

Decision 87 10 077

OCT 28 1987

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion to provide programs)
whereby certain specialized telephone)
equipment may be provided to)
subscribers certified as disabled, and)
whereby telecommunications devices for)
the deaf may be provided to certain)
agencies of state government, pursuant)
to Sections 2881 (c) and 2881.1 of the)
Public Utilities Code.)

I.86-07-031
(Filed July 16, 1986)

OPINION ON PETITION FOR MODIFICATION
OF DECISION 87-04-027

Background

Decision (D.) 87-04-027 established a statewide program for providing specialized or supplementary telephone communications equipment to subscribers who are certified disabled,¹ at no charge additional to the basic exchange rate, pursuant to Public Utilities (PU) Code Section 2881.

The California Association of the Deaf, Greater Los Angeles Council on Deafness, Deaf Counseling, Advocacy and Referral Agency and Norcal Center on Deafness (Deaf Organizations) filed a petition for modification (petition) of the above-mentioned decision on May 11, 1987. This petition requests that the decision be modified to:

1. Expand the Trust Committee to include an additional disabled representative.

¹ Certification is determined by a licensed physician and surgeon acting within the scope of his or her license or by a qualified state agency.

2. Establish a broadly focused advisory committee consisting of disabled consumers. --
3. Provide Telecommunications Devices for the Deaf (TDDs) to businesses with deaf employees who are certified disabled.
4. Equip public pay telephones with TDDs in select locations when specially designed equipment becomes commercially available.
5. Implement affirmative action for the deaf and other disabled people in filling any new positions created by the new program.

Responses to Deaf Organizations' petition were received from Pacific Bell and from the Self Help for Hard of Hearing People, Inc. (SHHH) on May 29, 1987.

In its response, Pacific Bell asserts that Deaf Organizations' petition should not be considered because the petition does not allege legal error and proposes substantive changes which, if adopted, would place new duties on parties to the proceeding without any evidentiary showing that such changes are reasonable or appropriate. In support of its response, Pacific Bell cites Rule 43 of the Commissions Rules of Practice and Procedure which sets forth the specific requirement that only minor changes to a decision shall be considered by a petition.

SHHH supports Deaf Organizations' petition regarding the establishment of a broadly focused committee and the provision of TDDs to businesses with deaf employees who are certified disabled. However, it does not support Deaf Organizations' other proposed changes.

Technically, Pacific Bell's argument that Deaf Organizations petition does not comply with the requirements of Rule 43 is correct because the petition requests more than a minor change in D.87-04-027. It is recognized that Deaf Organizations is too late to file a timely application for a rehearing, and in any event, Deaf Organizations has not alleged legal error.

Nevertheless, we have discretion to entertain petitions, and should exercise that discretion because of the importance of the issues brought before us.

Expand the Trust Committee

Ordering Paragraph 2 of D.87-04-027 expands the Trust Committee to include a representative of the diverse interest of disabled persons. However, Deaf Organizations believe that the addition of only one person representing the diverse interest of disabled persons would present a potential conflict between the interest of the motion impaired and the hearing impaired. Therefore, it recommends that the decision be modified to include one additional person so that the motion impaired and the hearing impaired could have separate representation on this committee.

SHHH asserts that Deaf Organizations failed to mention that, like the differences between the motion impaired and the hearing impaired, there are differences between the deaf and the hard of hearing. Therefore, should we consider adding more persons to the Trust Committee, two additional persons should be added. This would enable the motion impaired, deaf, and hard of hearing to have their own representative. Further, SHHH points out that should the Trust Committee be expanded, other disabled groups would also want separate representation on the Trust Committee.

The Trust Committee has limited functions and is not an operating body. The purpose of the Trust Committee, as summarized in the decision, is to review and approve requests for reimbursement, to recommend surcharge rate changes, to invest excess funds, to retain the services of a Bank Trustee, and to cause an annual audit of the financial statements by an independent Certified Public Accounting firm.

Deaf Organizations did not assert that our decision was factually incorrect, and did not substantiate how a representative of the diverse interest of the disabled persons would conflict with the interest of the motion impaired and the hard of hearing, and

other disabled groups, in carrying out the above-mentioned responsibilities of the Trust Committee. Therefore, Deaf Organizations proposed modification to Ordering Paragraph 2 should not be adopted.

