

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Telecommunications Division

RESOLUTION T-16031
Date: June 11, 1997

RESOLUTION

RESOLUTION T-16031. TO AUGMENT THE DEAF AND DISABLED TELECOMMUNICATIONS EQUIPMENT AND SERVICE PROGRAMS (PUBLIC UTILITIES CODE SECTION 2881, ET SEQ.) 1997 ANNUAL BUDGET PURSUANT TO DECISION NO. 89-05-060 ON AN INTERIM BASIS.

BY SUPPLEMENTAL FILING ON MARCH 5, 1997 FOR BUDGET AUGMENTATION REQUEST.

SUMMARY

This Resolution adopts on an interim basis a budget augmentation amount of \$2,915,990 to supplement the interim 1997 Program Budget amount of \$37,765,826 adopted by the Commission on April 9, 1997 in Resolution T-16017 for the Deaf and Disabled Telecommunications Equipment and Service Programs, pursuant to Public Utilities Code Section 2881, et seq. This adopted budget augmentation amount is to provide incentives for the remainder of the year (six months, July through December 1997) for the Deaf and Disabled Telecommunications Program Administrative Committee to attract other California Relay Service providers and possibly improve the service quality of California Relay Services. The adopted budget augmentation of \$2,915,990 is \$1,897,289 or approximately 39.4% less than the \$4,813,279 proposed by the Deaf and Disabled Telecommunications Program Administrative Committee.

BACKGROUND

In compliance with state legislation, the Commission implemented three telecommunications programs for California residents who are deaf, hearing impaired, and disabled:

- o Telecommunications Devices for the Deaf (TDDs) distribution, per Senate Bill (SB) 597 (Chapter 1142, 1979);
- o Dual Party Relay System, using a third-party intervention, to connect persons who are deaf, severely hearing impaired, or speech impaired with persons of normal hearing, per SB 244 (Chapter 741, 1983);
- o Supplemental Telecommunications Equipment for persons who are disabled, per SB 60 (Chapter 585, 1985).

These programs are all funded by the Deaf and Disabled Telecommunications Program (DDTP) Consolidated Budget (Program Budget).

Decision (D.) 89-05-060 (I.87-11-030) established that the annual Program Budget be submitted to the Executive Director and approved by a Commission resolution in accordance with the procedure discussed in the Decision.

On October 1, 1996, the Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC) filed the proposed 1997 Program Budget that totaled \$37,875,771. On April 9, 1997, the Commission adopted an interim 1997 Program Budget amount of \$37,765,826 (Resolution T-16017).

On March 5, 1997, the DDTPAC submitted a budget augmentation request of \$4,813,279 to increase the rate reimbursed to the current provider of the California Relay Service (CRS), to attract other CRS providers, and to possibly improve the quality of relay service. Resolution T-16017 did not consider this budget augmentation request when the 1997 Program Budget was adopted on an interim basis.

MASTER AGREEMENT

Currently, the DDTPAC has a contract with MCI Telecommunications Corporation (MCI) to provide state-wide dual party telecommunications relay service. The terms and conditions of this contract are specified in an agreement, called the Master Agreement, between the DDTPAC and MCI. MCI is designated as the Primary Contractor with the responsibility of initiating the CRS on a state-wide basis. Other contractors, as alternative providers, may offer CRS under the same terms and conditions of the Master Agreement, but have not elected to do so. As the primary contractor, MCI is able to use the current CRS 800 numbers in its operations.

One of the terms in the Master Agreement is "Compensation". The primary contractor is reimbursed at \$0.699 per conversation minute for calls using MCI's relay service.¹

Another term is the "Liquidated Damages For Failure To Meet Performance Requirements". There are two performance requirements:

- (1) Excessive Call Blockage: [t]he minimum standard is that no more than a daily average of 1% of all calls to CRS shall receive a busy signal. Liquidated damages are \$2,000 per day for each calendar day the blockage rate requirement is not met.
- (2) Excessive Time to Answer Calls: [t]he minimum standard is that calls to CRS be answered with an average daily answer time of 7 seconds, to assure that 85% of all calls are answered within 10 seconds. Liquidated damages are \$2,000 per day for each calendar day the answer time requirement is not met.²

