

Decision 96-11-045 November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.

R.95-04-043
(Filed April 26, 1995)**ORIGINAL**I.95-04-044
(Filed April 26, 1996)**O P I N I O N**

On September 12, 1996, a Petition for Modification of Decision (D.) 96-02-072, relating to the Deaf and Disabled Telecommunications Program (DDTP), was filed by the following parties: AT&T Communications of California, Inc. (AT&T), the California Coalition of Agencies Serving the Deaf and Hard-of-Hearing, Inc. (CCASDHH), the Deaf and Disabled Telecommunications Program (DDTP), the Office of Ratepayer Advocates (ORA), GTE California, Inc. (GTEC), MCI Telecommunications, Inc. (MCI), MFS Intelenet of California (MFS), Pacific Bell (Pacific), Sprint Communications Company L.P. (Sprint), and Thomson Consulting (collectively, Joint Petitioners).

Background

Section 2881 of the California Public Utilities (PU) Code directs the Commission to devise a program whereby each telephone corporation provides telecommunications devices to deaf, hard of hearing, and disabled customers. This legislative requirement applies to both local exchange carriers (LECs) and competitive local carriers (CLCs). The DDTP was created to work with LECs for this purpose. With the advent of local competition, we recognized the need to modify the program to allow for the participation of CLCs.

In Ordering Paragraph 10 of D.95-07-054, we thus directed the staff to prepare a workshop report to address how the Deaf Equipment Acquisition Fund

(DEAF) program should be administered in an environment with more than one provider of local exchange service.

The Telecommunications Division (TD), in conjunction with the DDTP, convened a workshop among the current Program providers, potential CLCs, and interested parties to this proceeding in October 1995.

Adopting the consensus reached by workshop participants, we adopted Rule 4.F(10), initially in D.95-12-056 and carried forward in D.96-02-072.

Rule 4.F(10) states, in part:

"To ensure that qualified customers are provided with telecommunication devices for the deaf (TDDs) or other telecommunication equipment under the Deaf and Disabled Telecommunications Program (DDTP) program:

"(a) CLCs should contract with Pacific Bell, GTE of California, the California Telephone Association or Thomson Consulting to offer equipment and services to eligible deaf and disabled customers. These contracts should be interim pending the outcome of continued workshops to determine how CLCs should participate in the DDTP over the long term." (Emphasis added.)

Position of Parties

Petitioners state that the direction to contract with the four entities named above was based on the assumption that each could provide statewide service, a misunderstanding cleared up at a second workshop concerning the DDTP held in April 1996. Thomson Consulting clarified that it could not provide statewide coverage with its present infrastructure, and GTEC also pointed out that it could not provide equipment distribution statewide (or in Pacific Bell's service territory) without extending its infrastructure. Consequently, consensus was reached that it would be necessary for CLCs wishing to provide Local Exchange Service in the former service territories of Pacific Bell and GTEC to conclude agreements with each company for that purpose. The Second Workshop Report requested that this change be reflected in the Initial Rules. Since then, the Telecommunications Act of 1996 has authorized competition within telecommunications to include local exchange companies other than Pacific Bell and GTEC. Therefore, Petitioners propose that Initial Rule 4.F(10)(a) be revised to clarify this DDTP equipment distribution procedure for CLCs. Specifically, Petitioners propose that Rule 4.F(10)(a) be revised to read:

"(a) Each CLC will arrange for the LEC to distribute equipment to the CLC's eligible customers in each LEC's designated serving territory in effect as of December 31, 1995. LECs and CLCs must negotiate such agreements in good faith. These contracts should be interim pending resolution of the long term structure of the DDTP."

Petitioners state that further delay in reflecting the requested change in Initial Rules will only serve to confuse market entrants about the various responsibilities they assume.

