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**STATE OF MAINE
118TH LEGISLATURE
SECOND REGULAR AND SECOND SPECIAL SESSIONS**

**Final Report
of the

COMMISSION TO STUDY
THE
FUNDING AND DISTRIBUTION OF
TELETYPEWRITERS AND OTHER
TELECOMMUNICATIONS EQUIPMENT
FOR PEOPLE WITH DISABILITIES**

February 1999

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Executive Summary

The Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities was established in the First Regular Session of the 118th Legislature by Resolve 1997, chapter 72. The Commission completed its initial work in January, 1998, and was authorized by P.L. 1997, chapter 751, to conduct a final meeting following the adjournment of the 118th Legislature. The final meeting was authorized to permit Commissioners to further address the charges to the Commission, to review the progress made by working groups that were implementing the Commission's initial recommendations and to make any needed changes or additions in preparing its final report.

The Commission held their final meeting on November 20, 1998. From its deliberations at that meeting, the Commission makes the following recommendations:

1. The Commission recommends that the current funding mechanism established for the purchase and distribution of teletypewriters (TTY) and other specialized customer premise equipment (SCPE) continue as implemented for fiscal year 1998-99. The annual budget for the Telecommunications Equipment Plan should remain at \$140,000. This includes legislation to be submitted to the 119th Legislature authorizing \$85,000 to be allocated from a required annual assessment based on the gross revenues of the interexchange carriers, cellular and personal communications services (PCS) carriers and local exchange carriers that provide telephone services in the State. At the completion of the three-year funding cycle ending in fiscal year 2000-01, a reassessment should be conducted to establish the Telecommunications Equipment Plan's funding needs. The Bureau of Rehabilitative Services within the Department of Labor should review this funding mechanism with the joint standing committee of the Legislature having jurisdiction over labor matters and the joint standing committee of the Legislature having jurisdiction over utilities matters.
2. The Commission recommends that confidentiality provisions be included in the Telecommunications Equipment Plan to ensure that revenue data required to determine and collect the annual assessment of telecommunications carriers does not disclose proprietary information. Gross revenue data collected by the Public Utilities Commission and used by the Department of Labor should remain confidential and must not be used for competitive purposes.
3. The Commission recommends that the Telecommunications Equipment Plan be amended to provide specific authority to the Public Utilities Commission to obtain any relevant and necessary information that is required to determine the annual assessment amount to be levied on the gross revenue of telecommunications carriers, including intrastate telephone carriers.
4. The Commission recommends that the results of the Department of Education's annual survey assessing the need for specialized customer telecommunications equipment in all public schools in the State, including the Governor Baxter School for the Deaf, be presented annually by February 15 to the joint standing committee of the Legislature having jurisdiction over labor matters and the joint standing committee of the Legislature having jurisdiction over education matters.

5. The Commission recommends that -- as part of the comprehensive plan to provide telecommunication services to all populations with disabilities in the State -- the Bureau of Rehabilitative Services (BRS) should issue the request-for-proposal once it has finalized its work and the comprehensive plan and request-for-proposal have been submitted to the 119th Legislature for final review.

6. The Commission recommends that continuing discussions take place between groups representing the telephone companies, advocacy groups representing individuals who are Deaf or hard-of-hearing, advocacy groups representing individuals with other disabilities and other interested parties on the issue of access to technologies and equipment which enhances communication for all persons.

I. INTRODUCTION

Background

The Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities was established in the First Special Session of the 118th Legislature by Resolve 1997, chapter 72. The authority to conduct a final Commission meeting was established by P.L. 1997, chapter 751, during the Second Regular Session of the 118th Legislature. Copies of the resolve and the public law are attached in **Appendix A**. The Commission consisted of twelve members. The appointments are outlined in Resolve 1997, chapter 72. Senator Sharon Treat served as the chair of the Commission. A list of Commission members is included in **Appendix B**.

Charge to the Commission

The charge to the Commission was outlined in the enabling legislation, Resolve 1997, chapter 72, and was included in the Commission's original report to the Legislature (see elsewhere the March, 1998 Report of the Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities). The final meeting was authorized to permit the Commission to further address the original charges provided by the Legislature, to enable the Commission to receive a status report on the progress of state agencies in implementing the recommendations enacted by the 118th Legislature and to make any needed changes or additions in order to prepare its final report to the 119th Legislature.

As follow-up to the TTY Commission's work during the 1998 interim and the early part of the 118th Second Regular Session, the final meeting was held on November 20, 1998 to review and assess the implementation of the Commission's recommendations that were enacted by the 118th Legislature and to consider additional recommendations related to the telecommunications needs for persons with disabilities in the State. The Commission also used the meeting as an opportunity to receive status reports from the following two groups:

- ◆ The Division of Deafness, Bureau of Rehabilitative Services, Department of Labor. The Division, together with the Telecommunications Relay Services Advisory Council, was directed to develop a comprehensive long-term plan (Part C of P.L. 1997, chapter 751) which was to include the development of a request-for-proposal for increasing access to telecommunications equipment for Deaf, hard-of-hearing, speech-impaired and other persons with disabilities; and
- ◆ The Department of Education. The Department, in consultation with the Governor Baxter School for the Deaf, was directed to develop and begin distribution of an annual survey of public schools assessing telecommunications equipment availability and use (26 MRSA §1419-A, sub-§4).

II. COMMISSION PROCESS

Scope and Focus of Commission Meeting

The Commission deferred scheduling its final meeting until November, 1998, to allow the Division of Deafness and the Department of Education working groups to have sufficient time to report on their respective progress in developing the comprehensive long-term plan and the annual survey of public schools. After contacting state agency officials involved with these working groups during the interim, invitations were extended to meet with the Commission and provide a status report on their progress. A meeting summary of the Commission's final meeting is attached as **Appendix C**.

The Bureau of Rehabilitative Services provided a status report to the Commission on the progress made by the working groups in developing a comprehensive long-term plan (Part C of P.L. 1997, chapter 751). This plan was to include the development of a request-for-proposal designed to increase access to telecommunications equipment for Deaf, hard-of-hearing, speech-impaired and other persons with disabilities. The Bureau reported that a working group that including representatives from the Telecommunications Relay Services Advisory Council had met and that they were currently reviewing the proposed rules for the Telecommunications Distribution Program to use as a template for the request-for-proposal.

The Commission encouraged the Bureau of Rehabilitative Services to include the specific areas of services outlined in Part C of P.L. 1997, chapter 751, in the request-for-proposal bid specifications and performance standards. The request-for-proposal bid specifications and performance standards should include the following contract provisions: public awareness and outreach programs, including a toll-free number; customer intake and connection procedures; statewide distribution and storage capacity; customer access to network services on a 24-hour-a-day basis, including equipment installation and training; and maintenance and repairs of specialized customer telecommunications equipment and other telecommunications equipment. The Bureau assured the Commission that these provisions would be included in the final rules. The status report presented by the Bureau of Rehabilitative Services and the proposed rules for the expanded telecommunication devices program are attached as **Appendix D**.

The Department of Education provided an update to the Commission on the status of the annual survey of public schools assessing telecommunications equipment availability and use required by 26 MRSA §1419-A, sub-§4. The survey was developed in consultation with the Governor Baxter School for the Deaf, the Maine Consumer Information & Technology Training Exchange (Maine CITE) and other interested parties identified by the Department. It is the Department of Education's initial intention to pilot the survey in two to three school administrative units, make any necessary adjustments to the survey and then distribute the survey statewide. The Commission requested that the results be reported to both the joint standing committee having jurisdiction over labor matters and the joint standing committee having jurisdiction over education matters. Materials provided as part of the status report from the Department of Education are attached as **Appendix E**.