Another term in the Master Agreement is the "Performance Monitoring". The DDTPAC or its duly authorized agent is allowed to monitor, at Contractor's expense, all such activities conducted by the Contractor pursuant to the terms of the Master Agreement. The monitoring may be done on MCI's "internal operating and management procedures, examination of program data, special analyses, on-site checking, or any other reasonable procedure."³ MCI's main relay service center is located in Riverbank, California serving CRS users. It has also been using other relay service facilities outside of California available to handle Spanish to Spanish relay calls and overflow traffic from California relay users.

NOTICE/PROTEST/COMMENTS

On March 5, 1997, the DDTPAC mailed a copy of the 1997 Budget Augmentation Request to all parties of record in I.87-11-030. Only Sprint Communications Company L.P. (Sprint) filed comments that supported the budget augmentation request. No protests have been received on the Budget Augmentation Request.

¹ Page 68 of Master Agreement between MCI and the DDTPAC.

² Id., page 75.

³ Id., page 69.

BUDGET AUGMENTATION REQUEST

On March 5, 1997, the DDTPAC requested that the Commission approve additional funds of \$4,813,270 to supplement its proposed 1997 total Program Budget amount of \$37,875,279. The DDTPAC submitted this separate request in order to address the poor quality of service offered by MCI. The DDTPAC asserts that the augmented budget should attract other CRS providers, thus improving service quality.

In 1996, MCI was selected as the primary provider of CRS by the DDTPAC through a competitive bidding process. On October 12, 1996, MCI began offering CRS after the contract with Sprint, the prior CRS service provider, expired. The DDTPAC indicates that MCI immediately started to receive consumer complaints relating to almost all aspect of CRS services including "operator typing, spelling and grammar skills, users' inability to use various types of calling cards, users' inability to use their carrier of choice, ... and incorrect billing for CRS calls."⁴

The DDTPAC states that the number of complaints about MCI CRS service increased more than five fold, to 832 per month, compared with 146 per month for the previous CRS provider, Sprint.⁵ Sprint's complaint statistics were averaged over a 21-month period. It should be noted that, based on information provided by the DDTPAC, Sprint averaged about 194 complaints per month during the last twelve month period ending October 31, 1996.

The DDTPAC notes that it met with MCI to resolve these complaints. MCI has resolved some of these service problems, but the DDTPAC believes that an unacceptable level of complaints for poor quality of service continue. The DDTPAC has also hired an independent consultant to conduct performance monitoring of the CRS in order to evaluate "MCI's operating procedures, training and testing procedures, and accuracy of

⁴ March 5, 1997 Budget Augmentation Request, page 3.

⁵ Id., page 4.

relayed communications.”⁶ This consultant’s report on compliance of MCI with its contractual requirements is expected to be completed by the end of June 1997.

In its Budget Augmentation Request, the DDTPAC proposed a remedy to resolve the current service problems by offering CRS users an opportunity to have other providers complete their CRS calls. The DDTPAC asserts that the “only way to attract providers” is “to increase the reimbursement rate paid to CRS providers above the current level of \$0.699 per conversation minute.”⁷ The DDTPAC proposes to increase the reimbursement rate to \$0.89, which was the next lowest rate bid during the competitive bidding process. This new rate of \$0.89 would increase the cost of CRS by \$4,663,279 (SB 244 Telco Expense). Further, the DDTPAC requests an additional \$150,000 for its “administrative outreach budget to perform the statewide customer notice about the new CRS options.”⁸ Therefore, the total amount requested by the DDTPAC in this supplemental filing is \$4,813,279.

DISCUSSION

In this section we discuss the DDTPAC’s augmentation budget proposal. As indicated above, the DDTPAC proposes: (1) \$4,663,279 for CRS operations to increase the reimbursement rate paid to the current and new CRS providers; and (2) \$150,000 for statewide customer notification about the new CRS options.

