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Decision 92-02-017 February 5, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)OPINION

On October 3, 1991, the Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC) filed a petition for limited modification of Decision (D.) 89-05-060. The DDTPAC petitions for the addition of a senior citizen consumer representative to the Equipment Program Advisory Committee (EPAC), an advisory committee to the DDTPAC. No protests were filed. We grant DDTPAC's petition, with the same modification on how we accomplish the change to the EPAC charter as we adopted in D.91-10-029 (when modifying the California Relay Service Advisory Committee (CRSAC) charter).

1. Background and DDTPAC Petition

EPAC currently has four consumer representatives, each representing specific user communities: one deaf representative, one hard-of-hearing representative, and two disabled representatives. All four consumer representatives plus three utility representatives hold voting positions on the nine-member committee. Non-voting positions are held by the provider of the California Relay Service and a designee of the Commission's Executive Director.

The DDTPAC asserts that increased representation from the senior citizen community is essential to enable the EPAC to perform its duties and responsibilities. The DDTPAC points out that the

first stated duty of EPAC is: "To Develop a Standard List of Telecommunication Devices for the program." (EPAC Charter, Section IV(A); approved June 6, 1990 by Resolution T-14079.) According to the DDTPAC, the EPAC must seek the input of users and potential users of the telecommunications equipment in updating the list so that equipment that truly meets the needs of users is included. One important prerequisite for EPAC effectively performing this duty is to have equipment users and potential users adequately represented on the committee, according to DDTPAC.

EPAC has determined that over 60% of the consumers provided equipment through this program are senior citizens, but seniors are not specifically represented on any of the Deaf and Disabled Telecommunications Program (DDTP) committees, DDTPAC asserts. Additionally, seniors are the fastest growing identifiable consumer group. Because the equipment needs of seniors with disabilities are so different from those of most younger people with disabilities, the DDTPAC believes it to be in the best interest of the program to have the senior citizen community specifically represented on EPAC.

For many seniors with a disability, the disability is due to aging, and therefore is acquired later in life, according to DDTPAC. Consequently, seniors do not view themselves as disabled individuals and do not associate with any of the established disability organizations. In addition, many seniors do not accept new technology readily, and therefore are more hesitant to use the standard pieces of equipment that younger people with disabilities are comfortable in using.

The DDTPAC feels strongly that the addition of a senior citizen representative on the committee will facilitate outreach to a potentially large, untapped consumer community. A senior citizen representative will bring links to senior organizations that the program currently lacks, and will assist EPAC in developing acceptable methods of presenting the equipment and its benefits to

the senior community. These unique perspectives are not currently represented on EPAC.

Furthermore, DDTPAC argues that the addition of a senior citizen representative to EPAC will not shift the voting balance. D.89-05-060 establishes the current composition and voting structure, with seven voting members out of nine. The voting members are the three utility representatives (Pacific Bell, GTE California Incorporated, and California Telephone Association) and the four consumer representatives. If a senior citizen consumer representative is added to the committee, the DDTPAC proposes that the position be a voting member to be congruent with the other consumer members. The members representing the relay service provider and the Commission's Executive Director's designee are to remain non-voting members.

Adding another consumer representative will not shift the current voting balance between utility and consumer members, because the consumer members already have a voting majority, according to DDTPAC. The new proposed ten-member EPAC would therefore have eight voting members and two non-voting members.

Finally, the DDTPAC argues that the program's committees should be responsive to the needs of the consumers who depend on the equipment and services provided by the DDTP. Because senior citizens constitute the largest single identifiable group of consumers of program equipment, DDTPAC is convinced that seniors should be specifically represented on EPAC, the committee that directly oversees the segment of the program most directly involving senior citizen consumers. DDTPAC affirms that the proposed modification is in the best interest of the DDTP, the Deaf Equipment Acquisition Fund Trust, and especially the ratepayers of California. The DDTPAC requests that the Commission grant the DDTPAC's petition. The DDTPAC further requests that the Commission order EPAC to file the necessary changes in its charter to allow for the new senior citizen consumer representative.

2. Discussion

Adding a fifth consumer representative to the EPAC incrementally increases the administrative costs of the DDTP. We just recently approved adding a second deaf community consumer representative to the CRSAC, increasing total CRSAC membership to ten. We need to be watchful of the overall costs of the program.

