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Decision 97-12-101 December 16, 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's own motion to design and implement a program that provides for publicly available telecommunications devices capable of servicing the needs of the deaf or hearing impaired in existing buildings, structures, facilities, and public accommodations.

**ORIGINAL**  
Rulemaking 97-10-018  
(Filed October 9, 1997)

Order Instituting Investigation on the Commission's own motion to design and implement a program that provides for publicly available telecommunications devices capable of servicing the needs of the deaf or hearing impaired in existing buildings, structures, facilities, and public accommodations.

Investigation 97-10-019  
(Filed October 9, 1997)

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## INTERIM OPINION

### I. Summary

By this interim order we designate the Payphone Service Providers Committee (PSP Committee)<sup>1</sup> to establish a subcommittee designated as the interim committee consisting of two PSP Committee member plus one representative each assigned from the Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC), the California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (Coalition), and the Commission's Telecommunications Division, on an interim basis, to begin implementing Public Utilities Code (PU Code) Section 2881.2. Specifically, this interim committee will administer a new Telecommunications program which will provide for the placement of Telecommunications Devices capable of servicing the needs of the deaf or hearing impaired (TDD) in existing buildings and public accommodations. This interim order establishes the parameters for the committee's operations and sets forth the immediate tasks and responsibilities to be carried out by the interim committee.

### II. Background

By Decision (D.) 92603 (5 CPUC2d 305 (1981)) we designed and implemented a program whereby each telephone corporation provides TDDs funded through a "Communications Devices for the Deaf" (CDD) surcharge, known as the Deaf Equipment Acquisition Fund (D.E.A.F.) surcharge that was to have expired on January 1, 1997. Subsequently, the California Legislature enacted Assembly Bill 3152, signed by the Governor on September 21, 1996, which extended the surcharge from January 1, 1997 to January 1, 2001, and added Section 2881.2 to the PU Code.

We instituted this consolidated rulemaking and investigation to implement PU Code Section 2881.2, which requires the Commission to design and implement a new

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<sup>1</sup> The PSP Committee was formerly called the Customer Owned Pay Telephone Enforcement Program Subcommittee (COPT) subcommittee.

program providing for the placement of TDDs through an appropriate committee under the Commission's control. This new program is to be phased in over a reasonable period of time beginning no later than January 1, 1998.

All Local Exchange Carriers (LECs) and Competitive Local Carriers (CLCs) were named respondents to this proceeding. Respondent LECs, respondent CLCs, and interested parties were invited to file written comments on the implementation guidelines for the administration, funding, and disbursement of funds for this new program.

We received comments from a diverse group of parties representing telephone corporations, the deaf and hard of hearing, a committee under Commission control, and the Commission staff. These parties include AT&T Communications of California, Inc. (AT&T-C), GTE California Incorporated (GTEC), Pacific Bell, the Coalition, DDTPAC, and the Office of Ratepayer Advocates (ORA). Reply comments were received from AT&T-C, Coalition, GTEC, and ORA.

### III. Discussion

Pursuant to PU Code Section 2881.2, the primary activities of this new program are to identify locations where TDD access is not available but highly desirable; to contract for the procurement, installation and maintenance of program TDD devices; and, to coordinate with building owners and tenants for the placement of program TDDs. Each of these activities is to be carried out through a committee under our control. Although the consolidated rulemaking and investigation order requested comments on all aspects of the new program, we are mandated to begin implementing this program by January 1, 1998. To comply with the January 1, 1998 date, we will bifurcate this proceeding. In this phase we will select and establish an appropriate interim committee and designate immediate and short-term program activities. In a subsequent order we will address the longer-term program activities, and consider any changes to the committee structure.

#### **IV. Comments**

Currently, there are two public-policy committees with public telephone or TDD equipment experience. They are the DDTPAC, which has filed comments in this proceeding, and the PSP Committee. The respective functions of each committee are identified in the consolidated rulemaking and investigation order. Respondents and interested parties (parties) were invited to comment on whether the responsibilities of this new program should be delegated to one of the existing committees or to a new committee. Parties were also invited to comment on the composition of the committee and its relationship to the Commission.

##### **A. AT&T-C's Comments**

AT&T-C recommends that we establish a California Publicly Available Telecommunications Devices Task Force (PATD Task Force) to operate in a similar fashion to the existing California Local Number Portability Task Force. Such a task force, working within PU Code Section 2881.2 guidelines, would include representatives from the two existing public policy committees and a Commission Telecommunications Division staff representative. There would be no limit on the number of members. However voting rights would be limited to one vote per company or organization with the Commission staff member being a non-voting member. Each company or organization would select its own representative. There would be no term limits.

AT&T-C also recommends that this PATD Task Force be required to establish an organizational structure for Commission approval. This organizational structure would include, at a minimum: a Mission Statement ; leadership roles and responsibilities; membership, mailing, service, and primary contact lists; voting rights; operational ground rules; and a meeting schedule. Policy decisions would remain with the Commission. Once the structure is approved, a charter would be developed for Commission approval.