However, since deaf organizations and other disabled organizations believe there is a potential conflict between a disabled representative and the diverse interest of disabled persons, the term of the disabled representative should be limited to one year. The seat of the disabled representative should rotate among different disabled organizations and persons. These organizations and persons should confer among themselves and select a representative on a yearly basis. Upon selection of a representative a letter should be sent to the Deaf Trust Committee identifying the organizations and persons selecting the new disabled representative and the name of the new representative.

Establish a Broadly Focused Advisory Committee

Deaf Organizations propose that the decision be modified to require the establishment of a committee of disabled consumer representatives to be responsible for the oversight of Trust funded programs and disabled tariff items, and to assist in the development of program improvements, policy recommendations, and new program initiatives. With respect to the selection of committee members, it recommends that for each candidate seeking to be a hearing impaired representative, the California Association of the Deaf be given the opportunity to provide its recommendation prior to the selection of hearing impaired committee members.

SHHH supports Deaf Organizations' proposed committee. However, like the California Association of the Deaf, it wants similar authority to review and recommend candidates for the committee.

Pacific Bell argues that there is no record to support the Deaf Organizations' proposed modification, and the program should proceed as approved.

This investigation was not opened to consider the establishment of a committee with oversight of Trust activities, disabled tariff items, program improvements, policy recommendations or new program initiatives. Rather, it was opened to provide programs whereby certain specialized telephone equipment may be provided to subscribers certified as disabled, and whereby telecommunications devices for the deaf may be provided to certain agencies of state government.

However, Deaf Organizations and SHHH present a valid concern for the need to have input from the disabled into the development of program initiatives and improvements, and policy recommendations to the DEAF Trust if the disabled programs are to remain successful.

There are already two committees associated with the DEAF Trust, an administrative committee and a standardization advisory committee. Instead of establishing a third committee the responsibilities of one of the committees presently in existence, the standardization advisory committee, should be broaden to take on an advisory role to assess the feasibility of new program initiatives and improvements, and to provide policy recommendations to the DEAF Trust.

To enable the standardization advisory committee to operate effectively with this added responsibility and to enhance the committee's diverse interest, the membership of the committee should be increased from the current five members comprised of a representative from the deaf and/or hearing impaired, motion impaired, Pacific Bell, independent telephone companies, and Commission staff, to six members. Representation from the deaf and/or hearing impaired should be separated so the deaf has its own representative and the hard of hearing has its own representative.

Provide TDDs to Businesses with Deaf Employees

Deaf Organizations recommend that Ordering Paragraph 26 be modified to clearly state that those businesses with deaf or

severely hearing-impaired employees are eligible for TDDs under this program.

It believes clarification is necessary because the present TDD program provides TDDs only to those business services whose proprietors or partners are deaf or severely hearing-impaired (small business owners). With the clarification, TDDs would be available to all businesses who employ deaf or severely hearing-impaired employees.

On the other hand, Pacific Bell asserts that Deaf Organizations are requesting the Commission to adopt an expansive interpretation of the original intent, to extend benefits to those businesses who do not require such benefits, and to incorporate the expanded interpretation into Pacific Bell's existing TDD program.

Pacific Bell believes that the intent of the decision is to provide the disabled owners and employees of small businesses and sole proprietorships the ability to utilize this program. In this regard, Pacific Bell asserts that it intends to make equipment available to such businesses, and intends to consider providing additional equipment on a case-by-case basis so as not to burden the Trust with the requirement of supporting large business enterprises who might make large and unreasonable demands for equipment.

Ordering Paragraph 26 provides that, where business service is involved, telephone utilities shall provide a reasonable quantity of equipment to those businesses who employ certified disabled persons.

Although one may imply from the above-mentioned language that TDDs should be made available to all businesses which employ certified disabled persons, there was no intention to provide a blanket distribution program for TDD equipment. Rather, it was

intended to complement the present TDD program on a cost effective basis with emphasis on small businesses.²

Official notice is taken of Commission Resolution T-12043, dated August 12, 1987, which increased the telephone subscriber surcharge used to fund the deaf and disabled programs from 3 cents to the maximum 10 cents per telephone subscriber effective September 1, 1987. In increasing the surcharge to the maximum allowable rate, it was recognized that a funding shortage exists for the present programs and that it may be necessary to limit or reduce program services if solutions to the funding shortage are not found.

Should large businesses be included in the TDD distribution program at this time, it would only divert necessary funds available for carrying out other program activities. Therefore, Ordering Paragraph 26 should be clarified to read as follows:

"Where business service is involved, small businesses (as considered in the present TDD program) who employ certified disabled persons are eligible to receive a reasonable quantity of equipment."

