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Decision 96-11-050 November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643. R. 95-01-020 (Filed January 24, 1995)

Investigation on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643. I. 95-01-021 (Filed January 24, 1995)

OPINION

ORIGINAL

I. Introduction

In Decision (D.) 96-10-066, the Commission ordered a series of workshops to be held in connection with the implementation of the universal service rules adopted in the above-captioned proceeding. That decision also specified which divisions of the Commission should conduct the workshops and perform the other tasks associated with the universal service program. D.96-10-066 also specified how much of a discount certain entities would be entitled to if they negotiated a rate for a particular service that was below the tariffed discount rate. Today's decision modifies D.96-10-066 by allowing the staff some additional time in which to conduct some of the workshops. This decision also gives the Executive Director discretion to decide which divisions of the Commission should handle the workshops and functions ordered in D.96-10-066. It also authorizes the assigned Administrative Law Judge (ALJ) to modify the dates and timelines for the workshops and reports contained in D.96-10-066 after consulting with the Assigned Commissioner. Finally, the language concerning the negotiated rate is modified

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to allow providers and certain entities more flexibility in the rate that they can negotiate.

II. Workshop Dates, Timelines, and Staffing

D.96-10-066 became effective on October 25, 1996. The decision, however, was not mailed out to the parties until November 4, 1996. Due to the slight delay in the mailing of the decision, coupled with the recent internal reorganization of the Commission, and the ongoing clarification of division responsibilities, D.96-10-066 should be modified to allow Commission staff sufficient time to notice and conduct the workshops. In addition, due to the reorganization of the Commission divisions, instead of naming particular divisions to conduct the workshops and to perform the other needed tasks, the Executive Director should have the discretion to determine which division or divisions should undertake the work contemplated in D.96-10-066.

The workshop dates and other deadlines, and the staffing constraints that are most impacted by the above events are contained in the following ordering paragraphs of D.96-10-066: 8.k.; 14; 14.a.; 14.c.; 15; 15.a.; 15.b.; 15.c.; 16; and 16.c. We shall extend the dates slightly, as detailed in ordering paragraph 1 below, and change the specific division designations to allow the Executive Director to decide which divisions should be assigned the tasks ordered in D.96-10-066. We shall also permit the assigned ALJ, after consultation with the assigned Commissioner, to modify any of the workshop dates or deadlines for the reports that are contained in D.96-10-066 as may be required.

It is our intent that these changes will not impact the beginning date for the collection of the California High Cost Fund-B (CHCF-B) surcharge and the California Teleconnect Fund. Finally, the language concerning the negotiated rate is modified

surcharges, and the claims process for CHCF-B subsidy support and for California Teleconnect Fund support. Negotiated Rate Discounts

The California Teleconnect Fund creates a program of rate discounts for certain kinds of qualifying entities. Rule 8.E. of Appendix B of D.96-10-066 specifies how much of a subsidy carriers are entitled to if they provide discounted services to qualifying entities. The rules state in pertinent part that: "The subsidy amount shall be (1) the difference between the tariffed rate for businesses for such services, and the tariffed discount rate; or (2) if the rate negotiated is below the tariffed discount rate, the carrier shall be entitled to the sum that represents the percentage discount off of the negotiated rate."

The second part of the above rule as written, creates a situation that we did not intend to occur. This is best illustrated by using the example contained in footnote 31 of D.96-10-066 at page 83. If the parties do not negotiate any discount, the school would pay \$500 for DS-3 service, and the carrier would receive a subsidy of \$500 from the California Teleconnect Fund. The parties would also be free to negotiate a lower rate. However, under present Rule 8.E, the negotiated rate would have to fall below \$500, the amount of the tariffed discount rate, before the second part of Rule 8.E would come into play. That is, any negotiated rate less than \$1000 but equal to or greater than \$500, would not receive the percentage discount as contemplated in the text of D.96-10-066.

Commissioner, should be permitted to modify any of the workshop dates or deadlines for the reports that are contained in

1. See pages 83 through 86 of D.96-10-066.

Accordingly, Rule 8.E.1 of Appendix B and Findings of Fact 56, 60, and 63 of D.96-10-066 should be modified to reflect our intent that parties are free to negotiate a lower rate than the tariffed rate for businesses for such services, and to receive the percentage discount off of the negotiated rate.