The PATD Task Force would also analyze its need for full time employees and prepare guidelines for the day-to-day operations. Committee members would not

be compensated for their time. Approved meeting minutes and detailed program reports, as specific program activities begin, would be submitted to the Commission.

**B. GTEC's Comments**

GTEC does not believe that the DDTPAC or PSP Committee have the necessary expertise within their respective membership to effectively carry out the duties the committee will be required to perform. Therefore, GTEC recommends that a new committee representing the diverse interest of disabled persons, persons with technical expertise, and the Commission staff be formed. A committee charter would be prepared by the committee and submitted to the Commission for approval. This charter would set forth the scope of the committee's duties and projected budget.

Under GTEC's proposal, members would be selected through a nomination process similar to that used by the DDTPAC. Members would be nominated for a two-year term and be permitted to be re-appointed for two additional terms. The Commission would approve the final membership.

While the committee would be under the Commission's control, GTEC recommends that the committee's activities be limited to administrative duties and that policy decisions remain with the Commission. Monthly written reports would be submitted to the Telecommunications Division Director. These reports would itemize the Committee's expenditures and program pay-phone usage reports for phones in the program, including, under certain special circumstances, phones other than pay telephones.

The Committee's day-to-day operations would be accomplished by individuals other than committee members, consistent with the manner in which the DDTPAC and PSP Committee operate.

**C. Pacific Bell's Comments**

Pacific Bell recommends that this program be operated by a subcommittee of the DDTPAC with added representation by pay telephone service providers (PSPs). Alternatively, Pacific Bell recommends the creation of a separate TDD committee consisting of representatives from the equipment industry, non-profit agencies serving

the deaf or hearing-impaired community, PSPs, "Building Owners and Managers Association," and persons with the requisite managerial and financial experience required to manage the program.

Irrespective of whether a subcommittee or a new committee is established, the organization would be allowed to determine its own size, composition of members, term length of members, and terms of a committee charter. The results of these activities would be reported to the Commission. Although committee members would serve on an advisory basis, at least one full-time position would be needed for the financial and operational management, contract management, and enforcement matters related to the placement of TDDs. Regardless of the number of full time employees, all committee members would be compensated for time and expenses in accordance with per diem authorization and expense policies.

**D. Coalition's Comments**

The Coalition recommends that this program be administered by the DDTPAC, or its successor organization, which is experienced in administering a program that operates from the surcharge revenues; oversees the Deaf Equipment Acquisition Fund trust and its investments; procures, stores, distributes and repair TDDs and other equipment; conducts outreach and onsite installation and customer training; and interacts with telephone companies and contractors. Although the Coalition is aware of proposals to change the current DDTPAC structure to a corporate model, that would not change its recommendation regarding the responsibility for this program.

The Coalition believes that a staff person of the DDTPAC or its successor should have day-to-day management responsibility for the program, which would include management of procurement and contract compliance. The committee would be responsible for administering the program including contracting with another agency to conduct outreach, identify and propose TDD locations, accept and evaluate TDD installation requests, and seek cooperation from owners, managers, and tenants. Since the existing DDTPAC or its successor would be responsible for administering the

program, per diems would be those approved by the Commission for that committee. Additional administrative expenses similar to those incurred under the existing DDTPAC programs, such as travel and interpreters, would be allowed.

**E. DDTPAC's Comments**

The DDTPAC believes that the responsibility for this new public telephone TDD program should be assigned to a new committee, distinct and separate from itself and from the PSP Committee. Although DDTPAC believes that its members and the members of its two advisory committees have the expertise needed to implement this new program, it is undergoing an extensive restructure and reorganization of its own program, including the transition of major program operations from the LECs to itself. This restructuring and reorganization will require DDTPAC's full attention for at least the next two years. Hence, DDTPAC is unable to commit the additional time it would take to get this program implemented at this time.

The DDTPAC recommends that a minimum of 51% of the members of the new committee be consumers who are users of the public telephones which will be modified. In order to attract people with the background and skills necessary to serve on this new committee DDTPAC believes that the Commission must be prepared to compensate the committee members commensurate with the level of service required. The \$300 per day honorarium recently authorized for committee members of the Low Income Governing Board and the California Board for Energy Efficiency is close to the compensation level DDTPAC believes is necessary to attract talented committee members, provided that the honorarium is also available for attendance at subcommittee meetings. DDTPAC also assumes that the new committee will be required to follow state procurement guidelines and procedures as the DDTPAC has been instructed to do.

DDTPAC also recommends that the committee develop a charter or bylaws defining its authorized duties and responsibilities. Such a document would specify the committee's relationship to the Commission and procedures to be used by



the committee for obtaining review and approval of documents by the Commission, including the programs budget.

DDTPAC reminds us that the legislation specifies that the new program applies to "public telephones" and not merely to "pay telephones." Hence, this program should improve the accessibility to all such public telephones.

