

Decision 00-02-034 February 17, 2000

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.

Rulemaking 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.

Investigation 95-01-021
(Filed January 24, 1995)

**OPINION REGARDING ORA'S PETITION TO MODIFY
DECISION 97-12-105 AND RESOLUTION T-16176**

1. Summary

This decision grants the petition to modify Decision (D.) 97-12-105 and Resolution T-16176 filed by the Office of Ratepayer Advocates (ORA) to the extent the petition requests leave for ORA to serve in vacant positions on the Universal Lifeline Telephone Service (ULTS) Marketing Board. In all other respects, ORA's petition to modify D.97-12-105 and Resolution T-16176 is denied.

2. Background

In D.96-10-066, the Commission created the ULTS Marketing Board (ULTSMB) to serve as the sole entity responsible for marketing the ULTS program.¹ Pursuant to D.96-10-066, the ULTSMB is required to develop an annual budget for marketing the ULTS program, devise competitively neutral

¹ The ULTS program provides subsidized basic telephone service to qualifying low-income residential subscribers in California pursuant to Pub. Util. Code §§ 871 et seq.

marketing strategies, and oversee the implementation of ULTS marketing campaigns. In carrying out its duties, the ULTSMB is required to operate at all times under the direction, control, and approval of the Commission.

In D.97-12-105, the Commission adopted a charter for the ULTSMB. The adopted charter states that the ULTSMB shall consist of 12 voting members² representing the following constituencies:

<u>Number of Representatives</u>	<u>Group or Industry Represented</u>
3	Large & Medium Local Exchange Carriers (LECs).
3	Competitive Local Carriers (CLCs) and Interexchange Carriers(IECs).
3	Community-Based Organizations (CBOs).
1	Wireless Carriers.
1	Small LECs.
1	Consumer Services Division.

In Resolution T-16176, issued on August 6, 1998, the Commission revised the charter of the ULTSMB in various respects, but none of these modifications affected the number or composition of the ULTSMB's members.

On April 5, 1999, ORA filed a petition to modify the charter of the ULTSMB adopted in D.97-12-105, as modified by Resolution T-16176. In its petition, ORA asks the Commission to revise the charter of the ULTSMB to include a new position on the Board reserved exclusively for ORA. ORA

² The ULTSMB also includes a non-voting representative of the Commission's Telecommunications Division.

supports its petition by asserting that its presence on the ULTSMB is necessary to ensure that the ULTSMB adheres to the goals and rules for the Board adopted by the Commission in D.97-12-105.

On May 5, 1999, GTE California Incorporated (GTE) filed a response to ORA's petition. GTE states that in Rulemaking (R.) 98-09-005, the Commission is considering modifications to the ULTS program that could affect the ULTSMB. GTE recommends that the Commission defer ruling on ORA's petition until the matters at issue in R.98-09-005 have been decided.

3. Discussion

We are not aware of any matter being considered in R.98-09-005 that has a bearing on ORA's petition. Therefore, we decline to adopt GTE's recommendation to defer consideration of ORA's petition until the matters at issue in R.98-09-005 have been decided.

We are not persuaded by ORA that its presence on the ULTSMB is necessary to ensure that the ULTSMB adheres to the goals and rules for the Board adopted in D.97-12-105. We have absolute authority and control over the ULTSMB, and we do not need ORA's assistance to ensure that the ULTSMB complies with our decisions. Therefore, we deny ORA's petition to expand the membership of ULTSMB to include a position reserved exclusively for ORA.

On the other hand, we see no reason why ORA should not be allowed to serve on the ULTSMB if there is a vacant position on the Board. The ULTSMB has been hindered in its work by a chronic shortage of qualified persons willing to serve on the ULTSMB.³ Therefore, to help the ULTSMB garner the resources it

³ There are currently four vacant positions on the ULTSMB, one each for (i) large and medium LECs, (ii) CBOs, (iii) wireless carriers, and (iv) CLCs and IECs.

needs to carry out its duties and responsibilities, we shall modify the charter of the ULTSMB to allow ORA to serve in any vacant position on the Board.⁴ If there are no vacant positions, ORA may serve as a non-voting member of the ULTSMB. When serving on the ULTSMB, ORA shall always represent itself. ORA shall also be treated as a "state agency" with regard to its participation on the ULTSMB in terms of expense reimbursement, per diem, and conflict-of-interest rules.⁵