Equip Public Pay Telephones with TDDs

Deaf Organizations recommend that Ordering Paragraph 27 be modified to require the designation of TDD equipped public pay telephones in high traffic areas when such equipment becomes commercially available. Further, it recommends that the locations of such pay telephones be recommended by the advisory committee and approved by the Trust Committee.

² The determination of whether a business is a small business is to be determined from the criteria, except for the requirement that the proprietors or partners be deaf or severely-hearing impaired, set forth in the present TDD program.

As discussed in filed comments, Deaf Organizations recognize that a TDD public pay telephone pilot program has run into difficulty because of vandalism and abuse of such pay telephones. However, it believes that technology is rapidly changing and that specially designed TDD equipped pay telephones were to be available commercially in the near future.

Given the present results of the pilot program, SHHH believes that the proposed modification is premature and should not be considered until technology for tamper-proof TDDs is developed and available commercially.

Pacific Bell emphasizes the pay telephone issue was considered in D.87-04-027 (pp. 15-17) and, therefore, sees no reason for a modification. Instead, Pacific Bell believes that the standardization advisory committee, established by Ordering Paragraph 11, can consider new technology as it relates to pay telephones. ✓

We concur with Pacific Bell. The standardization advisory committee, as delineated in Ordering Paragraph 12, is responsible for recommending and updating, as new technology is developed, a standard equipment list for the disabled program. Deaf Organizations has not justified the need to change this procedure or the need to implement a new procedure for equipment not presently available commercially, or for which no technology presently exists; therefore, the proposed modification should not be adopted.

Implement Affirmative Action

Deaf Organizations also request the decision be modified to include a finding of fact that Deaf Organizations recommend affirmative action; a conclusion of law that it is appropriate for the telephone utilities to undertake special efforts to employ deaf and other disabled people in the new program; and an order that such special efforts should be made.

Deaf Organizations are concerned that the respondent telephone utilities have not represented that they will undertake special efforts to employ deaf or other disabled people in the new program. In support of its proposed modification, Deaf Organizations cite its comments and recommendations filed in this proceeding, urging affirmative action for the deaf and other disabled people.

Although SHHH supports the request for affirmative action, it believes that the telephone utilities are in compliance with the law regarding affirmative action and that no special restrictions or quotas on the hiring of deaf and other disabled people should be imposed.

Pacific Bell argues that consideration of an affirmative action program for the disabled was not an issue in this proceeding. Since it was not an issue, any modification of the decision at this point in this regard would deny the telephone utilities and other interested parties due process.

We concur with Pacific Bell. Affirmative action was not an issue in this proceeding and there has been no evidence in the record demonstrating that Pacific Bell is not complying with affirmative action laws; therefore, Deaf Organizations proposed modifications on this issue should be denied.

Findings of Fact

1. D.87-04-027 established a statewide program providing specialized or supplementary telephone communications equipment to subscribers who are certified disabled.
2. Deaf Organizations filed a petition to modify D.87-04-027.
3. Pacific Bell and SHHH filed responses to the petition.
4. Pacific Bell recommends that the petition not be considered because it does not allege legal error and proposes substantive changes.

5. Ordering Paragraph 2 expands the Trust Committee to include a representative of the diverse interest of disabled persons.

6. Deaf Organizations recommend the decision be modified to include one additional person on the Trust Committee so that the motion impaired and the hearing impaired could have separate representation on the committee.

7. SHHH asserts that if we expand the Trust Committee two additional persons should be added so that the motion impaired, the deaf, and the hard of hearing could have separate representation.

8. Other disabled groups would also want separate representation on the Trust Committee.

9. The purpose of the Trust Committee is to review and approve requests for reimbursement, to recommend surcharge rate changes, to invest excess funds, to retain the services of a Bank Trustee, and to cause an annual audit of the financial statements by an independent Certified Public Accounting firm.

10. Deaf Organizations request that the decision be modified to require the establishment of a committee of disabled consumer representatives to be responsible for the oversight of Trust funded programs and disabled tariff items, and to assist in the development of program improvements, policy recommendations, and new program initiatives.

11. Deaf Organizations recommend that the California Association of the Deaf be given the opportunity to provide its recommendation prior to the selection of hearing impaired committee members.

12. SHHH requests similar authority to review and recommend candidates for the broadly focused advisory committee.

13. This investigation was not opened to consider the establishment of a committee with oversight of Trust activities, disabled tariff items, program improvements, policy recommendations, or new program initiatives.