To meet the need of representing the senior citizen community, we consider keeping the same number of consumer representatives on the EPAC (four rather than increasing the number to five) and directing the DDTPAC and EPAC to nominate replacement committee members (as existing members' terms expire) in the same proportion as senior citizens who use the program. That is, as the existing four EPAC consumer representatives' terms expire, EPAC and DDTPAC could nominate two or three replacement members that in each person represent more than one community (e.g., represent both (1) deaf, hard of hearing, or disabled and (2) the senior citizen community).

We reject this approach since we are convinced that seniors are a sufficiently identifiable and large group to require separate representation. We suggest, however, that the DDTPAC give thorough consideration to balancing particular representation needs by recommending appointment of new members to represent more than one group before the DDTPAC recommends further increases to the total number of members on any committee. Moreover, we would like the EPAC and DDTPAC to consider nominating future consumer representatives on the EPAC in the same proportion as senior citizens using DDTP equipment. That is, if 60% of the consumers provided equipment through the DDTP are senior citizens, a goal should be for three out of five of the consumer representatives on the EPAC to be senior citizens. This is not a requirement, but a goal that the DDTPAC should consider when it seeks qualified candidates.

We also consider applying an age requirement for the senior representative. Citizens are defined as part of the senior citizen community at different ages for different purposes (e.g., age 50 for eligibility to live in some retirement communities, age 65 for social security, or age 70 for some mandatory retirement programs). We have no record on the age used to define senior citizens for different purposes, nor on when the aging process itself causes or contributes to disabilities. We will not specify a particular minimum age for the senior citizen representative on the EPAC. We suggest, however, that EPAC and DDTPAC use age 60 as a guide when considering nominations.

Finally, we note that the terms of the first round of members were staggered (one, two, and three years) so that each year the committee will replace about one-third of its members. Since the terms are sufficiently staggered, we will direct that the senior citizen representative be appointed to a three-year term.

We make the necessary changes in the EPAC charter, as provided in Attachment A. We request that the DDTPAC modify the EPAC charter to conform to Attachment A, and direct DDTPAC to confirm by letter to the Executive Director that the changes have been made. This is the process we used in modifying and approving the original CRSAC charter, and in D.91-10-029 when we further modified the CRSAC charter. This process can work again and save time and expense. We ask DDTPAC to include proposed charter revisions if it petitions for further charter modifications.

Findings of Fact

1. DDTPAC filed a petition to modify D.89-05-060 on October 3, 1991, asking that a voting representative from the senior citizen community be added to the EPAC.
2. No protests were filed.
3. The first charter-stated duty of the EPAC is to create a standard list of telecommunication devices for the program.

4. EPAC must seek the input of users and potential users of telecommunications equipment in updating the list so that equipment that truly meets the needs of users is included.

5. EPAC can perform this duty better if equipment users and potential users are represented on the committee.

6. The majority of consumers provided equipment through the DDTP are senior citizens, but seniors are not specifically represented on any DDTP committee.

7. It is in the best interest of the DDTP to have the senior citizen community specifically represented on the EPAC because the equipment needs of seniors with disabilities are so different from those of most younger people with disabilities.

8. A senior citizen representative will bring links to senior citizen organizations that the program currently lacks, and will assist EPAC develop acceptable equipment presentations to the senior community.

9. Consumer members currently hold four of seven votes.

10. Consumer members with a senior citizen representative added will hold five of eight votes.

11. The voting balance between consumer and utility members will not shift, since the consumer members have, and will retain, a voting majority.

12. The membership terms are sufficiently staggered so that the senior citizen representative may be appointed to a full three-year term and maintain the desired rotation of approximately one-third of the committee every year.

13. The DDTPAC requests that the Commission grant the petition and order the EPAC to file the necessary changes in its charter.

14. Just as we have done before, we will make the necessary changes and direct the DDTPAC to confirm by letter to the Executive Director that the changes have been made by the EPAC.

Conclusions of Law

1. No protests were filed in response to the DDTPAC petition for modification, and a public hearing is not necessary.
2. It is reasonable to add a senior citizen representative to the EPAC.
3. The senior citizen representative should be appointed for a three-year term.
4. The DDTPAC petition to modify D.89-05-060 should be granted as modified herein.
5. This order should be effective today since there are no protests and increased representation of the senior citizen community on the EPAC should occur as soon as reasonably possible.

