



a trust and to administer the ULTS program. With the establishment of a ULTS surcharge, General Order 153 became outdated. Accordingly, the Commission's Advisory and Compliance Division (CACD), formerly the Commission's Evaluation and Compliance Division, was requested to hold and complete workshops to, among other matters, revise General Order 153.

**Order**

By this order, we are approving the Committee's charter with minor modification and approving a settlement agreement (Agreement) between Pacific Bell and the Division of Ratepayer Advocates (DRA) which provides for Pacific Bell to, among other matters, reimburse the ULTS Fund approximately \$8.25 million applicable to the 1984 through 1989 time period.

By this order, we are also requesting that CACD hold additional workshops to address whether General Order 153 should be rescinded or revised, as well as to identify procedures to ensure that the ULTS surcharge is applied on a consistent basis within California, prospectively.

**Petition for Modification**

The Committee filed a Petition for Modification (Petition) of D.87-10-088 on November 27, 1991. By its Petition, the Committee seeks approval of its charter (governing instrument). No opposition to the Petition has been filed.

By its Petition, the Committee represents that, since its inception, the Committee has expressed concern over the establishment of its authority and its delegated responsibilities to perform program functions and to implement the trust, as specified in D.87-10-088. Such responsibilities include the receipt and investment of ULTS surcharge monies, the payment of monies expended by local exchange carriers (LECs) and interexchange companies for actual ULTS costs incurred, and an annual audit of the ULTS Fund by an independent certified public accountant firm.

The Committee established a charter to govern its operations because of the voluntary nature of membership on the Committee, and because of the magnitude of the financial implications of the Committee decisions. Its first charter was adopted by the Committee in January 1988. After several years of existence and experience, the Committee found ambiguities and experienced difficulties with its initial charter. Therefore, the Committee established a new charter in 1991.

By its Petition, the Committee seeks specific approval of its charter. The Committee believes that only by such approval may the Committee and its members stand to obtain security against potential personal liability for the manner in which the Committee's business is conducted.

In support for its requested Commission approval, the Committee cited D.89-05-060 (32 CPUC 2d 27, 40, 55-56), in which the Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC) and its affiliated advisory committees were ordered to develop charters which would govern their operations and to submit those charters for Commission approval. Said charters were subsequently approved and adopted with few modifications by Commission Resolution T-14060 and T-14079, on June 6, 1990.

The major Commission modification to the proposed charters was to replace an indemnification clause with a clause drafted by the Commission's Legal Division to provide indemnification of DDTPAC committee members and employees as "uncompensated servants of the Commission" within the meaning of Government Code Section 810.2. We also authorized DDTPAC and its affiliated advisory committees to purchase Errors and Omissions Insurance for its members, employees, and for any members of its advisory committees or task forces reporting to DDTPAC, to the extent that such activities are held not to be indemnified by the state and/or defense is not provided by state under Government Code

Sections 810.2, 825 et seq., and/or 955 et seq.. Similar terms have been incorporated in the Committee's charter.

The Committee, comprised of five members, one of each represented from the five largest LECs, small LECs, interexchange telecommunications companies, and two members from the public, have undertaken a commendable job in administering the ULTS trust and performing the tasks identified in D.89-05-060.

We concur with the Committee that, given the substantial quantity of funds placed under its administration and the voluntary nature of membership on the Committee, a committee charter should be approved by the Commission. However, there are minor modifications that should be made to the charter to further clarify the Committee's activities specifically adopted in Ordering Paragraph 10 of D.87-10-088 which requires that the Committee not be a policy committee.

Modification should be made to Section IV, Duties and Responsibilities, of the charter as follows. Words underlined are added to the charter and words in parentheses are deleted from the charter.

- A.3. Subject to direction by the Commission and in consultation with the Trustee, the Committee shall determine an investment policy for the assets of the Trust, taking into account the Trust's short-term and long-term financial needs, select an investment advisor, and review the investment performance of the Trust.
- A.5. Investigate and evaluate policy and operational issues pertaining to the Committee's administration of the Moore Universal Telephone Service Act.
- A.7. Shall not make decisions with respect to ULTS program changes without Commission approval. May make decisions with respect to the Committee's administrative function (program changes) that do not have significant policy or budgetary implications unless the majority of the

Committee decides to refer such proposed changes to the Commission for decision. The Committee shall maintain a record of any administrative (program) changes that it initiates, and it shall notify the Commission's Executive Director of such changes.

