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Decision 90-06-026 June 6, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Advisory and Compliance)
 Division, Telecommunications Branch)
 Resolution No. T-13035, January 11,)
 1989 and Resolution No. T-13039,)
 January 11, 1989.)

ORIGINAL
 Application 89-04-023
 (Filed April 11, 1989;
 Supplement filed
 June 26, 1989)

**ORDER MODIFYING
RESOLUTION T-13035 AND RESOLUTION T-13039**

Background

We issued Resolutions T-13035 and T-13039 on January 11, 1989. Both resolutions called for certain duties and responsibilities on the part of the Deaf Equipment Acquisition Fund (D.E.A.F.) Trust Administrative Committee (Committee). We established this Committee in Decision (D.) 92603 (January 21, 1981) to select a trustee and jointly administer the fund.

On April 11, 1989, the Committee filed a petition for modification of Resolutions T-13035 and T-13039. The Committee believed that both resolutions imposed duties and responsibilities on the Committee beyond those allowed by law and created an unreasonable conflict of interest for Committee members.

The Committee stated that Resolution T-13039 (establishing an annual budget) would require powers beyond those delegated to it by the Commission. The Committee cited specific instances where it was called to be responsible for administration of the programs and required to review closely all claims for reimbursement for reasonableness and prudence. The Committee stated that it has no operational responsibility or authority. Rather, it reviews all operating company expenditure reports for accuracy, completeness, and to the extent possible, for

appropriateness to the programs, but it does not review for the prudence of particular expenditures.

As for Resolution T-13035 (relating to minimum standards for telecommunications devices for the deaf) the Committee stated that responsibility to determine cost-effectiveness of equipment rests with the Equipment Standardization Advisory Committee (ESAC). The Committee said that it does not have the expertise to determine cost-effectiveness of equipment or to design policies for integrating new equipment with older inventories held by the local telephone companies. Such responsibilities it believed lie more properly with the operating companies or with the ESAC.

The Committee's April 11, 1989 petition also notes its belief that the resolutions conflict with the Administrative Law Judge's Proposed Decision in I.87-11-031, released March 10, 1989. The Committee asked that the Commission revoke Resolution T-13035, and modify Resolution T-13039. Resolution T-13039 would be modified so the Committee would only approve expenditures in compliance with the budget approved by the Commission. In the alternative, the Committee requested that the Commission hold both resolutions in abeyance until a decision was reached in I.87-11-031. On May 11, 1989, AT&T Communications, operator of the California Relay Service, one of the programs funded by the Trust, submitted comments concurring with the Committee's position.

We issued D.89-05-060 on May 5, 1989 in I.87-11-031. On June 26, 1989, the Committee (now renamed the Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC), per D.89-05-060) filed a Supplement to its Petition for Modification. In its Supplement, the DDTPAC assumes that D.89-05-060 takes precedence over the Resolutions T-13035 and T-13039.

The DDTPAC argues that neither resolution is now necessary. The DDTPAC states that the prudence review of Resolution T-13039 is not required since D.89-05-060 directs that the DDTPAC "would review and approve monthly expense claims for

reimbursement in accordance with the pre-approved annual budget". (D.89-05-060, p. 21.) The DDTPAC furthermore states that D.89-05-060 makes clear the DDTPAC will not have the power to order the utilities to do anything. The DDTPAC also believes the expanded role explained in D.89-05-060 for the ESAC (now renamed the Equipment Program Advisory Committee (EPAC)) settles the issue of who should determine cost-effectiveness of equipment standards.

The DDTPAC requests that the Commission clarify the status of the two resolutions to the extent that they are inconsistent with D.89-05-060, or formally revoke all or parts of the resolutions as necessary.

We agree with the Committee that the resolutions are inconsistent with D.89-05-060. In accordance with the Committee's request in its Supplement to Petition for Modification (p. 3), we hereby revoke Resolution T-13035, and modify T-13039 as discussed below.

