

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Disposition)	Application No. C-931(32)
Property Tax Revenue for Taxable)	
Year 1991 and Certain Other Tax)	ORDER APPROVING
Years by Certain Affected Telecom-)	DISPOSITION FOR TAX YEARS
munications Companies:)	1986, 1987, 1988, 1989,
)	1990, 1991, and 1992
)	
Southeast Nebraska Telephone Co.)	
RESPONDENT.)	
)	Entered: November 22, 1993

BY THE COMMISSION

OPINION AND FINDINGS

The Commission opened this docket May 14, 1992. A format was established to approve or disapprove plans submitted by certain affected telecommunications companies. Specifically, this docket sought whether to approve disposition of excess revenues resulting from decreases in personal property taxes for the 1991 tax year. Neb. Rev. Stat. Section 86-803(9) (1992 Cum. Supp.) governs our review. Subsequently, we reviewed a plan from the Southeast Nebraska Telephone Company ("Southeast") of Falls City, Nebraska on July 14, 1992, but did not act upon it.

Shortly after that hearing, the Nebraska Supreme Court ruled in the Bahensky and Jaksha decisions that the property tax scheme (upon which the Commission and the companies relied in calculating the amount of revenues available for disposition in 1991) was unconstitutional. The Commission's Communications Department ("the Staff") then moved that we hold the entire C-931 docket in abeyance while the Legislature reacted to the Court's rulings and we did so August 4, 1992.

Nebraska voters subsequently approved an amendment to the State Constitution (AMENDMENT 1) and the Legislature, in special session in the Fall of 1992, altered the State's personal property tax laws to adjust the State's tax policy to the Bahensky and Jaksha rulings (LB 1). This new legislation has not been found unconstitutional nor is it the subject of any pending lawsuits.

Based on proposed stipulations between the Staff and Respondents US West Communications and Lincoln Telephone Company, we lifted the order of abeyance as it applied to those two companies and reviewed modified plans for disposition. Hearing was held in the Commission Hearing Room, Lincoln, Nebraska on June

2, 1993. All Commissioners were present to hear testimony. Entered into the record as Exhibits 5 and 6 were letters from Governor Ben Nelson and the State Tax Commissioner praising the stipulations and urging their approval.

Briefly, the stipulations we considered at that hearing re-calculated the amount of revenue for disposition for the 1991 tax year (based on the tax scheme installed pursuant to LB 1). In addition, the stipulations addressed tax years 1989, 1990, and 1992. After hearing, the Commission approved the Lincoln Telephone and US West dispositions as per the stipulations. This was done by order entered June 16, 1992.

We now consider whether to accept a stipulation offered by Southeast and the Staff. It approximates the stipulations described above and already approved, except in the amount of the revenue available for disposition for the applicable tax years 1989, 1990, and 1991. In addition, Southeast did pay 100 percent of its personal property taxes for tax years 1986, 1987, and 1988. Southeast took steps to preserve its rights in challenging the valuation of its personal property in those years and it appears there is a possibility it could recover those taxes paid. The local subdivisions through the Richardson County Attorney have recognized this possibility and support this stipulation as a means of eliminating that potential outcome. The stipulation provides for the method of disposition chosen by Southeast to dispose of the 1991 revenue and re-calculates the disposition's amount. Staff moved that the order of abeyance be lifted as it applies to Southeast. We grant that motion.

The Commission, being fully advised, finds: The proposed stipulation between Southeast and the Staff should be adopted and incorporated by reference into this order as Exhibit 1 and should be made the findings and final determination of the Commission as it applies to the 1986, 1987, 1988, 1989, 1990, 1991 and 1992 tax years.

We also take judicial notice of the fact that a new docket (C-992) was opened to consider application of Section 86-803(9) to the 1992 tax year. This docket applies to all telecommunications companies, including Southeast, just as the C-931 docket did. Because this stipulation and order apply to the 1992 tax year, Southeast's participation in the C-992 is concluded.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the proposed stipulation be and it is hereby adopted and incorporated by reference into this order as Exhibit 1 and made the findings and final determination of the Commission

as applied to the Southeast Nebraska Telephone Company for the 1986, 1987, 1988, 1989, 1990, 1991 and 1992 tax years.

IT IS FURTHER ORDERED that the proposed plan offered by the Respondent disposing of revenues from decreased personal property taxes for the 1991 tax year as re-calculated in Exhibit 1 be, and it is hereby, approved pursuant to this order.

IT IS FINALLY ORDERED that this order concludes the Southeast Nebraska Telephone Company's participation in the C-992 docket.

MADE AND ENTERED at Lincoln, Nebraska this 22nd day of November, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Daniel G. Hurvick
Duane D. Gay

//s//Rod Johnson
//s//Frank E. Landis, Jr.
//s//James F. Munnelly

James F. Munnelly
Chairman

ATTEST:

Robert R. King
Executive Director

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