CRS Providers

The Commission is concerned with the continuing problems related to the quality of service during the transition period between different CRS providers, from Sprint to MCI. The Commission is aware of the continued CRS service problems with MCI. Even though the average number of complaints per day has decreased during the last reporting period, the number of complaints is still higher than the previous time period with Sprint. In the approval of the 1997 Program Budget (Resolution T-16017), the Commission directed MCI to initiate service improvements to improve the service quality for CRS

⁶ Id.

⁷ Id., page 5.

⁸ Id., page 5.

users. MCI has resolved some problems but an unacceptable level of complaints continues.

Besides this directive to MCI, the Commission is now approving a budget augmentation amount of \$2,915,990 for the rest of the year (six months) to provide an opportunity for CRS users to benefit from using other CRS providers. Because we are persuaded that alternative providers will not offer CRS at the contract rate of \$0.699 per conversation minute, we will approve an increased reimbursement rate, not to exceed \$0.89 from the current rate of \$0.699 per conversation minute, subject to the following conditions, discussed below. By limiting the new reimbursement rate to \$0.89 per conversation minute, we effectively eliminate the 5% incremental amount over the new reimbursement rate for those providers that relay less than 300,000 conversation minutes during the first twelve months of providing CRS service. The \$0.89 per conversation minute will apply irrespective of the volume of traffic each provider carries.⁹ In addition, we will monitor the service quality of each CRS provider by requiring that the individual CRS providers file a monthly service report, as discussed below, with the Director of Telecommunications Division (TD).

Liquidated Damages

Because of our continuing concern with service quality problems, CRS providers must comply with current service performance requirements as specified in the Master Agreement; however, the liquidated damages will be more than those specified in the Master Agreement, and will apply to those providers seeking the higher reimbursement rate of \$0.89. To change the liquidated damages in the Master Agreement, we authorize the DDTPAC as follows:

⁹ The DDTPAC's Augmentation Request of \$4,663,279 is budgeted for nine months (April through December 1997). We are approving a budget augmentation request amount of \$2,915,990 for six months (July through December 1997). The reduction of \$1,747,289 in budget augmentation request of \$4,663,279 reflects the adjustment of \$1,585,289 of the augmentation request for the time period of April through June 1997 and the adjustment of \$162,000 for the elimination of the 5% incremental increase over the new reimbursement rate of \$0.89

The DDTPAC may negotiate with providers to amend the CRS Master Agreement to raise the reimbursement rate above the level of the rate submitted by the lowest bidder in the original IFB process. The DDTPAC may negotiate an amended CRS Master Agreement that will include the revised liquidated damages set forth below, to be assessed against CRS providers for non-compliance with contract requirements. If a provider does not agree to this modification, then it will not be eligible for the new reimbursement rate per conversation minute, as discussed herein.

As mentioned previously, the current liquidated damages in the Master Agreement are \$2,000 for each calendar day of non-compliance with each service performance requirement. We believe the present liquidated damages are insufficient to encourage the current and future CRS providers to provide proper quality of service to their CRS users. Therefore, for those providers requesting the higher reimbursement rate of \$0.89, the Master Agreement should reflect the following liquidated damages:

- (1) The Liquidated Damage should be assessed on every relay center of each CRS service provider for the non-compliance of each service performance requirement. The service performance requirements, as stated on page 75 of the Master Agreement, are "excessive call blockage" and "excessive time to answer calls".
- (2) The Liquidated Damages should be modified from the current \$2,000 per day for each calendar day of non-compliance of each performance requirement to \$2,000 plus an incremental amount of 10% of the additional amount in gross revenue collected between the new reimbursement rate of \$0.89 per conversation minute and the current rate of \$0.699 for the first day of non-compliance of each performance requirement.
- (3) For each additional day of continuous non-compliance of each performance requirement at every relay service center of each CRS provider, the incremental 10% amount (plus the initial \$2,000) will be increased by an amount of 10% of the incremental gross revenues collected per day between the two rates.
- (4) After ten days of continuous non-compliance of each performance requirement, the fine will increase to a maximum of 100% of incremental gross revenue collected per day between the two rates (plus the initial \$2,000 per day).
- (5) Thereafter, for each additional day after the tenth day of continuous non-compliance of each performance requirement for every relay center of each CRS provider, the liquidated damages will be \$2,000 plus 100% of incremental revenues collected per day between the two rates.
- (6) A waiver period of four months from the new liquidated damages is granted to the new alternative CRS providers to allow these providers to bring the quality of CRS up to meet contractual requirements. These alternative providers will pay a flat \$2,000 per day for each calendar day

for non-compliance of each service performance requirement specified in the Master Agreement for the first four months of the contract. After the initial waiver period, the new liquidated damages will apply to these alternative CRS providers.