Administrative Committee Responsibilities

We agree with the DDTPAC that its proper role is as described in its own Petition, and as we have stated in D.89-05-060. We reiterate:

"The Deaf and Disabled Telecommunications Program Administrative Committee would review and approve monthly program expense claims for reimbursement in accordance with the pre-approved annual budget". (D.89-05-060, p. 21.)

While the Commission is considering any budget submitted by the DDTPAC for approval, the DDTPAC should act in accordance with the last approved budget.

We further reiterate:

"The DDTPAC should not have the authority to order the utilities to do anything". (D.89-05-060, p. 26.)

As the Committee states:

"[the Committee] currently reviews phone company expenditure reports for accuracy and

completeness, and to the extent apparent from the reports, for appropriateness to the programs. It does not review the prudence of particular expenditures". (Committee Petition, p. 2.)

We are satisfied with this role for the DDTPAC as defined in our decision and stated by the Committee. Should the Committee, as a majority, determine that any utility report or expense claim is inappropriate, the Committee is directed to refer the matter to the Commission for a determination. In our forthcoming consideration of the Committee's Charter and Expense Approval Process (as called for in D.89-05-060), we will see that these responsibilities and a method for referring to the Commission any Committee concerns about inappropriate utility expense reports or claims is delineated. We therefore modify Resolution T-13039 to be consistent with this role for the DDTPAC by revoking all except the part relating to approval of the budget. (A corrected copy is attached as Appendix A.)

Advisory Committee Responsibilities

We agree with the DDTPAC that it does not have the responsibility to ensure that equipment standards or service policies proposed by its Advisory Committees (such as the EPAC, or the California Relay Service Advisory Committee, CRSAC) are cost-effective. We deal more specifically with responsibility to support the reasonableness and cost-effectiveness of any recommendations below.

In D.89-05-060 (p. 22) we direct that the DDTPAC have the ability to make program change recommendations to the Commission which have policy and/or budgetary implications. We state that these recommendations would be initiated by the DDTPAC on its own or as submitted to the DDTPAC by the Advisory Committees. We asked that the DDTPAC, in conjunction with the Commission Executive Director, develop a process for submittal of proposals and recommendations to the Commission for Commission approval. As the

DDTPAC states in its Petition, "actual policy determinations should be made by the Commission". (Petition, p. 6.) We concur.

We require here that any such proposals and recommendations made to the Commission be supported by evidence of their reasonableness and cost-effectiveness. The responsibility for the showing of reasonableness and cost-effectiveness should lie with the originator, be it the DDTPAC, the Advisory Committee, or the operating companies.

In our forthcoming consideration of the Charters for the DDTPAC, EPAC, and the CRSAC, as called for in D.89-05-060, we will clarify who has the responsibility to evidence the reasonableness and cost-effectiveness of any recommendations. In our forthcoming review of the Administrative Committee Expense Approval Process, also called for in D.89-05-060, we will present a means for resolving Committee concerns about inappropriate utility expense reports or claims. At the present time we agree with the Committee's Petition, and hereby revoke Resolution T-13035, and revoke those parts of Resolution T-13039 not relating to the approval of the 1989 annual budget.

Findings of Fact

1. Resolution T-13035 (January 11, 1989) required the D.E.A.F. Trust Administrative Committee, now the DDTPAC, to determine the cost-effectiveness of equipment minimum standards proposed by the ESAC, now the EPAC.

2. Resolution T-13035 (January 11, 1989) also required the Committee to determine a policy for integrating equipment purchases under the new minimum standards with older inventories held by the local telephone companies.

3. The DDTPAC, as presently constituted, does not have the expertise to determine if the proposed standards are cost-effective.

4. The DDTPAC suggests that policy determinations be made by the Commission.

5. Resolution T-13039 (January 11, 1989) required the Committee to be responsible for administration of the programs and to review closely all claims for reimbursement for reasonableness and prudence.

6. The DDTPAC in its present structure has no operational responsibility or authority.

7. The DDTPAC currently reviews telephone company expenditure reports for accuracy and completeness, and to the extent apparent from the reports, for appropriateness to the programs. It does not review the prudence of particular expenditures.