The Committee should make a compliance filing in this proceeding of its acceptance or nonacceptance of the above-identified modifications which have been incorporated into the Committee's entire charter attached to this order as Appendix A, within 90 days from the effective date of this order. Nonacceptance of the proposed modifications negates Commission approval of a committee's charter at this time. However, the Committee may propose a revised charter to CACD with supporting reasons for any proposed modifications. Upon CACD's review and analysis, CACD should submit a resolution with its recommendation for Commission consideration.

**Order to Show Cause**

Subsequently, in 1990, CACD conducted a compliance audit of Pacific Bell's ULTS reimbursement claims submitted to the Committee between January 1, 1984 and December 31, 1989. On October 15, 1992, CACD's Auditing and Compliance Branch issued a report on the result of its compliance audit of Pacific Bell's records. CACD identified five audit exceptions in its compliance audit which CACD believed resulted in a \$35,686,022 overpayment to Pacific Bell from the ULTS Fund. These audit exceptions consisted of the following:

- a. \$ 3,516,220 - Insufficient documentation on service connection and conversion charge waivers.
- b. \$ 2,685,591 - Insufficient documentation on installment billing of service connection and conversion charges.

- c. \$ 2,079,072 - Calls made by ULTS customers beyond the measured rate call allowance.
- d. \$26,685,607 - Service representatives and administrative costs.
- e. \$ 719,532 - Carrying charges applicable to identified exceptions.

Pacific Bell responded to CACD's audit findings with an October 26, 1992 letter explaining that it would not reimburse the ULTS Fund on the basis of CACD's audit without having an opportunity to be heard.

Subsequently, on November 23, 1993, an Order to Show Cause (OSC) was issued in the still open ULTS investigation, directing Pacific Bell to explain why "Pacific Bell or its employees has refused to reimburse the ULTS for over-payments in the sum of \$35,686,022."

OSC Prehearing Conference

A prehearing conference (PHC) was held on April 16, 1993 to identify issues and to determine the parties' positions on the OSC. At the PHC, Pacific Bell and DRA notified all interested parties that they have begun negotiating a settlement on the OSC. The assigned administrative law judge reminded all parties to follow the Commission's settlement rules (Rule 51.1 of the Commission's Rules of Practice and Procedure), and ordered that all future settlement negotiations between Pacific Bell and DRA be open to all appearances of record in this proceeding. The PHC was adjourned pending the receipt of a letter addressing the status of a settlement from Pacific Bell and DRA.

Proposed Settlement

On November 1, 1993, Pacific Bell and DRA filed a Joint Motion to adopt a ULTS Agreement. The Agreement provides for Pacific Bell to:

- a. Refund \$8.25 million to the ULTS Fund.
- b. Reduce future ULTS billings by approximately \$600,000 annually.
- c. Reduce future billings for service representative administrative costs by approximately \$300,000 annually.
- d. Close the books on all reimbursement claims submitted during the 1984 through 1989 time period, and for the 1990 to present time period on those issues that have been addressed in the settlement.
- e. File a Joint Motion with DRA requesting that General Order 153 be revised.

Toward Utility Rate Normalization (TURN) filed an opposition to the proposed settlement on December 1, 1993. Although TURN found most of the proposed settlement to be acceptable, it opposed the settlement because the settlement would preclude the Commission from scrutinizing Pacific Bell's ULTS claims for service representative time from January 1, 1990, the date that the new regulatory framework took effect, to the present time.<sup>1</sup>

In separate responses to TURN's comments, Pacific Bell and DRA argued that the settlement should be adopted without any modification. Subsequent to their independent responses, Pacific Bell and DRA convened a meeting with TURN to resolve differences of

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<sup>1</sup> TURN noted in its opposition that Pacific Bell had already been reimbursed approximately \$37 million for ULTS expense claims since July 1, 1990, of which approximately half that amount represented recovery of service representatives' time.

opinion regarding the meaning and appropriateness of the proposed settlement. As a result of this meeting, Pacific Bell and DRA filed an amendment to their November 1, 1993 Joint Settlement Agreement on February 4, 1994. The amendment eliminated language regarding the prohibition against "disallowances, penalties, or other forms of rate reductions," and substantially narrowed the scope of issues addressed beyond the initial CACD audit period.

