

Decision 99-03-034 March 18, 1999

**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.

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)

**OPINION**

**Summary**

By this order, we adopt a priority location list for the placement of telecommunications devices capable of servicing the needs of the deaf or hearing impaired (TDDs) in existing buildings, structures, facilities, and public accommodations. Location owners shall certify under penalty of perjury that their locations meet the location definition set forth in Pub. Util. Code § 2881.2(c) prior to the installation of program TDDs. Program funds may also be used to

provide portable TDD equipment<sup>1</sup> at those locations listed on the priority location list upon satisfying three conditions: the location must meet the statutory location definition, the location does not have an existing payphone; location, and a telephone instrument is available for public use at the location.

### **Jurisdiction**

This consolidated Rulemaking and Investigation proceeding was initiated by the Commission to implement Pub. Util. Code § 2881.2. This code section provides us with the authority to design and implement a new program providing for the placement of TDDs in existing buildings, structures, facilities, and public accommodations through an appropriate committee under Commission control.

### **Background**

The Payphone Service Providers Committee (PSP Committee) established a TDD Placement Interim Committee (Committee) to assist us in implementing Pub. Util. Code § 2881.2, pursuant to Decision (D.) 97-12-104, dated December 16, 1997.

A committee charter and administrative budget, including a funding mechanism, were approved by the Commission pursuant to Resolution T-16191, dated September 17, 1998, and D.98-12-073, dated December 17, 1998, respectively. This proceeding remained open to review, assess, and approve the Committee's proposed criteria for determining and specifying the locations that would benefit from this new TDD program, to establish a priority location list for

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<sup>1</sup> Portable TDD equipment should be authorized at locations where a telephone instrument is made available to the general public in those locations where payphone does not exist.

installing program equipment, and to solicit and award contracts based on State procurement rules, pursuant to D.98-12-073.

### **Compliance Filing**

The Committee submitted a November 23, 1998, compliance filing with the Commission's Docket Office setting forth its criteria for determining and specifying the locations that should benefit from this new TDD program and its priority location list for installing program equipment. The Committee's priority location list is set forth in Appendix A to this order.

The Committee utilized the expertise of its Committee members, the Deaf and Disabled Telecommunications Program Administrative Committee's (DDTPAC) mailing list, input from meetings held in the deaf community, and a Pacific Bell TDD "site usage survey" to develop a TDD location survey. The Committee sent the site usage survey to 73 statewide deaf or hearing impaired non-profit consumer organizations for input. Twelve of the 73 organizations responded, resulting in a response rate of approximately 19%. The questionnaire results were used by the Committee to develop its priority location list, as set forth in its compliance filing.

The priority location list consists of 24 generic locations, of which the first 11 are identified to be locations most frequently used by the deaf and hearing impaired and most likely in need of TDDs. Hospitals and clinics were identified as the number one priority location followed by police stations, hotels, airports, government offices, courthouses, convention centers, train stations, bus stations, schools, and highway rest-stops.

The Committee opposed the use of program funds to satisfy compliance with the American With Disabilities Act (ADA). Based on a comparison of the ADA requirements with its priority location list, the Committee concluded that the responsibility for providing TDDs at the first nine locations may lie with

either the payphone or location owner. Hence, the Committee recommended that such locations be visited and checked for compliance with ADA requirements. Once such locations are brought into ADA compliance, the Committee believes that the need for program TDD equipment should fall into the latter half of the priority location list following schools and highway rest-stops.

The Committee contended that the TDD program should not be restricted to payphones because a public phone can not always be defined as a payphone. For example, banks, libraries, place of worship, post office, and restaurants are locations where there is a likelihood that a payphone does not exist. Accordingly, the Committee recommended that public locations not having payphones should be provided with a portable unit that can be used in conjunction with an existing telephone. The Committee also recommended that portable TDDs be used at those locations listed in the second half of the priority location list.

The Committee intends to submit the criteria necessary for the placement of program TDDs after we have approved the recommendations set forth in its compliance filing.

### **Discussion**

Pub. Util. Code § 2881.2 requires the Commission to direct the appropriate committee under its control to determine and specify locations within existing buildings, structures, facilities, and public accommodations in need of a TDD. Consistent with this code requirement, the Committee, established under the direction of this Commission, was the appropriate committee to undertake this activity.