8. Resolutions T-13035 and T-13039 are inconsistent with D.89-05-060, which spells out the powers, duties, and responsibilities of the Administrative and Advisory Committees.

9. D.89-05-060 supersedes Resolutions T-13035 and T-13039, making moot Resolution T-13035 and all of Resolution T-13039 except that part which approves the budget as submitted by the Committee.

10. The Commission's forthcoming review of the Charters of the DDTPAC, the EPAC, and the CRSAC, as called for in D.89-05-060, will delineate the responsibilities of each committee. A method for resolving Committee concerns about inappropriate utility expense reports will be addressed in the forthcoming Commission's review of the Expense Approval Process, also called for in D.89-05-060.

Conclusions of Law

1. Resolution T-13035 should be revoked.
2. Resolution T-13039 should be revoked, except those parts treating budget approval.

IT IS ORDERED that:

1. Resolution T-13035 is revoked.

2. Resolution T-13039 is revoked, except those parts approving the annual budget submitted by the Committee, indicated in the corrected copy attached as Appendix A.

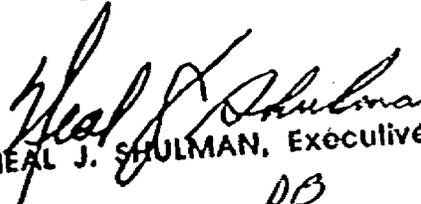
3. The proceeding in A.89-04-023 is closed.

This order is effective today.

Dated June 6, 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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


NEAL J. SHULMAN, Executive Director

JB

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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND
COMPLIANCE DIVISION
Telecommunications Branch

RESOLUTION NO. T-13039
January 11, 1989 (Original)
June 6, 1990 (Corrected)

CORRECTED RESOLUTION

RESOLUTION ESTABLISHING AN ANNUAL BUDGET FOR THE YEAR 1989 TO
PROVIDE FOR DEAF AND DISABLED TELECOMMUNICATIONS EQUIPMENT
AND SERVICE PROGRAMS PURSUANT TO PUBLIC UTILITIES CODE
SECTION 2881 AND FOLLOWING

SUMMARY

By this Resolution, the Commission adopts an annual budget for the year 1989 of \$28,000,500 to provide for telecommunications equipment and services to the deaf and disabled pursuant to Section 2881 and following of the Public Utilities (PU) Code.

Resolution T-13023, September 28, 1988, established the interim Commission review process of the proposed 1989 budget submitted by the Deaf Equipment Acquisition Fund (D.E.A.F.) Trust Administrative Committee to the Commission on November 14, 1988. The Commission's Advisory and Compliance Division (CACD) conducted a workshop to receive public comment on the proposed budget, and reviewed data request responses of its own from the operating companies providing the equipment and services.

CACD prepared an analysis of the proposed 1989 annual budget submitted by the D.E.A.F. Trust Administrative Committee. We herein adopt CACD's proposed budget of \$28,000,500.

BACKGROUND

The Commission opened an Investigation, I.87-11-031, in order to review numerous issues relating to the deaf and disabled telecommunications equipment and service programs provided by the local exchange companies and AT&T Communications of California (AT&T) pursuant to PU Code Section 2881. The programs include provision of Telecommunications Devices for the Deaf (TDDs) to deaf subscribers, a dual party relay connecting TDD subscribers with

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hearing telephone users by means of an operator, and specialized telecommunications equipment to physically disabled telephone subscribers to assure basic access to the public switched telephone network.

As part of a settlement reached among the parties to the investigation, and filed by the Commission's Division of Ratepayer Advocates before the Commission for adoption, is a proposal for a formal review of the program budgets submitted to the Commission by the D.E.A.F. Trust Administrative Committee, the organization the Commission has established to provide fiscal management of the programs. The Commission will be deciding on the appropriate means for the formal budget review process in its final decision to I.87-11-031, expected in early 1989.

