

Decision 87 10 088

OCT 28 1987

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the method of implementation of the Moore Universal Telephone Service Account.

OIR 83-11-05 (Rulemaking)
(Filed November 30, 1983)

(For appearances see Decision 87-07-090 and Appendix A.)

INTERIM OPINION

Background

By Decision (D.) 87-07-090 this investigation was expanded to address necessary modifications to the Universal Lifeline Telephone Service program (ULTS) to conform with AB 386¹ which was signed into law on July 15, 1987, by the Governor as an urgency statute and chaptered on July 16, 1987.

Among other matters, this law rescinds a tax which has been used to subsidize ULTS. However, it provides for the establishment of a 4% interim surcharge on service rates to subsidize ULTS until an initial order adopting required rates and funding requirements is issued by the Commission or until October 31, 1987, whichever occurs first. By D.87-07-090 an interim surcharge mechanism was adopted, subject to refund.

A prehearing conference (PHC) was held on August 20, 1987, to identify AB 386 matters which require further Commission attention. After an off the record discussion, interested parties agreed that the following seven issues should be addressed through a written comment procedure:

- a. Annual proceedings.
- b. Disposition of collected funds.

1 Ch. 163, Stats. 1987.

- c. Pooling arrangements.
- d. Taxability of surcharge.
- e. Verification of eligibility.
- f. Minimum changes for an order and scope for future hearings.
- g. Double surcharge.

Interested parties were also requested to comment on suggested changes to General Order 153, the General Order which provides the procedure for the administration of ULTS. Comments were filed on September 15, 1987, and reply comments on September 25, 1987. Approximately fifteen comments and reply comments were received from thirty five interested parties.

Allied Radiotelephone Utilities of California, a non-profit trade association representing a large number of radiotelephone utilities (RTUs), filed a motion to dismiss RTUs and cellular radio carriers as respondents to this investigation, on August 19, 1987. Similarly, Cellular Resellers Association, Inc., a non-profit mutual benefit corporation composed of certificated cellular resellers not affiliated with wireline or non-wireline cellular providers, filed a motion to dismiss certificated cellular resellers from this investigation, on September 15, 1987.

Annual Proceeding

Among the Code Sections added to the Public Utilities (PU) Code with the passage of AB 386 was Section 879. This section provides that the Commission shall, at least annually, initiate a proceeding to set rates for ULTS. All telephone utilities providing ULTS shall annually file, on a date set by the Commission, proposed ULTS rates and a statement of projected revenue needs to meet the funding requirements to provide ULTS to qualified subscribers, together with proposed funding methods.

Of the eight issues under consideration, this issue was the most controversial. AT&T Communications of California, Inc.

(AT&T) and MCI Telecommunications Corporation (MCI) adamantly believe that AB 386 requires local exchange companies (LECs) to file their initial annual statement prior to October 31, 1987, the date the Commission is required to issue its initial order adopting required rates and funding requirements.

Other interested parties such as PSD, Pacific Bell and General Telephone Company of California (General) assert that there is no reference in the bill requiring the LECs to file their initial annual statement prior to October 31, 1987. PSD and Pacific Bell point out that Section 879.5 clarifies that the specific requirements of Section 879 need not be followed in this initial proceeding because Section 879.5 specifically states that "notwithstanding Section 879" the Commission shall issue its initial order adopting required rates and funding requirements not later than October 31, 1987.

US Sprint Communications Company (US Sprint), in its reply comments, recommends that rather than trying to resolve this dilemma, we immediately act to comply with PU Code Sections 870 through 880 which have been adopted with the passage of AB 386 and which assure the continued availability and financial viability of ULTS. This position is supported by numerous interested parties.

We concur with US Sprint. We also concur with PSD's and Pacific Bell's interpretation of AB 386. Rather than belay this issue, we must move ahead if ULTS is to continue. However, before doing so, interested parties should be reminded that LECs have filed recent ULTS cost data in response to Ordering Paragraph 1 of D.87-04-067 and that ULTS revenue and expense estimates for the fiscal year ending June 30, 1988 are included in Item 4 to this proceeding. Although this data has been available since May of 1987, only Toward Utility Rate Normalization (TURN) commented on the data.

As stated previously, PU Code § 879 requires LECs to annually file, on a date set by the Commission, the proposed ULTS

rates and statement of projected revenue needs. Several interested parties proposed that the annual filing date not be set until all ULTS issues are resolved; however, any further delay is not in the best interest of ULTS nor in the spirit of AB 386. Of the interested parties recommending a date for the annual filing, none proposed the same date. Therefore, on judgement, we will adopt April 1st for the annual filing required by the LECs and July 1st to implement annual surcharge rates. This should enable interested parties to participate in workshops and, if necessary, evidentiary hearings on unresolved matters.

As TURN points out, if need be, we can set ULTS rates more frequently than once a year. However, we do not intend to exercise such authority except upon the occurrence of significant events, such as an unprojected deficit in the Trust.