On March 9, 1994, TURN filed a notice of withdrawal of its opposition to the proposed Agreement. This was because Pacific Bell's and DRA's amendment responded to TURN's fundamental concern that the settlement attempted to resolve issues relating to the time period after January 1, 1990, a time period for which Pacific Bell claims the ULTS Fund had not been audited by CACD.

#### Reasonableness of Settlement

The proposed settlement has been achieved in compliance with Rule 51.1 of the Commission's Rules of Practice and Procedure. It represents a reasonable and fair compromise among the widely diverging positions of a \$36 million disallowance expressed by CACD, a \$11 million disallowance expressed by DRA, and a \$13 million in undercharges to the ULTS Fund expressed by Pacific Bell. This proposed settlement further eliminates the need to address fundamental legal questions, such as whether such disallowances, based on events that occurred up to nine years ago, are barred to a large degree by the statute of limitations and/or the equitable doctrine of laches. All things considered, the proposed settlement is reasonable, consistent with the law, and in the public interest.

For all of the above reasons we will adopt Pacific Bell's and DRA's Agreement.

#### Process to Update General Order 153

By D.87-10-088's Finding of Fact 36, we have already found that General Order 153 is obsolete. This is because the General Order provides for administrative procedures applicable to a ULTS tax rescinded in 1987 by AB 386. By Ordering Paragraph 20

a ULTS tax rescinded in 1987 by AB 386. By Ordering Paragraph 20 of the same order, we have already ordered that ULTS' General Order be revised through workshops. Accordingly, Pacific Bell's and DRA's Agreement to file a Joint Motion requesting General Order 153 be revised is moot and need not be implemented.

By this present order we will request CACD to reconvene the workshops related to the General Order. Given that technological and funding changes have occurred since implementation of the General Order, and may continue to change and impact ULTS, the workshop participants should address whether it is more appropriate to rescind or revise the General Order. If there is a consensus that the General Order should be revised, the workshop participants should identify specific revisions to reflect currently authorized ULTS procedures in a generic sense so that yearly modifications to the General Order will not be necessary. However, if it is the consensus of the workshop participants that the General Order should be rescinded, the parties should address how currently authorized ULTS procedures should be promulgated, such as by Commission Order or by individual advice letter filing.

As brought out by a DRA July 19, 1988 Petition, telecommunications utilities have applied the ULTS surcharge inconsistently. For example, some telecommunications carriers applied the ULTS surcharge to intraLATA toll private line services, while other telecommunications carriers did not. No action was taken on this Petition because the telecommunications utilities were applying the ULTS surcharge consistently with their individually authorized tariffs, and because the yearly adopted surcharge rate is based on the total of each LEC's projected ULTS expenses and lost revenue data, and the total projected surchargeable revenue base is based on the total of each LEC and interexchange carrier's projected surchargeable revenue base. It is very likely that, absent specific definition of the services to which the surcharge is applicable, other inconsistencies may

currently exist. To eliminate such inconsistencies and to ensure that the yearly ULTS surcharge rate is applied within California on a consistent basis, CACD should include in its upcoming workshop, the issue of specific definitions of telecommunications services subject to the ULTS surcharge.

Irrespective of whether parties recommend that the General Order be revised or rescinded, a final compliance workshop report should be filed by CACD in this proceeding within six months after the effective date of this order. This workshop report should also identify and recommend specific modifications to ensure that the ULTS surcharge is applied prospectively on a consistent basis within California.

**Findings of Fact**

1. General Order 153 was established to set forth ULTS administrative procedures.
2. A ULTS surcharge was established to replace the ULTS tax rescinded by AB 386.
3. The Committee was established to set up a trust and to administer the ULTS program.
4. With the establishment of a ULTS surcharge, General Order 153 became obsolete pursuant to D.87-10-088.
5. The Committee seeks Commission approval of its charter.
6. No opposition to the Committee's Petition has been received.
7. DDTPAC charters have been approved with minor modifications by Commission Resolutions T-14060 and T-14079.
8. Ordering Paragraph 10 of D.87-10-088 requires that the Committee not be a policy committee.
9. The Commission issued an OSC on November 23, 1993, which directed Pacific Bell to explain why it should not be required to reimburse the ULTS Fund approximately \$36 million in ULTS funds paid to Pacific Bell during the January 1, 1984 to December 31, 1989 time period.

