

Decision **90 10 040** OCT 12 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
 on the Commission's own motion to)
 determine the feasibility of)
 implementing New Funding Sources and)
 Program Reductions in the Deaf and)
 Disabled Program Pursuant to Section)
 2881 of the Public Utilities Code.)

ORIGINALI. 87-11-031
(Filed November 25, 1987)O P I N I O N

On August 30, 1990, the Division of Ratepayer Advocates (DRA) filed a petition for modification of Decision (D.) 89-05-060 to allow the Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC) to develop a request for proposal (RFP) for provision of the California Relay Service and to put the service out for competitive bid.

In D.89-05-060 we required the DDTPAC to negotiate an interim contract with AT&T for the provision of relay service. These contract negotiations were apparently unsuccessful and DDTPAC has proceeded to develop a request for proposal for putting the service out for competitive bid. The problem DRA seeks to address is that D.89-05-060 did not specifically state that DDTPAC could put the relay service out for competitive bid.

DRA believes that it was the Commission's intent to eventually allow the DDTPAC to use the competitive bidding process. In ordering the DDTPAC to negotiate a relay service contract with AT&T, the Commission stated that development of such a contract was a potential precursor to open competitive bidding, according to DRA. DRA goes on to note that the Commission generally favors competitive bidding as a means for reducing costs and has ordered the utilities to develop and implement a full competitive bidding

program for the purchase of equipment distributed by the Deaf and Disabled program.

This matter appeared on the Commission's Daily Calendar on September 6, 1990. DRA had requested that the time to respond to the petition for modification be shortened but we have allowed the full 30 days to expire before acting on the petition. There have been no protests. AT&T filed a reply to DRA's petition on October 5, 1990.

AT&T urges the Commission to develop a clearly defined procedure for each stage in the process of selecting the contractor: submitting the RFP to the Commission for approval before it is issued for bids, bidding on the RFP, submitting the resulting contract for Commission approval, and review by the Commission of the submitted contract. Specifically, AT&T asks that after the RFP is filed with the Commission (for approval before it is issued), the Commission allow all interested parties 30 days to review the RFP and submit comments, along with an additional 10 days to review the comments of others and file reply comments. AT&T argues this procedure is fair and would provide the Commission a record to approve, change or disapprove the RFP. The comment period may prevent or minimize litigation, according to AT&T, and will result in a more expeditious development of a competitive bidding process.

Discussion

When D.89-05-060 was issued in May, 1989, clearly there was no indication of any problems with California Relay Service that would suggest the need for an immediate alternative to AT&T as the provider. Just as clearly almost 18 months later there is such a need. No contract was ever negotiated with AT&T. Instead of using such a contract as the precursor to competitive bidding, we hope that DDTPAC has achieved the same result by defining the service in contractual terms in the Request for Proposal it has

prepared. This is critical to a successful competitive bidding process. We grant the DRA's petition to modify D.89-05-06.

We deny AT&T's recommendation to include a period for comments and replies on the RFP. It is not feasible to insure that all potential competitors see and have the opportunity to comment upon the RFP. It would be unfair for some potential competitors to see and comment upon the RFP before other potential competitors first see the RFP. The comment period would give some competitors up to an additional 40 days to work on a proposal that other competitors would not have. We will rely on the Commission Advisory and Compliance Division to provide expert advice if the RFP needs amendment before we approve it for release by the DDTPAC.

We will specify a procedure for each stage of the process, as AT&T suggests. DDTPAC will submit the RFP to the Executive Director. After consideration, by resolution we will approve or disapprove the RFP, or approve it with modifications, and authorize the DDTPAC to issue the RFP to receive bids. The DDTPAC will receive and review the proposals. The DDTPAC will then submit a summary of the proposals, along with its recommendation, to the Executive Director for the selection of the contractor, with sufficient explanation and justification that we may understand the DDTPAC's reasoning. We will then approve, disapprove or modify their recommendation by a resolution.

We will not place a time limit on the DDTPAC's submission of the RFP to us, nor a limit on the amount of time within which the DDTPAC must submit its recommendations to us. The DDTPAC has every incentive to conduct this process expeditiously, and we will look forward to their quick action.

Therefore, we modify D.89-05-060 by adding the following:

Finding of Fact 16 - A competitive bidding process will allow AT&T (the current provider of California Relay Service) and others the opportunity to bid for the service.

Conclusion of Law 7 - Competitive bidding should be authorized for the provision of California Relay Service.

Ordering Paragraph 19 - DDTPAC is authorized to prepare and submit to the Executive Director a request for proposal for competitive bids for providing California Relay Service, which the Commission will approve, disapprove or modify by resolution before it is issued by the DDTPAC. DDTPAC will receive and review the proposals and prepare a summary of the proposals along with its recommendations. The summary and recommendations will be submitted to the Executive Director. The Commission will approve, disapprove or modify the DDTPAC's recommendation by resolution.

Findings of Fact

1. D.89-05-060 required DDTPAC to negotiate an interim contract with AT&T for the provision of California Relay Service.
2. DRA reports that contract negotiations were unsuccessful and that no contract has been negotiated.
3. DDTPAC wishes to develop a request for proposal and put the relay service out for competitive bid.
4. AT&T filed a reply to DRA's petition, in which AT&T asks that we specify the specifics in the process of selecting a contractor.

Conclusion of Law

D.89-05-060 should be modified to permit DDTPAC to develop a request for proposal and put the relay service out for competitive bid, along with specifications on the process for final selection of the contractor.

O R D E R

IT IS ORDERED that:

1. The D.89-05-060 is modified by adding the following finding, conclusion and ordering paragraph:

Finding of Fact 16 - A competitive bidding process will allow AT&T (the current provider of California Relay Service) and others the opportunity to bid for the service.

Conclusion of Law 7 - Competitive bidding should be authorized for the provision of California Relay Service.

Ordering Paragraph 19 - DDTPAC is authorized to prepare and submit to the Executive Director a request for proposal for competitive bids for providing California Relay Service, which the Commission will approve, disapprove or modify by resolution before it is issued by the DDTPAC. DDTPAC will receive and review the proposals and prepare a summary of the proposals along with its recommendations. The summary and recommendations will be submitted to the Executive Director. The Commission will approve, disapprove or modify the DDTPAC's recommendation by resolution.

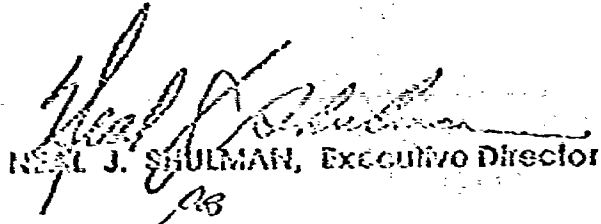
2. In all other respects, D.89-05-060 remains in full force and effect.

This order is effective today.

Dated OCT 12 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
/s/