The following schedule, modified from PSD's proposed timetable, should apply to the required annual filing and be processed as an advice letter filing:

- a. On April 1st each LEC files its worksheet.
- b. On April 15th Pacific Bell files the ULTS funding requirement and the surcharge percentage.
- c. On May 1st interested parties file comments on the April 1st and 15th filings.
- d. On May 15th interested parties file reply comments.
- e. On June 15th or the first Commission meeting subsequent to June 15th, the Commission issues a resolution setting forth the adopted funding requirement and the surcharge percentage.
- f. On June 20th or five days after issuance of the order, referred to in Section e. above, utilities file an appropriate advice letter.

- g. On July 1st advice letters become effective.
- h. Telephone companies provide notice to customers on the first bill to which the revised surcharge applies.

The first annual filing from each LEC should be made on April 1, 1988. Workshops should be held to develop a filing format compatible to all LECs and to insure that comparable data is provided from each LEC prior to the initial filing date.

Copies of each LEC filing, including its advice letter filing, should be served on the appearance list presently in effect. Parties who wishes to be placed on the service list in the future should make their request in writing to the Commission's Process Office with a copy to each appearance of record.

Should parties take issue to any filing, they may file a protest. The protest will be evaluated and, if there is merit to the protest, the protest will be the basis for an evidentiary hearing on the selected issue. However, an opinion should be issued in accordance with the above timetable setting the funding requirements, surcharge percentage, identification of issues for evidentiary hearings and the setting of evidentiary hearings. At the completion of evidentiary hearings, an opinion setting forth any changes to the funding requirement, the surcharge percentage, and/or changes to the ULTS program should be issued.

Disposition of Collected Funds

By D.87-07-090 utilities collecting ULTS taxes subsequent to July 16, 1987, pursuant to Section 44042 of the Revenue and Taxation Code were ordered to retain such tax monies, subject to refund, in an interest-bearing account pending further order of the Commission.

Those interested parties commenting on this issue concur that any such taxes collected after the date the tax was terminated should be made available to the ULTS pool to meet ongoing needs of the program.

Since interested parties did not comment on how much money was assessed and collected as a tax subsequent to the repeal of Section 44042 of the Revenue and Taxation Code, it is uncertain how much money was collected, if any at all. Any such tax money collected would be helpful in meeting ongoing needs of the ULTS program. Even though it may be costly for utilities to refund tax money assessed and collected subsequent to the repeal of the tax, there is no authority or desire to divert money collected as a tax to a Commission designated program. Utilities who imposed and collected ULTS tax money subsequent to its repeal should either refund the money to their customers or seek a ruling from the Board of Equalization for the disposition of such funds. Taxes assessed prior to the repeal of the tax, but collected subsequent to the repeal, should be transferred to the ULTS fund.

By the same decision, we implemented a 4% interim surcharge on the service rates of intrastate interLATA services and on intrastate telecommunications services not defined by LATA boundaries, subject to refund pending further Commission action. The utilities were directed to place the interim surcharge in an interest-bearing account.

Interested parties concur that an interim surcharge was imposed to meet ongoing needs of the ULTS program; therefore, the interim surcharge should be retained for the intended purpose. We agree. The "subject to refund" clause imposed on the interim surcharge should be lifted and any such funds collected are to be forwarded with applicable interest to the ULTS fund as soon as practicable. A transmittal sheet identifying revenues applicable to the interim surcharge, the interim surcharge collected, and interest earned on the interim surcharge funds should accompany the

deposit. A copy of the transmittal sheet should be sent to the Commission's Evaluation and Compliance Division Director.

Pooling Arrangements

Interested parties commenting on pooling arrangements concur that the ULTS program should be administered on an industry basis, rather than on a utility-by-utility basis. Several of the respondents recommend a trust be established and that it be administered by a diverse interest of representatives similar to the DEAF Trust (Deaf Equipment Acquisition Fund Trust) which was set-up in 1981 to receive funds and to reimburse telephone utilities for expenses incurred for providing specialized or supplementary telephone communications equipment to disabled customers.

Since the ULTS program is a statewide program, we concur with interested parties that the ULTS program should be administered on an industry basis through a trust on an accrual basis of accounting with a fiscal year period beginning July 1st. Therefore, a ULTS administrative committee should be established to implement the Trust and to be responsible for the receipt and investment of ULTS surcharge monies and for the payment of monies expended by LECs and IECs for actual ULTS costs incurred. The administrative committee should also be responsible for causing an annual audit of the ULTS fund by an independent Certified Public Accountant firm. The function of the administrative committee is financial in nature and should not be construed to include policy decisions.

Of the many suggestions for the establishment of the ULTS administrative committee, Public Staff Division (PSD) advocates a diversified membership consisting of five representatives to be selected from the five largest LECs, the small LECs, public interest groups, the IECs, and the Commission's Executive Director.