In its comments on the proposed decision, ORA claims that it is necessary to create a permanent voting position for ORA on the ULTSMB in order to ensure that ratepayer interests are represented on the Board. We are not persuaded. We remind ORA that the purpose of the ULTSMB is to market the ULTS program to low-income households in a competitively neutral manner. To this end, we reserved positions on the ULTSMB for (1) community-based organizations with expertise in serving the needs of low-income households, and (2) major competitive interests within the telecommunications industry. This composition of ULTSMB members is meant to provide the Board with the skills, experience, and expertise that it needs to fulfill its responsibilities. While ORA

⁴ Rule 47(h) of the Commission's Rules of Practice and Procedure states that the Commission, in response to a petition for modification, may modify the decision as requested, or modify the decision in some other way consistent with the requested modification. Today's decision modifies D.97-12-105 in a way that is consistent with the modification requested by ORA.

⁵ Representatives of state agencies serving on Commission advisory boards generally do not receive expense reimbursement or per diem from the public moneys that fund the boards' activities. Representatives of state agencies also have to comply with conflict-of-interest rules and reporting requirements that may not be applicable to other board members.

can contribute time and effort to the ULTSMB, ORA has failed to show that it has any special qualifications that warrant a permanent position on the ULTSMB.⁶

To implement today's decision, we will modify the ULTSMB's charter to include the following text:

3.1.1. The Director of the Commission's Office of Ratepayer Advocates (ORA) or the Director's designee may serve on the ULTSMB if (i) there is a vacant position on the Board due to a lack of qualified representatives from the LECs, IECs, CLCs, or CBOs; and (ii) ORA is appointed to the vacant position by the Commission. ORA may have only one representative on the ULTSMB. Once appointed to a position, ORA may serve in the position for the remaining term of that position. If there are no vacant positions, ORA may serve as a non-voting member of the ULTSMB without appointment by the Commission.

Within 60 days from the effective date of today's decision, the ULTSMB shall file at the Commission's Docket Office an executed copy of the ULTSMB's charter that has been modified to conform with today's decision.

The ULTSMB shall have 60 days from the effective date of this decision to fill the existing vacant positions on the Board in accordance with the procedures set forth in D.97-12-105, Ordering Paragraphs (OPs) 23 and 24. ORA may fill any vacant position that remains after 60 days for the remaining term of that position.⁷ If in the future we decide to appoint ORA to serve in a vacant

⁶ This decision allows ORA to serve as a non-voting member of the ULTSMB if ORA is unable to fill a vacant voting position on the Board. Thus, ORA will always be able to represent ratepayer interests before the Board.

⁷ ORA must provide written notice of the vacant position it is filling on the ULTS to the following parties: The Commission's Executive Director, the Director of the Telecommunications Division, and the other members of the ULTSMB.

position, we shall do so in accordance with the same procedures that we use to appoint the other voting members of ULTSMB.⁸

4. Public Utilities Code Section 311(g)

The draft decision of Administrative Law Judge Kenney was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1. Comments on the draft decision were filed by ORA on January 25, 2000. No reply comments were filed. We have taken ORA's comments into account, as appropriate, in finalizing this decision.

Findings of Fact

1. The charter for the ULTSMB adopted in D.97-12-105, as modified by Resolution T-16176, does not authorize ORA to serve on the ULTSMB.

2. The ULTSMB operates at all times under the direction, control, and approval of the Commission.

3. It is not necessary for ORA to serve on the ULTSMB in order to ensure that the ULTSMB adheres to the goals and rules for the ULTSMB adopted by the Commission in D.97-12-105.

4. The work of the ULTSMB has been hindered by a chronic shortage of qualified persons willing to serve on the Board.

5. Allowing ORA to serve in vacant positions on the ULTSMB would help the Board carry out its duties and responsibilities.

⁸ The procedure used by the Commission to appoint persons to serve full terms on the ULTSMB is described in D.97-12-105, mimeo., p. 17. The procedure used by the Commission to fill vacancies that occur when members leave the ULTSMB prior to the expiration of their terms is described in D.97-12-105, OPs 23 and 24.