**F. *ORA's Comments***

ORA reviewed the existing committees with public telephone or TDD equipment experience to determine which committee is better suited for this new program. Based on its analysis as summarized in its comments, ORA concluded that a new committee consisting of not more than seven members should be established. ORA recommends that the two existing committees with experience in the pay phone and TDD area nominate two individuals for committee membership. To ensure that the Commission and consumer groups are involved in the committee tasks, a Commission representative from ORA, a Commission representative nominated by the Executive Director, and a representative from a consumer advocacy group should also be appointed to the committee.

This committee would be responsible for the overall policy making and stewardship of the program. The day-to-day administration and operational duties should be delegated to the Committee's staff. Committee members' compensation and per diem would be consistent with the levels established by the Commission for other Boards administered by the Commission.

ORA also recommends that the Committee create a charter and that the Commission establish a deadline for the submission of the charter. Such a document would include, but not be restricted to, membership definitions; committee purpose; conflict of interest rules; duties and responsibilities; meeting guidelines; and officer selection.

**V. *Committee Structure***

Only Pacific Bell and the Coalition recommend that the committee be included as an integral part of an existing committee, the DDTPAC. Although Pacific Bell

recommends that the DDTPAC add PSP representation, both believe that the DDTPAC has the necessary experience to administer this new program. However, the DDTPAC is undergoing a structural change requiring its full attention for at least the next two years. Hence, DDTPAC is not able to take on this additional function.

Alternatively, DDTPAC recommends that a new committee be established with a minimum of at least 51% representation from consumers who are users of the public telephones that will benefit from this new program. The remaining parties who filed comments also recommend that a new committee be established.

We could establish a new committee to administer this program. However, the basic organizational structure of a new committee would need to be created before committee members could begin to implement this new program. This would result in additional start-up time and costs. In addition, the function and expertise of such a committee would substantially overlap, with the existing expertise and operations of both the DDTPAC and PSP Committee. Given this overlap and because today we assign only a limited interim task to begin implementation measures, we see no benefit in creating an additional committee at this time. Hence, we will direct the PSP Committee, as modified, to take on the added responsibilities of this program through its establishment of a subcommittee (interim committee) on an interim basis and to keep all program activities and costs distinctly separate from its other responsibilities, pursuant to PU Code Section 2881.2(b).

As part of our ongoing review of the organizational structure of boards and committees under our jurisdiction, we note that the PSP Committee's charter<sup>2</sup> is before the Commission for consideration of approval. Consistent with the majority of parties commenting in this proceeding, we agree that the PSP Committee should incorporate into its charter the additional responsibilities being assigned to the interim committee as authorized by this interim order. As recommended by several of the parties filing

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<sup>2</sup> As noticed in the Commission's Daily Calendar of December 10, 1997, the PSP Committee has submitted a charter for Commission approval.

comments, the charter should include provisions regarding the committee's responsibilities; membership; compliance with the Bagley-Keene Open Meeting Act (Bagley-Keene Act or Act); conflict of interest rules; compensation; indemnification; reporting requirements; and, budgets, each of which is addressed in this interim order.

The charter should be submitted as a compliance filing with the Commission's Docket Office and served on the service list in this proceeding no later than sixty days from the effective date of this interim order. The Commission will inform the PSP Committee of the results of its review by a letter from the Executive Director, or by a Commission decision or resolution, as deemed appropriate by the assigned Commissioner in consultation with the assigned Administrative Law Judge (ALJ). The interim committee shall not receive any compensation until the PSP Charter has been approved by the Commission. However, the committee may track its reasonable costs and seek recovery of such reasonable costs as program funds become available.

#### **VI. Responsibilities**

PU Code Section 2881.2(a) requires us to direct an appropriate committee under our control to determine and specify locations within existing buildings, structures, facilities, and public accommodations for the program equipment; to ensure consideration of for-profit and nonprofit corporations for the procurement, installation, and maintenance of the program equipment; and, to seek cooperation of the owners, managers, and tenants of structures determined to be in need of the program equipment.

Based on their filed comments, the parties have differing ideas on what the committee's responsibilities should be. For example, the Coalition recommends that the Commission delegate authority to the committee to administer the program. It believes that it is appropriate for the Commission to set and approve overall policy goals and program direction. However, it does not believe that the Commission should be involved in the day-to-day management of the program. The Coalition also proposes that the committee be responsible for the establishment of TDD location priorities, develop requests for proposals, award contracts, and hire its own staff and consultants.

AT&T-C and GTEC recommend that, although the committee is under the control of the Commission, policy decisions should remain with the Commission and the committee's activities should be limited to administrative duties. However, they do not believe that the Commission should be precluded from seeking the committee's advice on policy issues.

We concur with the Coalition's position that we should not micro-manage the program and with AT&T-C's and GTEC's position that the committee's activities should be limited to administrative duties. However, neither position has been adequately defined. The statute specifically requires the committee to be under our direction and control, consistent with other entities we consider to be advisory bodies to the Commission. Thus, we will assign the interim committee duties and responsibilities consistent with its role as an advisory committee.