However, since the Commission is to have the overall responsibility to regulate and/or review all activities related to

ULTS, there should be no Commission representative on the Trust Committee. Instead, another representative of public interest groups should be included. The Commission's Evaluation and Compliance Division should take immediate steps to oversee the selection of administrative committee members and the establishment of the ULTS Trust.

As soon as the ULTS Trust is established, the administrative committee should inform the Commission's Executive Director in writing of the names and terms of the ULTS Trust administrative committee members as well as the address of where ULTS tax and surcharge monies should be deposited. In turn, the Executive Director shall, by letter, require respondent LECs and IECs presently holding ULTS tax monies, except ULTS tax monies assessed and allocated to the period after July 15, 1987, and surcharge monies to the Trust to deposit all ULTS funds held by them. The LECs and IECs should not net any ULTS costs prior to deposit with the ULTS Trust. Subsequent deposits should be made on a monthly basis, no later than the 10th of the subsequent month.

Conforming to PSD's proposal, the ULTS administrative committee should be responsible for preparing an annual budget for the administrative committee's operation, consistent with the LEC's yearly filings, to be approved by the Commission's Evaluation and Compliance Division Director. Administrative committee members should not be compensated for serving on the committee. Budgetary approved funds should be reimbursable from the ULTS Trust only when actually incurred.

Claims for actual ULTS costs incurred should be submitted to the ULTS Trust administrative committee and copies to the Commission's Evaluation and Compliance Division for committee approval prior to payment on a monthly basis. Since surcharge revenue and claims are to be processed on a monthly basis, there is no need to provide for the recovery of carrying costs as in the prior ULTS program. However, it may be necessary for the ULTS

Trust administrative committee to phase in monthly payments and the elimination of carrying charges because AB 386 authorizes only quarterly payments from funds collected as a tax. It is silent on funds collected as a surcharge. Other ULTS costs, which were recoverable under the prior program, should continue under this program.

Since workshops and evidentiary hearings are to be scheduled, interested parties should come to an agreement on the monthly form that should accompany surcharge monies and claim payment to the administrative committee. Copies of forms used with the prior ULTS program are attached to General Order 153.

PSD recommends that all actual costs incurred for the implementation and operation of a verification program and for the education of ULTS services be recovered. However, its proposal is premature and should not be adopted at this time.

Taxability of Surcharge

Pacific Bell and AT&T believe that federal excise taxes and state and federal income taxes are applicable to the surcharge.

However, for state and federal income tax purposes, the utilities imposing the surcharge would incur little or no additional tax liability because the surcharge would be taxable income to the utilities upon receipt of surcharge money and deductible as ordinary and necessary business expense when paid to the Trust for support of ULTS.--

Since utilities are expected to incur little or no tax liability from the imposition of a surcharge, such tax effects should not be recoverable from the ULTS fund.

Verification of Eligibility

This new law, adding § 875(b) to the Public Utilities (PU) Code, provides, in part, that the Commission may establish procedures necessary to ensure that the ULTS qualifies for any federal funds available for the support of universal telephone service in a separate proceeding.

The Federal Communications Commission (FCC) presently has two programs available to support ULTS. These programs, deferral of FCC mandated subscriber line charges and an allowance of one-half of telephone installation costs up to \$30, are available only if a procedure is implemented to verify ULTS customers' eligibility both at the time of applying for ULTS and at renewal of eligibility.

Verification of eligibility was considered in our initial opinion adopting a ULTS program. However, a self-certification procedure was adopted because of its ease of administration and compliance and a desire to both preclude potential abuses of confidential consumer information and to avoid casting a "welfare" stigma over the program. In this phase of the proceeding, almost every interested party recommends future workshops and/or hearings to consider implementing a program to verify the eligibility of ULTS customers.

Although California long distance interstate users are contributing to the federal funds through long distance rates which include access charges paid by long distance carriers for access to local exchange companies' (LECs), California customers are benefitting from the program to the extent that California LECs do receive credit for one-half of the access charge, or \$1.30 of the \$2.60 access charge. According to AT&T's calculations, California could receive at least \$15 million of federal funds to subsidize ULTS.

We concur with Continental Telephone Company of California that the Commission has an obligation to the utilities' ratepayer to explore all possibilities for obtaining Federal support for ULTS. Therefore, it is time to evaluate the FCC's verification requirements and to determine whether an acceptable verification program can be developed to meet Federal requirements and, if so, whether such a program can be implemented on a cost effective basis while maintaining the confidentiality of customer

information. Workshops should be conducted by the Commission's Evaluation and Compliance Division prior to the possible scheduling of any evidentiary hearings on this issue.

Minimum Changes for an Order and Scope for Future Hearings

A majority of comments received support the continuation of the present ULTS program on condition that further workshop and hearings be held to consider and adopt a more precise surcharge rate and revised ULTS program. Proposed revisions include elimination of the \$0.25 inside wire and the \$0.75 equipment credits, setting the maximum subsidy a customer could receive towards flat rate ULTS at the same dollar amount a measured ULTS customer receives, and changes to the outreach program.

