

Decision 88 02 037

FEB 24 1988

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's	)	
own motion into the method of	)	OII 83-11-05 (Rulemaking)
implementation of the Moore	)	(Filed November 30, 1983)
Universal Telephone Service Account.	)	

OPINION MODIFYING DECISION 87-10-088

Pacific Bell filed a petition for modification (petition) of Decision (D.) 87-10-088, which implemented surcharge funding requirements for the subsidization of Universal Telephone Lifeline Service (ULTS), on December 18, 1987.

By this petition, Pacific Bell seeks to modify the decision to correct two matters. First, it proposes that Ordering Paragraph 16 of the decision be modified to allow the local exchange companies to recover federal excise tax and similar state and local tax effects on amounts paid for ULTS from the ULTS Trust. Second, that the decision be modified to accurately describe Pacific Bell's position with respect to the legislative intent of Assembly Bill (AB) 386 and AB 461.

On the first matter, Pacific Bell asserts that the portion of Ordering Paragraph 16 relating to excise taxes conflicts with Internal Revenue Code (IRC) Section 4251(a)(2) which requires the party paying for communications services, or in this case the ULTS Trust, to pay the applicable excise tax.

In support of its position, Pacific Bell cites Private Letter Ruling 8520059 of the Internal Revenue Service (IRS), dated February 20, 1985 and a Technical Advice Memorandum (LTR 8709006) of the IRS, dated November 18, 1986, Attachment A and B to the petition. Although such pronouncements from the IRS are not binding, Pacific Bell indicates that they do represent the likely IRS position on an issue.

We concur with Pacific Bell that the decision should be modified to allow utilities to recover excise taxes on ULTS programs from the ULTS Trust.

On the second matter, Pacific Bell clarifies that it did not concur with AT&T Communications of California (AT&T-C) or with U.S. Sprint Communications Company (U.S. Sprint) that the legislative intent of AB 386 is to require all telephone corporations to fund ULTS. Rather, Pacific Bell believed that AB 386 "completely leaves open the question of upon whom a ULTS surcharge can be applied." Further, Pacific Bell recommended that the ULTS surcharge should be imposed upon the intrastate, interLATA (Local Access and Transport Area) services provided by the interexchange companies. Accordingly, Pacific Bell requests that Finding of Fact 31 and Conclusion of Law 14 be modified to properly reflect its position.

We concur. Finding of Fact 31 and Conclusion of Law 14 should be modified to omit any reference to Pacific Bell.

Findings of Fact

1. Pacific Bell filed a petition for modification of D.87-10-088 on December 18, 1987.
2. Ordering Paragraph 16 relating to excise taxes conflicts with Section 4251(a)(2) of the IRC.
3. Pacific Bell did not concur with AT&T-C or with U.S. Sprint that the legislative intent of AB 386 is to require all telephone corporations to fund ULTS.
4. Pacific Bell recommended that the ULTS surcharge should be imposed upon the intrastate, interLATA interexchange companies.

Conclusion of Law

Pacific Bell's petition for modification of D.87-10-088 should be granted.

O R D E R

IT IS ORDERED that:

1. Findings of Fact 22 and 31 of Decision (D.) 87-10-088 are modified as follows:

22. Utilities imposing the surcharge would incur little or no additional income 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.

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

2. Conclusions of Law 12 and 14 of D.87-10-088 are modified as follows:

12. Income tax effects from the Universal Lifeline Telephone Service (ULTS) shall not be recoverable from the ULTS fund because the utilities imposing the surcharge are expected to incur little or no additional income tax liability. However, excise taxes and any similar state or local taxes imposed on amounts paid for ULTS should be recoverable from the ULTS Trust.

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

3. Ordering Paragraph 16 of D.87-10-088 is modified as follows:

16. State and Federal income tax effects incurred by the utilities for ULTS programs shall not be recoverable from the ULTS Trust; such effects shall be recoverable in

general rate cases. However, any excise taxes and similar state or local taxes imposed on amounts paid for ULTS shall be recoverable from the ULTS Trust.

This order is effective today.

Dated FEB 24 1988, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
JOHN B. OHANIAN  
Commissioners

Commissioner Frederick R. Duda,  
being necessarily absent, did  
not participate.

Commissioner G. Mitchell Wilk,  
being necessarily absent, did  
not participate.

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

  
Victor Weitzer, Executive Director