10. Pacific Bell and DRA filed a Joint Motion to adopt a ULTS Agreement.

11. TURN opposed Pacific Bell's and DRA's Joint Motion.

12. Pacific Bell and DRA resolved TURN's differences and filed an amended settlement on November 1, 1993.

13. TURN filed a notice to withdraw its opposition to the proposed settlement.

14. The proposed settlement is in compliance with Rule 51.1, as it is reasonable in light of this record, consistent with the law, and in the public interest.

15. Ordering Paragraph 20 of D.87-10-088 provided for General Order 153 to be revised through workshops.

16. Pacific Bell's and DRA's Agreement to file a Joint Motion for General Order 153 to be revised is moot.

17. Telecommunications utilities have applied the ULTS surcharge inconsistently.

#### Conclusions of Law

1. Any committee charter to be approved by the Commission should be consistent with the authority provided to the Committee by D.87-10-088.

2. Minor modification should be made to Section IV, Duties and Responsibilities, of the Committee's charter to bring it in compliance with D.87-10-088.

3. The proposed settlement as amended on February 4, 1994 by Pacific Bell and DRA should be approved.

4. Workshops should be reconvened to address the viability of General Order 153 and to recommend changes to the General Order, if applicable.

5. The ULTS surcharge should be applied on a consistent basis within California.

6. Because of the public interest in resolving the OSC, the following order should be effective immediately.

INTERIM ORDER

IT IS ORDERED that:

1. The Universal Lifeline Telephone Service (ULTS) Administrative Committee (Committee) charter with the specific modifications identified in the body of this order and incorporated into the Committee's charter, as shown in Appendix A of this order, shall be approved upon the Committee's acceptance of the specific modifications identified in the body of this order. Within 90 days after the effective date of this order, the Committee shall submit a written compliance filing with the Docket Office indicating its acceptance or nonacceptance of the specific charter modifications. Nonacceptance of any part of Appendix A nullifies approval of its charter at this time.

2. The Committee may propose revisions to its charter, including future revisions, by submitting its proposed changes with supporting reasons to the Commission's Advisory and Compliance Division (CACD). Upon CACD's review and analysis, CACD shall submit a resolution with its recommendation for Commission consideration.

3. The amended settlement agreement between Pacific Bell and Division of Ratepayer Advocates attached to this order as Appendix B is hereby approved, thereby resolving all claims related to or arising out of the Commission's November 23, 1993 Order to Show Cause in this proceeding.

4. CACD shall reconvene workshops to determine whether it is more appropriate to rescind or revise General Order 153. If a majority of workshop participants determine that the General Order should be revised, the workshop participants shall identify specific revisions to reflect currently authorized ULTS procedures. If it is the consensus of the workshop participants that the General Order should be rescinded, the parties shall address how currently authorized ULTS procedures should be promulgated.

5. CACD shall include as part of the workshops being ordered in Ordering Paragraph 4, the issue of specifically defining telecommunications services subject to the ULTS surcharge for the purpose of applying the ULTS surcharge on a consistent basis within California, prospectively.

6. CACD shall issue a final workshop report on the results of Ordering Paragraph 4 and 5, above, within 6 months after the effective date of this order.

7. This investigation remains open to address the results of the workshops being required by this order.

This order is effective today.

Dated October 26, 1994, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
PATRICIA M. ECKERT  
NORMAN D. SHUMWAY  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
Commissioners

APPENDIX A

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CHARTER

of the

UNIVERSAL LIFELINE TELEPHONE SERVICE  
TRUST ADMINISTRATIVE COMMITTEE

I. NAME

The name of the committee shall be the Universal Lifeline Telephone Service Trust Administrative Committee ("the Committee").

II. PURPOSE

The Committee's purpose is to function, in connection with the Moore Universal Telephone Service Act, as an administrative committee under the supervision and control of the California Public Utilities Commission ("the Commission"), pursuant to Decision No. 87-10-088 of the Commission, and pursuant to the Universal Lifeline Telephone Service Trust Agreement, dated February 1, 1988, as it may be amended and restated from time to time ("the ULTS Trust" or "the Trust").