The Commission discussed at length the funding mechanism established for the Telecommunications Equipment Distribution Program. A representative from the Public Utilities Commission and TTY Commission members representing other telephone carriers reported on issues and concerns raised during the implementation of this funding mechanism.

The funding mechanism enacted pursuant to P. L. 1997, Chapter 751, required the Public Utilities Commission (PUC) to levy an assessment on certain telecommunications carriers to provide an additional \$85,000 in Fiscal Year 1998-99 to the Telecommunications Equipment Fund in order to provide additional funding for the purchase and distribution of specialized customer telecommunications equipment appropriate for Deaf, hard-of-hearing, speech-impaired and disabled persons in the State. On November 20, 1998, TTY Commissioners were informed that the PUC would be contemplating implementation of a state universal service fund over the next few years. However, these representatives indicated that development of a Universal Service Fund may not take place until 2002. The letter from the TTY Commission to the Public Utilities Commission highlighting the TTY Commissioners' interest in including funding for the Telecommunications Equipment Program in the Universal Access Fund (should one become available in the future) is attached as **Appendix F**.

In consideration of the fact that the PUC is in the early stages of rulemaking proceedings, the TTY Commission unanimously recommended to continue dedicating additional Special Revenue funding for the purchase and distribution of specialized customer telecommunications equipment for the next three fiscal years (through Fiscal Year 2001-02). TTY Commissioners indicated that maintaining both General Fund support (\$55,000 was appropriated in FY 1998-99) and Special Revenue funding (\$85,000 was appropriated in FY 1998-99) for the Telecommunications Equipment Fund was prudent public policy that would likely provide sufficient funding for TTY equipment that is appropriate to meet the needs of persons who are Deaf, hard-of-hearing or speech-impaired and for specialized customer telecommunications equipment that is appropriate to meet the needs of hearing individuals with disabilities.

To address concerns raised by the PUC Staff regarding the implementation of the Special Revenue fund for Fiscal Year 1998-99, the TTY Commission made several recommendations to modify the calculation and collection of special assessments on telecommunications carriers. TTY Commissioners recommend that the PUC be authorized to identify which telecommunications carriers would be levied with an annual assessment (on gross revenues in state) and also to determine what amounts these carriers would be assessed in order to raise an additional \$85,000 for the special revenue account and allocated to the Telecommunications Equipment Fund. The PUC will also require the authority to collect revenue data on inter-state calls and from wireless carriers. The Department of Labor's Bureau of Rehabilitative Services (BRS) will be responsible for contacting telecommunications carriers and collecting the special assessment. To protect the proprietary concerns of telecommunications carriers, a "protective order" must be included in law that requires BRS to secure the confidentiality of revenue data provided by carriers.

III. RECOMMENDATIONS AND SUMMARY OF KEY FINDINGS

The Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities unanimously voted to present the following recommendations for the immediate consideration of the 119th Legislature.

- 1. The Commission recommends that the current funding mechanism for the purchase and distribution of TTY and other specialized customer premise equipment (SCPE) continue as implemented for fiscal year 1998-99. The annual budget for the Telecommunications Equipment Plan should remain at \$140,000. This includes legislation to be submitted to the 119th Legislature authorizing \$85,000 to be allocated from a required annual assessment based on the gross revenues of the interexchange carriers, cellular and personal communications services (PCS) carriers and local exchange carriers that provide telephone services in the State. At the completion of the three-year funding cycle ending in fiscal year 2000-01, a reassessment should be conducted to establish the Telecommunications Equipment Plan's funding needs.**

The Commission received testimony from a Public Utilities Commission (PUC) official and from TTY Commission representatives of telecommunications providers in the state indicating that Maine's plans for establishing a Universal Service Fund may not be implemented until the year 2002. The Commission has written to the PUC to encourage PUC Commissioners to consider including funds for the Telecommunications Equipment Distribution Program in the Universal Service Fund (USF) at such time when a state USF is available. The Bureau of Rehabilitative Services within the Department of Labor should review this funding mechanism with the joint standing committees of the Legislature having jurisdiction over labor matters and utilities matters.

- 2. The Commission recommends that confidentiality provisions be included in the Telecommunications Equipment Plan to ensure that revenue data required to determine and collect the annual assessment of telecommunications carriers does not disclose proprietary information. Gross revenue data collected by the Public Utilities Commission and used by the Department of Labor should remain confidential and must not be used for competitive purposes.**

The Commission discussed the possibility of telephone carriers being reluctant to provide market share information should that information be available for public perusal. It was suggested to facilitate the collection of the information and protect the proprietary interests of telephone carriers that a confidentiality provision be incorporated into the proposed legislation establishing funding for the Telecommunications Equipment Distribution Program.

- 3. The Commission recommends that the Telecommunications Equipment Plan be amended to provide specific authority to the Public Utilities Commission to obtain any relevant and necessary information that is required to determine the annual assessment amount to be levied on the gross revenue of telecommunications carriers, including intrastate telephone carriers.**

During the TTY Commission's final meeting, Commissioners learned that the PUC has no authority over intrastate telephone carriers, and PUC officials indicated that specific language was needed to allow the PUC to collect this information for the purpose of determining the amount of the assessment that would be levied against the gross revenues of telecommunications carriers.

4. The Commission recommends that the results of the Department of Education's annual survey assessing the need for specialized customer telecommunications equipment in all public schools in the State, including the Governor Baxter School for the Deaf, should be presented annually by February 15 to the joint standing committee of the Legislature having jurisdiction over labor matters and the joint standing committee of the Legislature having jurisdiction over education matters.

As mentioned earlier, Part A of P. L. 1997, chapter 751, required the Department of Education, in consultation with the Governor Baxter School for the Deaf and certain advocacy groups, to conduct an annual survey of the need for specialized customer telecommunications equipment in public schools across the State and to present this report to the joint standing committee of the Legislature having jurisdiction over labor matters. The Commission felt that the access issues addressed by this survey were also educational policy matters and should also be presented to the joint standing committee having jurisdiction over education matters. The Commission further proposed that this statutory provision be amended to include a specific annual reporting date.

5. The Commission recommends that -- as part of the comprehensive plan to provide telecommunication services to all populations with disabilities in the State -- the Bureau of Rehabilitative Services (BRS) should issue the request-for-proposal once it has finalized its work and the comprehensive plan and request-for-proposal have been submitted to the 119th Legislature for final review.

P. L. 1997, chapter 751, part C, requires the Bureau of Rehabilitation Services (BRS) and the Telecommunications Relay Services Advisory Council to consult with interested parties to develop a comprehensive plan, including recommendations for a "request-for-proposal" process that would provide direct access to telephone networks for Deaf, hard-of-hearing, speech-impaired and disabled persons. The Commission discussed the concern raised by BRS officials as to whether or not the Bureau had the authority to issue the request-for-proposal (RFP) once it was completed. Commissioners agreed that the legislative intent underpinning P.L. 1997, chapter 751, was to have the Bureau issue the RFP once the comprehensive plan had been presented to the Legislature and final work on the RFP had been completed.

6. The Commission recommends that discussions continue to take place between groups representing the telephone companies, advocacy groups representing individuals who are Deaf or hard-of-hearing, advocacy groups representing individuals with other disabilities and other interested parties on the issues of access to technologies and equipment which enhance communication for all persons.

The Commission stressed the importance of continuing to focus the attention of all concerned on the issue of communication for populations with disabilities, as well as those populations without disabilities. For Deaf, hard-of-hearing and disabled individuals, access to adequate telecommunications equipment and services is not only a safety concern, but is also a basic necessity for full participation in the economic, social and civic spheres of contemporary life in our State. The Commission urges the coalition of advisory groups representing Deaf and hard-of-hearing individuals and disabled populations to continue to work together with telecommunications carriers in important oversight and advisory roles so that access to telecommunication services may be enhanced for all persons in this State.

