



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 2, 1998

Mr. John Laakso
Acting Executive Director
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Letter Opinion No. 98-043

Re: Interpretation of Senate Bill 667, establishing program to assist individuals with hearing or speech impairment to purchase specialized telecommunications device for telephone access (ID# 39619)

Dear Mr. Laakso:

Your predecessor asked this office which of three possible interpretations of a provision of Senate Bill 667,¹ relating to the administration of a program for the provision of vouchers for the purchase of specialized telecommunications devices to deaf and hearing-impaired persons, appears to us to be correct.

As explained in the request letter, Senate Bill 667 requires the Public Utility Commission and the Texas Commission for the Deaf and Hard of Hearing to establish such a program so that qualified individuals will be provided "telephone network access that is functionally equivalent to that enjoyed by individuals without an impairment of hearing or speech."² To that end, the bill requires that "[t]he Texas Commission for the Deaf and Hard of Hearing shall determine a reasonable price for a basic telecommunications device for the deaf (TDD or TTY) and distribute to each eligible applicant a voucher that guarantees payment of that amount to a distributor of new specialized telecommunications devices."³

¹See Act of May 6, 1997, 75th Leg., R.S., ch. 149, § 1, 1995 Tex. Gen. Laws 296, 297. Please note that the 75th Legislature repealed article 1446c-0, V.T.C.S., in a nonsubstantive revision of statutes relating to utilities. Government Code section 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision. Section 1 of Senate Bill 667 adds sections 3.611, 3.612, and 3.613 of article 1446c-0, V.T.C.S. to section 56.102 of the Utilities Code without reference to the repeal of said article by Acts 1997, 75th Leg., R.S., ch. 166, § 9. See Util. Code § 56.102 (italicized material following text of section).

²Act of May 6, 1997, 75th Leg., R.S., ch. 149, § 1, 1995 Tex. Gen. Laws 296, 297; see also Util. Code § 56.102 (italicized material following text of section).

³*Id.*

Your predecessor noted that this statutory language appears to be ambiguous, since it is not clear whether the parenthetical reference to "TDD or TTY" is to be "read as directive or by way of example." Accordingly, three possible statutory interpretations were suggested, and this office was asked which we regard as the correct one.

Before considering this question, a word of explanation is in order. A letter brief submitted to this office by the Commission for the Deaf and Hard of Hearing offers definitions for the terms in the parenthetical phrase. "'TDD,'" as it explains, "is an acronym for telecommunications device for the deaf. This includes a range of equipment appropriate for the different needs of individuals who are deaf or have speech or hearing disabilities. . . . 'TTY' means a teletypewriter, a specific device for transmitting messages over phone lines where the input is through a keyboard and the output is to a printer or display."⁴ As we understand it, then, a range of equipment is available to deal with the differing categories and degrees of hearing and speech impairment.

In the request letter three possible interpretations of the act were suggested. Briefly stated, they are: 1) vouchers may be issued "only for the price of a basic TDD or TTY" and may be used only to purchase such a device; 2) vouchers may be used to purchase specialized devices, but the difference in price between such devices and a "basic TDD or TTY" must be borne by the purchaser; or 3) vouchers may be issued for "whatever equipment TCDHH finds to be a basic telecommunications device" that meets the needs of an individual participant in the program.

We agree that the parenthetical reference to "TDD or TTY" is ambiguous, particularly since the terms are undefined in the statute and apparently can describe a wide range of equipment types. In our view, the first of the three alternative interpretations you proffer is belied by the provision that "[t]he individual exchanging a voucher for the purchase of a specialized telecommunications device is responsible for payment of the difference between the voucher's value and the price of the device."⁵ This language clearly contemplates vouchers being used for the purchase of something more than TDDs or TTYs. Accordingly, we cannot agree that vouchers may be used to purchase only TDDs or TTYs.

As between the second and third readings suggested, in our view the third reading appears to us to be preferable. The Commission for the Deaf and Hard of Hearing is empowered to determine "a reasonable price for a basic telecommunications device."⁶ That might be taken to mean that it may only set a single price, or that it was restricted to the prices of a "basic" TDD or TTY. Such a result however, would, at least in the view of the commission, fail properly to serve the needs

⁴Letter from David W. Meyers, Executive Director, Texas Commission for the Deaf and Hard of Hearing, to Attorney General Dan Morales, Office of the Attorney General 3 (Nov. 10, 1997) (on file with Attorney General Opinion Committee).

⁵See Act of May 6, 1997, 75th Leg., R.S., ch. 149, § 1, 1995 Tex. Gen. Laws 296, 297; see also Util. Code § 56.102 (italicized material following text of section).

⁶*Id.*

of those meant to be assisted by the program, because the varying types and degrees of severity of their impairment require a range of possible instruments to deal with them.

The statute, in giving the Commission for the Deaf and Hard of Hearing regulatory authority to determine "a reasonable price for a basic telecommunications device for the deaf" may also be read, and we think fairly be read, to give the commission authority to determine what constitutes such a device. That is the reading the commission itself proposes.

In our view, the bill analysis of Senate Bill 667's companion bill, House Bill 1330, tends to support this reading. The bill analysis says, as background, that "People who cannot access conventional telephone equipment without assistance due to deafness or other hearing or speech impairments are at an economic disadvantage. They must purchase basic telephone equipment and still be faced with paying prohibitive costs for assistive equipment. This proposal suggests a way to equalize the cost for these consumers to access the telephone through a state subsidy."⁷ If, then, the purpose of the bill is to equalize costs for these consumers, a reading which permits people with greater needs to have them filled for about the same cost as is paid by those with lesser needs appears to us to serve that purpose.

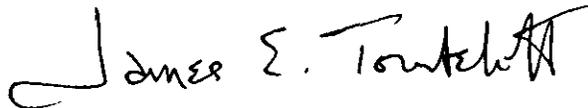
Given the ambiguity of the statutory language and the expressed intent of the statute to "enable [deaf and hearing- or speech-impaired individuals] to purchase specialized equipment to provide telephone network access that is functionally equivalent to that enjoyed by individuals without an impairment of hearing or speech," the reading of the language proposed to us by the Commission for the Deaf and Hard of Hearing appears to us a reasonable one. Accordingly we conclude that Senate Bill 667 authorizes the Texas Commission for the Deaf and Hard of Hearing to determine what constitutes a basic telecommunications device for an individual eligible to participate in the voucher program established by the statute. As a matter of administration, we assume such decisions will be made by determining what constitutes a basic device for the varying categories and degrees of severity of hearing and speech impairment; but these determinations are for the Texas Commission for the Deaf and Hard of Hearing to make.

⁷House Comm. on Human Svcs., Bill Analysis, H.B. 1330, 75th Leg. (1997).

S U M M A R Y

Senate Bill 667 authorizes the Texas Commission for the Deaf and Hard of Hearing to determine what constitutes a basic telecommunications device for an individual eligible to participate in the voucher program established by the statute.

Yours very truly,

A handwritten signature in black ink that reads "James E. Tourtelott". The signature is written in a cursive style with a large initial "J" and a stylized "E".

James E. Tourtelott
Assistant Attorney General
Opinion Committee