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Decision 92-04-066 April 22, 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.

I.87-11-031
(Filed November 25, 1987)

O P I N I O N

1. Summary

By this decision, we authorize a \$100 per diem compensation, in addition to expense reimbursement, for non-utility, non-government consumer members of Deaf and Disabled Telecommunications Program (DDTP) committees. We also terminate further inquiry into limiting or controlling use of the California Relay Service (CRS). Finally, we direct the Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC) to work with the Commission Advisory and Compliance Division (CACD) on a filing to demonstrate compliance with Federal Communications Commission (FCC) requirements that the CRS meets or exceeds federal standards.

2. Background

By Assigned Commissioner's ruling dated November 1, 1991, parties were asked to submit comments in two areas:

a. Per Diem Compensation

1. Whether the Commission should authorize a \$100 per diem compensation, in addition to expense reimbursement, for consumer members of the DDTP committees, to be funded from the existing authorized DDTP budget;

2. Whether evidentiary hearing is necessary for further consideration of this issue;
 3. Any other matter necessary for consideration of this issue.
- b. Excessive use of the CRS
1. How excessive, frivolous or abusive use of the CRS may be defined (see 32 CPUC 2d 27, 50);
 2. How the Commission can regulate such use within the provisions of the Americans with Disabilities Act (ADA);
 3. How the ADA affects our consideration of pricing as an alternative in that regulation;
 4. The role of Public Utilities Code § 2881(f)(2) in the context of the ADA;
 5. Whether evidentiary hearing is necessary for further consideration of this issue;
 6. Any other matter necessary for consideration of this issue.

Parties were asked to file comments by December 1, and reply comments by December 16, 1991.

Comments were filed by Pacific Bell (Pacific), the Division of Ratepayer Advocates (DRA), the California Association of the Deaf (CAD) and the DDTPAC.¹ DRA filed reply comments. We will discuss each area in turn.

3. Per Diem Compensation

Following review of the comments, we decide to authorize \$100 per diem compensation, in addition to expense reimbursement,

¹ DDTPAC's motion to accept its comments late is granted.

for non-utility, non-government consumer members of DDTP committees. This compensation will be funded from the existing authorized DDTP budget.

We are persuaded by DRA, DDTPAC and CAD that this payment is consistent with the policy we adopted in Decision (D.) 91-10-016 (wherein we authorized compensation in the amount of \$100 per meeting day for non-utility, non-government members of the California Electromagnetic Field Consensus Group (CEFCG)). We embraced a two-fold rationale in D.91-10-016, which also applies here. First, it is unfair that the time some members devote to committee activities is compensated as part of their employment, while other members receive no compensation for the time spent on their participation. Second, our policy of obtaining the broadest public participation would inevitably be frustrated if the lack of compensation excluded persons with experience, perspective, or burdens of the very problem we are seeking to resolve.

Pacific disagrees:

"Pacific is hesitant to change the philosophical incentive of community participation from one of strict volunteerism to one which includes partial monetary reimbursement. Such a process sets the precedent that community thought and input should be paid for by government rather than voluntarily given by the citizenry. There is little question but that citizen volunteers benefit from their participation in ways that far exceed the proposed \$100 per diem. These benefits include possessing access to information and having a viable avenue to influence decision makers and promote their own ideas. Further, there is no indication that the DDTP committees are experiencing a shortage of competent citizen participation due to the unavailability of a per diem compensation plan." (Comments of Pacific Bell, pp. 1-2.)

Voluntarism is a noble enterprise. But voluntarism calls for sacrifice. Relying on, and requiring, sacrifice is

unnecessary here. The legislature has authorized the DDTP. A funding mechanism exists. It is proper to use this mechanism for all reasonable expenses of the program. Our reasons to provide compensation (e.g., equity and encouragement of broad public participation) are not outweighed by the ideal of voluntarism, however noble.

We agree that government should not be called upon to fund all community input. But government is not being called upon to fund the consumer input in this case. In this case, a program exists that is funded by ratepayers, including program users.

We also agree with Pacific that consumer volunteers benefit by participation. Utility members similarly benefit by participation, however, they are compensated. A benefit from participation does not negate fair and equitable treatment of consumer members.

DRA's reply comments point out that Pacific's actions do not support the voluntarism ideal it espouses. Not only are Pacific's employees on DDTP committees compensated from the D.E.A.F. Trust Fund, but Pacific also recognizes the importance of consumer input by paying an honorarium to the consumer panel members who review Pacific's proposed services. Additionally, on December 5, 1991, Pacific held an ad hoc Consumer Education Forum. Pacific compensated the consumer members for their contributions by both reimbursing expenses and providing an honorarium.

