

ORIGINAL

Decision 93794 DEC - 1 1981

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
 to be implemented by each
 California telephone utility.

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 (Petition filed October 28, 1981)

FOURTH INTERIM OPINION

By this petition the Deaf Equipment Acquisition Fund Trust Industry Administrative Committee (Committee) requests that the Commission:

1. Authorize the Committee to create a trust to be known as the "Deaf Equipment Acquisition Fund Trust" (Trust) by entering into a trust agreement with a California licensed bank the Committee will select.
2. Authorize the Committee to file with the Internal Revenue Service (IRS) a request for advance ruling that both the amounts received by the Trust resulting from collections by the telephone companies of the monthly surcharges and income generated by assets in the Trust will not be subject to federal income tax.
3. Delegate to the Committee the power to take such other steps as it may deem necessary and appropriate to obtain the ruling from the IRS.
4. Authorize whatever action the Committee may deem necessary and appropriate to obtain comparable rulings from the California Franchise Tax Board (CFTB).
5. Authorize the Committee to execute powers of attorney appointing two members of the law firm of Heller, Ehrman, White & McAuliffe (Counsel) as attorneys-in-fact to represent the Trust before the IRS and CFTB.

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

The Committee filed a petition on August 7, 1981 which, for the purpose of best securing tax-exempt status for the fund, requested the Commission, rather than the Committee, be the trustee for the fund and seek the necessary tax rulings. By D.93495, dated September 1, 1981, we reserved consideration of the Committee's request and ordered the respondent telephone utilities to hold the funds collected from the 15-cent monthly surcharge, which surcharge went into effect on the date of D.93495, in clearly designated separate accounts accruing interest at the commercial paper rate.

The Committee states that it has now, in accordance with D.92603, selected Counsel to perform the legal services necessary to establish and implement a trust which will receive the surcharges and acquire the special telephone equipment. Counsel has prepared a trust agreement for which the Committee is seeking authorization.

Bids for the trusteeship have been received from a number of banks who are potential trustees, and one to serve as trustee will be selected by the Committee shortly.

The Committee emphasizes that it is important to the viability of the entire program that the Trust not be burdened by income taxes on the income it receives and on the net surcharges collected from telephone users and deposited in the trust. Therefore, Counsel has prepared a form of request for advance ruling from the

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IRS. The request asks the IRS to determine in advance that the Trust will not be subject to federal income tax either on the amounts it receives as a result of the surcharge collected by the telephone companies or on the income generated by trust assets.

Counsel has advised that it will take the IRS several months to issue the rulings, and that when the rulings are received, comparable rulings should be requested from the CFTB with respect to California income tax. Since it is in the best interests of all of the parties and of the program itself to initiate the ruling process as soon as possible, the Committee asks that the Commission act on its requests.

Two lawyers of Counsel's law firm are proposed to serve as tax counsel before the IRS in connection with the request for ruling. A power of attorney authorizing them to do this will be required by the IRS on its standard IRS Form 2848. The Committee asks that the Commission authorize it to execute this form of power of attorney and to execute a similar form of power of attorney authorizing the lawyers to serve as counsel before the CFTB to obtain comparable rulings with respect to California income tax.

The Committee suggests that the matters covered by its petition do not require a public hearing, and accordingly, asks that the Commission grant the petition ex parte.

The Commission has carefully considered the Committee's requests and is of the opinion that the Committee's proposals provide a reasonable basis for proceeding to carry out the mandate of the Legislature as enacted in PU Code § 2831.

A petition to modify D.92603 was filed on November 20, 1981 by the Commission staff. The petition requested modification to delete further distribution of telecommunications devices for the deaf (TDD) to speech-impaired persons under this program.

This decision will discontinue distribution of TDD equipment to speech-
impaired persons.^{1/} The legislation which mandates the TDD program
refers only to TDD distribution to "the deaf or severely hearing
impaired." To avoid confusion as to the purpose of the 15-cent
surcharge ordered in D.92603, no further distribution of TDDs
to speech-impaired persons will be made under this program.