III. MEMBERSHIP

A. Members. The Committee shall be comprised of five members: one member chosen from the five largest local exchange companies; one member chosen from the small exchange companies; one member chosen from the inter-exchange companies; and two members chosen from consumer organizations.

B. Selection. Members shall be nominated by the organizations or constituencies they are to represent. Selection and approval of members shall be by the Commission's Executive Director, in accordance with procedures adopted by the Commission.

C. Terms of Appointments. A member shall hold office until a successor has been appointed and has assumed office.

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D. Removal. Any member of the Committee may be removed at any time by the Commission's Executive Director, for cause shown, in accordance with procedures adopted by the Commission.

E. Vacancies. The organizations or constituencies whose seat is vacated shall nominate individuals to fill that vacancy, and the selection and approval of the individual to fill that vacancy shall be made by the Commission's Executive Director, in accordance with procedures adopted by the Commission.

F. Indemnification. Members, officers, employees, and agents of the Committee who are not members of the Commission staff are uncompensated servants of the Commission and the State of California within the meaning of Section 810.2 of the Government Code. The State will accordingly indemnify them as it indemnifies its compensated employees, and will provide them representation by the California Attorney General, for their acts done within the course and scope of the services they perform for the Committee, as provided in Government Code Sections 825 et seq. and Sections 995 et seq. The Committee may, in addition, use Trust funds to purchase Errors and Omissions Insurance for indemnification of its officers, members, employees, and agents and of the Trust for such persons' acts done within the course and scope of the services they perform for the Committee, to the extent that such activities are held to be indemnified by the State and/or defense is not provided by the State under Government Code Sections 810.2, 825 et seq., and/or 995 et seq.

G. Expenses. Consumer members of the Committee shall be entitled to reimbursement of reasonable expenses incurred in connection with their service on the Committee, but they shall not be entitled to honoraria or per diem allowances. Consistent with Commission Resolution F-621, utility members are not eligible for expense reimbursement.

#### IV. DUTIES AND RESPONSIBILITIES

A. The Committee shall have the following duties:

1. With respect to the receipt of surcharges from telephone companies:  
(a) maintain records, on a monthly basis, of the amount of surcharges transmitted by telephone companies; (b) notify the Commission of any company which is delinquent. All other duties in connection with the receipt of surcharges are the responsibility of the staff of the Commission.

2. With respect to the payment of claims submitted by telephone companies: (a) pay company claims which are approved by the Commission staff; (b) approve and pay administrative expenses of the Committee; (c) provide monthly receipts and expenditures reports to the Commission. All other duties in connection with the approval and payment of claims are the responsibility of the staff of the Commission.

3. Subject to direction by the Commission and in consultation with the Trustee, the Committee shall determine an investment policy for the assets of the Trust, taking into account the Trust's short-term and long-term financial needs, select an investment advisor, and review the investment performance of the Trust.

4. Recommend surcharge rate changes to the Commission.

5. Investigate and evaluate policy and operational issues pertaining to the Committee's administration of the Moore Universal telephone Service Act.

6. Initiate recommendations to the Commission for changes in the administration of the Moore Universal Telephone Service Act.

7. Shall not make decisions with respect to ULTS program changes without Commission approval. May make decisions with respect to the Committee's administrative function that do not have significant policy or budgetary implications unless the majority of the Committee decides to refer such proposed changes to the Commission for decision. The Committee shall maintain a record of any administrative changes that it initiates, and it shall notify the Commission's Executive Director of such changes.

8. Perform the functions set forth in the Universal Lifeline Telephone Service Trust Agreement.

9. Hire or contract with persons or firms to provide the support necessary to enable the Committee adequately to fulfill its duties.

10. Prepare and submit to the Commission an annual budget for the Committee; during the time that the Commission is considering approval of the proposed budget, the Committee shall act in accordance with its existing budget as though it had been extended for another year. Prepare and submit supplemental budget requests to the Commission if such requests are necessary adequately to fulfill the duties of the Committee.

11. Obtain an annual audit of the ULTS Trust Fund by a firm of independent certified public accountants.

12. File an annual report with the Commission.

13. Perform such other duties as may from time to time be imposed on it by the Commission in connection with the administration of the Moore Universal Telephone Service Act.