We agree with Pacific that there is no indication that the DDTP committees are currently experiencing a shortage of competent citizen participation due to the unavailability of per diem compensation. Nonetheless, there is no need to wait until a shortage exists to provide limited, reasonable compensation. There can be no question that reducing or eliminating the sacrifice that may otherwise be required will not only ensure retention of current consumer members, but will also promote recruitment and retention of replacement consumer members.

We agree with DRA and DDTPAC that DDTPAC should establish and administer Commission-approved guidelines. DDTPAC should consider the following in developing its proposed guidelines:

1. A cap (e.g., \$500) per month per non-utility, non-government consumer member;
2. Compensation only for attending regularly scheduled meetings (e.g., work at home or with a utility outside a regularly scheduled meeting should not be eligible for per diem compensation; attendance at conferences, seminars and conventions should not be eligible for per diem compensation);
3. A minimum meeting length;
4. A minimum amount of time in required attendance at each meeting;
5. The necessity of a meeting quorum for members to qualify for per diem compensation;
6. Whether the per diem should be paid to the employer if the consumer member was compensated by his or her employer to attend the meeting, and be paid to the consumer member if self-employed or not compensated by the employer;
7. A request form to be signed by the consumer member and submitted to DDTPAC for payment;
8. Maintenance of records;
9. Whether the Executive Director of the DDTPAC should have the authority to determine whether a consumer member should be awarded compensation and if the full or a prorated amount should be awarded.

We adopt DRA's recommendation that DDTPAC submit its proposed guidelines to the Commission's Executive Director by letter, with a copy served on all parties. We will provide 30 days

for parties to submit comments to the Executive Director, with a copy served on all other parties. We will consider DDTPAC's proposal and parties' comments before issuing a resolution to adopt guidelines. DDTPAC may not begin awarding compensation until we have authorized the guidelines.

DDTPAC states that it would like the option of paying the compensation to either the consumer member or the member's employer, if asked by the employer. We note this above as one item in the guidelines DDTPAC should consider. Further, however, DDTPAC indicates that it would like to make this option available to government employers of committee consumer representatives. By D.91-10-016 we do not authorize per diem compensation for government employees on the CEFCG, and thus similarly not to the government employers, and we will not do so here. DDTPAC must present a convincing argument if they wish us to consider this further. If so, it should be submitted by DDTPAC with the proposed guidelines and parties should address this in their comments.

DRA, DDTPAC and CAD assert that evidentiary hearings are not necessary. Pacific agrees, unless the compensation plan is adopted and it is not a specific line item in the DDTPAC budget.

We are not convinced that hearings are necessary. We direct that compensation be provided from existing funds. In the interest of properly tracking expenses, we direct that per diem compensation be noted as a specific line item entry on the budget of each committee.

4. Excessive Use of the California Relay Service

The costs of this vital relay service exceed the rates assessed users. The deficit, which was clearly contemplated by the framers of the service, is funded by all telephone ratepayers via a

surcharge on every telephone bill.² Both this Commission and the Legislature have recognized that such a surcharge can be justified only if the funds are spent in an efficient manner.

In section 2881(f) of the Public Utilities Code, we find the following directive:

"The commission shall prepare...annually...a report...[including] an evaluation of options for controlling...expenses [of the telecommunications for the deaf and disabled program] and increasing program efficiency, including, but not limited to...

"(2) The imposition of limits or other restrictions on maximum usage levels for the relay service, which shall include the development of a program to provide basic communications requirements to relay users at discounted rates and, for usage in excess of those basic requirements, at rates which recover the full costs of service."

In D.89-05-060, we responded with the following assumption of responsibilities:

"The Legislature has also expressed its clear concern that program monies be spent effectively, a directive we interpret as requiring an effort on our part to discourage excessive or frivolous use.

"In further hearings we wish to hear evidence regarding typical usage patterns for the relay service along with proposals for reasonable means to discourage excessive use. These proposals should be tailored so as not to affect most of the usage by most of the subscribers; in other words, we wish to set limits that would constrain abuse rather than everyday usage. Rather than strict quantity limits, we believe that pricing might be a better approach; for example, relay center

² The surcharge is excluded from certain services, such as universal lifeline telephone service and one-way paging service.

usage could be free up to a certain number of minutes per month, with a per-minute charge applying thereafter. AT&T's comments provided some potentially helpful examples of these options, and the Legislature also pointed in this direction in § 2881(f)((2)). We also wish to hear evidence regarding good reasons why particular subscribers might make unusually heavy use of the relay center, such as for employment. It may be appropriate to provide specific exceptions or higher usage limits in such cases. The proposals should also address the use to be made of any monies that might be collected; our initial preference would be to reduce the need for program funding from other sources." (D.89-05-060, 32 CPUC 2d 27, 50.)