- (7) The DDTPAC will have the latitude to negotiate for each alternative CRS provider the date on which the revised Liquidated Damages provisions, including the four-month waiver period, will begin to apply. For each alternative provider, that date shall be no later than the date on which the provider begins offering relay services to customers.
- (8) In no event, the total incremental liquidated damages per day for non-compliance of both performance requirements will not exceed the incremental revenues collected by the offending provider.

To illustrate how the revised Liquidated Damages provisions would be used, we offer a hypothetical example. Assuming that MCI handles a volume of 49,187 conversation minutes per day (based upon 70% of the total conversation minutes per day), the liquidated damages at the new reimbursement rate will be \$2,000 plus approximately \$940 for the first day of non-compliance of a performance requirement. The incremental amount is calculated at 10% of incremental gross revenue of \$9,395 collected per day, between the new reimbursement rate and the current rate. For each additional day of continuous non-compliance, the liquidated damages would increase by an incremental amount of approximately \$940 per day for each consecutive day for the same infraction, to a maximum of \$9,400 (plus the initial \$2,000) per day on the tenth day. Thereafter, for each additional day of non-compliance, the total liquidated damage amount would remain at \$11,400 (\$2,000 plus \$9,400) per day until compliance is met.

Customer Base List

It is the responsibility of the DDTP to monitor the effectiveness of the relay services. For example, the Commission expects the DDTP periodically to assess, through customer surveys, the quality of CRS service offered by contracting carriers. To that end, all providers of CRS services do so with the understanding that subscriber list information, to the extent the CRS provider(s) collect and maintain this data, must be made available to the Commission. The Commission requires only the following

subscriber list information: the customer's name, address, and telephone number.¹⁹ Such information shall be provided, at no charge, to the Commission upon the request of the Commission staff, or upon termination of the Master Agreement contract.

Service Monitoring Reports

In Resolution T-16017, the Commission required that MCI file with the Director of the TD a monthly report listing the number of complaints received during the month along with the type of complaint in a format determined by TD. Any new alternative CRS providers would have to provide a similar report within 30 days after the end of each reportable month. Those reports are to be furnished separately for each relay service center and for total CRS operations.

All CRS providers would have to file with the Director of TD an emergency plan to address quality of service in case of natural disaster and unexpected or unplanned volume of traffic by CRS users. This plan would have to be filed with the Director of the TD, within 90 days after signing the amended Master Agreement.

Statewide Customer Notification

The Commission is concerned with CRS reimbursement will subsidize the marketing efforts of each utility who sell basic service to DDTP customers. As discussed in the Resolution T-16017, which approved the interim 1997 Program Budget, we did not allow the CRS Specialists to do outreach strictly for CRS. Therefore, to be consistent with the Commission policy that the marketing efforts of CRS should be the responsibility of CRS provider(s), we will not approve the additional \$150,000, as requested in the budget augmentation, to inform the CRS users about the new service provider(s). We do not believe that the DDTP program should subsidize the marketing efforts of new service provider(s), who will be able to market relay services to their customers. Furthermore, we believe that the increase in the reimbursement rate for providing relay services, as discussed above, should compensate CRS providers for outreach necessary to market CRS.

¹⁹ The Commission distinguishes here between the subscriber list information, as defined in Section 222 (f)(3)(A) of the 1996 Federal Telecommunications Act, and the customer proprietary network information (CPNI), as defined in Section 222(f)(1)(A).