The Committee's priority location list was based on input from the Committee's own members, meetings held in the deaf community, a Pacific Bell

survey, and from statewide deaf or hearing impaired nonprofit consumer organizations. This is consistent with the code requirement that priority be given to those existing buildings, structures, facilities, and public accommodations determined by this Commission with the advice and counsel of statewide nonprofit consumer organizations for the deaf or hearing impaired.

A copy of the Committee's compliance report setting forth its recommended priority location list was mailed to all parties on the service list of this proceeding. No comment or objection to the Committee's compliance report was received. Hence, the priority location list attached to this order should be approved.

Pub. Util. Code § 2881.2(c) defined existing buildings, structures, facilities, and public accommodations to include only those locations constructed or altered prior to January 26, 1993, or which are otherwise not required to comply with § 303 of the ADA of 1990<sup>2</sup> or any other section of that act and its implementing regulations and guidelines. Hence, the Committee's recommendation that program funds not be used to satisfy compliance with ADA requirements is consistent with the statute. The use of program funds for installing TDDs are restricted to those locations meeting the location definition set forth in Pub. Util. Code § 2881.2(c).

Although the Committee recommended that locations identified on its priority location list need to be checked for compliance with ADA requirements, the statute specifically excluded locations' subject to § 303 of the ADA or any other section of that act from this program. The statute does not provide this Commission or any committee under its direction with jurisdiction or authority

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<sup>2</sup> 42 U.S.C., Sec. 12183, Public Law 101-336.

to determine whether a location is in compliance with or brought into compliance with the ADA requirements. Hence, the Committee's recommendation that locations be visited and checked for compliance with ADA requirements should not be adopted. Owners of locations included in the priority location list should be required to certify under penalty of perjury that its location complies with the definition set forth in Pub. Util. Code § 2881.2(c) prior to approving the installation of any TTD program equipment.

The Committee also recommended that portable TDD equipment should be made available in conjunction with an existing telephone at locations where a public payphone does not exist. We concur if a location listed on the priority location list was constructed or altered prior to January 26, 1993, is otherwise not required to comply with any section of the ADA, does not have a payphone at the location, and a telephone instrument is available at the location for public use.

Our adoption of a priority location list in this order concludes the need to keep this proceeding open to review, assess, and approve the Committee's proposed criteria for determining and specifying the locations that would benefit from this new TDD program and to establish a priority list for installing program equipment.

The only other reason to keep this proceeding open would be to address the solicitation and award of contracts based on State procurement rules. That issue is moot, however, because Ordering Paragraph 4 of D.98-12-073 established a contract process for the Committee to follow and provided authority to the Telecommunications Division Director to approve the Committee's plan for conducting Request for Proposal (RFP) and bid process. The process also provides for the Committee to issue the RFP, select one or more qualifying bidders and submit the proposed provider contract(s) to the Telecommunications Division Director. In turn, the Telecommunications Division Director is to

prepare for Commission consideration a proposed resolution adopting the contract(s) to provide program service.

Given that this TDD program is still in the start-up phase, the Committee may have a need to obtain Commission direction or approval of TDD program activities. Hence, a procedure should be approved for the Committee to seek Commission approval of program activities. In this regard, the Committee should submit its request or proposal to the Telecommunications Division Director for review. In turn, and consistent with D.98-12-073, the Telecommunications Division Director should then prepare a resolution for the Commission's consideration. This proceeding should be closed.

#### **Comments on Draft Decision**

The draft decision of the assigned Administrative Law Judge in this matter was mailed to the parties in accordance with PU Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No comments were received.

#### **Findings of Fact**

1. Pub. Util. Code § 2881.2 provides us with the authority to design and implement a new program providing for the placement of TDDs in existing buildings, structures, facilities, and public accommodations through an appropriate committee under Commission control.

2. A committee charter and administrative budget, including a funding mechanism, were approved by the Commission.

3. This proceeding remained open to review, assess, and approve the Committee's proposed criteria for determining and specifying the locations that would benefit from this new TDD program, to establish a priority location list for installing program equipment, and to solicit and award contracts based on State procurement rules.