The Commission shall have all policy and program decision-making authority. However, we should receive advice and recommendations from the committee regarding program and policy matters. For example, the committee should be responsible for developing the criteria to determine and specify the locations to benefit from program equipment for our approval. Once we approve the criteria, it would be the committee's responsibility to utilize the criteria in developing for our approval a priority list for the installation of program equipment and to submit such a list. Upon our subsequent approval, the committee should be responsible for implementing the list. Similarly, although we do not authorize contracting activities today, we envision that the committee should be responsible for developing the criteria to be used in soliciting out contracts for our approval, consistent with State procurement rules. Upon our approval, the committee would be responsible for using the criteria in issuing requests for proposals and for submitting the final proposals for our approval. The same procedure should be used in seeking the cooperation of locations that would benefit from the program equipment. That is, the criteria would be established by the committee and submitted to the Commission for approval. Upon Commission approval, the committee would implement the criteria.

Today we charge the interim committee with a limited task. Pursuant to PU Code Section 2881.2, the committee should proceed to determine, specify and prioritize locations within existing buildings, structures, facilities, and public accommodations in need of a telecommunications device.

We note that priority should be given to those existing buildings, structures, facilities, and public accommodations we determine, with the advice and counsel of statewide nonprofit consumer organizations, to be of most importance and usefulness to the deaf or hearing impaired. We therefore instruct the interim committee to develop its recommendations for our approval after having obtained such advice. The interim committee should obtain such advice using a similar method as recommended by AT&T. Specifically, the interim committee should identify statewide nonprofit consumer organizations for the deaf or hearing impaired and send notice to those organizations of the interim committee's existence and purpose, for the purpose of obtaining recommendations. This interim task should result in a list describing the criteria used to select and describe prior locations by general description such as hotels, airports, etc., but will not identify specific locations such as the second floor of 123 A Street, Any City, California.

Upon completing the criteria and priority list, the interim committee shall submit this information along with any recommendations, for our approval as a compliance filing to this proceeding. Any recommendations should include an outline of proposed next steps, along with any recommendations regarding the appropriate establishment of a permanent committee. We set a target date for completing the assigned tasks and submitting the compliance filing as six months from the effective date of this order. If this target date is not met, the interim committee should address the establishment of an appropriate committee and what remains to be done in the progress report described in Section XII of this interim order. A copy of this compliance filing should be served on the service list in this proceeding. Interested parties may comment on this compliance filing within 15 days after it is filed with the Commission's Docket Office.

## **VII. Membership**

Parties proposed distinctly different compositions of the committee. The recommendations ranged from a maximum of seven members to an unlimited number of members, and representation from only the DDTPAC to unlimited representation, restricted only by committee decision.

Consistent with our comments regarding the overlap of functions and expertise and because of the limited nature of the implementation duties we assign today, we designate the PSP as modified herein to establish a subcommittee, interim committee. The PSP Committee<sup>1</sup> shall select two of its members to represent it on the interim committee. In addition to the PSP members, the interim committee should have a representative from the deaf or hearing impaired community to be chosen by DDTPAC and another member to be chosen by the Coalition from among their members, plus a Commission representative to be assigned by the Telecommunications Division.

The Commission's representative should be a non-voting member and will also act as a liaison between the interim committee and the Commission for the purpose of seeking informal Commission guidance for the interim committee.

The PSP, DDTPAC, Coalition, and the Commission may change their own committee representative at any time upon written notice to the Commission. The, PSP, DDTPAC, and the Telecommunications Division shall submit the name, business address, and telephone number of their committee representative to ALJ Galvin no later than January 30, 1998.

## **VIII. Bagley-Keene Open Meeting Act**

The interim committee is a "state body" as defined by Government Code Section 11121.8. This Government Code section defines a state body to include "any advisory board, advisory commission, advisory subcommittee, or similar multi-member advisory

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<sup>1</sup> The existing PSP members are: Tom Keanne from California Payphone Association, Sharon Carpenter from Payphone Service Providers Group, Martin Garrick from San Diego Payphone Association, Lynne Elezondo from Pacific Bell, Donna O'Brien from GTE California Incorporated, and Ken McEldowney from Consumer Action.

board of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons."

As a state body, the interim committee is subject to the Bagley-Keene Act (Government Code Section 11120, *et seq.*). This Act requires, among other things, that the interim committee meetings be open to the public, and that public notice of the meetings, including a brief general description of the business to be transacted or discussed, be posted ten days in advance of the meeting. Notice may be satisfied through the use of the Commission's Daily Calendar.

By D.97-09-117 we provided guidance on several issues related to compliance with the Bagley-Keene Act.<sup>4</sup> Among the issues addressed were teleconferencing, voting, public participation, and the inspection and distribution of public records. The committee members should follow the guidance contained in D.97-09-117<sup>5</sup> with the exception of the teleconferencing portion of the decision pertaining to instructions when there is no quorum in one location which is subject of an application for rehearing.

To further assist interim committee members in complying with the Bagley-Keene Act, upon request the Legal Division shall provide the interim committee with a copy of the State Attorney General's Office publication and 1997 supplement which address compliance with the Bagley-Keene Act. The interim committee members should review these documents and conduct their activities consistent with the guidance embodied in these documents.