ORDER

IT IS ORDERED that:

1. The petition of the Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC) for modification of Decision (D.) 89-05-060 is granted as modified.
2. D.89-05-060, 32 CPUC 2d 27, is modified as follows. The second sentence in the first paragraph under the section titled "Equipment Program Advisory Committee" (32 CPUC 2d at 37) is modified to read: "The Equipment Program Advisory Committee voting members should consist of three utility representatives and five consumer representatives." The third paragraph in the same section is modified to read: "The consumer representation should include two disabled representatives, one hard-of-hearing representative, one deaf representative, and one senior citizen representative."

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3. The Commission's Executive Director shall send a copy of this decision to the DDTPAC. The DDTPAC shall modify the charter of the Equipment Program Advisory Committee as approved herein and specified in Attachment A. The DDTPAC will confirm by letter to the Executive Director when the changes have been made.

This order is effective today.

Dated February 5, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director

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CHARTER OF THE
DEAF AND DISABLED TELECOMMUNICATIONS PROGRAM
EQUIPMENT PROGRAM ADVISORY COMMITTEE

I. NAME

The name of the committee shall be the Equipment Program Advisory Committee (referred to hereafter as "the Committee").

II. PURPOSE

The Committee's general purpose is advisory to the Deaf and Disabled Telecommunications Program Administrative Committee in connection with equipment programs mandated by Section 2881 of the Public Utilities Code for providing telecommunications access for persons who are deaf, severely hearing impaired or disabled, and to recommend and update, as new technology is developed, a standard equipment list for programs, to develop procedures for evaluating new products, and to make recommendations for policy changes with respect to the quality of both equipment distribution and service provision.

III. MEMBERSHIP

A. Members. The Committee shall be comprised of seven eight voting members and two non-voting members as follows:

1. Voting Members.

- (a) Utility Members. The Committee shall include three members representing telephone utilities. The three shall consist of one from Pacific Bell, one from GTE California, and one from the California Telephone Association.
- (b) Consumer Members. Four Five of the Committee members shall represent consumer groups, consisting of one from the hard-of-hearing

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community, two from the disabled community, and one from the deaf community, and one from the senior citizen community.

2. Non-voting Members. The non-voting members shall consist of one representative of the California Relay Service provider, and one Commission staff member as designated by the Executive Director.

B. Selection of Members. Potential members of the Committee shall be nominated to the Administrative Committee by the organizations or constituencies they are to represent. The members of the Committee shall be recommended by the Administrative Committee for approval by the Commission's Executive Director, according to procedures preferred by the Commission.

C. Qualifications of Members. The qualifications of members shall be established by the Administrative Committee in conjunction with the Commission. In general, members shall have professional or technical expertise sufficient to enable them to be conversant with the responsibilities of the Committee. Consumer members should be able to demonstrate organizational or other ties to the constituency they are representing, and in addition, they should not be employed by or represent the interests of any vendors or distributors who are providing or who may in the future provide equipment or services for the Deaf and Disabled Telecommunications Program, consistent with the Disclosure and Conflict of Interest Policy attached to this charter.

D. Term of Appointments. The terms of the members of the Committee shall be staggered, with approximately one-third of the membership of each committee appointed each year. Initial appointments shall be for terms of one, two or three years; thereafter members will be appointed for three-year terms. A member may be reappointed, but no member shall serve for more than two consecutive full terms.

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E. Removal. Membership may be terminated through resignation. Members who fail to attend three consecutive meetings without just cause or proxy may be subject to removal from the Committee. Any member of the Committee, on the recommendation of two-thirds of the Committee, may be removed at any time by the Commission's Executive Director for cause shown, in procedures preferred by the Commission.

F. Vacancies. Vacancies on the Committee shall be filled from nominations submitted by the organization or constituency whose vacancy is being filled. The membership of persons filling a vacancy shall be selected and approved by the Commission's Executive Director using procedures preferred by the Commission. Vacancies for expired terms will be filled by full term appointments; vacancies for unexpired terms will be filled for the remainder of the term.

G. Expenses. Consistent with Commission Resolution F-621, consumer members of the Committee shall be entitled to appropriate reimbursement of expenses they incur in connection with their service on the Committee. Utility members are not eligible for expense reimbursement.