B. While the Committee shall have the power and authority to carry out the foregoing duties, it shall not have the authority to direct utilities to act or refrain from acting. Such authority shall remain solely with the Commission. The members of the Committee in the performance of their duties and in the actions taken by the Committee shall at all times be subject to the direction, control and approval of the Commission.

## V. MEETINGS

A. General. The Committee shall meet monthly. Notification of the date, place, and time of each meeting shall be given to each member. Unless another location is stated in the notice, meetings shall be at the Public Utilities Commission Building in San Francisco.

B. Open Meetings. All meetings shall be open to the public and shall be held in accordance with the provisions of the Bagley-Keene Open Meeting Act. A copy of that Act shall be given to every existing and new member of this Committee.

C. Quorum. A majority of the members of the Committee in office shall constitute a quorum for the transaction of business. The members may be present in person or by conference telephone, so long as the place of the meeting is open to attendance by the public. A meeting at which a quorum is initially present may transact business notwithstanding the withdrawal of members, if any action taken is approved by at least a majority of the required quorum for the meeting.

## VI. OFFICERS

A. Two Officers. The Committee shall have two officers, a Chairperson and a Vice-Chairperson, who shall be elected by the members. The officers shall be elected to serve a term of one year, and they may be re-elected. An officer shall continue to hold office until a successor has been elected and assumed office.

B. Duties. The Chairperson shall be the executive officer of the Committee and shall have the general supervision and direction of the affairs of the Committee. The Chairperson shall preside at all meetings of the Committee. In the absence of the Chairperson, the Vice-Chairperson shall perform the duties of that office.

The officers shall perform such other duties as from time to time may be prescribed by the Committee.

**VII. EFFECTIVE DATE and AMENDMENTS**

This Charter shall become effective on the date it is approved by the California Public Utilities Commission.

This Charter may be amended by vote of the majority of the members of the Committee, but no amendment shall be effective until approved by the Commission.

**SCOPE OF THE SETTLEMENT**

Pacific and DRA ("the settling parties") agree to settle all claims related to or arising out of CACD's October 1992 Audit Report on Pacific's Universal Lifeline Telephone Program ("CACD's Report").

The terms and conditions of this Settlement shall be effective upon adoption by the Commission.

**TERMS OF THE SETTLEMENT**

1. Refund To The ULTS Fund. Pacific agrees to refund to the ULTS Fund \$8.25 million, to be paid as follows:

- (1) One Initial Installment Payment of \$3 million to be paid within 45 days of the effective date of the Commission's decision adopting the Settlement; and
- (2) Ten subsequent Monthly Installment Payments of \$525,000 to be paid in each of the ten consecutive months following the Initial Installment Payment.

Both the Initial Installment Payment and the Monthly Installment Payments will be paid in the form of a special credit identified on Pacific's Monthly Reimbursement Claim which is submitted to the ULTS Fund each month.

2. Elimination Of Reimbursement Claim For Measured ULTS Local Calls Beyond The 60-Call Allowance. Within 45 days of the effective date of the Commission's decision adopting the Settlement, Pacific shall cease seeking reimbursement for lost revenue due to Measured ULTS local calls beyond the 60-call allowance. Elimination of this reimbursement claim will result in an ongoing reduction in Pacific's

overall ULTS reimbursement claims by approximately \$600,000 annually.

3. Implementation Of New Time And Motion Study. As a result of issues raised in CACD's Report, Pacific has conducted a new time and motion study. The study shows that Pacific should reduce its per-customer reimbursement claim for time spent by service representatives discussing ULTS with applicants for service. Pacific implemented the results of this new study effective August 1, 1993, which will result in an ongoing reduction in Pacific's overall ULTS reimbursement claims by approximately \$300,000 annually.

4. Waiver Of Backbilling Claims. Pacific agrees not to seek reimbursement from the ULTS Fund for the backbilling and underbilling issues identified on pages 83-84, 92, and 103 of Pacific's February 1, 1993 Response to the Order Show Cause. According to Pacific, these issues amounted to approximately \$13 million in alleged backbillings and underbillings between 1984 and 1989, and Pacific expressly waives any right to request reimbursement for these alleged underbilling issues in the future.