Allied Radiotelephone Utilities, CalTel, and ICS Communications, Chalfont Communications, Kidd's Communications, Inc., R.C.S., Inc., Salinas Valley Radio Telephone Company, and Metromedia Telecommunications, Inc. assert that the surcharge, by law, can only be applied to the LECs. This assertion is based on their interpretation of PU Code § 879(c) enacted by AB 386.

Specifically, this code section provides that any order issued by the Commission shall require telephone corporations providing ULTS to apply the funding requirement in the form of a surcharge to service rates which may be separately identified on the bills of customers using those services.

AT&T, Pacific Bell, and US Sprint disagree with the above interpretation and, instead, state that the legislative intent of AB 386 is to require all telephone corporations to fund ULTS on an equitable basis. To support their interpretation AT&T, Pacific Bell, and US Sprint cite PU Code § 871.5(c) signed into law by the Governor on September 19, 1987. This code section provides, in part, that ULTS should be supported fairly and equitable by every telephone corporation.

We concur with AT&T, Pacific Bell, and US Sprint. Having concluded that the surcharge is not restricted to the LECs, the

next step is to decide which telephone services should be subject to the surcharge.

Pacific Bell opposed a surcharge on intraLATA services to fund ULTS because, first, it believes that the surcharge should be imposed only on those services which have substantially declined in price since 1984. Secondly, any surcharge imposed on both LECs and IECs would result in customer confusion, and, thirdly, long distance telephone services have historically helped contribute to the achievement of low basic rates.

We are not persuaded by Pacific Bell's arguments, particularly since the Legislature has clarified that ULTS should be supported equitably by all telephone corporations; therefore, intraLATA services should be subject to the surcharge similar to intrastate interLATA services. Consistent with PU Code § 879(c) the ULTS should not be applied to ULTS rates charged by telephone corporations for ULTS.

To the extent intraLATA services are subject to a surcharge, PSD believes that the surcharge should be applied only to intraLATA toll services. However, should the ULTS program grow to the extent that the surcharge becomes burdensome on toll services, PSD believes that the surcharge should be extended to interLATA services, discretionary intraLATA exchange services, and lastly, to all basic exchange service except ULTS.

PSD's priority plan is premature and will not be considered at this time. However, its proposal to surcharge interLATA and intraLATA toll has merit and should be adopted. Consistent with the provisions of § 871.5(c) of the PU Code, the surcharge rate applicable to interLATA toll services should be the same surcharge rate applicable to intraLATA toll services. This will result in minimal customer confusion.

Although interested parties recommend minimal changes to the ULTS program in the initial order, there is no agreement on either the required ULTS surcharge rate or to which services it

should be applied. The following tabulation illustrates this disparity:

<u>Interested Party</u>	<u>Rate</u>	<u>Application of Rate</u>
AT&T	1.7%	Intrastate Services.
CalTel ²	2.0 - 3.0%	LEC Services.
US Sprint	2.65%	IntraLATA and InterLATA Toll Services.
TURN	4.0%	InterLATA Services.
PSD	4.0 & 3.0%	InterLATA & IntraLATA Toll Services Respectively.
Pacific Bell	5.7%	IEC Intrastate Services.

Although TURN questions the economic assumptions used by interested parties to develop their surcharge rates, an initial surcharge rate and funding requirement must be derived if we are to comply with AB 386. For consistency, the initial funding requirement and surcharge rate should be based on actual and projected ULTS data from Item 4 received into this proceeding which has been subject to interested parties' scrutiny since May 15, 1987. Item 4 is an analysis of ULTS revenues and expenditures for the period July 1, 1986 through June 30, 1988.

The initial funding requirement is \$112.8 million as derived from annualizing projected October through December 1987 claims of \$37.6 million to July 1, 1988, the next fiscal year. The next step is to divide the funding requirement by total intraLATA toll and interLATA toll to arrive at the initial surcharge rate.

Our intent is to have one and only one rate, this will eliminate customer confusion and make it easier to implement. However, the surcharge should not be applied to intraLATA toll

² California Association of Long Distance Telephone Companies.

calls until such customers have been informed and provided an opportunity to revise their calling patterns, and LECs have had an opportunity to revise their billing programs. Therefore, the surcharge should not be applicable to intraLATA toll calls until January 1, 1988.

The initial surcharge rate is 4%. This rate is derived from annualizing interLATA projected October through December 1987 revenues for the period October 1987 through July 1, 1988 and annualizing 1986 toll service revenue of the five major LECs³ for the period January 1, 1988 through July 1, 1988. Recorded LEC toll service revenue was used because it represents recent data filed with the Commission on a consistent basis.

This 4% rate should provide sufficient funds to make up for the thirteen day transition period in which no subsidized revenue was received, a change from a tax subsidized program to a surcharge subsidized program, and the projected \$26.6 million deficit at June 30, 1988. This rate, consistent with the interim rate, should also result in less confusion among the IECs and their customers, particularly since a new rate is to be considered for July 1, 1988.