4. The Committee's priority location list is set forth in Appendix A to this order.

5. The Committee's priority location list was based on input from the Committee's own members, meetings held in the deaf community, a Pacific Bell survey, and from statewide deaf or hearing impaired nonprofit consumer organizations.

6. No comment or objection to the Committee's compliance report was received.

7. Pub. Util. Code § 2881.2(c) defined existing buildings, structures, facilities, and public accommodations to include only those locations constructed or altered prior to January 26, 1993, or otherwise not required to comply with § 303 of the ADA or any other section of that act and its implementing regulations and guidelines.

8. The statute does not provide this Commission or any committee under its direction with jurisdiction or authority to determine whether a location is in compliance with or brought into compliance with the ADA requirements.

9. D.98-12-073 established a contract process for the Committee to follow and provided authority to the Telecommunications Division Director to approve the Committee's plan for conducting the RFP bid process. The process also provides for the Committee to issue a RFP, select one or more qualifying bidders and submit the proposed provider contract(s) to the Telecommunications Division Director. In turn, the Telecommunications Division Director is authorized to prepare for Commission consideration a proposed resolution adopting the contract(s) to provide program service.

### **Conclusions of Law**

1. The priority location list attached to this order should be approved.



2. TDD program funds should not be used to satisfy compliance with ADA requirements.

3. The Committee should not be responsible for verifying that program locations are in compliance with ADA requirements.

4. Portable TDD equipment should be made available at qualified locations in conjunction with an existing telephone at locations where a public payphone does not exist.

5. A procedure should be approved for the Committee to seek Commission approval of program direction and activities.

6. Because of the public interest in making available TDDs in public location, the following order should be effective immediately.

7. This proceeding should be closed.

## O R D E R

### IT IS ORDERED that:

1. The TDD Placement Interim Committee's (Committee) priority location list attached to this order as Appendix A shall be adopted.

2. Owners of locations included in the priority location list shall certify under penalty of perjury that its location complies with the definition set forth in Pub. Util. Code § 2881.2(c) prior to approval of installing any telecommunications devices capable of serving the needs of the deaf or hearing impaired (TTD) program equipment.

3. Portable TDD equipment shall be made available to be used in conjunction with an existing telephone made available for public use at locations listed on the priority location list if the location was constructed or altered prior to January 26, 1993, is otherwise not required to comply with any provision of the ADA, and a payphone does not exist at the location.

4. Requests for Commission approval of TDD program direction or activity shall be submitted by the Committee to the Telecommunications Division director for review. In turn, the Telecommunications Division Director shall prepare a resolution for Commission consideration.

5. Rulemaking 97-10-018 and Investigation 97-10-019 are closed.

This order is effective today.

Dated March 18, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners

## APPENDIX A

SURVEY RESULTS OF PREFERRED LOCATIONS FOR TDDs					
	ALWAYS	OFTEN	SOMETIMES	SELDOM	NEVER
HOSPITAL/CLINIC	83%	8%			1%
POLICE STATIONS	75%			8%	17%
HOTEL	67%	17%	8%	8%	
AIRPORT	67%	25%		8%	
GOVERNMENT OFFICES	58%	25%	8%		8%
COURTHOUSE	50%	33%	8%		8%
CONVENTION CENTER	50%	8%	25%	8%	8%
TRAIN STATION	41%	17%	25%	8%	8%
BUS STATION	41%	17%	17%	8%	17%
SCHOOL	41%	8%	17%	17%	17%
HIGHWAY RESTSTOPS	33%	17%	41%		8%
BANK	17%	8%	50%	17%	8%
SHOPPING MALL	17%	17%	33%	17%	17%
STADIUM/ARENA	17%	17%	17%	17%	33%
LIBRARY	17%	17%	17%	33%	17%
PLACE OF WORSHIP	17%		33%	17%	33%
PARK	17%	8%	8%	33%	33%
TOURIST ATTRACTIONS	17%	17%	33%	25%	8%
POST OFFICE	8%	8%	25%	41%	17%
SUPERMARKET	8%		17%	33%	41%
RESTAURANT	8%		41%	17%	33%
MOVIE THEATER	8%	8%	8%	33%	44%
THEATER	8%	8%	17%	25%	44%
GAS STATION	8%		25%	33%	25%

(END OF APPENDIX A)