CONCLUSIONS

Based upon the above discussion, we will adopt an interim supplement budget amount of \$2,915,990 by increasing the reimbursement rate to \$0.89 per conversation minute which we anticipate will attract other CRS providers and possibly improve the service to CRS users. The DDTPAC will file the amended Master Agreement with the Commission's Executive Director for approval for those CRS providers that will be billing at the new reimbursement rate of \$0.89 per conversation minute. The Commission's Executive Director should approve in writing the amended Master Agreement within fifteen days of filing such agreement by the DDTPAC. Any provider which offers relay service at the reimbursement rate of \$0.699 per conversation minute will be subject to the terms and conditions contained in the Master Agreement, not those contained in the amended Master Agreement.

The DDTPAC anticipates that its independent consultant's report evaluating MCI CRS operations will be issued by the end of June, 1997. The DDTPAC will provide to the Commission's Executive Director the draft copy and the final copy of the consultant's report, and should submit its evaluation of the final report within 30 days of issuance of that report.

We believe that CRS operations may improve as a result of this consultant's study and the inclusion of additional CRS providers. Given that the consultant's report is expected to be issued by the end of June 1997, we believe that adoption of the 1997 supplement Program Budget amount of \$2,915,990 should be on an interim basis to provide us the opportunity to further adjust, if needed, the overall 1997 Program Budget during the course of 1997.

CHANGE IN SURCHARGE LEVEL

Section 2881 (f) of the Public Utilities Code places a cap on the fund balance that should not exceed six months of expected spending requirements. We examined the present fund balance of the DDTP along with the interim approval of the 1997 Program Budget and subsequent augmentation budget amount. We noticed that the funding

balance will exceed the six months expense requirement if the current surcharge is maintained for the remainder of the year and the interim 1997 Program Budget and supplement augmentation budget are incorporated into DDTP operations. To eliminate the surplus fund balance, the surcharge should be reduced to 0.296% from the present surcharge of 0.36%. However, as discussed in Resolution T-16017, we expect future changes to the 1997 Program Budget that may further change the surcharge requirement. To minimize customer confusion relating to possible future change, we would not change the surcharge factor at this time. We will revisit this issue after the submission of the consultant report on MCI's CRS operation, implementation of recommendations from the management audit report, and possible cost savings resulting from improved efficiencies in DDTP operations as a result of implementation of Commission orders listed in Resolution T-16017.

FINDINGS

1. The DDTPAC requested a budget augmentation of \$4,813,279. This additional amount would be used to increase the rate reimbursed to attract new providers of CRS, and possibly improve the quality of relay service.
2. The DDTPAC's budget augmentation request consists of \$4,663,279 to increase the reimbursement rate for eight months and \$150,000 for statewide customer notification of the new CRS options.
3. The adopted 1997 Program Budget in Resolution T-16017 did not consider the budget augmentation request.
4. No party protested the DDTPAC's budget augmentation request. Sprint filed comments supporting the request.
5. MCI began to provide CRS on October 12, 1996 after the contract with the prior provider, Sprint, expired.
6. The DDTPAC indicates that complaints with MCI's CRS services ranged from grammar mistakes to users' inability to use their carrier of choice. The number of complaints with MCI increased to 832 per month from 146 per month with the previous CRS provider.

7. The DDTPAC has met with MCI but complaints of poor service continue.
8. The DDTPAC has hired a consultant to conduct performance monitoring of MCI's CRS operations. This consultant's report is expected to be issued by the end of June 1997. The DDTPAC will provide to the Commission's Executive Director the draft copy and the final copy of that report, and its evaluation of the final report within 30 days of issuance of that report.
9. The budget augmentation amount of \$2,915,990 for the remaining six months of the year, should be approved to provide an opportunity for CRS users to have the benefits of using other CRS providers.
10. Subscriber list information of DDTP customers under the control or possession of CRS providers should be made available to the Commission upon request, or upon the termination of the Master Agreement.
11. The DDTPAC should negotiate with CRS providers an amended Master Agreement relating to the reimbursement rate, not to exceed \$0.89 per conversation minute, and liquidated damages as discussed on pages 6 through 8 of this resolution. We will limit the increase in the new reimbursement rate to \$0.89 per conversation minute, irrespective of the volume of traffic each provider carries.
12. The approval of the additional budget amount should be subject to the condition that the liquidated damages, as discussed on pages 6 through 8 of this resolution, be changed for every relay center of each CRS provider who will be claiming the reimbursement rate at \$0.89 per conversation minute. In no event, the total incremental liquidated damages per day for non-compliance of both performance requirements should not exceed the incremental revenues collected per day by the offending provider.
13. The new liquidated damages should be waived for the first four months of the contract period for new alternative providers. During the initial waiver period of the contract, these alternative providers will pay a flat \$2,000 per day for each calendar day for non-compliance of each service performance specified in the Master Agreement.
14. The DDTP should not subsidize the marketing efforts of each utility that sells basic service to DDTP customers. The amount of \$150,000 for statewide customer notice is not approved as part of the budget augmentation request.
15. The increase in reimbursement rate for providing relay services should compensate CRS providers for outreach necessary to market CRS.