APPENDIX A

CHAPTER 72

S.P. 293 - L.D. 944

Resolve, Establishing a Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities

Sec. 1. Commission established. Resolved: That the Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities, referred to in this resolve as the "commission," is established; and be it further

Sec. 2. Commission membership. Resolved: That the commission consists of the following 13 members:

1. One member of the Senate, appointed by the President of the Senate;
2. One member of the House of Representatives, appointed by the Speaker of the House of Representatives;
3. One member jointly appointed by the President of the Senate and the Speaker of the House;
4. One representative of the Public Advocate;
5. One representative of the Public Protection Division within the Office of the Attorney General;
6. One representative of a Deaf advocacy organization, appointed by the Governor;
7. One representative of a disability advocacy organization, appointed by the Governor;
8. Three representatives of telephone companies providing phone service within the State including one representative of independent telephone companies, appointed by the Governor; and
9. Three members of the general public who currently use or plan to use teletypewriters or special telecommunications equipment for persons with disabilities, appointed by the Governor; and be it further

Sec. 3. Convening of commission. Resolved: That all appointments must be made no later than 30 days after the effective date of this resolve. The Chair of the Legislative Council shall call the first meeting within 14 days after all appointments are made. The commission shall elect a chair from among its members; and be it further

Sec. 4. Duties. Resolved: That the commission shall study the following:

1. The current use and distribution of teletypewriters and other telecommunications equipment for persons with disabilities in the State, including the current loaner program;
2. The use and distribution of teletypewriters and other telecommunications equipment for persons with disabilities in other states, including, but not limited to, the financing of teletypewriters and other telecommunications equipment and the type of equipment currently being used;
3. The compliance requirements of the federal Americans with Disabilities Act of 1990 regarding the use of teletypewriters and other telecommunications equipment;
4. How to purchase specialized customer premise equipment or SCPE, such as artificial larynges, signaling devices, amplified handsets, large number dial overlays, direct telephone dialing, telebraille, teletypewriters or telecommunications equipment for persons with disabilities, and other devices that provide access to telephone networks for people with hearing, speech, vision or mobility impairments;
5. Establishing a system of administration and record keeping, as well as distribution, repair and replacement of SCPE units for certified subscribers; and
6. Establishing a funding mechanism for expansion of the program that will include use of additional equipment; and be it further

Sec. 5. Report. Resolved: That the commission shall prepare a written report of its findings and submit the report, together with any necessary implementing legislation, to the Second Regular Session of the 118th Legislature by January 1, 1998. If the commission requires an extension, it may apply to the Legislative Council, which may grant the extension; and be it further

Sec. 6. Staff assistance. Resolved: That the commission shall request staff assistance from the Legislative Council; and be it further

Sec. 7. Compensation. Resolved: That the legislative members of the commission are entitled to per diem and reimbursement for travel and other necessary expenses upon application to the Legislative Council. The Executive Director of the Legislative Council shall administer the commission's budget; and be it further

Sec. 8. Meetings. Resolved: That the commission may meet up to four times; and be it further

Sec. 9. Appropriation. Resolved: That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

1997-98

LEGISLATURE

**Commission to Study the Funding and
Distribution of Teletypewriters and
Other Telecommunications Equipment
for People with Disabilities**

Personal Services

\$660

All Other

2,350

Provides funds for the per diem and expenses of legislative members, contracted interpreter services and miscellaneous costs of the Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities.

LEGISLATURE

TOTAL

\$3,010

See title page for effective date.

CHAPTER 751

S.P. 853 - L.D. 2266

An Act to Implement the Recommendations of the Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this Act is necessary as an emergency measure to allow the Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities to continue its work immediately following the Second Regular Session of the 118th Legislature; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 26 MRSA §1419, sub-§1, ¶¶B-1 and B-2 are enacted to read:

B-1. "Person with a disability" means a person who is unable to communicate by telephone because of a vision, mobility or other physical or mental impairment.

B-2. "Specialized customer telecommunications equipment" means telecommunications equipment used by persons with disabilities to conduct telephone communications. "Specialized customer telecommunications equipment" includes but is not limited to teletypewriters, artificial larynges, signaling devices, amplified handsets, large number dial overlays, direct telephone dialing, fax machines or other equipment used by persons with disabilities to provide access to telephone networks.

Sec. A-2. 26 MRSA §1419, sub-§1, ¶D, as enacted by PL 1995, c. 560, Pt. F, §13, is repealed.

Sec. A-3. 26 MRSA §1419, sub-§2, as enacted by PL 1995, c. 560, Pt. F, §13, is amended to read:

2. Specialized customer telecommunications equipment system. The department shall consult with appropriate agencies and organizations serving ~~the deaf community~~ deaf, hard-of-hearing or speech-impaired persons and persons with disabilities concerning the needs of the ~~teletypewriter~~ specialized customer telecommunications equipment system. To the extent that

funds are available, the department shall take steps necessary to preserve and maintain a viable ~~teletypewriter~~ specialized customer telecommunications equipment system for use by ~~the deaf population~~ deaf, hard-of-hearing or speech-impaired persons and persons with disabilities in this State, including, but not limited to, providing for repair services and equipment for loaning to persons whose ~~teletypewriter~~ specialized customer telecommunications equipment is being repaired.

Sec. A-4. 26 MRSA §1419-A, as enacted by PL 1995, c. 560, Pt. F, §13, is amended to read:

§1419-A. Specialized customer telecommunications equipment for persons with disabilities

1. Money for specialized customer telecommunications equipment. The Bureau of Rehabilitation Services within the department, pursuant to appropriation of money to the bureau for ~~special telecommunication~~ specialized customer telecommunications equipment for deaf, hard-of-hearing and speech-impaired persons and persons with disabilities, shall, upon request, provide up to 50% of the cost of ~~special telecommunication~~ specialized customer telecommunications equipment to an organization or municipality that makes available the remaining funds for this equipment in a manner satisfactory to the Director of the Bureau of Rehabilitation Services.

2. Telecommunications Equipment Fund. There is established the Telecommunications Equipment Fund to be used by the Division of Deafness within the Bureau of Rehabilitation Services. The Division of Deafness may accept gifts or grants for the purposes of this section. These gifts and grants and authorized appropriations must be deposited in the Telecommunications Equipment Fund and disbursed in accordance with this section. The Telecommunications Equipment Fund may be used for purchase, lease, distribution, upgrading, installation, maintenance and repair of ~~special~~ specialized customer telecommunications equipment for deaf, hard-of-hearing or speech-impaired persons and persons with disabilities. The Division of Deafness may draw on the Telecommunications Equipment Fund in accordance with the telecommunications equipment plan required under subsection 3.

3. Telecommunications equipment plan. The Division of Deafness shall develop a plan to make ~~special~~ specialized customer telecommunications equipment available to deaf, hard-of-hearing or speech-impaired persons and persons with disabilities and to distribute money from the Telecommunications Equipment Fund. The plan must be developed by the Division of Deafness annually, not later than January 1st, in accordance with the rule-making procedures in Title 5, chapter 375. The plan must provide for the expenditure of money from the Telecommunications Equipment Fund for the benefit of deaf, hard-of-hearing or speech-impaired persons and persons with disabilities for the purchase, lease, distribution, upgrading, installation, maintenance and repair of ~~special~~ specialized customer telecommunications equipment capable of serving their needs. Persons who are profoundly deaf or speech impaired or who have a disability so that they are unable to use the telephone for expressive or receptive communications, as verified by a written report from an otologist, an audiologist or a physician, are eligible for assistance from the Telecommunications Equipment Fund. The plan must ensure that persons with disabilities have access to appropriate specialized customer

telecommunications equipment to meet their individual needs. The plan must include specific criteria that govern the priorities assigned to various persons who need this equipment. The criteria must take into account household income, degree of impairment, need for emergency communications, living arrangements and other factors determined relevant by the Division of Deafness. In developing the criteria, the Division of Deafness shall consult with the advisory council established in section 1413-C and other advisory councils representing the interests of persons with disabilities.

