

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

Order Instituting Rulemaking Into  
Implementation of Senate Bill 669, Regarding the  
Deaf and Disabled Telecommunications Program.

FILED  
PUBLIC UTILITIES COMMISSION  
MAY 4, 2000  
SAN FRANCISCO OFFICE  
RULEMAKING 00-05-001

**ORDER INSTITUTING RULEMAKING  
INTO IMPLEMENTATION OF SENATE BILL 669**

**Summary**

By this order, we institute a rulemaking into the implementation of the portion of California Senate Bill (SB) 669 dealing with telecommunications services for the deaf and disabled communities.<sup>1</sup> SB 669 creates the Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC or Administrative Committee), which the Commission created many years ago both to oversee administration of the program and to advise the Commission. The statute also requires telephone corporations that collect funds to pay for deaf and disabled telecommunications services to remit such funds to this Commission. The Commission in turn must transfer the revenues to the state Controller for deposit in the Deaf and Disabled Telecommunications Program Administrative Committee Fund (DDTPAC Fund).

The Deaf and Disabled Telecommunications Program (DDTP) has long and well served the deaf, hard-of-hearing, and disabled communities. We

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<sup>1</sup> Stats. 1999, Ch. 677.

wholeheartedly endorse the program and its services and have no intention of changing the program substantively. Rather, this rulemaking is aimed at:

1. ensuring that the DDTP has adequate administrative authority and resources to “to carry out the programs pursuant to the commission’s direction, control, and approval.”<sup>2</sup>
2. reviewing the DDTPAC’s structure to ensure that it achieves “appropriate representation by the consumers of telecommunications services for the deaf and disabled,” as SB 669 requires (P.U. Code Section 278 (a) 2), and
3. implementing the changes in financial administration that SB 669 requires.

### **Deaf and Disabled Telecommunications Program – History and Current Structure**

The DDTP has assisted the deaf, hard-of-hearing, and disabled communities to gain access to the public switched telephone network since 1979. The program began with mandated distribution of TeleTypewriters (TTYs) to deaf and hard-of-hearing Californians. In 1983, the program expanded to include statewide, 24-hour dual party relay services, and in 1984, the program began to provide telephone equipment other than TTYs to people with functional difficulty using the telephone. Currently, Public Utilities Code Sections 2881, 2881.1, and 2881.2 set forth program requirements, and a series of Commission decisions establish the administrative and financial structure of the program.

During the mid-1990s the Commission began opening telephone markets to competition. In order to ensure that the DDTP was competitively neutral, and for the sake of efficiency, the Commission began a process of centralizing many of the DDTP’s functions: customer database, customer call center, warehouse,

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<sup>2</sup> Pub. Util. Code § 278(a)(1).

equipment procurement, inventory and distribution, field advisory staff, and customer walk-in centers.

Currently, the DDTP consists of three components:

- (1) the distribution of telecommunications devices for the deaf (TDDs) at no cost to certified deaf and hearing-impaired telephone subscribers, to schools and organizations representing the deaf or hearing-impaired, and to state agencies with significant public contact;
- (2) the California Relay Service, which improves the communication potential for deaf and hearing-impaired by providing them direct access to California's public switched telephone network; and
- (3) the provision of other specialized telecommunications equipment to consumers with hearing, vision, mobility, speech and cognitive disabilities.

Two advisory committees and the DDTPAC participate in the DDTP. The California Relay Service Advisory Committee advises the DDTPAC on the operations of the California Relay Service. The Equipment Program Advisory Committee advises the DDTPAC on the needs for program equipment.<sup>3</sup> An amalgam of entities currently provides DDTP services. MCI WorldCom and Sprint Corporation each have contracts for the California Relay Service; approximately 34 non-profit staff employees in Oakland perform DDTP functions including financial, social service and administrative oversight; and the

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<sup>3</sup> The DDTPAC has 10 members: 4 representatives of telecommunications carriers, 1 Commission representative and 5 community based organization representatives. The California Relay Service Advisory Committee and the Equipment Program Advisory Committee each has 9 members: 3 carrier, 1 Commission, and 5 community based organization representatives.

incumbent local exchange carriers handle field advisor functions<sup>4</sup> and provide customer walk-in centers.

All California telephone subscribers fund the DDTP through a small surcharge appearing on individual telephone bills. Telephone companies collect the surcharge from their customers and remit the money to a public trust fund called the Deaf Equipment Acquisition Fund (DEAF) Trust.