Findings of Fact

1. D.96-10-066 ordered a series of workshops to be held, specified the divisions which should conduct the workshops, and created a rule regarding what discount would apply if the negotiated rate was below the tariffed discount rate.

2. Although D.96-10-066 became effective on October 25, 1996, the decision was not mailed until November 4, 1996.

3. The Commission has recently undergone an internal reorganization modifying the structure and responsibilities of various divisions.

4. The workshop dates and other deadlines, and the staffing constraints that are most impacted are contained in the following Ordering Paragraphs of D.96-10-066: 8.k; 14; 14.a; 14.c; 15; 15.a.; 15.b.; 15.c.; 16; and 16.c.

Conclusions of Law

1. Due to certain events, D.96-10-066 should be modified to allow the staff sufficient time to notice and conduct the workshops.

2. Due to the Commission's internal reorganization and modification of division responsibilities, the Executive Director should be given the discretion to determine which division or divisions should undertake the work contemplated in the ordering paragraphs of D.96-10-066.

3. The assigned ALJ, after consulting with the assigned Commissioner, should be permitted to modify any of the workshop dates or deadlines for the reports that are contained in D.96-10-066 on an as-needed basis.

4. The second part of Rule 8.B. of Appendix B of p D.96-10-066, as written, creates a situation that we did not intend to occur.

5. Rule 8.B. and Findings of Fact 56, 60 and 63 of D.96-10-066 should be modified to reflect our intent that parties are free to negotiate a lower rate than the tariffed rate for businesses for such services, and to receive the percentage discount off of the negotiated rate.

ORDER

IT IS ORDERED that:

1. The following Ordering Paragraphs of Decision (D.) 96-10-066 shall be modified as follows:
 - a. In Ordering Paragraph 8.k., the reference to "45 days" shall be deleted and replaced with "60 days".
 - b. In Ordering Paragraph 14, the reference to "Consumer Services Division" shall be deleted and replaced with the following: "Commission staff, as determined by the Executive Director."
 - c. In Ordering Paragraph 14, the reference to "90 days" shall be deleted and replaced with "120 days".
 - d. In Ordering Paragraph 14.c., the reference to "45 days" shall be deleted and replaced with "60 days".
 - e. In Ordering Paragraph 15, the reference to "Telecommunications Division" shall be deleted and replaced with the following: "Commission staff, as determined by the Executive Director,".
 - f. In Ordering Paragraph 15.a., the reference to "20 days" shall be deleted and replaced with "30 days".

g. In Ordering Paragraph 15.b., the reference to "60 days" shall be deleted and replaced with "75 days".

h. In Ordering Paragraph 15.c., the reference to "60 days" shall be deleted and replaced with "75 days".

i. In Ordering Paragraph 16, the reference to "Consumer Services Division" in conjunction with the Telecommunications Division shall be deleted and replaced with the following: "Commission staff, as determined by the Executive Director."

j. In Ordering Paragraph 16.c., the reference to "30 days" shall be deleted and replaced with "45 days".

2. The following Ordering Paragraph shall be added to D.96-10-066 as Ordering Paragraph 20:

"The assigned ALJ after consulting with the assigned Commissioner, shall be permitted to modify any of the workshop dates or deadlines for the reports that are contained in this decision on an as-needed basis."

3. The phrase "if the rate negotiated is below the tariffed discount rate," which appears in Findings of Fact 56, 60, and 63, and in Rules 8-E of Appendix B of D.96-10-066 shall be deleted and replaced with the following phrase:

In Ordering Paragraph 14.c., the reference to "60 days" shall be deleted and replaced with "75 days".

In Ordering Paragraph 15, the reference to "Telecommunications Division" shall be deleted and replaced with the following: "Commission staff, as determined by the Executive Director."

In Ordering Paragraph 15.a., the reference to "30 days" shall be deleted and replaced with "45 days".

"if the rate negotiated is below the tariffed rate for businesses for such services,"

This order is effective today.

Dated November 26, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL WM. FESSLER
JESSIE J. KNIGHT, JR.
JOSIAH L. NEEPER
Commissioners

Commissioner Henry M. Duque,
being necessarily absent, did
not participate.