4. Specialized customer telecommunications equipment needs in the public school system.

The Department of Education, in consultation with the Governor Baxter School for the Deaf and advocacy groups for deaf and hard-of hearing persons and for the information technology interests of consumers, shall conduct an annual survey of all public schools in the State for the purpose of assessing the need for specialized customer telecommunications equipment in the school system and report its findings to the joint standing committee of the Legislature having jurisdiction over labor matters. The report must include: the number of deaf and hard-of-hearing students and their needs for specialized customer telecommunications equipment; the availability of specialized customer telecommunications equipment; the number of requests for specialized customer telecommunications equipment; and the status of training for teachers and other school personnel in the use of specialized customer telecommunications equipment.

Sec. A-5. Assessment for specialized customer telecommunications equipment. The activities authorized under the Maine Revised Statutes, Title 26, section 1419-A, subsection 2 must be funded through an annual assessment for specialized telecommunications equipment to be levied on each interexchange carrier, local exchange carrier, reseller and mobile telecommunications carrier that provides telecommunications service in the State. The assessment must be based on the amount of revenues that each carrier receives from the services that it provides to customers in this State. The level of the assessment must be established each year by the Public Utilities Commission. For fiscal year 1998-99, the assessment must be set at a level that will generate an additional \$85,000 in order to provide additional funding for the purchase and distribution of specialized customer telecommunications equipment. These funds must be deposited into the Telecommunications Equipment Fund established by Title 26, section 1419-A, subsection 2. These funds may not lapse but must be carried forward for the purposes identified in Title 26, section 1419-A, subsection 2.

Sec. A-6. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1998-99
LABOR, DEPARTMENT OF	
Rehabilitation Services	
	All Other
	\$85,000

Provides additional allocations for the Telecommunications Equipment Fund to allow the distribution of certain specialized customer telecommunications equipment.

PART B

Sec. B-1. Resolve 1997, c. 72, §5 is amended to read:

Sec. 5. Report. Resolved: That the commission shall prepare a written report of its findings and submit ~~the a~~ report, together with any necessary implementing legislation, to the Second Regular Session of the 118th Legislature by January 1, 1998. ~~If the commission requires an extension, it may apply to the Legislative Council, which may grant the extension~~ The commission shall continue its study and may meet one time after the adjournment of the Second Regular Session of the 118th Legislature. The commission shall submit a final report that may include any necessary implementing legislation to the First Regular Session of the 119th Legislature by January 15, 1999; and be it further

Sec. B-2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1997-98

LEGISLATURE

Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities

Personal Services

\$165

All Other

1,150

Provides funds for the per diem and expenses of legislative members, interpreter services and miscellaneous costs, including printing, of the Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities.

LEGISLATURE

TOTAL

\$1,315

Sec. B-3. Retroactivity. This Part applies retroactively to January 1, 1998.

PART C

Sec. C-1. Comprehensive plan. The Division of Deafness within the Bureau of Rehabilitation Services in the Department of Labor and the Telecommunications Relay Services Advisory Council, in consultation with an association representing the State's telephone companies, the Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities and other advisory councils representing the interests of persons with disabilities, shall develop a comprehensive long-range plan to provide deaf, hard-of-hearing and speech-impaired persons and persons with disabilities direct access to specialized customer telecommunications equipment and other telecommunications equipment throughout the State. The plan must be presented to the 119th Legislature by January 15, 1999. The plan must develop recommendations for a request-for-proposal to develop statewide direct access to telephone networks for deaf, hard-of-hearing and speech-impaired persons and persons with disabilities. The request-for-proposal recommendations may address bid specifications and performance standards for the following contract provisions: public awareness and outreach programs, including a toll-free number; customer intake and connection procedures; statewide distribution and storage capacity; customer access to network services on a 24-hour-a-day basis, including equipment installation and training; and maintenance and repairs of specialized customer telecommunications equipment and other telecommunications equipment.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 15, 1998.

APPENDIX B

**COMMISSION TO STUDY THE FUNDING AND DISTRIBUTION OF
TELETYPEWRITER AND OTHER TELECOMMUNICATIONS
EQUIPMENT FOR PEOPLE WITH DISABILITIES
(Resolves 1997, Chapter 72)**

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APPENDIX C

**COMMISSION TO STUDY THE FUNDING AND DISTRIBUTION OF
TELETYPEWRITERS AND OTHER TELECOMMUNICATIONS EQUIPMENT FOR
PEOPLE WITH DISABILITIES**

Meeting Summary -- November 20, 1998

Commission Members present: William Black, Daniel Breton, Jonathan Connick, Larry Sterrs, Rep. Joseph Taylor, Sen. Sharon Treat and Kim Wallace

Others present: Linda Jariz, Bureau of Rehabilitative Services; Alice Johnson, Division of Deafness; Kathy Powers, Maine Consumer Information & Technology Training Exchange; Margaret Haberman and Doug Newton, ASL Interpreters; and Phil McCarthy, Commission Staff

1. Reconvening the Commission / Welcome / Overview.

Senator Treat, Commission Chair, welcomed Commissioners and guests and reviewed the meeting agenda and expectations, including the charges to the Commission under P.L. 1997, Chapter 751 (LD 2266).

2. Bureau of Rehabilitation Services progress report on the status of a comprehensive long-range plan to provide Deaf, hard-of-hearing and speech-impaired persons and persons with disabilities direct access to specialized customer telecommunications equipment and other telecommunications equipment throughout the state.

Linda Jariz reported the Bureau of Rehabilitative Services' (BRS) progress in developing proposed regulations for the expanded Telecommunications Equipment Program. The Bureau intends to administer this part of the Telecommunications Equipment Program until the Request-for-proposal (RFP) is implemented. While consumer demand and costs are unknown, BRS intends to keep administrative costs low so that much of the \$140,000 can be used to provide access to equipment.

The Commission reviewed the draft rules as proposed by the Bureau and made the following comments related to the draft rules and the proposed RFP:

- ◆ system should be consumer-oriented and "technology neutral";
- ◆ specifications shouldn't be too particular and should allow bidders to get creative in designing necessary elements into system;
- ◆ most effective approach may be a collaborative approach between telephone companies and other entities; allow process to bring different kinds of contractors together to provide unique set of services; and
- ◆ legislative intent was to provide authority for Bureau to issue RFP once the comprehensive plan was presented and reviewed by the 119th Legislature;

Commissioners also discussed the oversight responsibility of the Bureau, particularly the issue of bringing telecommunications carriers into the compliance with federal and state regulations and not having the sole responsibility for providing access to equipment and services rest only with the Bureau. Commissioners offered the following perspectives regarding oversight issues:

- ◆ the Americans with Disabilities Act and the Telecommunications Act both require telecommunications companies to provide access to networks;
- ◆ Some Commissioners didn't want providers to think they can get off the hook for providing universal access to telecommunications by making a small contribution to this fund; Commission's efforts have been to supplement, not replace the telecommunications carriers efforts;
- ◆ Commission intent was to avoid placing Bureau in role of mandating compliance from telecommunications providers and carriers; wanted Bureau to work with providers and consumers in establishing RFP criteria so that providers would voluntarily comply with federal and state regulations;
- ◆ Telecommunications carriers rely on ratepayers to foot the bill for services which require some type of funding mechanism;
- ◆ PUC officials proposed moving away from embedding charges in utilities rates even though increment would be very small; and
- ◆ Telecommunication Program is a small, but important program and telecommunications companies are not freed of their responsibilities under Americans with Disabilities Act and Telecommunications Act.