16. The new alternative providers should file with the Director of Telecommunications Division a monthly service report similar to the one that MCI is to file monthly for its CRS as discussed in Resolution T-16017.

17. All providers should file with the Director of Telecommunications Division an emergency plan to take care of quality of service in case of natural disaster and unexpected or unplanned traffic volume by CRS users.

18. The 1997 Supplement Program Budget should be on an interim basis as we will be examining the consultant report on performance monitoring of MCI's CRS operations and other items mentioned in Resolution T-16017.

19. The surcharge rate of 0.36% should not be changed at the present time.

THEREFORE, IT IS ORDERED that:

1. The interim 1997 Program Budget shall be augmented by \$2,915,990 to provide incentive to DDTPAC to attract other CRS providers, increase the reimbursement rate not to exceed \$0.89 per conversation minute, and possibly improve the service quality of CRS. The supplemental adjustment is adopted on an interim basis subject to further Commission action during 1997.

2. The DDTPAC is authorized to negotiate an amended Master Agreement relating to compensation and liquidated damages items under the terms and conditions discussed on pages 6 through 8 of this resolution.

3. We will authorize this augmentation request to provide an opportunity for CRS users to have the benefits of using other CRS providers. The approval of the additional budget amount and the increase in reimbursement rate, not to exceed \$0.89 per conversation minute for CRS shall be subject to the condition that the liquidation damages, as discussed on pages 6 through 8 of this resolution, incorporated in the amended Master Agreement.

4. The DDTPAC shall file with the Commission's Executive Director its amended Master Agreement for those CRS providers that will be billing at a new reimbursement rate. The Commission's Executive Director shall approve in writing the amended Master Agreement within fifteen days of filing such agreement by the DDTPAC.

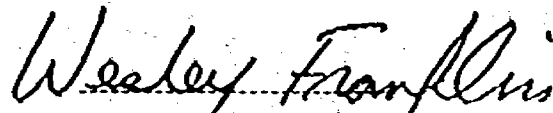
5. We will not approve the additional \$150,000, as requested by DDTPAC in its budget augmentation, for statewide outreach to inform the CRS users about the new service provider(s). The DDTP program shall not subsidize the marketing efforts of new service providers, who will be able to market their services to the CRS users.

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6. The DDTPAC shall file with the Commission's Executive Director a copy of the consultant's draft and final reports on performance monitoring of MCI's CRS operations. Further, DDTPAC shall submit its evaluation of the consultant's final report. Both of these items shall be filed within 30 days from the issuance of the consultant's final reports, respectively.
7. The new alternative providers shall file with the Director of Telecommunications Division a monthly service report similar to the one that MCI is to file for its CRS as required by Resolution T-16017.
8. All providers shall file with the Director of Telecommunications Division, within 90 days after signing the Master Agreement, an emergency plan to take care of quality of service in case of natural disaster and unexpected or unplanned increase in traffic volume by CRS users.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on June 11, 1997. The following Commissioners approved it.



Wesley M. Franklin
Executive Director

P. GREGORY CONLON
President

JESSIE J. KNIGHT, Jr.

HENRY M. DUQUE

RICHARD A. BILAS

Commissioners

I dissent.

/s/ JOSIAH L. NEEPER
Commissioner