

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Disposition) Application No. C-931(23)
Property Tax Revenue for Taxable)
Year 1991 and Certain Other Tax) ORDER APPROVING
Years by Certain Affected Telecom-) DISPOSITION FOR TAX YEARS
munications Companies:) 1989, 1990, 1991, and
) 1992
)
K & M Telephone Company)
RESPONDENT.) Entered: August 30, 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 approved a plan from K & M Telephone Company ("K & M") of Chambers, Nebraska on June 23, 1992.

After that order was entered, 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 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, altered the State's personal property tax laws to adjust its tax policy to the Bahensky and Jaksha rulings (LB 1). This new legislation has since survived the Court's scrutiny (see MAPCO II) and this requires a new calculation of the 1991 revenues for disposition by the telecommunications carriers subject to this docket.

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. 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 K & M 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. In this case that is solely 1991 because K & M did not participate in the tax challenges. Therefore, K & M did not benefit from the 1989 and 1990 tax decisions and paid 100 percent of its personal property taxes in those two years. Because 1989 and 1990 are disposed of in this fashion, we treat it as a disposition exceeding the approximate 80/20 split other companies who did benefit from the court decisions have used in their dispositions. The stipulation reaffirms the method of disposition chosen by K & M 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 K & M. We grant that motion.

The Commission, being fully advised, finds: The proposed stipulation between K & M 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 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 K & M, just as the C-931 docket did. Because this stipulation and order apply to the 1992 tax year, K & M'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 K & M Telephone Company for the 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 proper-

ty 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 K & M Telephone Company's participation in the C-992 docket.

MADE AND ENTERED at Lincoln, Nebraska this 30th day of August, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Daniel G. Munnely
Duane D. Gay

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

John F. Saeed
Chairman

ATTEST:

John F. Saeed
Executive Director