Workshops and evidentiary hearings should be held to address interested parties' proposal to eliminate the \$0.25 inside wire and the \$0.75 equipment credits, setting the maximum subsidy a customer could receive towards a flat rate ULTS at the same dollar amount a measured ULTS customer receives, and changes to the outreach program.

Double Surcharge

Although only a few of the interested parties addressed the double surcharge issue, their comments consistently argued for

³ Pacific Bell, General Telephone of California, Continental Telephone Company of California, Citizens Utilities Company of California, and Roseville Telephone Company.

procedures similar to the Board of Equalization's Regulation 2610 which applied to the ULTS tax. This regulation authorized resellers to deduct from gross revenues, subject to the ULTS tax, the amount paid to facilities-based carriers for intrastate interLATA telecommunications services to which the tax was already applied.

There is no intent to impose a surcharge on the same service more than once. Therefore, utilities should be allowed to deduct from their gross revenue, subject to the surcharge, the amounts paid to other utilities to which the surcharge has already applied.

General Order 153

General Order 153, providing for the administrative procedures to implement ULTS as subsidized by a tax, is now obsolete. Surprisingly, minimum comments were received on proposed revisions to this General Order. We concur with Pacific Bell's and AT&T's suggestion that the General Order not be updated until all ULTS issues are resolved. Since workshops are to be held on other issues, we should include the rewrite of General Order 153 in the workshop agenda.

Motions to Dismiss RTUs and Cellular Radio Carriers

Allied Radiotelephone Utilities of California and Cellular Resellers Association, Inc. filed motions to dismiss RTUs and Cellular Utilities, respectively, from this investigation. These interested parties assert that under the prior Moore ULTS tax, RTUs and Cellular Utilities not only didn't pay any tax, they were specifically excluded from paying such a tax. Further, AB 386 specifically requires only those telephone companies providing residential telephone service to impose a surcharge to subsidize ULTS.

The first assertion is without merit because, as Allied Radiotelephone Utilities of California asserts in its reply brief,

AB 386 does not supplement or extend the Moore Act; it repeals it, and constructs a new structure in its place.

While the second assertion has merit, this issue was previously discussed and dismissed. Interested parties are reminded that AB 386 provides the Commission with the necessary authority (PU Code § 880) to determine questions of fact in administering the ULTS surcharge program. Although the ULTS surcharge is not being applied to RTUs and Cellular Utilities at this time, they are telephone corporations and, as such, should participate in subsidizing the ULTS program as the need arises. This investigation is the appropriate forum for determining whether RTU's and Cellular Utilities should be subject to the ULTS surcharge, and we intend to resolve this issue in this proceeding. Our decision needs to be made in close coordination with our upcoming investigation on the new regulatory framework for RTU and cellular utilities. The motion to dismiss RTUs and Cellular Utilities from this proceeding is denied.

Findings of Fact

1. Seven issues were identified at the prehearing conference for comment and reply comment.
2. Interested parties were requested to comment on suggested changes to General Order 153.
3. A motion was received from Allied Radiotelephone Utilities of California and from Cellular Resellers Association, Inc. to dismiss RTUs and Cellular utilities from this investigation.
4. PU Code § 879 requires that the Commission, at least annually, initiate a proceeding to set rates for ULTS.
5. All telephone utilities providing ULTS shall annually file, on a date set by the Commission, proposed ULTS rates and a statement of projected revenue needs.
6. AT&T and MCI Telecommunications Corporation believe that AB 386 requires LECs to file their initial annual statement prior to October 31, 1987.

7. PSD and Pacific Bell point out that Section 379.5 clarifies that the specific requirements of Section 379 need not be followed in this initial proceeding.

8. LECs have filed recent ULTS cost data in response to Ordering Paragraph 1 of D.87-04-067.

9. Item 4 to the investigation provides an analysis of ULTS revenues and expenditures for the period July 1, 1986 through June 30, 1988.

10. Of the interested parties proposing an annual filing date, none proposed the same date.

11. TURN points out that the ULTS surcharge rate can be set more often than once a year.

12. D.87-07-090 ordered utilities collecting ULTS taxes subsequent to July 16, 1987, to retain such tax money, subject to refund, in an interest bearing account pending further Commission order.

13. Interested parties concur that any ULTS tax money assessed and collected after the repeal of the tax should be used for ULTS purposes.

14. D.87-07-090 implemented a 4% interim surcharge, subject to refund, on the service rates of intrastate interLATA services and on intrastate telecommunications services not defined by LATA boundaries.

15. Interested parties concur that the subject to refund clause imposed on the interim surcharge be lifted and any such funds collected be used for ULTS purposes.

16. There is concurrence that the ULTS program should be administered on an industry basis.

17. Interested parties propose a trust fund be established to administer ULTS funds.

18. PSD proposes that an administrative committee consisting of five members with diverse interest be established to administer the ULTS Trust.