The Commissioners generally agreed that there was a need for a coalition of advisory groups, including the Telecommunications Relay Services Advisory Council, the Deaf Advisory Council and groups representing disabled populations, to continue providing advice and oversight to the Bureau of Rehabilitation Services as the comprehensive plan and RFP are implemented.

3. Department of Education progress report on the status of the annual survey of specialized customer telecommunications equipment needs in the public school system.

Kathy Powers, Project for the Maine Consumer Information & Technology Training Exchange (Maine CITE), presented the progress report for the Department of Education (DOE). The four annual survey categories established in statute were reviewed by staff at the DOE and the Governor Baxter School for the Deaf (GBSD). A draft of survey questions was then shared with Maine Center on Deafness, Governor Baxter School for the Deaf student body president and the Deaf Advisory Group. The only feedback received was a positive response and suggestion on establishing policy of involving parents of Deaf and hard-of-hearing students.

DOE staff then identified methods and strategies to establish a data collection and analysis system. DOE proposes a two-step process: (1) short-term plan is to propose a pilot project with two to three school administrative units and then assess results before developing a

state-wide survey; and (2) long-term plan is to include the technology-related data collected by this survey into the ongoing data collection efforts of the DOE technology work group.

Commissioners raised several concerns related to access barriers faced by public school students, including the following:

- ◆ what process does the Department of Education have to receive complaints from students?;
- ◆ will long-range technology effort also include disabled people in addition to Deaf and hard-of-hearing advocates?; and
- ◆ wanted to clarify that Governor Baxter School for the Deaf must be included in the annual survey.

The Department of Education raised the following questions with Commissioners:

1. Did Commission intend to survey availability of “specialized customer telecommunications equipment” (SCTE) include equipment for educational staff who are Deaf or hard-of-hearing, as well as students with speech impairments?
2. Was Commission intent to capture equipment availability of SCTE within a school administrative unit or the building where the student or staff is located; and how should portable classrooms be treated?
3. What was the Commission intent regarding any action to be taken by the Department or a local school unit once the survey results come in?

Commissioners agreed that the Department should use common sense in developing survey. Commissioners also agreed that the survey results would promote greater awareness and would provide an opportunity for the Department of Education, the department of Labor and local schools to take a proactive approach, including using data to plan and fund provision of equipment and outreach services.

4. Commission Review of Telecommunications Equipment Fund and special assessment for specialized customer telecommunications equipment.

Gil Brewer, Legislative Counsel for the Public Utilities Commission, (PUC) provided the Commissioners with the PUC perspective on implementing the special assessment. The following issues were raised by the PUC:

- ◆ PUC doesn’t regulate inter-state calls and wireless carriers, therefore it was difficult to get at their financial information and Commission should propose legislation authorizing PUC to collect this information;
- ◆ legislation should also provide PUC with authority to collect information from wireless carriers and inter-state revenues;
- ◆ carrier confidentiality and proprietary issues needs to be addressed; PUC has a “protective order” related to the collection of similar information from regulated carriers, but this may

not cover the Department of Labor and Commission should write confidentiality protections into the law; and

- ◆ PUC established an arbitrary cutoff and decided to not assess the first \$200,000 gross revenues of a carrier before assessing the carrier; this resulted in the smallest carrier being assessed \$20 (based on assessment of 1/100th of a cent) and Bell Atlantic being assessed more than half of \$85,000 collected.

The Commission also reviewed the current status of PUC's consideration of a state Universal Service Fund (USF). The Commission learned that the PUC is considering dovetailing the Telecommunications Fund with the proposed state Universal Service Fund. However, the state USF would use a "rate-balancing" method rather than a funding mechanism based on assessing carriers and forwarding those assessment to a special revenue account in the Department of Labor.

The Commissioners also were informed that the PUC had provided a notice of inquiry to get the ball rolling on a state USF and that the deadline for comments was November 30, 1998. Commission staff was directed to file a comment on behalf of the Commission.

5. Commission Discussion & Development of Recommendations

Commissioners reviewed the issues already discussed and developed recommendations for further legislation to continue implementation of the Telecommunications Program and Telecommunications Fund.

The Commission reviewed the policy implications that might arise from combining the Telecommunications Fund with the state USF:

- ◆ the Telecommunications Act, sec. 254, refers to a Universal Service Fund for low-income, but also discusses providing affordable access for disabled consumers;
- ◆ full implementation of state USF rules is not expected to happen until 2002;
- ◆ telecommunications carrier representatives indicated that potential exists to push subsidies currently hidden in phone bills and commingle with this assessment as a one line-item charge; this would allow for a level-playing field where all carriers would contribute to public policy items supported by the state USF;
- ◆ advocates for disabled populations see the Telecommunications Fund and state USF as separate and distinct policy mechanisms;
- ◆ similar to federal USF regulations, it is anticipated that a state exchange carrier association may collect funds;
- ◆ with robust revenues, perhaps Appropriations Committee will completely fund Telecommunications Program through General Fund appropriations; and
- ◆ policy compromise between General Fund appropriations and special revenue funds would keep Telecommunications Program reform on same track; by adding triggering language (i.e., sunset review), legislation can link Telecommunications Program funding mechanism to state USF.

Commissioner Black moved, and Commissioner Treat seconded, the following motion: Recommend introducing legislation to continue the funding mechanism established in fiscal year 1998-99 for the next three years -- FY 1999-2000, 2000-01 and 2001-02, including the following provisions:

1. Continue having PUC identify carriers and determine the amount of revenue to be assessed, but add provisions authorizing PUC to assess wireless carriers and inter-state revenues add a confidentiality provision to protect carriers' proprietary concerns;
2. Continue to direct the Bureau of Rehabilitation Services to collect the assessment which will be dedicated revenue for the Telecommunications Equipment Fund account which is managed and monitored by the Department of Labor; and
3. Send a letter before 11/30/99 to the PUC requesting that they consider addressing the Telecommunications Equipment Fund in the future state USF.

Discussion on the motion included the following items:

- ◆ regarding mechanics, who manages fund and does Appropriations Committee make decisions about special revenue funds? Public Advocate special revenue fund is a dedicated account and size of fund is controlled by Utilities Committee; in this case, the Department of Labor would manage fund and Labor Committee could provide oversight regarding necessary funding levels;
- ◆ to address concern that flat funding may not meet existing needs, may want to add language to legislation that would keep special revenue fund at \$140,000 and let General Fund of \$55,000 rise and fall according to needs assessment as reported to Appropriations Committee by Department of Labor;
- ◆ it may be cleaner to plug in \$85,000 and have PUC roll Telecommunications Equipment fund into state USF when and if it is implemented (maybe three to five years); and
- ◆ caution against language that state USF will replace need for this separate fund

VOTE 7-0

The Commission also reviewed the need to establish an advisory group to continue to provide consumer input to assist state officials in their oversight role with respect to ensuring access to telecommunications for disabled populations. Representatives of the Telephone Association of Maine, Bell Atlantic and Alpha One agreed to work together to put an informal group together to address oversight concerns.