### **SB 669**

SB 669 makes four significant changes to the Public Utilities Code that affect the DDTP. First, it codifies the DDTPAC as:

“an advisory board to advise the commission regarding the development, implementation, and administration of programs to provide specified telecommunications services and equipment to persons in this state who are deaf and disabled, as provided for in [Public Utilities Code] Sections 2881, 2881.1, and 2881.2.”<sup>5</sup>

Second, SB 669 codifies the legitimacy of any Commission decision to place operational responsibility for the program with the DDTPAC, requiring it:

“to carry out the programs pursuant to the commission’s direction, control, and approval.”<sup>6</sup>

In this, SB 669 creates no conflict with the long-standing practice of the Commission to place special responsibility and authority for the operations of this service program with an administrative committee under the Commission’s oversight. Indeed, it is possible to read SB 669 as a statutory endorsement of the Commission’s past practices.

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<sup>4</sup> Field advisors deliver, install, and maintain DDTP equipment provided to qualified customers.

<sup>5</sup> Pub. Util. Code § 278(a)(1).

<sup>6</sup> Pub. Util. Code § 278(a)(1).

Third, SB 669 requires the Commission to ensure that the DDTPAC achieves:

“appropriate representation by the consumers of telecommunications services for the deaf and disabled.”<sup>7</sup>

Thus, SB 669 creates no conflict with the Commission’s prior strategy of empowering the deaf and disabled community by ensuring its representation on an oversight board that has both advisory and operational responsibilities. Once again, we believe that it is possible to read SB 669 as an endorsement of the Commission’s current practices concerning the governance of this program.

Fourth, SB 669 changes the way the DDTP funds are held. Currently, the funds are held in trust under contract with the Bank of America. Under SB 669, telephone companies will remit surcharge revenues to the Commission, which will turn over the revenues to the State Controller. Thus, the funds will reside in the State Treasury rather than in a bank trust fund. Moneys in the DDTPAC Fund may only be expended upon appropriation in the annual state Budget Act.

### **Preliminary Scoping Memo**

The scope of this proceeding will be limited to an examination of current DDTP fiscal and administrative functions, and whether SB 669 requires changes in who handles these functions. Various California state employee unions have raised issues in other Commission proceedings about a state agency’s right to allow outside vendors to administer functions that can be handled by state employees. Moreover, SB 669’s requirement that “[m]oneys in the [DDTPAC Fund] may only be expended . . . upon appropriation in the annual Budget Act” raises questions that we would like participants to address:

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<sup>7</sup> Pub. Util. Code § 278(a)(2).

*1) Advisory Functions*

- a) Does SB 669 mandate changes in how the DDTPAC currently advises the Commission? If so, what changes?
- b) The Commission currently uses employees from the Telecommunications Division to interface with the DDTP staff. Would such functions be better performed by another Commission division, such as the Strategic Planning Division, which has more experience concerning matters of governance and management, than does the Telecommunications Division, which has more expertise in conducting regulatory reviews of utilities?
- c) Does the Commission's designation of one Commissioner as "liaison" offer an appropriate channel for communicating advice to a high level of the Commission? Would a team of two Commissioners better perform the function?

*2) Operational Functions*

- a) Should the Commission alter its interaction with the DDTPAC to ensure it has the authority and resources needed to "carry out the programs pursuant to the commission's direction, control, and approval?"<sup>8</sup> If so, how should it?
- b) The Commission has a poor record of adopting budgets for the DDTP in a timely fashion. Do such delays affect the ability of the DDTP to "carry out" the program? Does SB 669 place responsibilities on the Commission for timely adopting of DDTP budgets?
- c) How does SB 669 affect the current effort to centralize the delivery of equipment to the deaf and disabled in a single call center, warehouse and distribution system under the operational responsibility of the DDTPAC (described

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<sup>8</sup> Pub. Util. Code § 278(a)(1).

briefly in the Background and History section above) , if at all?

- d) Are there risks of DDTP service deterioration that may arise from alternative ways of implementing SB 669? If so, what are the risks? What are the best methods to avoid service deterioration?

*3) Participation by the Deaf and Disabled Communities*

- a) Does the Commission need to alter the composition of the DDTPAC to ensure “appropriate representation by the consumers of telecommunications services for the deaf and disabled?”<sup>9</sup>
- b) Should the DDTPAC continue to have utility representatives as members?
- c) Should the DDTPAC continue to have Commission employees as members?