19. PSD recommends that the administrative committee prepare a budget for its proposed operations to be approved by the Commission on a yearly basis.

20. PSD recommends that all actual costs incurred for the implementation and operation of a verification program and for education of the ULTS program be recovered.

21. Federal excise taxes and state and federal income taxes are applicable to the surcharge.

22. Utilities imposing the surcharge would incur little or no additional tax liability because the surcharge would be taxable income to the utilities upon receipt of surcharge money and deductible as ordinary business expenses when paid to the Trust.

23. PU Code § 875(b) authorizes the Commission to establish procedures necessary to ensure that ULTS qualifies for federal funds.

24. The FCC presently has two programs available to support ULTS if a procedure is implemented to verify the eligibility of ULTS customers.

25. Interested parties recommend we consider a program to verify eligibility of ULTS customers be implemented.

26. California long distance customers are contributing to the federal funds used to subsidize ULTS but are not receiving commensurate benefits.

27. AT&T estimates that California could receive at least \$15 million more of Federal funds to subsidize ULTS.

28. A majority of interested parties' comments propose minimum changes to the ULTS program until further hearings can be held.

29. Future changes to the ULTS program include consideration of eliminating the \$0.25 inside wire and the \$0.75 equipment credits, setting the maximum subsidy a customer could receive towards flat rate ULTS at the same dollar amount a measured ULTS customer receives, and changes to the outreach program.

30. Certain interested parties interpret PU Code § 879(c) enacted by AB 386 to mean that the surcharge can only be applied to LECs.

31. AT&T, Pacific Bell, and US Sprint assert that the legislative intent of AB 386 is to require all telephone corporations to fund ULTS on an equitable basis.

32. PU Code § 871.5(c) provides that ULTS should be supported fairly and equitably by every telephone corporation.

33. PSD believes that the surcharge should be applied to interLATA toll and intraLATA toll.

34. Interested parties do not agree on the initial surcharge rate or the application of the surcharge to telecommunications services.

35. Interested parties recommend that procedures similar to the Board of Equalization's Regulation 2610 be implemented to avoid the possibility of customers being charged a surcharge on the same service more than once.

36. General Order 153 is obsolete due to enactment of AB 386.

37. AB 386 repeals, rather than supplements or extends, the Moore Act.

Conclusions of Law

1. PSD's and Pacific Bell's interpretation of AB 386 that LECs are not required to file initial annual statements prior to October 31, 1987, is reasonable and should be adopted.

2. The setting of an annual filing date should not be delayed.

3. The annual date for LECs to file ULTS cost data should be April 1st and the annual date to implement an annual surcharge rate should be July 1st of each year.

4. The first annual filing from each LEC should be made on April 1, 1988.

5. Workshops should be held to develop a filing format compatible to all LECs and to insure that comparable data is provided.

6. The Commission should not divert money collected as a tax to a Commission designated program.

7. Utilities collecting ULTS tax money imposed and collected after the repeal of the tax should either seek a ruling from the Board of Equalization for disposition of the tax monies or refund the money to its customers.

8. The subject to refund clause imposed on the interim ULTS surcharge should be lifted and the funds collected used for ULTS purposes.

9. The ULTS program should be administered on an industry basis through the establishment of a trust.

10. A committee should be established to administer the trust.

11. PSD's proposal to provide for the recovery of actual costs incurred for the implementation and operation of a verification program and for the education of the ULTS program is premature and should not be adopted.

12. No tax effects from the ULTS should be recoverable from the ULTS fund because the utilities imposing the surcharge are expected to incur little or no additional tax liability.

13. Workshops and possible evidentiary hearings should be held to consider what the FCC ULTS verification of eligibility requirements are, whether an acceptable verification program can be developed to meet Federal requirements and, if so, whether such a program could be implemented on a cost effective basis.

14. AT&T's, Pacific Bell's, and US Sprint's interpretation of AB 386 requiring all telephone corporations to fund ULTS on an equitable basis should be adopted.

15. IntraLATA services should be subject to the surcharge similar to intrastate interLATA services.

16. The surcharge should not be applied to ULTS rates charged by telephone corporations for ULTS.

17. The initial ULTS funding requirement for the period October 1, 1987 through June 30, 1988 should be \$112.8 million.

18. Only one surcharge rate should apply to intraLATA toll and interLATA toll services.

19. The initial surcharge rate should be 4%.

20. LECs should notify their customers of the surcharge rate by bill inserts.

21. IntraLATA toll calls should not be subject to the surcharge until January 1, 1988.

22. Workshops and evidentiary hearings should be held to address interested parties' proposal to eliminate the \$0.25 inside wire and the \$0.75 equipment credits, setting the maximum subsidy a customer could receive towards a flat rate ULTS at the same dollar amount a measured ULTS customer receives, and changes to the outreach program.

23. Utilities should be allowed to deduct from their gross revenue, subject to the surcharge, the amounts paid to other utilities to which the surcharge has already been applied.