#### **IX. Conflict of Interest**

ORA recommended that a separate committee with no ties to any other program or committee be established to avoid any conflicts of interest. However, we have

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<sup>4</sup> D.97-09-117, *mimeo.*, pp. 47-59, pertaining to the Low Income Governing Board and the California Board for Energy Efficiency.

<sup>5</sup> With regard to teleconferencing, the interim committee should conform to Government Code Section 11123 pending resolution of this issue in the D.97-09-117 rehearing.

already concluded that an existing committee should administer the new program as modified and directed herein.

To address potential conflicts of interest, we shall require the interim committee members to comply with the Fair Political Practices Commission (FPPC) standard Conflict of Interest Code.<sup>4</sup> A primary purpose of this code is to preclude interim committee members from having a pecuniary interest in potential recipients of any funds under the interim committee's control. For purposes of applying these rules, all voting members of the interim committee shall be defined as "designated employees." Designated employees should disclose the following "economic interests": any investment or business position in, or income from, an entity, parent or subsidiary of an entity, seeking to provide any product or service related to the interim committee's function or that has plans to come before the interim committee to seek funds from the moneys under the control of the interim committee.

Government Code Section 18730 (b)(7) mandates that statements of economic interests be reported on forms prescribed by the FPPC. To carry out this mandate, the interim committee should designate one of its members to be responsible for obtaining the necessary reporting forms from the Commission's filing officer in the Executive Director's Office. This designated interim committee member should also be responsible for collecting the completed statements of economic interest from each interim committee member and timely submitting these forms to the Commission's filing officer.

The conflict of interest rules for the interim committee adopted by this order shall be subject to change as conditions warrant. If either the interim committee or the Telecommunications Division believes a change in the conflict of interest rules or their application is appropriate, they should first consult with the Commission's Legal Division and then advise the Commission of the proposed change as appropriate. A

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<sup>4</sup> 2 Cal. Code of Regulations, Section 18730.



copy of the request for change shall be served on the service list for this proceeding. If the Commission concurs with the proposed change, we will issue a decision or resolution, as appropriate, to implement the change.

**X. Compensation**

A majority of the commenting parties addressed the need for interim committee members to receive compensation for their work as interim committee members. However, there was no consensus on the compensation issue. Proposals ranged from no compensation at all to the maximum allowed by an unspecified per diem authorization and expense policy. Although each party had a valid reason for adoption of its preferred compensation proposal, it is a general goal to treat each Board and Committee under the Commission's jurisdiction equally.

Hence, we shall apply the same per diem and expense reimbursement policy to the interim committee that we adopted in D.97-04-044 and D.97-09-117 for the Low Income Governing Board and the California Board for Energy Efficiency.<sup>7</sup> Consistent with these orders interim committee members serving as representatives of a trade association or consumer group whose employers have funding available to support the employee's participation in the interim committee should use such funding to defray that member's expenses, as appropriate.

Consistent with D.97-04-044 and D.97-09-117, the amount of per diem provided to eligible interim committee members shall be \$300 for each day of interim committee meetings but \$200 if the interim committee meeting last less than two hours. There shall be no per diem for preparation work, and there shall be no per diem or expense reimbursement related to meetings of any subcommittee of the interim committee. Interim committee members shall not be eligible to receive intervenor compensation, pursuant to PU Code Section 1801 *et. seq.*, for their work related to the interim committee. In establishing the aforementioned level of per diem, we purposely do not

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<sup>7</sup> D.97-09-117, *mimeo.*, pp. 40-44.

set levels so high as to substitute for all comparable employment, as suggested by some of the parties, because we believe that interim committee membership should be looked upon as public service.

The amount and type of expense reimbursement provided to eligible interim committee members shall conform to the standards set forth in Resolution F-621, dated November 8, 1988, which is consistent with the practice we adopted in D.97-04-044 and D.97-09-117. The cited resolution allows for reimbursement of actual expenses related to travel, meals, parking, and other incidentals up to the limits currently in effect and applicable to Commission staff on official duty. Those limits include up to \$37.00 for meals during each 24-hour period and up to \$79.00 plus tax for lodging per night except that in state-designated high-cost areas, including San Francisco, the limit shall be \$110.00 plus tax per night. Private automobile use will be reimbursed at a rate of up to 24 cents per mile or the current government reimbursement rate. Airfare will be reimbursed up to the lowest available airfare with reference to the amount of notice given for the meeting being attended. Interim committee members will be reimbursed for reasonable miscellaneous expenses including cab fare, parking, and bridge tolls. Each item of travel expense claimed in the amount of \$5.00 or more must be substantiated by a receipt, except for meals. There shall be no reimbursement for meals or lodging expenses incurred within 50 miles of the interim committee members headquarters, or for lodging expenses incurred within 50 miles of their primary residence. Finally, interim committee members may be reimbursed for all reasonable costs necessarily incurred by them related to the operation of the interim committee, including photocopying, faxing, telephone calls, and supplies.

