

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: February 12, 2013

To: The Commission
(Meeting of February 13, 2013)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) – Sacramento

Subject: **SB 129 (Wright) – Deaf and disabled telecommunications program.**
As introduced: January 23, 2013

RECOMMENDED POSITION: SUPPORT AS SPONSOR

SUMMARY OF BILL:

This bill would extend the sunset provision for collection of the Deaf and Disabled Telecommunications Program (DDTP) surcharge, and the CPUC's ability to adjust the surcharge, from January 1, 2014 to January 1, 2024.

Also, this bill would extend until January 1, 2025 the requirement that the CPUC prepare and submit to the Legislature, on or before December 31 of each year, a report on the fiscal status of the programs.

CURRENT LAW:

- Pub. Util. Code § 2881(g) authorizes the CPUC to establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent uniformly applied to a subscriber's intrastate telephone services. The current surcharge remains in effect until January 1, 2014.
- Pub. Util. Code § 2881(k) permits the CPUC, until January 1, 2014, to make the programs supported thereby are adequately funded, and that the fund balances are not excessive.
- Pub. Util. Code § 2881(p) requires the CPUC, until January 1, 2016, to submit to the Legislature, on or before December 31 of each year, a report on the fiscal status of the programs.

DIVISION ANALYSIS (Communications Division):

The DDTP provides Californians who are deaf and disabled with specialized telecommunications equipment, and with relay services through the California Telephone Access Program (CTAP) and the California Relay Service (CRS), respectively. The CPUC designed and implemented DDTP/CTAP to provide free telecommunications devices capable of serving the needs of individuals who are deaf or hard-of-hearing (a Program Device), together with a single party line, at no charge additional to the basic exchange rate. Any subscriber certified as deaf or hard-of-hearing by a licensed physician, surgeon, audiologist, or a qualified state or federal agency—as determined by the CPUC—and any subscriber organization representing individuals who are deaf or hearing impaired may receive a Program Device.

The DDTP program also provides free specialized or supplemental telephone communications equipment to subscribers who are certified to be disabled at no charge additional to the basic exchange rate. The certification, including a statement of visual or medical need for specialized telecommunications equipment, is provided by a licensed optometrist or physician or surgeon or by a qualified state or federal agency as determined by the CPUC.

As required by Pub. Util. Code § 2881, the funds for the DDTP are collected via a surcharge applied to a subscriber's intrastate telecommunications service. The current surcharge rate, effective December 1, 2010, is 0.20%.

DDTP is administered and operated by the CPUC with advisory input from two advisory boards (TADDAC and EPAC). Program services and equipment are provided by vendors under contract to the CPUC. The DDTP Administrative Contractor charged with the overall day to day operation of the DDTP is the California Communications Access Foundation (CCAF).

DDTP includes wireless equipment. In 2010, the CPUC adopted Decision 10-11-033 directing that wireless equipment become a part of Deaf and Disabled Telecommunications Program's California Telephone Access Program (CTAP).

Enactment of AB 136 in 2011 requires the CPUC to add speech generating devices (SGDs) to the Deaf and Disabled Telecommunications Program (DDTP). This part of the program is currently being established.

SAFETY IMPACT:

Extension of DDTP sunset provision ensures that persons who are hard of hearing and/or disabled have access to universal telephone service which is vital to health and safety of these individuals.

RELIABILITY IMPACT:

No impact.

RATEPAYER IMPACT:

DDTP program revenues are collected through the DDTP surcharge rate that appears on customer billings as CA Relay Service and Communications Devices Fund. The surcharge is set as a percentage of the customer's intrastate billings. The CPUC periodically adjusts the surcharge after a review of the fund balance. The current DDTP surcharge rate, effective December 1, 2010, is 0.20%. If this bill is enacted, California telephone subscribers will continue to pay a monthly surcharge for these programs until January 1, 2022.

FISCAL IMPACT:

The DDTP program would continue to be funded until January 1, 2024.

ECONOMIC IMPACT:

Ensures that deaf, hard-of-hearing, and /or disabled persons can participate in the broader community and economic activities through access to telephone services.

LEGAL IMPACT:

The DDTP provides telecommunications relay service (TRS) for California deaf, hard-of-hearing, and/disabled consumers pursuant to both a state mandate, as set forth in Pub. Util. Code § 2881(b), but also pursuant to a federal mandate. Indeed, the FCC periodically re-certifies the CPUC's TRS program, most recently in 2012, and the CPUC must submit to the FCC annually logs of consumer complaints about the California TRS program. If the enabling legislation for the DDTP surcharge were allowed to sunset, the CPUC would lose the funding source for the TRS program, and would immediately fall out of compliance with the federal mandate. (This is not true for the DDTP equipment program component, which is not federally-mandated.)

LEGISLATIVE HISTORY:

The Deaf and Disabled Telecommunications Program consists of several components, each of which is set forth in statute. The statutory history of the program follows:

- In 1979, SB 597 was enacted requiring the CPUC to design and implement a program to provide telecommunication devices to deaf and hard-of-hearing consumers.
- In 1983, SB 244 mandated creation of a dual party relay system, now called the California Relay Service (CRS), to connect users of specialized telecommunications devices with any other telephone user.

- In 1985, SB 60 broadened the provision of specialized telecommunications equipment to individuals certified with hearing, vision, speech, cognitive, and mobility disabilities to the program.
- In 1999, SB 669 created a special fund in the State Treasury dedicated to the DDTP.
- In 2003, SB 168 provided authority for the CPUC to transfer advisory oversight of the program for placing specialized telecommunications devices with public payphones to the DDTP and its advisory committees.
- In 2011, AB 136 mandated creation of a program for the DDTP, as a last funding resort, to provide speech generating devices (SGDs) to eligible users.

PROGRAM BACKGROUND:

In 1979, legislation was enacted codifying the CPUC's existing program for providing specialized equipment to the deaf and hard of hearing. Specifically, the statute mandated that the CPUC design and implement a program to provide telecommunication devices to deaf and hard-of hearing consumers. This program, now called the Deaf and Disabled Telecommunications Program (DDTP), fulfills four mandated functions:

- Provides telecommunication devices to certified deaf and hard-of- hearing users.
- Provides a dual party relay system, now called the California Relay Service (CRS), to connect TTY users with any other telephone user.
- Provides specialized telecommunications equipment to individuals certified with hearing, vision, speech, cognitive, and mobility disabilities.
- Provides, as a last funding resort, speech generating devices (SGDs) to persons with profound speech disabilities.

The CPUC established a formal structure for the DDTP in 1989 to oversee the operations of the mandated programs, encompassing both the California Telephone Access Program (CTAP)—which distributes equipment, and CRS—which provides operators to relay telephone conversations to those who are deaf or hard-of-hearing, or speech-disabled.

OTHER STATES' INFORMATION:

None.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

- 1) This proposed legislation would extend the sunset provision for the DDTP from January 1, 2014 to January 1, 2024 and thus ensure availability of federally mandated Americans with Disabilities Act (ADA) required relay services and state CPUC required assistive telecommunication equipment for deaf and disabled persons.
- 2) Extension of the sunsets will ensure that people who are challenged using a standard telephone because of difficulty seeing, hearing, speaking, moving or remembering continue to receive health and safety impacting services connecting them by telephone to emergency, medical, business and other entities.
- 3) If the surcharge is allowed to expire then there will be no funds to continue to provide state mandated Deaf and Disabled Telecommunications Program services, thus impacting the health and safety of Deaf Disabled persons needing to communicate by telephone. Also, the state would be out of compliance with the federal ADA mandate.
- 4) Failure to extend the CPUC's ability to adjust the surcharge as needed could result in overfunding or underfunding the program.

SUMMARY OF SUGGESTED AMENDMENTS:

This bill should be amended in the following three ways.

Remove the outdated October 2002 reference to the completed and delivered report by striking Pub. Util. Code § 278.5.

Remove a duplicative section of the code by striking Pub. Util. Code § 2881(i). Pub. Util. Code § 2881(i) duplicates and conflicts with Pub. Util. Code § 2881(d). Section (d) was added in 2011 and the existing Section (i) was erroneously left in the statute. Stats. 2011, ch. 404 § 2 (AB 136) (adding Pub. Util. Code § 2881(d)).

Change the due date for the CPUC annual report to the Legislature on the fiscal status of the DDTP programs. The current report is due on or before December 31st. The CPUC can include end-of-the-year information with a report deadline consistent with the fiscal year instead of the calendar year. The proposed filing date is October 31.

STATUS:

SB 129 was referred to the Senate Energy, Utilities, and Communications Committee.

SUPPORT/OPPOSITION:

Support as sponsor.

STAFF CONTACTS:

Lynn Sadler, Director	(916) 327-3277	Lynn.Sadler@cpuc.ca.gov
Nick Zanjani, Legislative Liaison	(916) 327-3277	nkz@cpuc.ca.gov
Michael Minkus, Legislative Liaison	(916) 327-3277	Michael.Minkus@cpuc.ca.gov

BILL NUMBER: SB 129

INTRODUCED BY Senator Wright

JANUARY 23, 2013

An act to amend Section 2881 of the Public Utilities Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 129, as introduced, Wright. Deaf and disabled telecommunications program.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to oversee administration of the state's telecommunications universal service programs, including the deaf and disabled programs, which are funded through the Deaf and Disabled Telecommunications Program Administrative Committee Fund. Existing law, until January 1, 2014, requires the commission to establish a surcharge, not to exceed 0.5 %, that is uniformly applied to a subscriber's intrastate telephone service charges to allow providers of the equipment and service provided pursuant to the deaf and disabled programs to recover their costs. Existing law, until January 1, 2016, requires the commission to report specified information relative to the fiscal status of the programs to the Legislature on or before December 31 of each year.

This bill would extend imposition of the surcharge until January 1, 2024. The bill would extend the reporting requirements until January 1, 2025.

Under the Public Utilities Act a violation of any order, decision, rule, direction, demand, or requirement of the commission by a public utility is a crime.

Because the bill would require an order or decision of the commission to extend the surcharge funding the deaf and disabled programs and because a violation of these requirements would be a crime, the bill would impose a state-mandated local program by expanding the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2881 of the Public Utilities Code is amended to

read:

2881. (a) The commission shall design and implement a program to provide a telecommunications device capable of serving the needs of individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to a subscriber who is certified as an individual who is deaf or hearing impaired by a licensed physician and surgeon, audiologist, or a qualified state or federal agency, as determined by the commission, and to a subscriber that is an organization representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (h). A licensed hearing aid dispenser may certify the need of an individual to participate in the program if that individual has been previously fitted with an amplified device by the dispenser and the dispenser has the individual's hearing records on file prior to certification. In addition, a physician assistant may certify the needs of an individual who has been diagnosed by a physician and surgeon as being deaf or hearing impaired to participate in the program after reviewing the medical records or copies of the medical records containing that diagnosis.

(b) The commission shall also design and implement a program to provide a dual-party relay system, using third-party intervention to connect individuals who are deaf or hearing impaired and offices of organizations representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (h), with persons of normal hearing by way of intercommunications devices for individuals who are deaf or hearing impaired and the telephone system, making available reasonable access of all phases of public telephone service to telephone subscribers who are deaf or hearing impaired. In order to make a dual-party relay system that will meet the requirements of individuals who are deaf or hearing impaired available at a reasonable cost, the commission shall initiate an investigation, conduct public hearings to determine the most cost-effective method of providing dual-party relay service to the deaf or hearing impaired when using a telecommunications device, and solicit the advice, counsel, and physical assistance of statewide nonprofit consumer organizations of the deaf, during the development and implementation of the system. The commission shall apply for certification of this program under rules adopted by the Federal Communications Commission pursuant to Section 401 of the federal Americans with Disabilities Act of 1990 (Public Law 101-336).

(c) The commission shall also design and implement a program whereby specialized or supplemental telephone communications equipment may be provided to subscribers who are certified to be disabled at no charge additional to the basic exchange rate. The certification, including a statement of visual or medical need for specialized telecommunications equipment, shall be provided by a licensed optometrist, physician and surgeon, or physician assistant, acting within the scope of practice of his or her license, or by a qualified state or federal agency as determined by the commission. The commission shall, in this connection, study the feasibility of, and implement, if determined to be feasible, personal income criteria, in addition to the certification of disability, for determining a subscriber's eligibility under this subdivision.

(d) (1) The commission shall also design and implement a program to provide access to a speech-generating device to any subscriber who

is certified as having a speech disability at no charge additional to the basic exchange rate. The certification shall be provided by a licensed physician, licensed speech-language pathologist, or qualified state or federal agency. The commission shall provide to a certified subscriber access to a speech-generating device that is all of the following:

(A) A telecommunications device or a device that includes a telecommunications component.

(B) Appropriate to meet the subscriber's needs for access to, and use of, the telephone network, based on the recommendation of a licensed speech-language pathologist.

(C) Consistent with the quality of speech-generating devices available for purchase in the state.

(2) The commission shall adopt rules to implement this subdivision and subdivision (e) by January 1, 2014.

(e) All of the following apply to any device or equipment described in this section that is classified as durable medical equipment under guidelines established by the United States Department of Health and Human Services:

(1) It is the intent of the Legislature that the commission be the provider of last resort and that eligible subscribers first obtain coverage from any available public or private insurance.

(2) The commission may require the subscriber to provide information about coverage for any or all of the cost of the device or equipment that is available from any public or private insurance, the cost to the subscriber of any deductible, copayment, or other relevant expense, and any related benefit cap information.

(3) The total cost of any device or equipment provided to a subscriber under this section shall not exceed the rate of reimbursement provided by Medi-Cal for that device or equipment.

(f) Nothing in this section requires the commission to provide training to a subscriber on the use of a speech-generating device.

(g) The commission shall establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent uniformly applied to a subscriber's intrastate telephone service, other than one-way radio paging service and universal telephone service, both within a service area and between service areas, to allow providers of the equipment and service specified in subdivisions (a), (b), (c), and (i), to recover costs as they are incurred under this section. The surcharge shall be in effect until January 1, ~~2014~~

2024 . The commission shall require that the programs implemented under this section be identified on subscribers' bills, and shall establish a fund and require separate accounting for each of the programs implemented under this section.

(h) The commission shall determine and specify those statewide organizations representing the deaf or hearing impaired that shall receive a telecommunications device pursuant to subdivision (a) or a dual-party relay system pursuant to subdivision (b), or both, and in which offices the equipment shall be installed in the case of an organization having more than one office.

(i) (1) The commission shall expand the program created by this section to include assistance to individuals with speech disabilities that impair the individual's access to, and use of, the telephone network. The commission shall ensure that speech-generating devices, accessories, and mounting systems, and specialized telecommunications equipment, including infrared telephones, speaker phones, and telephone interface devices, are funded through the program.

(2) The commission shall ensure that only individuals who are both residents of the state and speech impaired as certified by a licensed physician, licensed speech-language pathologist, or qualified state or federal agency are eligible.

(3) The commission shall provide to each eligible applicant the appropriate equipment consistent with the recommendation of a licensed speech-language pathologist.

(4) The commission shall ensure that the equipment provided pursuant to this subdivision is consistent with the economy, efficiency, and quality of equipment that is available for purchase in the state.

(j) The commission may direct a telephone corporation subject to its jurisdiction to comply with its determinations and specifications pursuant to this section.

(k) The commission shall annually review the surcharge level and the balances in the funds established pursuant to subdivision (g). Until January 1, ~~2014~~ 2024 , the commission may make, within the limits set by subdivision (g), any necessary adjustments to the surcharge to ensure that the programs supported thereby are adequately funded and that the fund balances are not excessive. A fund balance that is projected to exceed six months' worth of projected expenses at the end of the fiscal year is excessive.

(l) The commission shall prepare and submit to the Legislature, on or before December 31 of each year, a report on the fiscal status of the programs established and funded pursuant to this section and Sections 2881.1 and 2881.2. The report shall include a statement of the surcharge level established pursuant to subdivision (g) and revenues produced by the surcharge, an accounting of program expenses, and an evaluation of options for controlling those expenses and increasing program efficiency, including, but not limited to, all of the following proposals:

(1) The establishment of a means test for persons to qualify for program equipment or free or reduced charges for the use of telecommunication services.

(2) If and to the extent not prohibited under Section 401 of the federal Americans with Disabilities Act of 1990 (Public Law 101-336), the imposition of limits or other restrictions on maximum usage levels for the relay service, which shall include the development of a program to provide basic communications requirements to all relay users at discounted rates, including discounted toll-call rates, and, for usage in excess of those basic requirements, at rates that recover the full costs of service.

(3) More efficient means for obtaining and distributing equipment to qualified subscribers.

(4) The establishment of quality standards for increasing the efficiency of the relay system.

(m) The report described in subdivision (l) that is due no later than December 31, 2013, shall evaluate options for controlling the program costs of providing speech-generating devices and include information on any barriers to participation in the program by eligible subscribers.

(n) In order to continue to meet the access needs of individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, the commission shall perform ongoing assessment of, and if appropriate, expand the scope of the program to allow for additional access

capability consistent with evolving telecommunications technology.

(o) The commission shall structure the programs required by this section so that a charge imposed to promote the goals of universal service reasonably equals the value of the benefits of universal service to contributing entities and their subscribers.

(p) (1) The requirement for submitting a report imposed under subdivision (1) is inoperative on January 1, ~~2016~~

2025 , pursuant to Section 10231.5 of the Government Code.

(2) A report submitted pursuant to subdivision (1) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid administrative and reporting disruptions with respect to the state's deaf and disabled telecommunications universal service programs, to maintain compliance with federal telecommunications universal service program requirements, and to encourage continued investments in the development and manufacture of technology and software that advances the communications capabilities of the deaf and disabled, it is necessary for this act to take effect immediately.