



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Surcharge of Utah Public Service Commission's
Lifeline Telephone Service Program.

File: B-226527

Date: February 3, 1988

DIGESTS

1. United States Department of the Interior can pay a surcharge levied indiscriminately against the United States, commercial businesses, and private residences, pursuant to a Utah Public Service Commission lifeline telephone service program that provides discounted residential telephone rates for Utah residents eligible for various public assistance programs. Discrimination by a public utility in setting its rates is not unlawful when based upon a classification corresponding to economic differences among its consumers.
2. Surcharge assessed by telephone service providers to implement Utah Public Service Commission's lifeline telephone service program by which lower income individuals receive less expensive service is not a tax, but part of an authorized rate for telephone services. The surcharge represents a partial redistribution of costs incurred by telephone service providers whereby the poorer users pay less for their services. 64 Comp. Gen. 655 (1985) distinguished.

DECISION

A certifying officer with the National Park Service of the United States Department of the Interior asks whether a surcharge levied pursuant to the Utah Public Service Commission's Lifeline Telephone Service Program can be certified for payment. For the reasons given below, we find that the payment can be certified.

BACKGROUND

Effective January 1, 1987, the Utah Public Service Commission established a program to provide discounted residential telephone rates for certain low income Utah residents. The program is known as the Lifeline Telephone Service Program. Utah Public Service Commission, §§ R750-341 et seq. Beneficiaries are residents who are currently eligible for various public assistance programs, including Aid to

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Families with Dependent Children, food stamps, and supplemental security income. Id. § R750-341-2. Eighty percent of the total costs of providing lifeline telephone services is to be funded from a surcharge imposed upon non-lifeline customers. The other 20 percent is to be funded from a surcharge imposed upon all intrastate toll and access services in Utah. Id. § R750-341-6.2.

The Contel Telephone Company and other telephone service providers are to assess and collect the lifeline surcharge. Monthly bills will show an 18 cent surcharge on each access line, and a surcharge of .65 percent on long distance calls and WATS usage within Utah. The surcharge is to be assessed indiscriminately against the United States Government, commercial businesses and private residences. It is estimated that the annual cost of the surcharge for one of Interior's national parks in Utah will be between \$1000 and \$1500. In a proceeding before it, the Utah Public Service Commission found that it had authority to establish a lower rate for lifeline services. In re Establishment of Telephone Lifeline Rates, Case No. 85-999-13 (Utah Pub. Serv. Comm. Jan. 3, 1986).

The Interior Department raises two legal problems that could preclude payment of the surcharge. First the Department suggests that if the surcharge is considered a vendee tax, the government cannot pay it; if it is a vendor tax,^{1/} arguably the federal government is being treated discriminatorily since it is paying for more services than another user group. Secondly, the certifying officer questions whether payment of the surcharge is consistent with section 1348 of title 31 of the United States Code, which prohibits appropriated funds from being expended for telephone service installed in any private residence or private apartment or for tolls or other charges for telephone services from private residences. He argues that by paying the surcharge, indirectly the federal government would be paying for telephone service in the private residences of the eligible lifeline users.

The Department has been certifying utility bills for payment even though the payment includes the lifeline surcharge. The Department states that if the surcharge eventually is

^{1/} The Department suggests that the lifeline surcharge does not meet the requirements of a valid vendor tax since the Utah Public Service Commission does not actually assess the charge and collect the revenue from the utility companies. The Commission has merely authorized and directed the utility companies to redistribute their costs from the poor users of their services to the rich users.

determined to be unallowable, it would be relatively easy to offset surcharge amounts paid against future utility bills.

LEGAL DISCUSSION

Generally, where rates for providing utility services are established by the legislature or a public service commission which has been delegated this power, such rates are controlling. Unless they are manifestly unjust, unreasonable or discriminatory, they should be paid by federal agency users. B-189149, Sept. 7, 1977; 27 Comp. Gen. 580, 582-83 (1948). Although public utilities as a rule cannot discriminate unjustly in their rates to consumers similarly situated or of the same class for the same service or kind of service, it is also true that rate-making authorities may decide that a substantial inequality in economic circumstances justifies a reasonable inequality of rates.

Accordingly, discrimination by a public utility in setting its rates is not unlawful when based upon a classification corresponding to economic differences among its customers or upon differences in the kind or amount of service furnished or other reasonable basis. B-189149, Sept. 7, 1977. In this regard, we have held that the General Services Administration was authorized to pay a lifeline surcharge representing lost revenues to utility companies who were providing basic utility services at reduced rates to elderly persons whose income was below a certain level. Id. Under this program the utility companies charged their other users for the costs of supporting the lifelines services. The users included the General Services Administration.

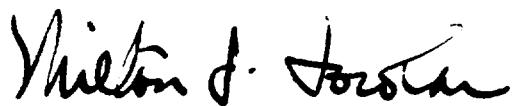
We think the lifeline surcharge to be imposed in this case is similar to the surcharge in B-189149, Sept. 7, 1977, and it represents a proper exercise of the Utah Public Service Commission's rate-making authority. The service is to be supplied to individuals who are eligible for public assistance, and it is to be funded from a surcharge assessed indiscriminately against customers not eligible for lifeline service, including the federal government, commercial businesses and private residences.

We do not regard the lifeline service surcharge to be a tax, either vendor or vendee, but rather a part of the authorized rate for telephone services. The surcharge represents a partial redistribution of the costs of doing business incurred by telephone service providers, and passed on to a defined class of service users. It is not a tax on the providers or their users.

We distinguish 64 Comp. Gen. 655, 656 (1985) and similar cases, in which we held that 9-1-1 telephone fees were found to be vendee taxes, and as such could not be assessed

against the United States. In those cases, the telephone service providers acted strictly as collection agents for the public authorities assessing the fees, which were used to offset the cost of a separate municipal service.

We also find that section 1348 of title 31 of the United States Code does not apply to the lifeline service program under consideration. As stated, that section prohibits appropriated funds from being expended for telephone service installed in any private residence or for tolls or other charges for telephone services from private residences. The lifeline service program does not involve these kinds of direct expenditures. A fair reading of section 1348, its legislative history and its construction does not justify such a broad interpretation of the restriction.



Acting Comptroller General
of the United States