*4) Fiscal Administration Functions*

- a) How should the Commission change its interaction with DDTPAC to ensure compliance with SB 669’s change in how DDTP funds are held and SB 669’s charge to the DDTPAC “to carry out the programs pursuant to the commission’s direction, control, and approval.”<sup>10</sup>
- b) When the Commission’s employees handle DDTP program funds, what changes are necessary in Commission administrative proceedings to ensure timely payment of vendors and to avoid the disruption of services to this community?

**Category of Proceeding**

Rule 6(c)(2) of our Rules of Practice and Procedure provides that the order instituting rulemaking “shall preliminarily determine the category” of the

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<sup>9</sup> Pub. Util. Code § 278(a)(2).

<sup>10</sup> Pub. Util. Code § 278(a)(1).

proceeding. This rulemaking is preliminarily determined to be quasi-legislative, as that term is defined in Rule 5(d).

### **Parties**

We plan to serve this Order Instituting Rulemaking (OIR) on several parties. Those we identify here as “respondents” shall file comments addressing the questions we raise above. Those we identify as “interested parties” may file such comments.

Respondents will be all telephone corporations subject to the Commission’s jurisdiction that perform DDTP functions. Interested parties will include DDTP consumers, current DDTP providers that are not telecommunications corporations, advocacy groups for the deaf and disabled, current DDTP advisory committees, California Department of Social Services (Disability and Adult Programs Division), California Department of Education (Specialized Programs Branch - State Special Schools and Services Division), the California Department of Rehabilitation, the California Attorney General, the California Department of Finance, and the California State Employees’ Association (CSEA) .

### **Hearings and Workshop**

We will hold hearings, including public participation hearings (PPHs), and convene a workshop to receive input on the issues we raise above. We fully recognize the importance of the program to the deaf and disabled communities, and have no intention of changing the services offered, the consumers served or any other *substantive* aspect of the program. Rather, we are concerned with implementing any changes to the program necessitated by SB 669. We view these changes as *procedural*. Therefore, the hearings and workshop will not be a



time to hear extensive comment on the benefits of the DDTP, as we are well aware of these benefits and intend for them to continue.

Rather, we desire information at the hearings and workshop as to the specific tasks that each DDTP function involves, and where and how those tasks might best be performed in the future. We will hold the workshop after the hearings so that the workshop is a means of focusing on the specific changes necessitated by SB 669. We direct our Strategic Planning Division to convene the workshop no later than September 30, 2000.

We anticipate that in addition to the PPHs, there will be a formal hearing involving legislative<sup>11</sup> and adjudicative facts.<sup>12</sup> We expect to hold the legislative and evidentiary hearings in August 2000.

We will require respondent telecommunications corporations to attend and participate in the hearings and workshop and to respond to the Strategic Planning Division's data requests. We invite other interested parties and members of the public to attend. The hearings and workshop will be accessible to the disabled. Sign language interpretation and closed captioning will be provided. Parties requiring other reasonable accommodation at the hearings or workshop should notify the Commission's Public Advisor at (415) 703-2074 or (415) 703-2032 (TDD) no later than 10 days prior to the hearings or workshop.

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<sup>11</sup> Rule 8(f)(3) defines "legislative facts" as general facts that help decide questions of law, policy, and discretion.

<sup>12</sup> Rule 8(f)(1) defines "adjudicative facts" as facts which answer questions such as who did what, where, when, how, why, or with what motive or intent.

**Written Comments**

We invite all parties to submit written comments on the questions we list above. However, parties need not file written comments in order to participate in the hearings or workshop.

**Schedule**

In accordance with Rule 6.3 and 6(c)(2), we adopt the following preliminary schedule. The preliminary schedule will be discussed at the first prehearing conference (PHC) set for June 23, 2000, at 10:00 a.m. in the Commission Courtroom, 505 Van Ness Avenue, San Francisco. The schedule may change thereafter.

OIR issued	April 20, 2000
Opening Comments Due	May 22, 2000
Reply Comments Due	June 12, 2000
First PHC	June 23, 2000
Second PHC	August 2000
Hearings	August 2000
PPH	September 2000
Workshop	September 2000
Final Decision	December 2000

The Assigned Commissioner will establish the date for the second PHC, but we anticipate it will be scheduled in August 2000. If the Assigned Commissioner determines at the second PHC that additional rounds of comments are appropriate, dates will be established. A scoping memo with more specific dates will be issued after the first PHC.

Consistent with Rule 6(e), we expect this proceeding to be concluded within 18 months.

**Objections to Category, Need for Hearing, Schedule**

Any person who objects to the preliminary categorization of this rulemaking, the need for hearing, or to the preliminary schedule, shall raise such objections by filing an objection 10 days before the first PHC is held in this proceeding.