6. ORA did not demonstrate that its area of expertise is (i) related to the primary duties and responsibilities of the ULTSMB, or (ii) needed by the ULTSMB to fulfill its duties and responsibilities.

7. The procedure used by the Commission to fill vacancies on the ULTSMB that occur when members leave the ULTSMB prior to the expiration of their terms is described in D.97-12-105, OPs 23 and 24.

8. The procedure used by the Commission to appoint persons to serve full terms on the ULTSMB is described in D.97-12-105, mimeo., p. 17.

Conclusions of Law

1. There is no issue being considered in R.98-09-005 that has any bearing on ORA's petition to modify D.97-12-105.

2. ORA failed to demonstrate a need to create a permanent position on the ULTSMB reserved exclusively for ORA.

3. ORA's petition to modify D.97-12-105 should be denied to the extent the petition seeks to add a position to the ULTSMB reserved exclusively for ORA.

4. ORA's petition to modify D.97-12-105 should be granted to the extent the petition requests authority for ORA to (i) serve in vacant positions on the ULTSMB, and (ii) serve as a non-voting member of the ULTSMB if there are no vacant positions on the Board.

5. The ULTSMB should have 60 days to fill all vacancies on the Board in accordance with the procedure set forth in D.97-12-105, OPs 23 and 24. ORA should be allowed to fill any vacancy that remains after 60 days.

6. Any future appointment of ORA to fill a vacant position on the ULTSMB should be done in accordance with the procedures described in D.97-12-105, mimeo., p. 17, and OPs 23 and 24.

7. ORA, when serving on the ULTSMB, should always (i) represent itself, and (ii) be treated as a "state agency" in terms of expense reimbursement, per diem, and conflict-of-interest rules and reporting requirements.

8. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The petition to modify Decision (D.) 97-12-105 and Resolution T-16176 filed by the Office of Ratepayer Advocates (ORA) is denied to the extent the petition seeks to add a new position to the Universal Lifeline Telephone Service Marketing Board (ULTSMB) reserved exclusively for ORA.

2. ORA's petition to modify D.97-12-105 and Resolution T-16176 is granted to the extent the petition requests authority for ORA to (i) serve in vacant positions on the ULTSMB, and (ii) serve as a non-voting member of the ULTSMB if there are no vacant positions on the Board.

3. The charter for the ULTSMB adopted by the Commission in D.97-12-105, as modified by Resolution T-16176, is modified to include a new Section 3.1.1 that states as follows:

The Director of the Commission's Office of Ratepayer Advocates (ORA) or the Director's designee may serve on the ULTSMB if (i) there is a vacant position on the Board due to a lack of qualified representatives from the LECs, IECs, CLCs, or CBOs; and (ii) ORA is appointed to the vacant position by the Commission. ORA may have only one representative on the ULTSMB. Once appointed to a position, ORA may serve in the position for the remaining term of that position. If there are no vacant positions, ORA may serve as a non-voting member of the ULTSMB without appointment by the Commission.

4. Within 60 days of the effective date of this order, the ULTSMB shall file at the Commission's Docket Office an executed copy of its charter that has been modified to include the new text identified in the previous Ordering Paragraph.

5. The ULTSMB shall have 60 days from the effective date of this order to fill all vacancies on the Board that exist as of the effective date of this order. The ULTSMB shall fill these vacancies in accordance with the procedure set forth in D.97-12-105, Ordering Paragraphs (OPs) 23 and 24. ORA may fill any vacancy that remains after 60 days for the remaining term of that position.

6. ORA shall provide the following persons with written notice of any vacancy that ORA fills pursuant to the previous OP: the Executive Director, the Director of the Telecommunications Division, and the other members of the ULTSMB.

7. Any future appointment of ORA to fill a vacant position on the ULTSMB shall be done in accordance with the procedures described in D.97-12-105, mimeo., p. 17, and OPs 23 and 24.

8. ORA, when serving on the ULTSMB, shall always (i) represent itself, and (ii) be treated as a "state agency" in terms of expense reimbursement, per diem, and conflict-of-interest rules and reporting requirements.

This order is effective today.

Dated February 17, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
LORETTA M. LYNCH
Commissioners