Sen. Treat also reminded Bell Atlantic that they promised phone books would list toll free phone number so consumers can contact contractor for Telecommunications equipment. Commissioner Black indicated that the Department of Labor needs to contract for a person to answer phone. Due to tariff problems, Bell Atlantic approaches this matter through "grants" to 501 C 3 corporations. It was suggested that this matter be addressed via the Request-for-proposal and that Commission Staff provide written notification to the Bureau of Rehabilitation Services that RFP bidders must include in their proposal a provision that grant funds from Bell Atlantic will be used to provide listings for outreach program in phone books.

Commissioner Wallace also requested that Commission staff clean up recommendation #2 in the January, 1998 Commission report (after "Telecommunication" to say that specific equipment will be provided to ensure that individuals with disabilities will have access to telecommunications networks).

Sen. Treat requested that Commission Staff provide a meeting summary, including recommendation, and make both available to Commissioners and interested parties.

6. Adjournment

Meeting was adjourned at 2:35 p.m.

Respectfully submitted,

Phil McCarthy, Commission Staff
Carrie McFadden, Commission Staff

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APPENDIX D

**Bureau of Rehabilitation Services
LD 2266 – Status Report
November 17, 1998**

Telecommunications Equipment Program – Interim Measures

Historically this program has been administered by BRS through the Maine Association for the Deaf. The program is funded at \$55,000 per year and is both a cost sharing and lending program – primarily concerned with TTYs. The Maine Association will continue to administer this program until the program is awarded through the RFP process.

The Bureau of Rehabilitation Services is administering the expanded part of the program created by LD 2266. The Telecommunication Equipment Program rules have been amended to include people with disabilities. These rules are nearly completed - ready for filing with the Secretary of State's office. The Bureau only intends to administer this program until the program is awarded through the RFP process. The expanded program is funded at \$85,000.

Development of the RFP

A group, including representatives from the Telecommunications Relay Services Advisory Council, this commission and the telephone association, has been meeting to discuss the requirements of Part C of LD 2266. After several meetings, the committee agreed to use the Telecommunications Equipment Program rules (as expanded) and the language contained in LD 2266 as the basis for developing the RFP. The amount of funding available for this program is \$140,000 annually. The RFP must cover purchased equipment, repairs and administrative costs. The expectation, however, is that most of the funds will go towards equipment/device purchases.

Next Steps

Group members were asked to advise BRS of any additions or concerns that should be considered during the development of the RFP. BRS will propose a draft RFP for discussion at a mid-December meeting.

12 DEPARTMENT OF LABOR

152 BUREAU OF REHABILITATION SERVICES

Chapter 12: TELECOMMUNICATION DEVICES FOR PEOPLE WITH DISABILITIES
PROGRAM RULES

1. PURPOSE AND GENERAL REQUIREMENTS OF THE PROGRAM

Under Maine Statutes Title 26 MRSA, §1419, the Division of Deafness, under the Bureau of Rehabilitation Services, Department of Labor, through the Telecommunication Devices for People with Disabilities Program (hereinafter called "The Program"), will provide funds for purchase, lease, upgrading, installation, maintenance and repair of specialized customer telecommunication equipment for persons with disabilities. The Division of Deafness, under the Bureau of Rehabilitation Services, will authorize funds in accordance with the following requirements:

- 1.1 Eligibility is determined without regard to age, sex, creed, color or national origin.
- 1.2 In the purchase of goods or services, the Program staff shall comply with applicable regulations of the Maine Department of Labor and Department of Administrative and Financial Services. The Program will purchase goods and services from vendors who meet specific licensure or certification requirements where applicable.
- 1.3 The Program will maintain a record for each applicant for, and recipient of, services and/or goods.
- 1.4 When appropriate, Program staff shall provide necessary referral to support the individuals in securing needed services from other agencies and organizations.
- 1.5 There is no residency requirement, durational or other, which would exclude from services an otherwise eligible individual who is living in the state.
- 1.6 For purposes of this policy, the Director will be the Director of the Bureau of Rehabilitation Services

2. ELIGIBILITY DETERMINATION

Under Subsection 4 of Public Law 531, persons who are disabled to the extent that they cannot use the telephone for expressive or receptive communications, as verified by a signed form from an otolaryngologist, audiologist, speech-pathologist, or physician are eligible for assistance from the fund.

2.1 Referral and Application for Services

2.1.1 Any person who applies for services shall undergo an eligibility determination, the results of which shall be shared with the individual. The Program shall process referrals in an equitable and expeditious manner consistent with available agency resources. An applicant is anyone who signs a dated application or letter.

2.2 Identification of Disability Eligibility

2.2.1 Each applicant must submit a form signed by a licensed physician, otolaryngologist, audiologist, ophthalmologist or speech pathologist stating that the applicant is disabled to the extent they cannot use the telephone for expressive or receptive communication.

2.3 Two Programs for Services

2.3.1 The Cost Sharing Program through the Division of Deafness pays for 50% of the cost of each piece of specialized customer telecommunication equipment, specifically to be provided to a person who is eligible.

2.3.2 The Lending Program lends a piece of specialized customer telecommunication equipment to those who cannot afford to buy one. The specialized customer telecommunication equipment can be borrowed for as long as needed or as long as the program remains in existence and as long as the applicant complies with the lending agreement.

2.4 Income Guidelines (for Lending Program Only)

The initial application for services will contain a section for a declaration of reported family gross annual income. An applicant whose gross annual income is below 185% of U.S. Department of Agriculture National Poverty Guidelines adjusted for family size will be eligible for the Lending Program.

2.4.1 Family's Gross Annual Income: The sum of all income of family members in the household (before taxes) received during the 12 month period prior to the date of application. Income includes:

1. Wages, salaries, commission or fees before deductions;
2. Net earnings from self-employment, partnership or business;
3. Net rental income;
4. Dividends;
5. Interest;
6. Contributions from persons outside the household;
7. Pensions or annuities;
8. Government benefits: public assistance, welfare payments, social security, SSI, unemployment
9. Alimony;
10. Child support; and
11. Other cash income withdrawn from savings or investments and other resources available to the family.

The following items are not included in determining gross annual income:- proceeds from sale of property, house or car, tax refunds, scholarships or training stipends.

2.5 Certification of Eligibility or Ineligibility will be made by Program staff.

2.5.1 Notification of Eligibility

A letter will be mailed to each individual determined eligible for services. The letter will state their eligibility and be signed and dated by Program Staff.

2.5.2 Notification of Ineligibility

For all applications where the Program Staff determines that an applicant for, or recipient of services, does not meet the requirements for eligibility as listed in 2.2, a letter stating the reasons for ineligibility shall be mailed to each applicant found ineligible, dated and signed by Program Staff, along with a statement of Rights of Appeal.

2.6 Order of Selection (for Lending Program only)

2.6.1 At any time services cannot be provided to all eligible individuals, the Order of Selection procedures must be implemented. Individuals shall be served in the following priority order:

Those eligible individuals who are:

- 1) Eligible aged 62 or older living alone;
- 2) Eligible living alone;
- 3) Eligible adults - with one family member under age 12;
- 4) Eligible adults - with one family adult member;
- 5) Eligible teenager or child.

3. PROGRAM OF SERVICES

3.1 Provision of Equipment

3.1.1 Includes provision of (for Lending Program only) specialized customer telecommunication equipment including one signaling device and/or one receiver when appropriate.

3.1.2 Includes orientation and training on use of equipment.

3.1.3 Includes equipment delivered by commercial carrier or personal delivery by Program Staff.

3.1.4 A temporary loaner will be provided in the event of breakdown of equipment.

4. AGREEMENT BETWEEN PARTIES (for Lending Program only)

4.1 Provisions of Agreement (Signed by applicant, parent or guardian)

4.1.1 Agree not to lease, sell, give away, or allow a lien to be placed upon it during the loan.

4.1.2 Agree to keep the equipment in good condition and to avoid abuse or damage.

4.1.3 Agree to provide adequate insurance to cover loss against fire, theft, or other happenings.

4.1.4 Agree to inform the Program staff if the equipment breaks down or is missing.

4.1.5 Agree not to remove or permit another person to remove the equipment from this State without written permission from the Bureau of Rehabilitation Services.