**Service List**

Within 15 days from the date of mailing of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking should send a letter to the Commission's Process Office and to the Public Advisor's Office, 505 Van Ness Avenue, San Francisco, California 94102, asking that his or her name be placed on the service list. The Process Office thereafter will create a service list and distribute it to all parties in this proceeding. This initial service list shall also be posted on the Commission's web site, [www.cpuc.ca.gov](http://www.cpuc.ca.gov), as soon as is practicable. Persons who wish to become a "party" to this proceeding may also appear at the first PHC and fill out the "Notice of Party/Non-Party Status" form (appearance form) at that time.

**Public Advisor**

Any party interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission Public Advisor's Office in Los Angeles at (213) 576-7056, or in San Francisco at (415) 703-2074 or (415) 703-2032 (TDD), or at (800) 299-6846 (TTY).

**Assigned Commissioner, Administrative Law Judge**

Henry M. Duque, the current Commissioner-liaison to the Deaf and Disabled Telecommunications Program, shall be the assigned Commissioner, and Sarah Thomas shall be the assigned Administrative Law Judge.

**Ex Parte Communications**

This proceeding is subject to Rule 7, which specifies standards for engaging in *ex parte* communications and the reporting of such communications. Pursuant to Rules 7(a)(4) and 7(d), *ex parte* communications will be allowed in this proceeding without any restrictions or reporting requirements until the assigned Commissioner makes an appealable determination of category as provided for in Rules 6(c)(2) and 6.4. Following the Commissioner's determination, the applicable *ex parte* communication and reporting requirements shall depend on such determination unless and until the determination is modified by the Commission pursuant to Rule 6.4 or 6.5.

**Therefore, IT IS ORDERED** that:

1. A rulemaking is instituted on the Commission's own motion to implement SB 669's provisions pertaining to the Deaf and Disabled Telecommunications Program.
2. All telephone corporations subject to the Commission's jurisdiction are made respondents to this proceeding.
3. The Executive Director shall cause this Order Instituting Rulemaking (OIR) to be served on respondents and on the DDTP office in Oakland, the DDTPAC, the California Relay Service Advisory Committee, the Equipment Program Advisory Committee, the California Department of Social Services (Disability and Adult Programs Division), the California Department of Education (Specialized Programs Branch-State Special Schools and Services Division), the California Department of Rehabilitation, the California Attorney General, the California Department of Finance, the California State Employees' Association, the World Institute on Disability, Self-Help for the Hard of Hearing, National Association of the Deaf, California Center for Law and the Deaf, the California

Latino Council of the Deaf and Hard of Hearing, the American Society for Deaf Children, United Cerebral Palsy, and the Rose Resnick Lighthouse for the Blind.

4. Within 15 days from the date of mailing of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking should send a letter to the Commission's Process Office and to the Public Advisor's Office, 505 Van Ness Avenue, San Francisco, California 94102, asking that his or her name be placed on the service list.

5. An initial service list for this proceeding shall be created by the Process Office and posted on the Commission's website ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)) as soon as it is practicable after the first prehearing conference (PHC). Parties may also obtain the service list by telephoning the Commission's Process Office at (415) 703-2021, or writing that office at Process Office, 505 Van Ness Avenue, Second Floor, San Francisco, California 94102.

6. The category of this rulemaking is preliminarily determined to be "quasi-legislative" as that term is defined in Rule 5(d) of the Commission's Rules of Practice and Procedure. The Commission will hold hearings involving legislative and adjudicative facts, and public participation hearings.

7. The Commission's Strategic Planning Division shall convene a workshop by the end of September 2000 for focused discussion of how to effect any changes to the Deaf and Disabled Telecommunications Program mandated by SB 669.

8. Parties interested in submitting comments or prepared testimony on the issues identified in this OIR shall submit and serve their comments, testimony, and other material in accordance with the schedule we set forth above and that developed at the first PHC, unless an Assigned Commissioner's ruling changes the schedule.

9. Any person who objects to the preliminary categorization of this rulemaking, the need for hearings or a workshop, or to the preliminary schedule,

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shall raise such objections by filing an objection 10 days before the first PHC is held in this proceeding.

10. The first PHC shall be held on June 23, 2000, at 10:00 a.m. in the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco.

This order is effective today.

Dated May 4, 2000, at San Francisco, California.

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

I abstained.

/s/ LORETTA M. LYNCH  
Commissioner

I abstained.

/s/ CARL W. WOOD  
Commissioner