

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Disposition of)
Property Tax Revenues for Taxable)
Year 1991 by Certain Affected Tele-)
communications Companies:)

American Telephone & Telegraph)
(AT&T))

Application No. C-931(40)

ORDER APPROVING DISPOSITION

Entered: April 5, 1993

BY THE COMMISSION

PRELIMINARY MATTERS

The Commission on its own motion opened this docket May 14, 1992 to determine whether to approve plans submitted by certain affected telecommunications companies for the disposition of revenues resulting from decreases in personal property taxes for the taxable year 1991. This docket is governed by Neb. Rev. Stat. Section 86-803(9) (1992 Cum. Supp.)

Notice of hearing was sent to AT&T July 23, 1992 by the Commission's Executive Director and hearing was scheduled for August 6, 1992. The Commission, in its original order opening this docket, ruled that a plan for disposition would be approved without a hearing, pursuant to its modified procedure rule, if (a) there was no dispute as to the amount of the revenue calculated for disposition and (b) if the respondent telephone company agreed to dispose of the revenues as provided by the alternatives pre-approved by the Commission.

Subsequent to the notice of hearing but prior to the hearing date, the Nebraska Supreme Court handed down decisions in the Bahensky and Jaksha tax cases. Because of the potential impact on the C-931 docket, the Commission's Communications Department moved in a formal motion that the docket be held in abeyance until the Legislature responded to these rulings. We granted that motion August 4, 1993. The voters of the State then approved an amendment to the State Constitution (AMENDMENT 1) and the Legislature, in special session, altered the State's personal property tax laws to adjust the State's tax policy to the Bahensky and Jaksha decisions.

On March 24, 1993, AT&T filed a proposed plan which stipulated to the amount of the revenue windfall calculated by the Communications Department (\$461,000). This plan combines alternatives 3 (provide technological assistance for educational systems) and 5 (refunds to customers) found in the Commission's initial order. "Attachment A," which details the AT&T proposal, is incorporated by reference into this order. The Communications Department filed a motion April 2, 1993 seeking that the abeyance order previously entered be lifted to the extent of entertaining the AT&T proposal. We grant that motion.

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O P I N I O N A N D F I N D I N G S

The Commission, being fully advised, finds:

1. AT&T has \$461,000 available for disposition in personal property tax revenues for the 1991 taxable year (after various offsets)¹.

2. AT&T filed documentation (Attachment A) which stipulates that the above amount will be used in conformance with the pre-approved methods selected previously by the Commission.²

3. The Communications Department staff and AT&T concur in the \$461,000 figure. There being no dispute as to the amount of revenue for disposition and the company agreeing to a disposition by use of two of the pre-approved methods described in Footnote 2, an order approving the disposition and cancelling the previously scheduled (and, in this case, indefinitely delayed) hearing should be entered.

4. The revenue subject to this order should be maintained in an interest-bearing account pending its actual disposition, that disposition to occur within one year of the date of this order. Interest should accrue during this period and thereafter on any undisposed revenues. The interest accrued on the undisposed

¹Commission Communication Department staff accepted certain offsets in arriving at each telecommunication company's calculation while recognizing that the then pending, now decided, court cases could affect those offsets as they pertain to the depreciation and income tax surcharges (which were subject to the litigation). Since the outcome of those lawsuits affects the offsets, the docket should remain open and the amount of the disposition shall be subject to verification after 1992 corporate tax returns are filed with the Nebraska Department of Revenue and, if further changes occur, including amended income tax returns, (a) a new calculation of the additional revenues should be made and confirmed for each company affected, and (b) respondents should stipulate to the disposition of those additional revenues.

²The revenues can be:

- (1) used to install equipment necessary to provide 911 or E-911 service;
- (2) used to implement Phase II of the Frame Relay project;
- (3) used to install distance learning or other technology assisted educational systems for secondary and/or primary school districts;
- (4) returned to the local governmental subdivision from which they came;
- (5) refunded to the respondent's customers on a pro rata basis; or
- (6) used to provide toll route diversity to improve network reliability.

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revenues should be added to the amount available for disposition. Finally, disposition should be made as soon as is practicable for the alternatives selected.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the previously delayed hearing for this respondent be, and it is hereby, cancelled.

IT IS FURTHER ORDERED that the proposed plan offered by the respondent AT&T for disposition of revenues resulting from decreased personal property taxes for the 1991 taxable year be, and it is hereby, approved pursuant to this order.

IT IS FURTHER ORDERED that this docket shall remain open and, if adjustments to the offsets used in the calculation of the revenues subject to disposition change due to further litigation, act of the Legislature, or are altered by amendment to corporate tax returns, (a) a new calculation of any additional revenues shall be made and confirmed for the respondent and (b) the respondent shall stipulate to the disposition of those additional revenues.

IT IS FINALLY ORDERED that the revenue subject to this order shall be maintained in an interest-bearing account pending its disposition, that disposition to occur within one year of the date of this order. Interest shall accrue during this period and thereafter on any undisposed revenues. The interest accrued on the undisposed revenues shall be added to the amount available for disposition and disposition shall be made as soon as is practicable for the method of distribution selected.

MADE AND ENTERED at Lincoln, Nebraska this 5th day of April, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Duane D. Gay

//s//Rod Johnson
//s//James Munnelly
//s//Daniel G. Urwiller

Daniel G. Urwiller

Vice Chairman

ATTEST:

[Signature]
Executive Director