4.1.6 Agree to return equipment to the Bureau of Rehabilitation Services upon its request.

5. CONFIDENTIALITY

All client/applicant information acquired by the Program staff is confidential and remains the property of the Program and shall only be used and released for purposes directly connected with the administration of the program. Information may, however, be disclosed in summary, statistical, and other forms which do not identify the individuals.

6. PROGRAM APPEALS PROCESS

An applicant for or recipient of Program services who is dissatisfied with any decision concerning the furnishing or denial of these services may request or if appropriate may request through the individual's representative a timely review of the determination. The Program shall make reasonable accommodation to the individual's disabling condition in the conduct of the appeals process.

6.1 Informal Review:

Whenever possible, the Program will attempt to resolve conflicts informally prior to Mediation or a Due Process Hearing, but an individual may request a Due Process Hearing immediately without having to go through appeal steps. An individual may request a meeting with staff, and appropriate supervisor to explore options for resolving any conflicts.

6.2 Mediation Process

6.2.1 The Department of Labor mediation process is an option to resolve conflicts when a resolution is not possible informally. The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a mutually satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make and discuss, orally and in writing, recommendations or options for settlement.

- 6.2.2 An individual must request Mediation within thirty (30) calendar days of the agency notice regarding the provision or denial of services that are in question. The request shall be in writing and the request shall describe the complaint. The request should be sent to the Director of BRS who will immediately forward it to the Department of Labor, Division of Administrative Hearings.
- 6.2.3 The Division of Administrative Hearings will schedule a mediation meeting within 15 calendar days of receipt of request and shall be held in location that is convenient to the parties in the dispute. The Mediation will be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- 6.2.4 During the pre-hearing conference for a due process hearing, mediation will be offered as an option. The process is voluntary for both parties and either party may withdraw at any time.
- 6.2.5 The agreement reached in the mediation process shall be set forth in a written mediation agreement.
- 6.2.6 Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.
- 6.2.7 The individual does have the ability to have representation at the mediation, including but not limited to representation by the Client Assistance Program.

6.3 Due Process Hearing

- 6.3.1 A Due Process Hearing is a procedure whereby an individual who is dissatisfied with the determinations concerning the provision or denial of Program services may seek a redetermination of agency action before an impartial hearing officer.
- 6.3.2 The individual must request a Due Process Hearing within thirty (30) calendar days of the agency notice regarding the provision or denial of service.
- 6.3.3 If no request for Due Process Hearing is made within thirty (30) days, the- agency decision is considered final.
- 6.3.4 The request for Due Process Hearing shall be in writing to the Director and shall describe the complaint. The Program will accommodate an individual's disability and offer assistance, if appropriate, in this

process. Request should be sent to the Director who will immediately forward to the Hearing's Unit of the Department of Labor.

6.3.5 The Due Process Hearing will be conducted within forty-five (45) calendar days of receipt of the request for Due Process Hearing.

6.3.6 The Due Process Hearing shall be conducted by an impartial hearing officer from a pool of qualified persons.

6.3.7 The Program may not deny or dismiss a request for Due Process Hearing unless the individual or his/her representative:

(a) withdraws the request in writing; or,

(b) is adjudged by the Due Process Hearing officer to be default for failure to appear at the hearing without good cause; or

6.3.8 The Due Process Hearing shall be conducted and a recommended decision shall be issued in accordance with Maine's Administrative Procedures Act, 5 MRSA Chapter 375, subchapter IV.

6.3.9 The Due Process Hearing Officer shall issue a decision within thirty (30) days of the completion of the hearing. If the Commissioner of Labor or the commissioner's designee decides to review the decision of the impartial hearing officer, she/he will notify the individual or, if appropriate the individual's representative, of the intent within twenty days of the mailing of the impartial hearing officer's decision. The Commissioner or his/her designee shall give the individual or individual's representative ten calendar days to submit additional evidence and information relevant to the final decision. If the Director does not notify the applicant/client of the intent to review the decision, the decision of impartial hearing officer becomes the final decision.

6.3.10 Within thirty (30) days of providing notice of intent to review the impartial hearing officer's decision, the Director shall make a final decision and provide a full report in writing of the decision, including findings and the statutory, regulatory,, or policy grounds for the decision, to the individual or, if appropriate, the individual's representative.

6.3.11 The Commissioner or designee may not overturn or modify a decision, or part of a decision, of an impartial hearing officer unless the Director concludes, based on clear and convincing evidence, that the decision is clearly erroneous because it is contrary to the approved State Policy.

6.3.12 The Due Process Hearing decision shall be considered final by the agency pending the out come of further appeal procedures.

6.4 Judicial Review Under M.R. Civ. P. 80C

In the written decision from the Director on a Due Process Hearing, the individual shall be advised of his/her right to file a petition in Superior Court under Rule 80C of the Maine Rules of Civil Procedure.

APPENDIX E

November 20, 1998

Department of Education Status Report to the Commission To Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People with Disabilities on Specialized Customer Telecommunications Equipment Needs in the Public School System

Public Law 1997, chapter 751, Part A, Section A-4 requires the Department of Education in consultation with the Governor Baxter School for the Deaf and advocacy groups for the deaf and hard-of-hearing persons to conduct an annual survey of all public schools in the State for the purpose of assessing the need for specialized customer telecommunications equipment in the school system and report its findings to the joint standing committee of the Legislature having jurisdiction over labor matters.

The report must include:

1. the number of deaf and hard of hearing students and their needs for specialized customer telecommunications equipment
2. the availability of specialized customer telecommunications equipment
3. the number of requests for specialized customer telecommunications equipment
4. the status of training for teachers and other school personnel in the use of the specialized customer telecommunications equipment.

The following information gives a status report of the the Department's actions to date.

Process Used to Solicit Input to Draft Survey Questions and to Identify Data Collection Strategies

Department staff constructed survey questions based on suggested questions in a memo "Questions for Survey of School Buildings". The draft was distributed to the Board of Directors of the Maine Center on Deafness, the Governor Baxter School for

the Deaf (GBSD) student body President and staff advisor, the Director of the GBSD Adult and Community Education Program and the Deaf Advocacy Group to solicit comments and recommendations. The only comments received as of November 12 indicated a positive response that the Department was doing a survey and a suggestion to include a question dealing with school policy around access for parents and community members. That question has been added to the current survey draft.

Department staff representing Technology, Goals 2000, Special Services and Management Information Services reviewed the charge, and identified methods and strategies already in place that would effectively collect the data and provide analysis of the results. Three facts emerged.

1. Currently there is no existing data collection or analysis activity within the Department that would capture the data in total.
2. Currently the Department collects data in each School Administrative Unit by school. However, some schools may be located in more than one building and this data is not reported.
3. The Department will be convening a work group during this current school year to develop a comprehensive plan for collecting data related to technology from local School Administrative Units.

As a result of these findings the Department proposes a two step process for meeting the legislative directive of conducting an annual survey.

Short term: The survey, accompanied by a letter to all Superintendents that explains the background and purpose of survey, will be sent. The letter will indicate that students covered include all those who are deaf and hard-of-hearing, which may include students who have 504 plans, or who are receiving Special Education services as well as school staff. Superintendents will be asked to forward the survey to the appropriate individual (s) within the district for completion and return to the Department. The Department first will pilot the survey in two to three School Administrative Units to test validity and consistency; then make any necessary adjustments and distribute statewide to all School Administrative Units. The Department will assure a telephone and/or other electronic follow up to obtain any missing or incomplete data. This pilot strategy should identify any flaws, barriers or

needs in the survey instrument or the data collection and analysis strategy that needs to be addressed before institutionalizing long term, annual data collection.