IV. DUTIES AND RESPONSIBILITIES

The Committee shall have the following duties:

- (A) To develop a Standard List of Telecommunication Devices for the program (hereafter referred to as the List);
- (B) Upon development of the first List, transmit it to the Administrative Committee for approval and submission to the Commission, and thereafter, in compliance with following paragraphs (C) and (D), amend the List and transmit it for approval;

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- (C) To, at a minimum of three regular intervals each year, take into consideration new technology and advances in science and engineering and, if applicable, update the List;
- (D) To establish detailed written operating procedures for new product consideration, which will include field trial, engineering evaluation, review of cost-effectiveness, and basis for recommendations for adding any new product to the List;
- (E) To assess the feasibility of new program initiatives and improvements;
- (F) To provide policy recommendations relating to both equipment and service quality in the equipment distribution program to the Administrative Committee;
- (G) Other activities necessary and appropriate to accomplish the purpose and responsibilities of the Committee.

V. MEETINGS

A. General. The Committee shall hold such meetings as it shall decide are necessary or appropriate in order to carry out its functions. All meetings shall be open to the public, shall be noticed, shall be conducted pursuant to Robert's Rules of Order, 1990 edition and shall be otherwise held in accordance with the provisions of Government Code Sections 11120 ff. Unless another location is specified in the notice, each meeting shall be held at the offices of the Administrative Committee.

B. Quorum; Voting. A majority ~~(5)~~ (6) of the authorized number of members, or their designated representatives, shall be necessary to constitute a quorum for performing the Committee's functions. However, no action shall be taken at any meeting without a majority ~~(4)~~ (5) of the total voting membership of the

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Committee. A majority of the members present at a meeting, whether or not a quorum is present, may adjourn the meeting to another time and place. Any adjourned meeting shall be subject to the same notice requirements as a regular meeting.

C. Proxies. A member may be represented at any meeting by oral or written authorization by that member to the chair naming a designated individual to represent that member at a specified, noticed meeting. Any proxy may be revoked at any time before the meeting begins by oral or written notice to the chair by the member who gave the proxy.

D. Motions. Both voting and non-voting members may submit motions from the floor for committee vote.

E. Agenda. Each notice of meeting shall be accompanied by an agenda setting forth the matters that are expected to be presented at the meeting. Each agenda shall include allotted time for public input. Except in an emergency and with the approval of a majority of the members present, the Committee shall not consider at any meeting an item not on the agenda.

F. Participation. Members of the public and observers shall not be permitted to take part in any meeting unless recognized by the chair.

VI. OFFICERS

A. Two Officers. The Committee shall have a Chairperson and a Vice-Chairperson, both of whom shall be elected by a majority of the members to serve for one year from date of election and may be re-elected.

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. The Vice-Chairperson

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shall perform the duties of the Chairperson when the Chairperson is unavailable. The officers shall perform such other duties as from time to time may be prescribed by the Committee.

VII. AMENDMENTS

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

VIII. INDEMNIFICATION

Members 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.

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Charter Attachment 1

Deaf and Disabled Telecommunications Program
Disclosure and Conflict of Interest Policy

The Deaf and Disabled Telecommunications Program was established by the California Public Utilities Commission (CPUC) to administer and oversee California's legislated programs that provide telecommunications services and equipment to deaf and disabled individuals in California. The CPUC established three committees to provide the oversight function and to recommend program and policy changes to the Commission. The three committees are the Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC), the California Relay Service Advisory Committee (CRSAC), and the Equipment Program Advisory Committee (EPAC). The CRSAC and the EPAC are advisory committees to the DDTPAC.

Each of the three committees has consumer members who represent the deaf and disabled constituents statewide whom the program serves. Each consumer member is appointed to represent a particular constituency (e.g., statewide deaf organization, speech impaired). Consumer members are nominated to the DDTPAC by the constituency or organization they represent. After reviewing the qualifications of the nominees, the DDTPAC recommends a nominee for appointment to the committee to the CPUC. The Commission's Executive Director makes the ultimate appointment to the committee.