24. Workshops should be held to revise General Order 153.

25. The Allied Radiotelephone Utilities of California and Cellular Resellers Association, Inc. motion to dismiss RTUs and Cellular Utilities from this proceeding should be denied.

26. The ULTS program should be implemented as provided in the body of this opinion.

27. This order should be effective immediately because AB 386 requires an order no later than October 31, 1987.

INTERIM ORDER

IT IS ORDERED that:

1. The annual filing date for Local Exchange Companies (LECs) to file Universal Lifeline Telephone Service (ULTS) cost data is April 1st and the annual date to set a surcharge is July 1st of each year. The annual filing requirements shall be processed as an advice letter filing. The timetable set forth in the body of this opinion shall apply to the annual filings and copies of all filings shall be served on all appearances to this proceeding.

2. The first annual cost data filing from each LEC shall be due on April 1, 1988.

3. Should a protest to the annual advice letter filing have merit and evidentiary hearings are necessary during the annual setting of a ULTS surcharge rate an interim opinion shall be issued in accordance with the timetable identified in Ordering Paragraph 1. At the completion of evidentiary hearings, an opinion setting forth any changes to the funding requirement, the surcharge percentage, and/or changes to the ULTS program shall be issued.

4. Utilities who imposed and collected ULTS tax money subsequent to the repeal of the tax shall either seek a ruling from the Board of Equalization on the disposition of such monies or refund the monies to their customers.

5. The "subject to refund" clause on the interim ULTS surcharge is lifted and the monies collected under the subject to refund clause shall be used for ULTS purposes.

6. The Commission's Evaluation and Compliance Division shall take immediate steps to oversee the selection of the five administrative committee members and the establishment of the ULTS Trust.

7. Utilities shall transmit all interim surcharge monies collected and applicable interest to the ULTS Trust not later than 30 days after the trust is formed. A transmittal sheet identifying revenues applicable to the interim surcharge, the interim surcharge collected, and interest earned on the interim surcharge funds shall accompany the deposit. A copy of the transmittal sheet shall be sent to the Commission's Evaluation and Compliance Division.

8. The ULTS program shall be administered on an industry basis through the establishment of a trust.

9. The ULTS trust shall report on an accrual basis of accounting and its fiscal year shall begin on July 1st.

10. An administrative committee shall be established to implement the trust and to be responsible for the receipt and investment of ULTS surcharge monies and for the payment of monies expended for actual ULTS costs incurred. This committee shall not be a policy committee.

11. The administrative committee shall have an annual audit conducted by an independent Certified Public Accountant firm and shall prepare an annual budget for the committee's operations, consistent with the LECs annual filing, to be approved by the Commission's Evaluation and Compliance Division Director.

12. The administrative committee shall be comprised of five members selected from among the five largest LECs, the small LECs, the IECs, and two members from public interest groups.

Administrative committee members shall not be compensated for serving on the committee.

13. The Commission's Evaluation and Compliance Division shall immediately take steps to oversee the election of administrative committee members and the establishment of the Trust.

14. The ULTS Trust shall not reimburse utilities for their carrying costs.

15. As soon as the Trust is established and the administrative committee is established, the administrative committee shall inform the Commission's Executive Director in writing of the names and terms of the committee members, as well as, the address of where ULTS tax and surcharge monies is to be deposited. Upon such notification, the Executive Director shall, by letter, inform respondent LECs and IECs presently holding ULTS tax monies, except ULTS tax monies assessed and collected subsequent to the repeal of the tax, where to deposit ULTS monies.

16. Any excise tax and State and Federal Income tax effects incurred by the utilities for ULTS programs shall not be recoverable from the ULTS Trust, but shall be recovered in general rate cases.

17. The initial ULTS funding requirement for the period October 1, 1987 through June 30, 1988 is \$112.8 million and the surcharge rate is 4%.

18. The surcharge rate shall apply to intraLATA toll and intrastate interLATA toll equally. However, the intraLATA toll surcharge shall not be applicable until January 1, 1988, by which time the LECs shall have informed their customers of the surcharge by bill inserts. LECs shall file applicable tariffs no later than December 15, 1987, to be effective January 1, 1988.

19. To avoid double surcharging, utilities shall be allowed to deduct from their gross revenue, subject to surcharge, the amounts paid to other utilities to which the surcharge has already been applied.

20. The Commission's Evaluation and Compliance Division shall hold and complete workshops to:

- a. Develop a uniform cost data filing format for all LECs.
- b. Develop a uniform transmittal form for deposit of ULTS surcharge monies to the ULTS.

- c. Develop a uniform claim request form for utilities to seek compensation for ULTS costs incurred.
- d. Determine the specific Federal Communications Commission's requirement for verification of eligibility, whether an acceptable verification program can be developed to meet the FCC's requirement, and, if so, whether it can be implemented on a cost effective basis.
- e. Consider the following changes to the ULTS program:
 - 1. Elimination of the \$0.25 inside wire and the \$0.75 equipment credits.
 - 2. Maximum subsidy for flat rate ULTS customers.
 - 3. Revise the outreach program.
 - 4. Revise General Order 153.