14. Deaf Organizations recommend that Ordering Paragraph 26 be modified to clearly state that those businesses with deaf or severely hearing-impaired employees are eligible for TDDs.

15. The present TDD program provides TDDs only to those business services whose proprietors or partners are deaf or severely hearing-impaired (small business owners).

16. Pacific Bell intends to make equipment available to small businesses and sole proprietors owned by or which employ disabled persons, and intends to provide additional equipment on a case-by-case basis so as not to burden the Trust with the requirement of supporting large business enterprises.

17. Ordering Paragraph 26 provides that, where business service is involved, telephone utilities shall provide a reasonable quantity of equipment to those businesses who employ certified disabled persons.

18. Resolution T-12043 increased the telephone subscriber surcharge used to fund the deaf and disabled programs from 3 cents to the maximum 10 cents per telephone subscriber.

19. The intent of providing TDD equipment to businesses was to complement the present TDD program on a cost effective basis with emphasizes on small businesses.

20. Deaf Organizations recommend that Ordering Paragraph 27 be modified to require the designation of TDD equipped public pay telephones in high traffic areas when such equipment becomes commercially available.

21. A TDD public pay telephone pilot program has run into difficulties because of vandalism and abuse of such pay telephones.

22. SHHH does not recommend the designation of TDD equipped public pay telephones until technology for tamper-proof TDDs is developed and available commercially.

23. The standardization advisory committee established by Ordering Paragraph 11 is responsible for considering new technology as it relates to pay telephones.

24. Deaf Organizations recommend the decision be modified to require telephone utilities to undertake special efforts to employ deaf and other disabled people in the new program.

25. SHHH asserts that the telephone utilities are in compliance with the law regarding affirmative action and that no special restrictions or quotas on the hiring of deaf or other disabled people need to be imposed.

26. Pacific Bell concludes that affirmative action was not an issue in this investigation.

Conclusions of Law

1. Although Deaf Organizations' petition does not technically comply with Rule 43, we have discretion to entertain petitions and should do so in this proceeding because of the importance of the issues brought before us.

2. Ordering Paragraph 2 should not be modified because Deaf Organizations did not present any facts misinterpreted in the decision or substantiate how a representative of the diverse interest of the disabled persons would conflict with the responsibilities of the Trust Committee.

3. The term of the Trust Committee's disabled representative should be limited to one year.

4. The responsibilities of the standardization advisory committee should be expanded to assess the feasibility of new program initiatives and improvements, and to provide policy recommendations to the DEAF Trust. The committee, comprised of five members, should be increased to six members.

5. Ordering Paragraph 26 should be modified to clarify the intent of providing TDD equipment to businesses.

6. Ordering Paragraph 27 should not be modified because the standardization advisory committee is responsible for recommending and updating, as new technology is developed, a standard equipment list for the disabled program.

7. D.87-04-027 should not be modified to require affirmative action because affirmative action was not an issue in this investigation, and there is no evidence on the record demonstrating that Pacific Bell is not complying with affirmative action laws.

8. D.87-04-027 should be modified to the extent provided in the following order.

ORDER

IT IS ORDERED that:

1. Ordering Paragraph 26 of Decision 87-04-027 shall be amended to read as follows:

"d. Where business service is involved, small businesses (as considered in the present TDD program) who employ certified disabled persons are eligible to receive a reasonable quantity of equipment."

2. The term of the disabled representative of the Trust Committee shall be limited to one year, the seat of which shall rotate among different disabled organizations and persons. Deaf organizations, disabled organizations and persons shall confer among themselves, yearly, and send by letter a list of organizations and persons voting and the name of the new representative to the Deaf Trust Committee.

3. The responsibilities of the standardization advisory committee shall be expanded to assess the feasibility of new program initiatives and improvements, and to provide policy recommendations to the DEAF Trust. The membership of this committee shall be increased from five members to six members, as provided in this opinion.

4. The California Association of the Deaf; Greater Los Angeles Council of Deafness; Deaf Counseling, Advocacy and Referral Agency; and NorCal Center on Deafness' petition for modification of

Decision 87-04-027 to expand the Trust Committee, to establish a broadly focused advisory committee, to equip public pay telephones with Telecommunications Devices for the Deaf (TDDs) when specially designed equipment becomes commercially available, and to implement affirmative action for the deaf and other disabled people in filling new positions created by the new program is denied. ✓

This order is effective today.

