California.



President






Commissioners

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(REFUND PLAN)

This refund is based on a reduction in the gross revenue requirement for the adopted test year in Application No. 55492 of \$5,817,000 due to license contract expenses which were allowed subject to refund in Decision No. 88232 and subsequently disallowed in Decision No. 90362.

A. REFUND APPLICATION

The refund amount, including interest, calculated for the period December 23, 1977, to the effective date of the tariffs authorized by Decision No. 90919 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 to eligible customer accounts within 120 days after the effective date of the refund order.

B. REFUND CALCULATION

1. Total Basic Refund: \$12,027,000 (\$5.817 million per year from December 23, 1977, to the effective date of the tariffs authorized by Decision No. 90919).

2. Interest

Interest at the rate of 7 percent 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 = $\frac{A + B}{2}$

And: A = Whole months between December 23, 1977, and the effective date of the tariffs authorized by Decision No. 90919.

B = Whole months between the effective date of the tariffs authorized by Decision No. 90919 and the refund application date.

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3. Individual Refund

Individual refunds will be calculated as follows:

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

C. REPORTING REQUIREMENTS

The Pacific Telephone and Telegraph Company 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.