21. The Commission's Evaluation and Compliance Division shall notify, in writing, respondents and interested parties of the workshops identified in Ordering Paragraph 20.

22. Upon completion of the workshop ordered in Ordering Paragraph 20, the Evaluation and Compliance Division shall prepare and file a report summarizing the results of the workshop. The Commission shall review the report and, if necessary, schedule a prehearing conference to set evidentiary hearings.

23. The ULTS Trust and program shall be administered as discussed in the body of this opinion.

24. Allied Radiotelephone Utilities of California's and Cellular Resellers Association, Inc.'s motion to dismiss radiotelephone utilities and cellular utilities is denied.

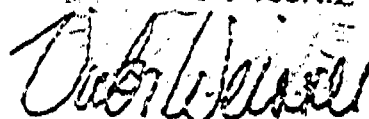
This order is effective today.

Dated OCT 28 1987, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.



Victor Weiss, Executive Director

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APPENDIX A

Additional Appearance List

Respondents: Hathaway Watson III, Attorney at Law, for AT&T Communications; Michael D. Sasser, Attorney at Law, for Pacific Bell; Peter W. Michaels, Attorney at Law, for Roseville Telephone Company; John L. Clark, Attorney at Law, for CP National and Tuolumne Telephone Company; and Jose E. Guzman, Jr., Attorney at Law, for US Sprint Communications Co.

Interested Parties: Kenneth S. Taymor, Attorney at Law, for McCaw Communications; Gary John Pomeroy, Legislative Analyst, for California Department of Consumer Affairs; Earl Nicholas Selby, Attorney at Law, for Bay Area Teleport; Shelley I. Rosefield, Assistant City Attorney, for James K. Hahn, City Attorney, City of Los Angeles; William G. Irving, for the County of Los Angeles; and Sylvia M. Siegel and Mark Barmore, Attorney at Law, for TURN.

Public Staff Division: Kathleen Kiernan-Harrington, Attorney at Law, David Shantz, and Karen Miller.

procedures similar to the Board of Equalization's Regulation 2610 which applied to the ULTS tax. This regulation authorized resellers to deduct from gross revenues, subject to the ULTS tax, the amount paid to facilities-based carriers for intrastate interLATA telecommunications services to which the tax was already applied.

There is no intent to impose a surcharge on the same service more than once. Therefore, utilities should be allowed to deduct from their gross revenue, subject to the surcharge, the amounts paid to other utilities to which the surcharge has already applied.

General Order 153

General Order 153, providing for the administrative procedures to implement ULTS as subsidized by a tax, is now obsolete. Surprisingly, minimum comments were received on proposed revisions to this General Order. We concur with Pacific Bell's and AT&T's suggestion that the General Order not be updated until all ULTS issues are resolved. Since workshops are to be held on other issues, we should include the rewrite of General Order 153 in the workshop agenda.

Motions to Dismiss RTUs and Cellular Radio Carriers

Allied Radiotelephone Utilities of California and Cellular Resellers Association, Inc. filed motions to dismiss RTUs and Cellular Utilities, respectively, from this investigation. These interested parties assert that under the prior Moore ULTS tax, RTUs and Cellular Utilities not only didn't pay any tax, they were specifically excluded from paying such a tax. Further, AB 386 specifically requires only those telephone companies providing residential telephone service to impose a surcharge to subsidize ULTS.

The first assertion is without merit because, as Allied Radiotelephone Utilities of California asserts in its reply brief, AB 386 does not supplement or extend the Moore Act; it repeals it, and constructs a new structure in its place.

While the second assertion has merit, this issue was previously discussed and dismissed. Interested parties are reminded that AB 386 provides the Commission with the necessary authority (PU Code § 880) to determine questions of fact in administering the ULTS surcharge program. Although the ULTS surcharge is not being applied to RTUs and Cellular Utilities at this time, they are telephone corporations and, as such, should participate in subsidizing the ULTS program as the need arises. The motion to dismiss RTUs and Cellular Utilities from this proceeding is denied.

Findings of Fact

1. Seven issues were identified at the prehearing conference for comment and reply comment.
2. Interested parties were requested to comment on suggested changes to General Order 153.
3. A motion was received from Allied Radiotelephone Utilities of California and from Cellular Resellers Association, Inc. to dismiss RTUs and Cellular utilities from this investigation.
4. PU Code § 879 requires that the Commission, at least annually, initiate a proceeding to set rates for ULTS.
5. All telephone utilities providing ULTS shall annually file, on a date set by the Commission, proposed ULTS rates and a statement of projected revenue needs.
6. AT&T and MCI Telecommunications Corporation believe that AB 386 requires LECs to file their initial annual statement prior to October 31, 1987.