Dated October 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 Weissert, Executive Director

AB

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Background

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The California Association of the Deaf, Greater Los Angeles Council on Deafness, Deaf Counseling, Advocacy and Referral Agency and Norcal Center on Deafness (Deaf Organizations) filed a petition for modification (petition) of the above-mentioned decision on May 11, 1987. This petition requests that the decision be modified to:

1. Expand the Trust Committee to include an additional disabled representative.

1 Certification is determined by a licensed physician and surgeon acting within the scope of his or her license or by a qualified state agency.

2. Establish a broadly focused advisory committee consisting of disabled consumers.
3. Provide Telecommunications Devices for the Deaf (TDDs) to businesses with deaf employees who are certified disabled.
4. Equip public pay telephones with TDDs in select locations when specially designed equipment becomes commercially available.
5. Implement affirmative action for the deaf and other disabled people in filling any new positions created by the new program.

Responses to Deaf Organizations' petition were received from Pacific Bell and from the Self Help for Hard of Hearing People, Inc. (SHHH) on May 29, 1987.

In its response, Pacific Bell asserts that Deaf Organizations' petition should not be considered because the petition does not allege legal error and proposes substantive changes which, if adopted, would place new duties on parties to the proceeding without any evidentiary showing that such changes are reasonable or appropriate. In support of its response, Pacific Bell cites Rule 43 of the Commissions Rules of Practice and Procedure which sets forth the specific requirement that only minor changes to a decision shall be considered by a petition.

SHHH supports Deaf Organizations' petition regarding the establishment of a broadly focused committee and the provision of TDDs to businesses with deaf employees who are certified disabled. However, it does not support Deaf Organizations' other proposed changes.

Technically, Pacific Bell's argument that Deaf Organizations petition does not comply with the requirements of Rule 43 is correct because the petition requests more than a minor change in D.87-04-027. It is recognized that Deaf Organizations is too late to file a timely application for a rehearing, and in any event, Deaf Organizations has not alleged legal error.

Nevertheless, we have discretion to entertain petitions, and should exercise that discretion because of the importance of the issues brought before us.

Expand the Trust Committee

Ordering Paragraph 2 of D.87-04-027 expands the Trust Committee to include a representative of the diverse interest of disabled persons. However, Deaf Organizations believe that the addition of only one person representing the diverse interest of disabled persons would present a potential conflict between the interest of the motion impaired and the hearing impaired. Therefore, it recommends that the decision be modified to include one additional person so that the motion impaired and the hearing impaired could have separate representation on this committee.

SHHH asserts that Deaf Organizations failed to mention that, like the differences between the motion impaired and the hearing impaired, there are differences between the deaf and the hard of hearing. Therefore, should we consider adding more persons to the Trust Committee, two additional persons should be added. This would enable the motion impaired, deaf, and hard of hearing to have their own representative. Further, SHHH points out that should the Trust Committee be expanded, other disabled groups would also want separate representation on the Trust Committee.

The Trust Committee does not operate as a policy or operating body. The purpose of the Trust Committee, as summarized in the decision, is to review and approve requests for reimbursement, to recommend surcharge rate changes, to invest excess funds, to retain the services of a Bank Trustee, and to cause an annual audit of the financial statements by an independent Certified Public Accounting firm.

Deaf Organizations did not assert that our decision was factually incorrect, and did not substantiate how a representative of the diverse interest of the disabled persons would conflict with the interest of the motion impaired and the hard of hearing, and

other disabled groups, in carrying out the above-mentioned responsibilities of the Trust Committee. Therefore, Deaf Organizations proposed modification to Ordering Paragraph 2 should not be adopted.

However, since deaf organizations and other disabled organizations believe there is a potential conflict between a disabled representative and the diverse interest of disabled persons, the term of the disabled representative should be limited to one year. The seat of the disabled representative should rotate among different disabled organizations and persons. These organizations and persons should confer among themselves and select a representative on a yearly basis. Upon selection of a representative a letter should be sent to the Deaf Trust Committee identifying the organizations and persons selecting the new disabled representative and the name of the new representative.

Establish a Broadly Focused Advisory Committee

Deaf Organizations propose that the decision be modified to require the establishment of a committee of disabled consumer representatives to be responsible for the oversight of Trust funded programs and disabled tariff items, and to assist in the development of program improvements, policy recommendations, and new program initiatives. With respect to the selection of committee members, it recommends that for each candidate seeking to be a hearing impaired representative, the California Association of the Deaf be given the opportunity to provide its recommendation prior to the selection of hearing impaired committee members.

SHHH supports Deaf Organizations' proposed committee. However, like the California Association of the Deaf, it wants similar authority to review and recommend candidates for the committee.