Ordering Paragraph 14 of D.89-05-060 orders an evidentiary hearing on measures to limit CRS use.

Subsequent to the passage of Section 2881 and D.89-05-060, Congress enacted the ADA. Sections 401(d)(1)(D) and (E) direct the Federal Communications Commission to prescribe regulations that:

"require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

"prohibit relay operators from ...refusing calls or limiting the length of calls that use telecommunications relay services...."

DRA, DDTPAC and CAD comment that it is impractical to define excessive, frivolous or abusive use of the CRS. Even if practical, the ADA restricts rates charged relay users and prohibits limiting the number or length of calls that use relay services. Just as there is no right for common carriers to limit excessive or frivolous use of the telecommunications network by voice users, there is no right to limit such use by relay users. Therefore, even if excessive, frivolous or abusive use could be

defined, it could not be policed. Parties argue that PU Code § 2881(f)(2) is no longer effective in the context of the ADA, and that hearings are not necessary on this issue. Pacific did not comment on this issue.

DDTPAC points out that the interest in examining pricing as a method of constraining abusive use originated shortly after a severe funding crisis. The initial surcharge (10 cents per subscriber line per month) was not adequate to fund the CRS and the specialized equipment distribution program, which both began in 1987. The program ended 1987 with a deficit of \$8.7 million. In 1988, however, the surcharge was changed to 0.5% of each subscriber's intrastate telephone charges. The revised surcharge proved sufficient, and was ultimately reduced to 0.3% in 1989, where it remains. The DDTPAC anticipates an unencumbered fund balance of over \$19 million at the end of 1992 due to previously accumulated surpluses. Even without the ADA restrictions, DDTPAC argues that there is no longer any fiscal reason to limit or constrain CRS usage.

Parties point out that, while we may not apply toll increases for CRS users, we may authorize toll discounts. CAD observes that in this context, the only potential price regulation open to the Commission would be to place a usage limit on the availability of toll discounts. CAD argues that this would likely have only a marginal impact on usage and would be of questionable cost-effectiveness for such limited control. CAD and DRA recommend against such regulation. We agree.

CAD offers other ways the Commission may limit CRS use:

- a. education of users to foster prudent use;
- b. letters of concern sent to individual callers that are considered to be abusing CRS;
- c. identification of voice numbers that are frequently called through CRS (via analysis of automated number identification data),

where subscribers to those numbers could be encouraged to obtain telecommunication devices for the deaf (TDDs).

CAD states that it does not believe that the need has been established for such controls, however, and until the DDTPAC has evidence of CRS abuse, the issue should not be pursued. DRA offers in reply comments that CAD's recommendations may violate privacy rights, and the spirit of the ADA.

We agree. The need to control CRS use is not now present. Moreover, our ability to do so, by quantity restrictions or price, is properly constrained by the ADA. There is no need for hearings to consider this further.

DRA raises one other related matter. California must submit documentation to the FCC for certification of CRS by October 1, 1992. The DDTPAC may provide valuable assistance to the Commission, according to DRA, given DDTPAC's extensive knowledge of the CRS. DRA believes Commission reliance on the DDTPAC for assistance is made more palatable by the per diem compensation. DRA recommends the Commission order DDTPAC to provide documentation by July 1, 1992 showing that the CRS vendor and program meet or exceed the minimum ADA and FCC requirements.

We agree that the DDTPAC can provide us valuable assistance. We will direct the DDTPAC to work with CACD on the necessary documentation. Since the exact documentation requirements are not yet known, we will not identify a specific deadline for a DDTPAC-prepared draft.

The last issue to be addressed in Investigation (I.) 87-11-031 was consideration of measures to limit excessive, frivolous or abusive use of the CRS. (See D.89-05-060, ordering paragraph 14.) With our resolution of this issue, we will close I.87-11-031 once we have approved the per diem guidelines.

Findings of Fact

1. Payment of \$100 per diem compensation, in addition to expense reimbursement, for non-utility, non-government consumer members of DDTP committees is consistent with the similar policy we adopted in D.91-10-016.

2. It is unfair that the time some members devote to committee activities is compensated as part of their employment, while other members receive no compensation for the time spent on their participation.

3. Our policy of obtaining the broadest public participation would inevitably be frustrated if lack of compensation excluded persons with experience, perspective, or burdens of the very problem we are seeking to resolve.