5. Books Closed For 1984-1989. Pacific shall no longer be subject to audit of its ULTS Program for the period 1984-1989 and expressly shall not be subject to any disallowance, penalty, or other form of rate reduction or be required to submit any refund to the ULTS Fund as a result of any issues or events that transpired prior to January 1, 1990, except as set forth in this settlement. This closure of books for disallowance, penalty, rate reduction, or refund purposes for the period 1984-1989 (1) is a vital term of this Settlement, (2) is accounted for in the \$8.25 million refund

described in paragraph 1 above, and (3) shall apply in all future Commission proceedings and be applicable against the proposals of any party, even if it is not a settling party.

6. Measured Call Allowance Resolved In Post-Audit Period.

The parties specifically acknowledged that the \$8.25 million refund amount described in paragraph 1 above includes a \$2.05 million refund of Pacific's reimbursement claims for lost revenue above the measured call allowance during the time period between January 1, 1990 and the date the Commission adopts this Settlement.

7. Joint Pleading To Consider Revising General Order 153.

The settling parties agree to draft and file a motion requesting a Prehearing Conference be set for the purpose of asking the Commission to formally or informally consider clarifying, revising, and/or updating General Order 153 so that the kinds of issues, controversies, and disagreements that have arisen as a result of CACD's Audit are avoided in the future. The settling parties shall use their collective best efforts to file the motion within 90 days after the effective date of a Commission decision adopting this Settlement. All settling parties shall have the opportunity to jointly participate in any and all ex parte communications regarding the relief requested in the joint motion. The motion will not discuss or propose any specific changes to General Order 153, and nothing in this Settlement requires any settling party to support or propose any particular position as to how General Order 153 should be changed.

8. General Provisions

- a. No Admission. This Settlement is entered into in full compromise of all issues related to the Order

to Show Cause. The settling parties acknowledge that the execution of this Settlement is not and shall not be construed as an admission of imprudence, wrong-doing, or liability and that this Settlement reflects a mutual desire to expeditiously resolve the issues in the public's interest.

- b. No Precedent. This Settlement represents a compromise, and the settling parties have entered into it on the basis that the Commission's adoption of the terms and conditions set forth herein not be construed as a precedent regarding any principle, rule of law, or issue in any current or future proceeding. The issues resolved by this Settlement should not be construed as reflecting the settling parties' views or positions with respect to the facts or laws applicable to this dispute. Rather, the terms and conditions contained in this Settlement shall be viewed only as a reasonable and appropriate compromise of the issues involved.
- c. Inadmissibility. In accordance with Rule 51.9 of the Commission's Rules of Practice and Procedure, no discussion, admission, concession, or offer to stipulate or settle, whether oral or written, made during any negotiation regarding this Settlement shall be subject to discovery or admissible in any evidentiary hearing if any party objects to its admission.

- d. Release. Provided that Pacific implements the requirements of this Settlement, Pacific shall not be subject to any claim, demand, cause of action, damage, liability, disallowance, penalty, or refund of any nature whatsoever embodied in or arising out of CACD's Report.
- e. Obligations Imposed By Commission. Unless specifically set forth in this Settlement, the settling parties do not intend to alter or change any of their obligations imposed by the orders, rules, regulations, or decisions of the Commission.
- f. Further Documents. The settling parties agree to execute such other or further documents or instruments and to take such other or further action as may be necessary or desirable to implement the terms and provisions of this Settlement.
- g. Entire Settlement. This writing constitutes the entire agreement among the settling parties. No modification or waiver of this Settlement shall be valid unless in writing and approved by the settling parties and the Commission. No settling party shall be bound by any representation, promise, statement, or information unless it is specifically set forth herein.
- h. Statutory Obligations. Nothing contained herein shall modify the Commission's statutory obligations to regulate Pacific.

- i. Interpretation. This Settlement shall in all respects be interpreted, enforced, and governed exclusively by and under the laws of the State of California in effect when this Settlement is approved by the Commission. This Settlement is to be deemed to have been jointly prepared by the settling parties, and all uncertainty or ambiguity existing herein shall not be interpreted against any settling party.
- j. Execution. This Settlement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.
- k. Approval by the Commission. This Settlement shall be effective upon approval by the Commission.

(END OF APPENDIX B)