Pacific Bell argues that there is no record to support the Deaf Organizations' proposed modification, and the program should proceed as approved.

This investigation was not opened to consider the establishment of a committee with oversight of Trust activities, disabled tariff items, program improvements, policy recommendations or new program initiatives. Rather, it was opened to provide programs whereby certain specialized telephone equipment may be provided to subscribers certified as disabled, and whereby telecommunications devices for the deaf may be provided to certain agencies of state government.

Since the proposed modification is beyond the scope of this investigation and there is no record to support the implementation of a broadly focused committee, the proposed modification should not be adopted.

Provide TDDs to Businesses with Deaf Employees

Deaf Organizations recommend that Ordering Paragraph 26 be modified to clearly state that those businesses with deaf or severely hearing-impaired employees are eligible for TDDs under this program.

It believes clarification is necessary because the present TDD program provides TDDs only to those business services whose proprietors or partners are deaf or severely hearing-impaired (small business owners). With the clarification, TDDs would be available to all businesses who employ deaf or severely hearing-impaired employees.

On the other hand, Pacific Bell asserts that Deaf Organizations are requesting the Commission to adopt an expansive interpretation of the original intent, to extend benefits to those businesses who do not require such benefits, and to incorporate the expanded interpretation into Pacific Bell's existing TDD program.

Pacific Bell believes that the intent of the decision is to provide the disabled owners and employees of small businesses and sole proprietorships the ability to utilize this program. In this regard, Pacific Bell asserts that it intends to make equipment available to such businesses, and intends to consider providing

additional equipment on a case-by-case basis so as not to burden the Trust with the requirement of supporting large business enterprises who might make large and unreasonable demands for equipment.

Ordering Paragraph 26 provides that, where business service is involved, telephone utilities shall provide a reasonable quantity of equipment to those businesses who employ certified disabled persons.

Although one may imply from the above-mentioned language that TDDs should be made available to all businesses which employ certified disabled persons, there was no intention to provide a blanket distribution program for TDD equipment. Rather, it was intended to complement the present TDD program on a cost effective basis with emphasis on small businesses.²

Official notice is taken of Commission Resolution T-12043, dated August 12, 1987, which increased the telephone subscriber surcharge used to fund the deaf and disabled programs from 3 cents to the maximum 10 cents per telephone subscriber effective September 1, 1987. In increasing the surcharge to the maximum allowable rate, it was recognized that a funding shortage exists for the present programs and that it may be necessary to limit or reduce program services if solutions to the funding shortage are not found.

Should large businesses be included in the TDD distribution program at this time, it would only divert necessary funds available for carrying out other program activities. Therefore, Ordering Paragraph 26 should be clarified to read as follows:

² The determination of whether a business is a small business is to be determined from the criteria, except for the requirement that the proprietors or partners be deaf or severely-hearing impaired, set forth in the present TDD program.

"Where business service is involved, small businesses (as considered in the present TDD program) who employ certified disabled persons are eligible to receive a reasonable quantity of equipment."

Equip Public Pay Telephones with TDDs

Deaf Organizations recommend that Ordering Paragraph 27 be modified to require the designation of TDD equipped public pay telephones in high traffic areas when such equipment becomes commercially available. Further, it recommends that the locations of such pay telephones be recommended by the advisory committee and approved by the Trust Committee.

As discussed in filed comments, Deaf Organizations recognize that a TDD public pay telephone pilot program has run into difficulty because of vandalism and abuse of such pay telephones. However, it believes that technology is rapidly changing and that specially designed TDD equipped pay telephones were to be available commercially in the near future.

Given the present results of the pilot program, SHHH believes that the proposed modification is premature and should not be considered until technology for tamper-proof TDDs is developed and available commercially.

Pacific Bell emphasizes the pay telephone issue was considered in D.87-04-027, (pp. 15-17), and, therefore, sees no reason for a modification. Instead, Pacific Bell believes that the standardization advisory committee, established by Ordering Paragraph 11, can consider new technology as it relates to pay telephones.

We concur with Pacific Bell. The standardization advisory committee, as delineated in Ordering Paragraph 12, is responsible for recommending and updating, as new technology is developed, a standard equipment list for the disabled program. Deaf Organizations has not justified the need to change this procedure or the need to implement a new procedure for equipment

not presently available commercially, or for which no technology presently exists; therefore, the proposed modification should not be adopted.

