

Decision 93495 SEP 1 1981**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
 own motion to provide for a )  
 program for the furnishing of )  
 telecommunications devices to the )  
 deaf and severely hearing impaired ) (Petition filed August 7, 1981)  
 to be implemented by each )  
 California telephone utility. )

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INTERIM ORDER

By Decision (D.) 92603 dated January 21, 1981, as modified by D.92871 dated April 7, 1981, the Commission adopted a program under Public Utilities (PU) Code Section 2831 for providing telecommunications devices for the deaf and hearing-impaired. As part of the program each telephone corporation would collect a monthly surcharge of 15 cents from each user which would be deposited into a trust fund to be established by a three-person industry administrative committee.

On August 7, 1981 the Deaf Equipment Acquisition Fund Trust Industry Administrative Committee filed a petition requesting that:

1. D.92603, as amended, be further amended to provide that the trust fund be established by the Commission rather than the Committee;
2. A request on behalf of the Commission as trustor be filed with the Internal Revenue Service (IRS) asking for rulings with respect to the tax-exempt status of the trust;
3. The Commission authorize and delegate the power to the Executive Director to request and obtain from the IRS an advance ruling that both the amounts received by the

trust resulting from collections by the telephone utilities of the monthly surcharges and income generated by assets in the trust will not be subject to federal income tax;

4. The Commission authorize and delegate the power to the Executive Director to take whatever further action may be necessary or appropriate to implement the program providing equipment for hearing- and speech-impaired persons including modifications of the documents comprising the trust agreement and the request for a ruling from the IRS and the execution of any additional documents to establish and implement the trust to obtain the requested rulings from the IRS; and
5. The Commission authorize the Executive Director to further delegate such of the above power as he may from time to time deem appropriate to the Committee.

The Committee alleges that:

1. It is essential to the viability of the entire program that the trust not be burdened by income taxes on the surcharges collected from telephone users and deposited in the trust.
2. In accordance with D.92603 the Committee has selected the San Francisco law firm of Heller, Ehrman, White & McAuliffe to perform the legal services necessary to establish and implement the trust.
3. Counsel has advised the Committee that there are several theories upon which an exemption from federal income taxes can be based, but under any theory it will be necessary that the trust is either an instrumentality of the State of California or is an integral part of the State, or that the income generated by the trust "accrues" to the State through the trust.

4. Counsel has further advised the Committee that to obtain tax-exempt status the Commission, and not the telephone utilities, should be the trustor.
5. To facilitate a ruling from the IRS it will be necessary for the Commission to file a request for an advance ruling as trustor.
6. Because it is possible that some changes in the documentation relating to the program will be required by the IRS and that the bank selected as trustee will want the trust agreement changed in certain respects, the Committee suggests that in the interest of expediting matters that the Commission authorize and delegate the power to the Executive Director to take whatever further action is deemed necessary or appropriate, consistent with the purposes of PU Code Section 2831, to implement the program, including modifications of the documents comprising the agreement and the request for rulings from the IRS and the execution of any additional documents to establish and implement the trust and to obtain the requested rulings from the IRS.
7. The Commission authorize the Executive Director to further delegate such of the above power as he may from time to time deem appropriate to the Committee.

#### Discussion

At this point we are frankly uncertain whether having the Commission serve as the trustor for the trust is either lawful or desirable. We are uncertain why the Industry Administrative Committee cannot create a charitable trust and seek a ruling from the Internal Revenue Service that funds collected through the 15 cent surcharge are not taxable revenues and that the charitable trust has tax-exempt status. Further, we cannot approve the trust instrument

in its present form, due to uncertainty on several critical issues, including the relationship between the trustee and the Industry Administrative Committee, on the one hand, and the relationship between the Committee and the Public Utilities Commission, on the other hand. Recently the assigned Commissioner sent letters to both Pacific Telephone and General Telephone seeking clarification on such matters as: 1) these utilities' practices in soliciting and accepting bids for TDD equipment, 2) these utilities' practices in charging the trust fund for certain overhead costs, and 3) the anticipated relationship between the Committee and the Commission. The letters sought clarification of the utilities' conception of the Commission's power to direct the Committee to order the trustee not to pay the utilities for costs not prudently incurred or not properly chargeable to the trust. The letters also sought information on whether the utilities would remit to the trust all surcharges collected or simply the net remaining after deductions by each utility for its (self-determined) expenses in administering the TDD program. The letters asked for responses to a long set of questions by September 10, 1981. We deem it advisable to see those responses before we authorize the establishment of the trust as suggested by the Industry Administrative Committee.

At this point we stress that we do not disagree with the analysis which has been done by tax counsel hired by the Administrative Committee to create the TDD trust. On the contrary, we are simply anxious to give this matter more study at this time. We note that the letter to the Internal Revenue Service prepared by tax counsel states that the trust is entirely subject to Commission control, but we are unable to determine this from the trust instrument itself. This is one additional reason why we deem it advisable to wait for the two principal telephone utilities' responses to the assigned Commissioner's letter.

The surcharges are in effect as of today. The order which follows directs the telephone utilities collecting the surcharges to hold the funds collected in a clearly designated separate account which will accrue interest at the commercial paper rate,\* pending further order of the Commission.

Findings of Fact

1. It cannot be determined at this time whether the Industry Administrative Committee's suggestion of having the Commission serve as trustor for the TDD trust is lawful or desirable.

2. The 15 cent surcharge authorized by D. 92871 is in effect as of today.

3. It is necessary that the Commission direct the telephone utilities collecting the surcharge to hold the funds collected in clearly designated separate accounts accruing interest at the commercial paper rate, pending further order of the Commission.

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\* The published Federal Reserve Board three month Prime Commercial paper rate.

Conclusion of Law

1. The following order should issue.

IT IS ORDERED THAT:

1. All telephone utilities collecting the 15 cent monthly surcharge authorized in D. 92603 shall hold such funds in clearly designated separate accounts pending further order of the Commission. Such amounts shall accrue interest at the published Federal Reserve Board three month Prime Commercial paper rate.

This order is effective today.

Dated SEP 1 1981 at San Francisco, California.

John E. Byron  
President

Richard D. Gaudin

Thomas W. Givens

Victor Calvo

Preswik & Green  
Commissioners