4. Our reasons to provide compensation (e.g., equity and encouraged of broad public participation) are not outweighed by the ideal of voluntarism, however noble.

5. A funding mechanism exists for providing compensation.

6. A per diem payment, in addition to expense reimbursement, will compensate current members or their employers.

7. Reducing or eliminating the sacrifice that may otherwise be required will promote retention of current consumer members, plus recruitment and retention of replacement consumer members.

8. DDTPAC should consider the following in developing its proposed guidelines:

- a. A cap (e.g., \$500) per month per non-utility, non-government consumer member;
- b. Compensation only for attending regularly scheduled meetings (e.g., work at home or with a utility outside a regularly scheduled meeting should not be eligible for per diem compensation; attendance at conferences, seminars and conventions should not be eligible for per diem compensation);
- c. A minimum meeting length;

- d. A minimum amount of time in required attendance at each meeting;
- e. The necessity of a meeting quorum for members to qualify for per diem compensation;
- f. Whether the per diem should be paid to the employer if the consumer member was compensated by his or her employer to attend the meeting, and be paid to the consumer member if self-employed or not compensated by the employer;
- g. A request form to be signed by the consumer member and submitted to DDTPAC for payment;
- h. Maintenance of records;
- i. Whether the Executive Director of the DDTPAC should have the authority to determine whether a consumer member should be awarded compensation and if the full or a prorated amount should be awarded.

9. It is impractical to define excessive, frivolous or abusive use of the CRS.

10. The concern of limiting CRS use originated shortly after a funding crisis.

11. An unencumbered fund balance of \$19 million is forecast for the end of 1992.

12. Even without ADA restrictions on how we might control CRS use, there is no longer the same fiscal reason to limit CRS use.

13. DDTPAC has extensive knowledge of CRS, which will be valuable to the Commission in obtaining FCC certification of CRS.

Conclusions of Law

1. It is reasonable to provide \$100 per diem compensation, in addition to expense reimbursement, for non-utility, non-government consumer members of DDTP committees, to be funded from the existing authorized DDTP budget.

2. DDTPAC should establish and administer Commission-approved guidelines for the per diem compensation.

3. DDTPAC should submit its proposed guidelines to the Commission's Executive Director by letter, with a copy served on all parties; parties should have 30 days to submit comments to the Executive Director, with a copy served on all other parties.

4. Evidentiary hearings are not necessary on authorization of a \$100 per diem compensation.

5. The ADA restricts rates charged relay users and prohibits limiting the number or length of calls that use relay services.

6. Evidentiary hearings are not necessary on whether or not to limit or control use of the CRS.

7. DDTPAC should work with CACD on a compliance filing to demonstrate that CRS meets or exceeds federal requirements for certification.

8. I.87-11-031 should be closed once we have adopted per diem compensation guidelines.

9. This order should be effective today to expedite the eventual adoption of per diem compensation guidelines.

O R D E R

IT IS ORDERED that:

1. The Deaf and Disabled Telecommunications Administrative Committee (DDTPAC) shall submit proposed guidelines for the administration of a \$100 per diem compensation, in addition to expense reimbursement, to be paid to non-utility, non-government consumer members of Deaf and Disabled Telecommunications Program (DDTP) committees and to be funded from the existing authorized DDTP budget. DDTPAC's proposed guidelines shall at a minimum consider the nine items identified in Finding of Fact 8. The guidelines shall be submitted to the Commission's Executive Director, with a copy served on all parties in Investigation (I.)

87-11-031. Parties shall have 30 days from the date of service to submit comments to the Commission's Executive Director on the proposed guidelines, with a copy to all other parties in

I.87-11-031. The Commission Advisory and Compliance Division (CACD) shall prepare a resolution for our consideration after its review of the proposed guidelines and comments.

2. DDTPAC shall work with CACD on a compliance filing which will demonstrate to the Federal Communications Commission that the California Relay Service meets or exceeds all federal requirements for compliance and certification.

3. By separate order, I.87-11-031 shall be closed once per diem guidelines have been authorized.

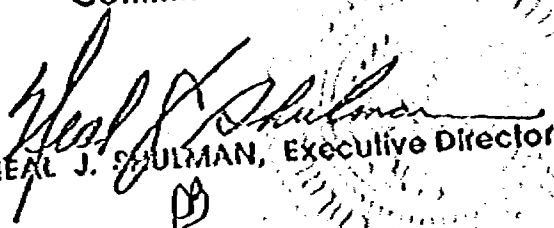
This order is effective today.

Dated April 22, 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