Implement Affirmative Action

Deaf Organizations also request the decision be modified to include a finding of fact that Deaf Organizations recommend affirmative action; a conclusion of law that it is appropriate for the telephone utilities to undertake special efforts to employ deaf and other disabled people in the new program; and an order that such special efforts should be made.

Deaf Organizations are concerned that the respondent telephone utilities have not represented that they will undertake special efforts to employ deaf or other disabled people in the new program. In support of its proposed modification, Deaf Organizations cite its comments and recommendations filed in this proceeding, urging affirmative action for the deaf and other disabled people.

Although SHHH supports the request for affirmative action, it believes that the telephone utilities are in compliance with the law regarding affirmative action and that no special restrictions or quotas on the hiring of deaf and other disabled people should be imposed.

Pacific Bell argues that consideration of an affirmative action program for the disabled was not an issue in this proceeding. Since it was not an issue, any modification of the decision at this point in this regard would deny the telephone utilities and other interested parties due process.

We concur with Pacific Bell. Affirmative action was not an issue in this proceeding and there has been no evidence in the record demonstrating that Pacific Bell is not complying with affirmative action laws; therefore, Deaf Organizations proposed modifications on this issue should be denied.

Findings of Fact

1. D.87-04-027 established a statewide program providing specialized or supplementary telephone communications equipment to subscribers who are certified disabled.

2. Deaf Organizations filed a petition to modify D.87-04-027.

3. Pacific Bell and SHHH filed responses to the petition.

4. Pacific Bell recommends that the petition not be considered because it does not allege legal error and proposes substantive changes.

5. Ordering Paragraph 2 expands the Trust Committee to include a representative of the diverse interest of disabled persons.

6. Deaf Organizations recommend the decision be modified to include one additional person on the Trust Committee so that the motion impaired and the hearing impaired could have separate representation on the committee.

7. SHHH asserts that if we expand the Trust Committee two additional persons should be added so that the motion impaired, the deaf, and the hard of hearing could have separate representation.

8. Other disabled groups would also want separate representation on the Trust Committee.

9. The purpose of the Trust Committee is to review and approve requests for reimbursement, to recommend surcharge rate changes, to invest excess funds, to retain the services of a Bank Trustee, and to cause an annual audit of the financial statements by an independent Certified Public Accounting firm.

10. Deaf Organizations request that the decision be modified to require the establishment of a committee of disabled consumer representatives to be responsible for the oversight of Trust funded programs and disabled tariff items, and to assist in the development of program improvements, policy recommendations, and new program initiatives.

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15. The present TDD program provides TDDs only to those business services whose proprietors or partners are deaf or severely hearing-impaired (small business owners).

16. Pacific Bell intends to make equipment available to small businesses and sole proprietors owned by or which employ disabled persons, and intends to provide additional equipment on a case-by-case basis so as not to burden the Trust with the requirement of supporting large business enterprises.

17. Ordering Paragraph 26 provides that, where business service is involved, telephone utilities shall provide a reasonable quantity of equipment to those businesses who employ certified disabled persons.

18. Resolution T-12043 increased the telephone subscriber surcharge used to fund the deaf and disabled programs from 3 cents to the maximum 10 cents per telephone subscriber.

19. The intent of providing TDD equipment to businesses was to complement the present TDD program on a cost effective basis with emphasizes on small businesses.

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21. A TDD public pay telephone pilot program has run into difficulties because of vandalism and abuse of such pay telephones.

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25. SHHH asserts that the telephone utilities are in compliance with the law regarding affirmative action and that no special restrictions or quotas on the hiring of deaf or other disabled people need to be imposed.

26. Pacific Bell concludes that affirmative action was not an issue in this investigation.

Conclusions of Law

1. Although Deaf Organizations' petition does not technically comply with Rule 43, we have discretion to entertain petitions and should do so in this proceeding because of the importance of the issues brought before us.

2. Ordering Paragraph 2 should not be modified because Deaf Organizations did not present any facts misinterpreted in the decision or substantiate how a representative of the diverse interest of the disabled persons would conflict with the responsibilities of the Trust Committee.

3. The term of the Trust Committee's disabled representative should be limited to one year.

4. A broadly focused advisory committee should not be established because consideration of such a committee is beyond the scope of this investigation.

5. Ordering Paragraph 26 should be modified to clarify the intent of providing TDD equipment to businesses.

6. Ordering Paragraph 27 should not be modified because the standardization advisory committee is responsible for recommending and updating, as new technology is developed, a standard equipment list for the disabled program.

7. D. 87-04-027 should not be modified to require affirmative action because affirmative action was not an issue in this investigation, and there is no evidence on the record demonstrating that Pacific Bell is not complying with affirmative action laws.