Since consumer members are all appointed to represent a designated constituency, the interests and opinions of the consumer members should not be intentionally controlled or influenced by any of the companies who provide goods and services to the program on an ongoing or regular basis. Some of these companies are already represented by positions on the three committees. In addition, the appearance of any conflict of interest caused by relationships between consumer members and vendors to the program needs to be avoided. For this reason, consumer members on the three committees and nominees for consumer member positions must disclose any relationships with vendors to the program which might tend to influence a consumer member's opinions or position.

The requirements must be met before a consumer member nominee's name for any of the program's three committees is forwarded to the CPUC for approval and for continued eligibility, once approved.

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Disclosure and Conflict of Interest Policy

I. Disclosure

Consumer members on DDTP committees must annually report any relationships that exist (employment, consultant, or otherwise) between the consumer member and a company that provides goods or services to the program. Such relationships that exist between a consumer member's affiliated organization or employer and a company that provides goods or services to the program must also be disclosed. This disclosure shall include the reporting of any ownership of stock or other equities issued by a company that provides goods or services to the program.

Consumer members must annually report their membership in or employment by any organization or participation on any boards, committees, or other groups that represent the deaf and disabled consumers served by the program. Consumer members must also report the name and general business purpose of any business entity in which the consumer member is a director, officer, partner, trustee, employee or holds any position of management.

Consumer members may not accept gifts of \$250 or more in value from any single vendor of goods or services to the program. Consumer members must also annually report any gifts, honoraria, or awards amounting to \$50 or more received either directly or through another organization from any vendor of goods or services to the program.

"Honorarium" means a payment for speaking at any event, participating in a panel or seminar, or engaging in any similar activity. For the purposes of this section, free admission, food, beverages, and other similar nominal benefits provided to a committee member at an event at which he or she speaks, participates in a panel or seminar, or performs a similar service, and reimbursement or advance for actual travel and for necessary accommodations provided directly in connection with the event are not payments and need not be reported. However, reimbursement for travel outside of California must be reported as an honorarium. A prize or award shall be disclosed as a gift unless the prize or award is received on the basis of a bona fide competition not related to the committee member's official status.

All of these reports must be renewed annually.

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Disclosure and Conflict of Interest Policy

If, in the judgement of the DDTPAC, any of the disclosed relationships would create a conflict of interest that would constitute reason to disqualify a consumer member from membership on any of the DDTP committees, the DDTPAC may recommend removal of the committee member to the CPUC.

II. Prohibition of Relationships

During their term of service on the committee, consumer members of DDTP committees shall not be employed by or represent the interests of any vendors or potential vendors of goods or services to the program, such that the consumer member receives either individually or through another organization \$250 or more annually for any type of service performed. Business arrangements with or services provided by the consumer member or his or her affiliated organization to the program that are routine and in the ordinary course of the program's activities (e.g., providing interpreter services) are not subject to the prohibition section. Any relationship with a vendor to this program that would under normal circumstances be customary and ordinary considering the nature of the consumer member's employment and/or expertise shall also not be regarded as subject to this prohibition section, but may be subject to the Prohibition of Participation section following. Examples of such relationships might include:

- a) A consumer member who is employed by a disability services organization, such as an independent living center, provides disability awareness training to a program vendor.
- b) A consumer member who is deaf provides information or training concerning deaf culture to a program vendor.
- c) A consumer member who is a heavy relay service user provides training or orientation regarding relay service usage to a program vendor.

III. Prohibition of Participation

No committee member shall make, participate in making, or in any way attempt to use his or her position on the committee to influence the making of any committee decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from

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Disclosure and Conflict of Interest Policy

its effect on the public generally, on the committee member or a member of his or her immediate family, or on 1) any investment, business entity or real property in which the committee member has a direct or indirect investment worth at least \$1,000, 2) any source of income aggregating \$250 or more within the preceding 12 months, 3) any business entity or other organization in which the committee member is a director, officer, partner, trustee, employee or holds any position of management, or 4) any donor of a \$250 or more gift to the committee member within the preceding 12 months.

When a committee member determines that he or she should not participate in a decision-making process because he or she has a disqualifying interest in it, the committee member must 1) immediately disclose the interest that creates the conflict, 2) withdraw from participation, 3) refrain from attempting to influence any other member, and 4) refrain from voting during any votes relating to the issue that creates the conflict. The member only needs to disclose the fact of a disqualifying interest and not its details.

(END OF ATTACHMENT A)