Claims for per diem and expense reimbursement should be approved by a Program Manager, or equivalent level, in the Commission's Telecommunications Division. The interim committee shall take necessary steps to make the actual payments for per diem and expense reimbursement using moneys from its budget through the D.E.A.F. surcharge.

#### **XI. Indemnification**

Interim committee members who are not members of the Commission staff are uncompensated servants of the State of California within the meaning of Government Code Section 810.2. Accordingly, the State will indemnify them as it indemnifies its compensated employees and will provide them with representation for their acts done within the course and scope of the services they perform for the committee pursuant to Government Code Sections 825 through 825.6 and Sections 995 through 996.6.

The interim committee's budget may be used to purchase errors and omissions (E&O) insurance or similar insurance for interim committee members for their acts done within the course and scope of services they perform for the interim committee to the extent such activities are held not to be indemnified by the State under Government Code Sections 825-825.6 or 995-996.6. This indemnification and purchase of E&O insurance is consistent with what the Commission has allowed for members of other advisory boards and committees under its jurisdiction.

#### **XII. Reporting**

Parties recommended that the committee submit monthly and periodic reports to the Commission to keep the Commission informed on its program activities. Among the suggested reports were financial, minutes of meetings, usage of program TDD equipment, budgets, annual reports, committee structure, membership, rules, and progress reports.

To help us to oversee the interim committee's activities and to give it direction as needed, we will require the interim committee to submit monthly reports by the twentieth of the following month to the Commission's Telecommunications Division Director. These monthly reports shall include approved meeting minutes, financial reports related to expenditures and compensation, and other reports that may be requested by the Telecommunications Division Director.

The interim committee should submit a report upon completion of its assigned responsibilities. If the interim committee has not completed its assigned responsibilities after six months from the effective date of this order, it shall submit a progress report

detailing the committee's activities. The report should include financial statements and specify the estimated date for completion of its activities and submission of its final report and recommendations.

A copy of the progress report should be provided to each Commissioner and to the Telecommunications Division Director. Notice of the report should be included in the Commission's Daily Calendar along with instructions on how to obtain a copy of the report. The progress report shall be due within seven months from the effective date of this order.

Consistent with other boards and committees under the Commission's jurisdiction, the committee's operations should be subject to audit. Accordingly, we will direct the Telecommunications Division to conduct annual financial and administrative audits. In conformance with State contract and procurement rules, the Telecommunications Division may hire consultants to perform these audits if the audit can not be conducted by Commission staff. The D.E.A.F. surcharge funds may be used for consultant audit costs. A copy of the audit results with recommendations, if any, shall be provided to each Commissioner.

### **XIII. Budget**

Pursuant to PU Code Section 2881.2(b), this program is to be funded through a surcharge not to exceed two-hundredths of 1 percent uniformly applied to a subscriber's intrastate telephone service, other than one-way radio paging service and universal lifeline telephone service, as set forth and restricted in PU Code Section 2881(d). Based on 1996 data, this surcharge would provide approximately \$2.5 million for the new program. Although this surcharge is to be combined with and count toward the current D.E.A.F. surcharge, there will be a distinctly separate fund and separate accounting for the surcharge authorized for this new program. In other words, the sum of this surcharge and the current D.E.A.F. surcharge must be no greater than 0.5%.

With the establishment of the committee's scope of responsibility set forth in this interim order the Committee should proceed to prepare and submit its program budget. As part of its budget, the committee should estimate the revenue obtainable

from the maximum surcharge possible to confirm that its budget is below the maximum funding limit. The committee should also recommend the surcharge rate needed to administer this new program.

We recognize that there will be financial needs for the interim committee prior to the submission and approval of the budget as addressed in our interim-committee-structure discussion. Because there are no current funds available, we will authorize the interim committee to maintain a separate accounting of its reimbursable activities as set forth in this order pending approval of its budget and implementation of the applicable D.E.A.F. surcharge. The interim committee should include such start-up costs in its initial budget.

The committee's budget should also include the costs for its day-to-day operations. The day-to-day operations should be accomplished using resources available to the PSP. However, the interim committee should track costs associated with the tasks assigned herein and seek recovery from the program funds specifically allocated to implementation of PU Code Section 2881.2.

The interim committee's first priority should be to prepare and submit its initial program budget and suggested surcharge rate as a compliance filing with the Commission's Docket Office, as soon as possible, but no later than April 30, 1998. A copy of this compliance filing shall be served on the service list in this proceeding. The Commission will inform the interim committee of the results of its review by decision or resolution. Subsequent budgets and surcharge requests shall be submitted by letter to the Executive Director and served on the service list in this proceeding. Approval of such subsequent budgets shall be by resolution. Subsequent to approval of the interim committee's budget and surcharge request, the interim committee will submit a compliance filing with the Commission's Docket Office recommending its plan for carrying out the program activities set forth in PU Code Section 2881.2.