We recognize that speech-impaired persons have a strong
need to use TDD equipment. Pacific Telephone and Telegraph Company
has stated to members of this Commission and its staff that it
intends to file an advice letter to distribute TDD equipment to
speech-impaired persons free of charge. We urge the other
respondent telephone companies to do the same. In this manner,
speech-impaired persons will continue to have the use of TDD
equipment as recommended by this Commission's staff.

A small number of TDD's have already been distributed to
speech-impaired persons under this program. This decision is not
intended to require the recall of any machines already distributed.

Findings of Fact

1. The requests of the Committee are reasonable.
2. A public hearing is not necessary.

Conclusions of Law

1. The authority requested by the Committee should be granted.
2. PU Code § 2831 mandates the TDD program for the deaf or
severely-hearing impaired, not for the speech-impaired.
3. The distribution of TDD equipment to speech-impaired
persons should not be continued under the Trust surcharge program.

^{1/} References to the speech-impaired are to be found in Appendix B,
Section I (Communications Division Exhibit 49) and in Appendix C,
Illustrative Tariff, (Communications Division Exhibit 50).

4. This decision should become effective today so that the Committee may proceed immediately to initiate the establishment of the trust fund and secure the necessary tax rulings.

FOURTH INTERIM ORDER

IT IS ORDERED that:

1. The Deaf Equipment Acquisition Fund Trust Industry Administrative Committee is authorized to:

- a. Create a trust to be known as the "Deaf Equipment Acquisition Fund Trust" (Trust) by entering into an agreement, in substantially the form of Appendix A to the petition (except that reference to the speech-impaired shall be deleted from it) with a California licensed bank the Committee will select.
- b. File with the Internal Revenue Service (IRS) a request for advance ruling, in substantially the form of Appendix B to the petition, that both the amounts received by the Trust resulting from collections by the telephone companies of the monthly surcharges and income generated by assets in the Trust will not be subject to federal income tax.
- c. Take such other steps as it may deem necessary and appropriate to obtain the ruling from the IRS.
- d. Take whatever action it may deem necessary and appropriate to obtain comparable rulings from the California Franchise Tax Board (CFTB).
- e. Execute powers of attorney appointing Julian N. Stern and Jerry H. Robinson, two lawyers of the law firm of Heller, Ehrman, White & McAuliffe to serve as tax counsel before the IRS and CFTB in connection with the requests for rulings.

2. Within 30 days after the effective date of this order, respondent telephone utilities shall file revised tariff sheets,

substantially in the form of Exhibit C to D.92603 but deleting all references to speech-impaired persons. The revised tariff sheets shall conform to the requirements of General Order Series 96 and shall apply only to service rendered on or after their effective date, which shall be five days after filing.

3. Within 30 days after the effective date of this order, each respondent telephone utility shall file a statement to notify the Commission of its plans to furnish TDD equipment to speech-impaired persons without use of funds from the Deaf Equipment Acquisition Fund Trust.

This order is effective today.

Dated December 1, 1981, at San Francisco, California.

JOHN E. BRYSON

President

RICHARD D. GRAVELLE

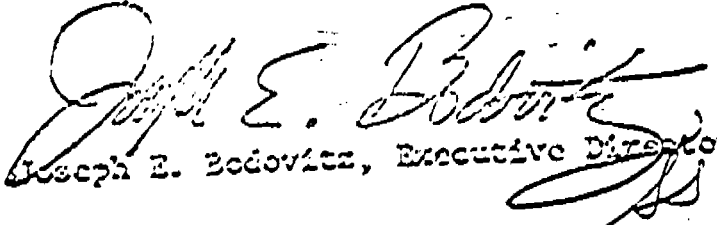
LEONARD M. GRIMES, JR.

VICTOR CALVO

PRISCILLA C. GREW

Commissioners

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


Joseph E. Bodovitz, Executive Director