8. D.87-04-027 should be modified to the extent provided in the following order.

ORDER

IT IS ORDERED that:

1. Ordering Paragraph 26 of Decision 87-04-027 shall be amended to read as follows:

"d. Where business service is involved, small businesses (as considered in the present TDD program) who employ certified disabled persons are eligible to receive a reasonable quantity of equipment."

2. The term of the disabled representative of the Trust Committee shall be limited to one year, the seat of which shall rotate among different disabled organizations and persons. Deaf organizations, disabled organizations and persons shall confer among themselves, yearly, and send by letter a list of organizations and persons voting and the name of the new representative to the Deaf Trust Committee.

3. The California Association of the Deaf; Greater Los Angeles Council of Deafness; Deaf Counseling, Advocacy and Referral Agency; and NorCal Center on Deafness' petition for modification of Decision 87-04-027 to expand the Trust Committee, to establish a broadly focused advisory committee, to equip public pay telephones with Telecommunications Devices for the Deaf (TDDs) when specially designed equipment becomes commercially available, and to implement affirmative action for the deaf and other disabled people in filing new positions created by the new program is denied.

This order is effective today.

Dated _____, at San Francisco, California.

Nevertheless, we have discretion to entertain petitions, and should exercise that discretion because of the importance of the issues brought before us.

Expand the Trust Committee

Ordering Paragraph 2 of D.87-04-027 expands the Trust Committee to include a representative of the diverse interest of disabled persons. However, Deaf Organizations believe that the addition of only one person representing the diverse interest of disabled persons would present a potential conflict between the interest of the motion impaired and the hearing impaired. Therefore, it recommends that the decision be modified to include one additional person so that the motion impaired and the hearing impaired could have separate representation on this committee.

SHHH asserts that Deaf Organizations failed to mention that, like the differences between the motion impaired and the hearing impaired, there are differences between the deaf and the hard of hearing. Therefore, should we consider adding more persons to the Trust Committee, two additional persons should be added. This would enable the motion impaired, deaf, and hard of hearing to have their own representative. Further, SHHH points out that should the Trust Committee be expanded, other disabled groups would also want separate representation on the Trust Committee.

The Trust Committee does not operate as a policy or operating body. The purpose of the Trust Committee, as summarized in the decision, is to review and approve requests for reimbursement, to recommend surcharge rate changes, to invest excess funds, to retain the services of a Bank Trustee, and to cause an annual audit of the financial statements by an independent Certified Public Accounting firm.

Deaf Organizations did not assert that our decision was factually incorrect, and did not substantiate how a representative of the diverse interest of the disabled persons would conflict with the interest of the motion impaired and the hard of hearing, and

As discussed in filed comments, Deaf Organizations recognize that a TDD public pay telephone pilot program has run into difficulty because of vandalism and abuse of such pay telephones. However, it believes that technology is rapidly changing and that specially designed TDD equipped pay telephones were to be available commercially in the near future.

Given the present results of the pilot program, SHHH believes that the proposed modification is premature and should not be considered until technology for tamper-proof TDDs is developed and available commercially.

Pacific Bell emphasizes the pay telephone issue was considered in D.87-04-027, (pp. 15-17), and, therefore, sees no reason for a modification. Instead, Pacific Bell believes that the standardization advisory committee, established by Ordering Paragraph 11, can consider new technology as it relates to pay telephones.

We concur with Pacific Bell. The standardization advisory committee, as delineated in Ordering Paragraph 12, is responsible for recommending and updating, as new technology is developed, a standard equipment list for the disabled program. Deaf Organizations has not justified the need to change this procedure or the need to implement a new procedure for equipment not presently available commercially, or for which no technology presently exists; therefore, the proposed modification should not be adopted.

Implement Affirmative Action

Deaf Organizations also request the decision be modified to include a finding of fact that Deaf Organizations recommend affirmative action; a conclusion of law that it is appropriate for the telephone utilities to undertake special efforts to employ deaf and other disabled people in the new program; and an order that such special efforts should be made.

Decision 87-04-027 to expand the Trust Committee, to establish a broadly focused advisory committee, to equip public pay telephones with Telecommunications Devices for the Deaf (TDDs) when specially designed equipment becomes commercially available, and to implement affirmative action for the deaf and other disabled people in filing new positions created by the new program is denied.

This order is effective today.

Dated OCT 28 1987, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
C. MITCHELL WILK
JOHN B. OHANIAN
Commissioners