#### **Findings of Fact**

1. Assembly Bill (AB) 3152 extended the D.E.A.F. surcharge and added Section 2881.2 to the PU Code.

2. This proceeding was opened to implement a TDD program pursuant to PU Code Section 2881.2.

3. The TDD program is to be phased in over a reasonable period of time beginning no later than January 1, 1998.

4. Comments were received from interested parties on the implementation guidelines for the administration, funding, and disbursement of funds for this new program.

5. The primary activities of this new program are to identify locations; contract for procurement, installation, and maintenance; and, coordinate for the placement of program TDD equipment.

6. The activities of this new program are to be carried out through a committee under Commission control.

7. There are currently two public-policy committees with public telephone or TDD equipment experience under our jurisdiction.

8. A majority of the parties who filed comments recommend that a new committee be established.

9. There is an ongoing review taking place of the organizational structure of the Boards and Committees under our jurisdiction, and creation of a new committee would require the Commission to address basic structure issues before the actual implementation efforts of the committee could begin.

10. In order to avoid these implementation delays and in the interests of taking advantage of the relevant existing expertise of the PSP Committee, it is appropriate to direct the PSP Committee to assume the responsibilities of this new program on an interim basis.

11. The PSP Committee's charter is before the Commission for consideration of approval.

12. The parties filing comments have different ideas on what the committee's responsibilities should be; however, the Committee will operate under the direction of the Commission, and will advise the Commission on relevant program and policy matters.

13. The responsibilities of the interim committee are administrative in nature, and include beginning to determine, specify, and prioritize locations within existing buildings, structures, facilities, and public accommodations in need of a telecommunications device for the deaf, as well as reporting to the Commission on these issues.

14. Recommendations for committee membership ranged from a maximum of seven members to an unlimited number of members.

15. The committee is a state body as defined by Government Code Section 11121.8.

16. D.97-09-117 provides guidance on issues related to compliance with the Bagley-Keene Act.

17. Government Code Section 18730(b)(7) mandates that statements of economic interest be reported on forms prescribed by the FPPC.

18. There is no consensus on the level of compensation committee members should receive.

19. Interim committee members who are not members of the Commission staff are uncompensated servants of the State of California within the meaning of Government Code Section 810.2.

20. Parties recommended that the committee keep the Commission informed on its activities through periodic reports.

21. A distinctly separate fund and separate accounting for the surcharge is required for this new program.

#### **Conclusions of Law**

1. The PSP Committee should take on the added responsibilities of this new program through a subcommittee on an interim basis, and should keep all activities and costs related to this new program separate from its other responsibilities.

2. The PSP Committee should incorporate into its charter the additional responsibilities authorized herein.

3. The interim committee should be advisory to the Commission and should not make any policy decisions.

4. The interim committee's membership should include representation from the deaf or hearing impaired community, PSP Committee, and Commission staff.
5. The interim committee should be subject to the Bagley-Keene Act.
6. The interim committee should conform to the conflict of interest requirements set forth in the body of this interim order.
7. The interim committee's conflict of interest rules may be subject to revision as conditions warrant.
8. The interim committee's per diem and expense reimbursement should be consistent with the standards applied to other boards and committees under the Commission's jurisdiction.
9. Interim committee members should be indemnified for the services they perform for the committee.
10. In addition to monthly reports submitted to facilitate the Commission's oversight role, the interim committee should be required to submit a progress report to the Commission, as described herein, if it has not completed its assigned tasks within six months of the effective date of this order.
11. The interim committee should prepare and submit a budget for Commission approval.
12. Upon completion of the assigned tasks, the interim committee should submit for Commission approval a compliance filing consisting of a report containing the criteria and priority list developed as a result of its activities, along with any recommendations and proposed next steps.
13. The interim committee should recommend the surcharge rate needed to administer the new program.
14. The interim committee should be authorized to maintain a separate accounting of its reimbursable activities pending approval of its budget.



## INTERIM ORDER

### IT IS ORDERED that:

1. The Payphone Service Providers Committee (PSP Committee) shall be designated as an interim committee to begin implementing the new program set forth in Public Utilities (PU) Code Section 2881.2.
2. The PSP Committee shall incorporate into its Charter the additional responsibilities authorized by this interim order. The PSP Committee shall submit its Charter as a compliance filing to the Commission's Docket Office and serve it on the service list in this proceeding no later than sixty days from the effective date of this interim order. The PSP Committee shall be notified of the results of the Commission's review of its Charter by a letter from the Executive Director, or by a Commission decision or resolution, as deemed appropriate by the assigned Commissioner in consultation with the assigned Administrative Law Judge (ALJ).
3. The interim committee shall not receive any compensation until the PSP Committee Charter has been approved by the Commission; however, the interim committee may track its reasonable costs and seek recovery of such reasonable costs as program funds become available.
4. The interim committee shall be an advisory committee to the Commission. The Commission shall have all policy and program decision making authority over the interim committee.
5. The interim committee shall consist of two representatives from the PSP Committee and one representative from each of the following: the Deaf and Disabled Telecommunications Program Administrative Committee, the California Coalition of Agencies Serving the Deaf and Hard Hearing Inc., and a Commission employee appointed by the Telecommunications Division. The Commission's appointee shall be a non-voting member.