The Workshop Report of December 11, 1995, upon which the Initial Rules were based, did not endorse a specific schedule for the interim period, although parties agreed that it would conclude July 1, 1996. The Workshop Report of May 15, 1996, recommended that the interim period be extended to January 1, 1997. Although neither date has previously been adopted, even the latter date has proven to be unduly optimistic. Only one agreement between a LEC and a CLC has been consummated to date, according to Petitioners, and it has taken time to work out the interface procedures and customer handoffs involved. Petitioners believe parties will do well to establish interim arrangements in the service territories of the LECs by January 1, 1997.

Petitioners express concern that this situation could put at risk compliance with Rule 4.F(10)(b) that CLCs specify in their tariffs how they will offer DDTP services. Petitioners believe the difficulties in resolving interim arrangements foreshadow the larger and more intransigent problem of a long-term structure for the DDTP. While the Commission has recently taken Comments and Reply Comments concerning the long-term structure of the equipment program, Joint Petitioners believe that a new and different DDTP structure is a complex, many-sided issue that will take considerable time to work through. Some of the issues to be explored would include:

- Cost efficiencies,
- Conflict of interest, and
- Trial of equipment vouchers and agency distribution.

Even if the Commission were to issue a decision establishing a wholly new structure for the program, Petitioners argue that considerable time would be needed to bridge to the new structure to prevent customers from getting lost in the process.

Accordingly, Joint Petitioners recommend that the Commission establish the interim period, during which the Initial Rule 4.F(10) would apply, as lasting until January 1, 1998.

Discussion

We conclude that the Petitioners' proposed modifications to Rule 4.F(10) are appropriate and should be adopted effective immediately. The revised rule will reflect the current status of the interim DDTP program and will provide until January 1, 1998 for parties to work toward development of a long-term structure of the program.

Findings of Fact

1. Section 2881 of the California PU Code directs the Commission to devise a program whereby each telephone corporation provides telecommunications devices to deaf, hard of hearing, and disabled customers.

2. Ordering Paragraph 10 of D.95-07-054 directed the staff to prepare a workshop report to address how the Deaf Equipment Acquisition Fund (DEAF) program should be administered in an environment with more than one provider of local exchange service.

3. D.96-02-072 carried forward Rule 4.F(10) initially adopted in D.95-12-056 which prescribed the initial rule for equipment distribution under the DDTP program.

4. The original DDTP rule directed that CLCs should contract on an interim basis with Pacific Bell, GTE of California, the California Telephone Association or Thomson Consulting to offer DDTP equipment and services to eligible deaf and disabled customers.

5. During the workshop held in April 1996, Thomson Consulting clarified that it could not provide statewide coverage with its present infrastructure, and GTEC indicated it could not provide equipment distribution statewide (or in Pacific Bell's service territory) without extending its infrastructure.

6. The May 1996 DDTP workshop report recommended that the DDTP Interim Program Period be extended from July 1, 1996 to January 1, 1997.

7. In light of the complexities encountered in developing a long-term structure for the DDTP program, parties to Petition for Modification now believe the Interim Program should be extended to January 1, 1998.

Conclusions of Law

1. The Petition for Modification of D.96-02-072 relating to Rule 4.F(10) should be granted.

2. The Interim Period for the DDTP Rule 4.F(10) should be extended to January 1, 1998.
3. D.96-02-072, Appendix E, Rule 4.F(10)(a) should be modified as set forth in the order below.

O R D E R

IT IS ORDERED that:

1. Rule 4.F(10)(a) as set forth in Appendix E of D.96-02-072 shall be modified to read as follows:

"(a) Each CLC will arrange for the LEC to distribute equipment to the CLC's eligible customers in each LEC's designated serving territory in effect as of December 31, 1995. LECs and CLCs must negotiate such agreements in good faith. These contracts should be interim pending resolution of the long term structure of the DDTP."

2. The Interim Period for the applicability of Rule 4.F(10)(a), as modified above shall be extended to January 1, 1998.

This order is effective today.

Dated November 26, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
JOSIAH L. NEEPER
Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.