In the interim, however, the Commission recognized that the 1989 proposed budget for the programs submitted by the D.E.A.F. Trust Administrative Committee to the Commission on November 14, 1988, should be reviewed and approved by an interim process. Accordingly, the Commission passed Resolution T-13023 on September 28, 1988, in which it ordered the D.E.A.F. Trust Administrative Committee to submit its proposed 1989 budget to the Commission and to serve copies on all parties to I.87-11-031.

CACD was ordered to conduct a workshop on the proposed budget to receive comments from interested parties. CACD held a workshop on November 7, 1988, to discuss the proposed budget; representatives from the Commission staff, D.E.A.F. Trust Administrative Committee, local exchange companies, and AT&T (operator of the relay) were present to receive comments and answer questions from interested parties. Copies of the revised 1989 budget submitted to the Commission on November 14, 1988, were also served on all parties to I.87-11-031.

In addition, Commission staff also submitted data requests on the proposed budget to the D.E.A.F. Trust Administrative Committee, the local exchange companies, and AT&T. CACD has prepared an analysis of the proposed budget and reply comments received and submitted its recommendations to the Commission. We have reviewed CACD's analysis of the proposed budget and reply comments.

DISCUSSION

Comments from Bay Area Center for the Law and the Deaf on behalf of the California Association of the DEAF (CAD) were received and were considered by CACD in its analysis of the proposed budget. CACD has considered CAD's comments and has incorporated many of them in its analysis.

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We adopt a budget of \$28,000,500 for the provision of deaf and disabled telecommunications equipment and services for the year 1989. The D.E.A.F. Trust Administrative Committee has the flexibility to balance expenses within this amount to meet varying demand and contingencies in the different programs. Should the D.E.A.F. Trust experience that this amount is insufficient to meet actual expenses in 1989 to provide the equipment and services, the D.E.A.F. Trust Administrative Committee is ordered to advise the Commission of the changes it requires in its budget; it should request whatever additional funds are required to provide the equipment and services at least 90 days in advance of anticipation of approval by the Commission of any increase in funds beyond the budget of \$28,000,500 approved in this Resolution.

FINDINGS

1. The D.E.A.F. Trust served copies on October 14, 1988 of its proposed 1989 annual budget for telecommunications equipment and services for the deaf and the disabled to all parties to I.87-11-031. The D.E.A.F. Trust submitted a revised program budget for the year 1989 to the Commission and to all parties to I.87-11-031 on November 14, 1988.
2. CACD held a workshop on November 7, 1988 to discuss the proposed budget served by the D.E.A.F. Trust on all parties to I.87-11-031 on October 14, 1988. Copies of the revised budget of November 14, 1988 were also served on all parties to I.87-11-031.
3. Written comments on the proposed budget have been received from the Bay Area Center for Law and the Deaf on behalf of the California Association of the Deaf and have been considered by CACD in its analysis of the proposed budget.
4. CACD has submitted its analysis and recommendations on the proposed budget and reply comments.
5. CACD recommends an amount of \$28,000,500 for the budget of the D.E.A.F. Trust Administrative Committee for the provision of deaf and disabled telecommunications equipment and services for the year 1989.

IT IS ORDERED that:

1. The budget amount of \$28,000,500 recommended by CACD be adopted for the year 1989 to provide telecommunications equipment and service for the deaf and the disabled. Should the D.E.A.F. Trust anticipate the need to spend in excess of the amount of \$28,000,500 for the provision of these programs, it will so advise the Commission and submit its request for additional funds to the

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Commission at least 90 days prior to expectation of approval for such funds.

2. The Executive Director is ordered to serve a copy of this Resolution on all parties to I.87-11-031.

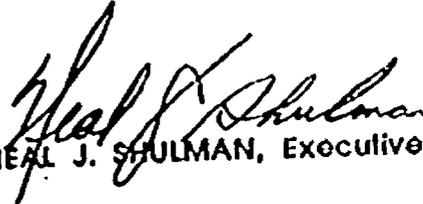
I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on June 6, 1990.

The following Commissioners approved it:

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

/s/ NEAL J. SHULMAN
Executive Director

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


NEAL J. SHULMAN, Executive Director

(END OF APPENDIX A)