6. Each organization or entity named to be represented on the interim committee shall appoint its own representative to serve on the committee and may change its own representative at any time upon notice to the Commission.

7. The organizations and entities named to be represented in the interim committee shall submit the name, business address, and telephone number of their selected committee representative to ALJ Galvin no later than January 30, 1998.

8. Interim committee members shall follow the Bagley-Keene Open Meeting Act (Bagley-Keene Act) guidance contained in Decision (D.) 97-09-117 with the exception of the teleconferencing portion of the decision which is subject to an application for rehearing. In regards to teleconferencing, the committee shall conform to Government Code Section 11123 pending resolution of this issue in the D.97-09-117 rehearing.

9. Upon request, the Legal Division shall provide the interim committee with a copy of the State Attorney General's Office publication and 1997 supplement which address compliance with the Bagley-Keene Act. The interim committee members shall review these documents and conduct their activities consistent with the guidance embodied in these documents.

10. Interim committee members shall comply with the Fair Political Practice Commission (FPPC) standard Conflict of Interest Code, and shall use the definition of "designated employees" and types of "economic interests" specified herein for purposes of complying with the code.

11. The interim committee shall designate one of its members to be responsible for obtaining necessary conflict of interest reporting forms from the Commission's Filing Officer in the Executive Director's Office. This designated committee member shall also be responsible for collecting the completed statements of economic interest from each interim committee member and timely submitting these forms to the Commission's Filing Office.

12. If either the interim committee or the Telecommunications Division believes a change in the conflict of interest rules or their application is appropriate, they shall first consult with the Legal Division and then advise the Commission of the proposed change as appropriate. A copy of the request for change shall be served on the service

list for this proceeding. If the Commission concurs with the proposed change we shall issue a decision or resolution, as appropriate, to implement the change.

13. The per diem and expense reimbursement policy adopted for the Low Income Governing Board and the California Board for Energy Efficiency pursuant to D.97-04-044 and D.97-09-117 shall apply to the interim committee being established by this interim order.

14. The amount and type of expense reimbursement provided to eligible interim committee members shall conform to the standards set forth in Resolution F-621, dated November 8, 1988.

15. Claims for per diem and expense reimbursement shall be approved by a Program Manager, or equivalent level, in the Commission's Telecommunications Division.

16. The interim committee members shall be indemnified for their acts done within the course and scope of the services they perform for the interim committee, pursuant to Government Code Sections 825 through 825.6 and Sections 995 through 996.6.

17. The interim committee may purchase errors and omissions insurance to cover the services they perform for the interim committee which are not covered by the Government Code Sections 825 through 825.6 and Sections 995 through 996.6.

18. The interim committee shall submit monthly reports by the twentieth of the following month to the Commission's Telecommunications Division Director as detailed in the body of this interim order.

19. The interim committee shall submit a report upon completion of its assigned responsibilities. If the interim committee has not completed its assigned tasks within six months of the effective date of this order, it shall submit a progress report detailing the interim committee's activities. The report shall include financial statements and specify the estimated date for completion of its activities and submission of its final report and recommendations.

20. A copy of the committee's report shall be provided to each Commissioner and to the Telecommunications Division Director. Notice of the progress report shall be included in the Commission's Daily Calendar along with instructions on how to obtain

a copy of the report. The report shall be due within seven months from the effective date of this order.

21. The Commission's Telecommunications Division shall conduct an annual financial and administrative audit on the Committee's operations.

22. The interim committee's day-to-day operations shall be accomplished using resources available to the PSP Committee. The interim committee shall track costs associated with the tasks assigned in this order and seek recovery from program funds allocated for implementation of PU Code Section 2881.2.

23. The interim committee shall prepare and submit its initial budget and suggested surcharge rate as a compliance filing at the Commission's Docket Office as soon as practically possible, but no later than April 30, 1998. A copy of this compliance filing shall be served on the service list in this proceeding. The Commission shall inform the interim committee of the results of its review by Commission Decision or Resolution.

24. Budget and surcharge requests subsequent to the initial request shall be submitted by letter to the Executive Director and served on the service list in this proceeding. Approval of such subsequent request shall be by Commission resolution.

25. Upon completion of its assigned tasks, the interim committee shall prepare and submit a compliance filing with the Commission's Docket Office recommending its plan for carrying out the program activities set forth in PU Code Section 2881.2 and as addressed in this interim order. At a minimum, this compliance filing shall consist of a report containing the criteria and priority list developed as a result of its activities, along with any recommendations and proposed next steps. A copy of this compliance filing shall be served on the service list in this proceeding. Interested parties may comment on the compliance filing within 15 days after the date filed with the Docket Office.

26. The Commission's Executive Director shall cause a copy of this interim order to be served immediately upon the PSP Committee.

27. This consolidated rulemaking and investigation proceeding shall remain open to address the program activities set forth in PU Code Section 2881.2.

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners