



PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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June 19, 2015

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Quasi-Legislative

TO PARTIES OF RECORD IN RULEMAKING 13-03-008:

This is the proposed decision of Commissioner Catherine J.K. Sandoval. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's July 23, 2015 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ KAREN V. CLOPTON

Karen V. Clopton
Chief Administrative Law Judge

KVC:vm2

Attachment

Decision **PROPOSED DECISION OF COMMR. SANDOVAL**
(Mailed 6/19/15)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Add
Speech Generating Devices to the Deaf
and Disabled Telecommunications
Program.

Rulemaking 13-03-008
(Filed March 21, 2013)

**DECISION RESOLVING PHASE 2 ISSUES AND
CLOSING THE PROCEEDING****Summary**

By this decision, the California Public Utilities Commission discusses resolution of how Phase 2 issues have been resolved, and closes Rulemaking 13-03-008.

1. Background

Rulemaking (R.) 13-03-008 was issued on March 26, 2013, in order to address the implementation of Assembly Bill (AB) 136 (Ch.404, Stats. 2011), which required that the California Public Utilities Commission (Commission) adopt rules to implement the Speech Generating Devices (SGD) program by January 1, 2014. Prior to the issuance of R.13-03-008, the Commission held two forums in Northern and Southern California to receive comments from interested participants regarding SGD distribution. These forums included panelists representing SGD users, Speech Language Pathologists (SLP) and the SGD manufacturer/providers.

Parties to this Order Instituting Rulemaking (OIR) include: Lewis Golinker for the Assistive Technology Law Center (ATLC), Hien Vo Winter for the Division of Ratepayer Advocates (DRA), Jesus G. Roman for Verizon California Inc. (Verizon), Jennifer Coggiola an SLP with the University of California at San Francisco (Coggiola) Amyotrophic Lateral Sclerosis (ALS) Center, Melissa Kasnitz for the Center for Accessible Technology (CforAT), and Dr. Bob Segalman, Ph.D., D.Sc. for Speech Communications by Telephone, Inc. (SCT).

In response to the questions posed in R.13-03-008, opening comments were filed on April 25, 2013 by DRA and CforAT. Reply Comments were filed on May 10, 2013, by CforAT.

Pursuant to R.13-03-008, the assigned Administrative Law Judge (ALJ) issued a ruling on April 24, 2013 to initiate a volunteer working group that would provide recommendations to the Commission for developing SGD distribution program rules. The working group included SGD users, SLPs and others who perform SGD assessments, and SGD manufacturers and distributors, government entities, and other organizations including non-profit organizations. On June 4, 2013 and July 2, 2013, working group Status Reports #1 and #2 respectively were provided to the assigned ALJ. After meetings were held during May and June, a final Working Group Report was issued on July 31, 2014. The assigned ALJ accepted the final Working Group Report (Final Report) and its Attachments 1 and 2 through an electronic mail (e-mail) ruling on August 23, 2013. On August 8, 2013, CforAT filed comments to the final Working Group Report.

On June 14, 2013, the assigned ALJ issued an electronic ruling requesting comments on a draft set of rules for governance of the SGD Distribution

Program. Opening comments were filed by DRA, Coggiola, CforAT, and ATLC on July 8, 2013; and Reply comments were filed by DRA, CforAT, and ATLC on July 19, 2013.

On December 23, 2013, in Decision (D.) 13-12-054, the Commission authorized the modification of the Deaf and Disabled Telecommunications Program (DDTP) in order to implement the provisions of AB 136. In particular, the Commission authorized: 1) the addition of rules, guidelines and procedures to govern the access to and distribution of Speech Generating Devices to any subscriber who is certified as having a speech disability requiring this device; and 2) the addition of rules to govern the access to and distribution of other assistive devices not addressed in AB 136.

The Commission also determined that a second phase of this proceeding would address: 1) whether further guidance is required in the administration of the distribution programs adopted herein; 2) whether exemptions or expedited procedures should be added to the rules adopted herein when there is a specific need; and 3) assessment of the sufficiency of funding.

On January 13, 2014, the assigned ALJ issued a ruling requesting responses to selected questions (based on the Phase 2 issues set out in D.13-12-054). On February 6, 2014, ATLC filed its response; on February 11, 2014, Office of Ratepayer Advocates (ORA), CforAT, and Coggiola filed their responses. On February 26, 2015, CforAT, ORA, Coggiola, and ATLC filed their replies. On June 27, 2014, the assigned ALJ issued a ruling requesting information regarding the effect of changes to Medicare rules on provision of SGDs. CforAT and ATLC responded on July 10, 2014; and ATLC replied on July 16, 2014. On August 4, 2014, the assigned ALJ issued a ruling providing notice of the issuance of the Commission's Communications Division Staff Report titled Deaf and

Disabled Telecommunications Program Speech Generating Devices Distribution
First Six Months – January 01, 2014 through June 30, 2014.

**2. Discussion of and Compliance with
Ordering Paragraphs of D.13-12-054**

By Ordering Paragraphs (OP) 3, 4, 6, 7, 8, 9, and 10 of D.13-12-054, the Commission outlined several items for further review by the assigned ALJ and the Commission's Communications Division:

3. The Commission shall explore options regarding development of an exemption or an expedited application process for instances where this is needed or desirable, in the second phase of this proceeding.
4. The Commission requires that the Communications Division, working with others as required, develop rules governing the administration of the Speech Generating Device and Supplemental Telecommunications Equipment distribution programs.
6. More detailed instructions regarding administration of the Speech Generating Device and Supplemental Telecommunications Equipment distribution programs shall be addressed in a second phase of this proceeding.
7. The second phase of this proceeding shall consider whether the Commission Program should request guidance from speech language pathologists and other experts regarding equipment and applications provided by the Speech Generating Device distribution program.
8. The Commission requires the assigned Administrative Law Judge to request input regarding issues to be addressed in the second phase of this proceeding from parties to this proceeding within 30 days of the issuance of this decision.
9. Within 30 days of the date of this decision, the assigned Administrative Law Judge shall request further guidance from parties regarding the following finance issues that may become a concern before the program has been in place for six months: 1) develop guidelines for the

Commission's Communications Division (CD) staff to follow where funding from other sources has been denied and the Commission may be responsible for full funding of Speech Generating Devices.

10. No later than July 31, 2014, the Commission's Communications Division staff shall serve a brief report in this proceeding regarding: 1) how much money was spent during the first six months of the Speech Generating Device (SGD) distribution program and the Supplemental Telecommunications Equipment program; 2) whether an adjustment to the current Deaf and Disabled Telecommunications Program surcharge is necessary; 3) should there be a cap on the amount spent on durable medical equipment SGDs and Supplemental Telecommunications Equipment (by each piece of equipment and by user); and 4) if a cap should be in place, what should that amount be. The assigned ALJ shall then request that parties comment on such information as part of the second phase of this proceeding.

For over one year, CD staff have administered the SGD program pursuant to D.13-12-054, and reviewed responses to the assigned ALJ's questions. As specific concerns have arisen, CD staff has been able to resolve those concerns on their own and in consultation with SGD customers and distributors, without the need for a ruling or decision in a formal proceeding. Based on this experience and knowledge, as well as experience gained from years of administering the DDTP program, CD staff has developed an informal set of guidelines/policies governing the administration of the SGD program in a timely and efficient manner.

On January 13, 2014, the assigned ALJ issued an e-mail ruling, in which she posed questions based on the OPs referenced above.¹ ORA, CforAT, and Coggiola filed and served their responses on February 11, 2014. ORA, CforAT, Coggiola, and ATLC filed and served their comments to those responses on

¹ 1. Should the Commission develop an expedited process within the statutory requirements of Pub. Util. Code § 2881, to help reduce the time it would take to obtain a Durable Medical Equipment - Speech Generating Device (SGD) for consumers that are terminally ill or where it is desirable?

a. Provide detailed reasons for your response.

b. If so:

i. What should the criteria be for allowing a speech disabled person to utilize the expedited process?

ii. Should the Commission explore SGD rentals and leases as part of this and other options?

2. Provide a proposed list of guidelines/instructions that you believe should be provided to Commission's Communications Division in their administration of the SGD distribution program.

a. Provide detailed reasons for your response.

3. Provide a proposed list of guidelines/instructions that the Commission should request from speech language pathologists and other experts regarding equipment and applications provided by the SGD and Supplemental Telecommunications Equipment distribution programs?

a. Provide detailed reasons for your response.

b. How should the guidelines and instructions be documented and how often should they be revisited?

4. Provide a proposed list of guidelines/instructions for the Commission's Communications Division to follow, where funding from other sources has been denied and the Commission may be responsible for full funding of Speech Generating Devices.

a. Provide detailed reasons for your response.

b. How should the guidelines and instructions be documented and how often should they be revisited?

OP 10 - The Commission's CD staff served its report on a timely basis. On August 4, 2014, the assigned ALJ issued a ruling providing notice of CD's report.

February 26, 2014. On June 27, 2014, the assigned ALJ issued an e-mail ruling requesting information from the parties regarding the effect of changes to Medicare rules regarding provision of SGD. On July 10, 2014, CforAT and ATLC each filed responses. ATLC then filed a reply on July 16, 2014. Based on the information received from parties regarding the issues outlined in the OPs of D.13-12-054, CD staff's experience, knowledge, and expertise, and CD's staff report on the evolution of the SGD program during its first six months in operation and how issues were addressed, we believe that CD staff has the expertise and knowledge to continue to informally develop administrative guidelines and resolve concerns regarding the SGD program, within the confines of the rules adopted in D.13-12-054.

Because CD has and will continue to address issues that arise out of the SGD program, including but not limited to those Phase 2 issues raised in D.13-12-054, the Commission should close R.13-03-008. If at some point in the future, CD or the parties believe a formal proceeding is necessary to resolve SGD program related issues, they may file a Petition for Rulemaking (request for a new rulemaking to be open), or a Petition for Modification of D.13-12-054 or this decision.

3. Comments on Proposed Decision

The proposed decision of Commissioner Sandoval in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

4. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. R. 13-03-008 was issued on March 26, 2013, in order to address the implementation of AB 136.
2. On December 23, 2013, in D. 13-12-054, the Commission authorized the modification of the DDTP in order to implement the provisions of AB 136, and determined that a second phase of this proceeding would address:
 - 1) whether further guidance is required in the administration of the distribution programs adopted herein;
 - 2) whether exemptions or expedited procedures should be added to the rules adopted herein when there is a specific need;
 - and 3) assessment of the sufficiency of funding.
3. For over one year, CD staff have administered the SGD program pursuant to D.13-12-054, and reviewed responses to the assigned ALJ's questions on Phase 2 issues. As specific concerns have arisen, CD staff has been able to resolve those concerns on their own and in consultation with SGD customers and distributors, without the need for a ruling or decision in a formal proceeding. Based on this experience and knowledge, as well as experience gained from years of administering the DDTP program, CD staff has developed an informal set of guidelines/policies governing the administration of the SGD program in a timely and efficient manner.
4. CD has addressed issues that arise out of the SGD program, including but not limited to those Phase 2 issues raised in D.13-12-054.

Conclusions of Law

1. In D.13-12-054, the Commission outlined several items for further review in this rulemaking.
2. CD staff should continue to informally develop administrative guidelines and resolve concerns regarding the SGD program, within the confines of the rules adopted in D.13-12-054.
3. CD has and should continue to address issues that arise out of the SGD program, including but not limited to those Phase 2 issues raised in D.13-12-054.
4. The Commission should close R.13-03-008.

O R D E R

IT IS ORDERED that:

1. The California Public Utilities Commission's Communications Division shall continue to address issues that arise out of the Speech Generating Device Program, including but not limited to those Phase 2 issues raised in Decision 13-12-054.
2. Rulemaking 13-03-008 is closed.

This order is effective today.

Dated _____, at San Francisco, California.