Long term: It is the intent of the Department to incorporate the survey questions into the technology related data to be collected from local School Administrative Units that will be developed by the technology work group mentioned previously.

Draft Survey Questions

Year of Survey

Name of School Administrative Unit

Name of Individual, Title and Contact Information of Individual(s) Supplying the Information

(For questions 1 and 2 the district will be provided with a matrix that includes a pre printed list of all schools in that district as well as a list of specialized customer telecommunications equipment defined in the law from which to choose.)

1. For each school indicate the number of deaf or hard-of hearing students and deaf or hard of hearing staff.
 - 1a. Please indicate the number of each type of specialized customer telecommunications equipment located in each school.
 - 1b. Please indicate the number of each type of specialized customer telecommunications equipment needed by deaf or hard of hearing students and deaf or hard of hearing staff in each school.
2. Please fill in any Administrative building where deaf or hard of hearing staff are located.
 - 2a. Please indicate the number of each type of specialized customer telecommunications equipment located in each Administrative building.
 - 2b. Please indicate the number of each type of specialized customer

telecommunications equipment needed by deaf or hard of hearing staff in each Administrative building.

3. Do you have a training program in place within your School Administrative Unit to train staff and students in the use of TTY'S and other specialized customer telecommunications equipment?

Yes_____

No_____

If No, are there plans to institute such training?

Yes_____

No_____

4. Is the telecommunications relay service available to students and staff who are deaf or hard-of-hearing?

Yes_____

No_____

If Yes, has the service been used during this past year?

Yes_____

No_____

5. Does your School Administrative Unit have a written policy related to access to specialized customer telecommunications equipment for parents, family members and the community?

Yes_____

No_____

If No, are there plans to develop a written policy?

Yes_____

No_____

6. Is any of the data requested in this survey currently collected and reported in

your School Administrative Unit's local technology plan?

Yes_____

No_____

Questions or Comments that Emerged During the Department's Planning Process

1. The current legislation specifies a report on the number of deaf and hard of hearing students. Because staff who are deaf and hard of hearing were included in the "Questions for Survey of School Buildings" staff questions are included in this draft. Is it the legislative intent to include others, such staff who are deaf and hard of hearing and students and staff with speech impairments who may need to use specialized customer telecommunications equipment, in this annual survey?

2. Is it the legislative intent to capture equipment availability within a local School Administrative Unit or availability of equipment in the building the student or staff is usually located? Is it the intent to include portable classrooms in this survey?

3. What is the legislative intent for any action to be taken by either the Department of Education or by local School Administrative Units on annual survey reports to the Legislature?

APPENDIX F

Commission To Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People With Disabilities

Members

Sen. Sharon Treat, Chair
Rep. Sharon Libby-Jones
Rep. Joseph Taylor
William Black
Eleanor Brown
Patti Brown
Daniel Breton
Jonathan Connick
April McAfee
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MEMORANDUM

November 30, 1998

TO: Dennis L. Keschl, Administrative Director, Public Utilities Commission

FROM: Senator Sharon Treat, Commission Chair and
Members, Commission to Study the Funding and Distribution of Teletypewriter and Other
Telecommunications Equipment for People with Disabilities

SUBJ: **Comments on Docket No. 98-807 - Inquiry Into Implementing the Universal
Service Provisions of the Telecommunications Act of 1996**

The Commission to Study the Funding and Distribution of Teletypewriter and Other Telecommunications Equipment for People with Disabilities (TTY Commission) held its final meeting on December 20, 1998, and is pleased to have the opportunity to comment on the Public Utilities Commission (PUC) inquiry into implementing the universal service provisions of the Telecommunications Act of 1996. Following a brief review of the scope of the TTY Commission study, please find comments from members of the TTY Commission regarding several specific issues related to the establishment of a state universal service fund.

TTY Commission -- General Background

The TTY Commission met four times during the 1997 legislative interim and submitted a report with recommended legislation to the Legislature in January, 1999 (see enclosed Executive Summary). TTY Commissioners found that Maine's existing telecommunications equipment

distribution program was far smaller in scope than it should be. Approximately 300-350 certified users are currently being served by the State's TTY loaner program. While it is difficult to determine the level of "unmet need" in the current loaner program, over 70% of the Deaf or hard-of-hearing population in Maine require the assistance of telecommunications equipment.

Still, there is a continuing need for both TTY and other specialized telecommunication equipment to meet the needs of persons with hearing- or speech-impairments and individuals with disabilities in the State. According to a statewide survey of Maine households conducted by the Bureau of Economic Research at Rutgers University, 13.5% of Maine's population have a disability that affects their ability to function in one or more life activities. For these individuals, access to telecommunications is a safety concern, as well as a basic necessity for full participation in the economic, social and civic spheres of contemporary life. Expert testimony indicated that people with special needs in other states have greater access to voice-level telecommunication services than do disabled individuals in Maine. Providing adequate resources for the purchase and distribution of special telecommunications equipment is a fundamental need for these persons.

Public Law 1997, Chapter 751, implemented the recommendations of the TTY Commission. This law amended the statutory provisions governing the Telecommunications Equipment Plan and the Telecommunications Equipment Fund to ensure that Deaf, hard-of-hearing, speech-impaired and disabled persons have direct access to telephone networks through the provision of specialized customer telecommunications equipment that are appropriate to their individual needs (see Title 26, section 1419-A, sub-~~§§~~ 2 and 3). The law also required the PUC to levy an assessment on certain telecommunications carriers to provide an additional \$85,000 in Fiscal Year 1998-99 to the Telecommunications Equipment Fund in order to provide additional funding for the purchase and distribution of specialized customer telecommunications equipment appropriate for Deaf, hard-of-hearing, speech-impaired and disabled persons in the State. The law authorized the TTY Commission to conduct one additional meeting during 1998 in order to review the status of state universal service fund rulemaking by the PUC and to receive progress reports from Department of Labor and Department of Education working groups regarding their plans for implementing specific TTY Commission recommendations.

Phase II -- Telecommunications Access Fund

On November 20, 1998, TTY Commission members were informed that the PUC would be contemplating implementation of a state universal service fund over the next few years. In consideration of the fact that the PUC is in the early stages of rulemaking proceedings, the TTY Commission unanimously recommended to continue dedicating additional Special Revenue funding for the purchase and distribution of specialized customer telecommunications equipment for the next three fiscal years (through Fiscal Year 2001-02). TTY Commissioners indicated that maintaining both General Fund support (\$55,000 was appropriated in FY 1998-99) and Special Revenue funding (\$85,000 was appropriated in FY 1998-99) for the Telecommunications Equipment Fund was prudent public policy that would likely provide sufficient funding for TTY equipment that is appropriate to meet the needs of persons who are Deaf, hard-of-hearing or speech-impaired and for specialized customer telecommunications equipment that is appropriate to meet the needs of hearing individuals with disabilities.

To address concerns raised by the PUC Staff regarding the implementation of the Special Revenue fund for Fiscal Year 1998-99, the TTY Commission made several recommendations to modify the calculation and collection of special assessments on telecommunications carriers. TTY Commissioners recommend that the PUC be authorized to identify which telecommunications carriers would be levied with an annual assessment (on gross revenues in state) and also to determine what amounts these carriers would be assessed in order to raise an additional \$85,000 for the special revenue account and allocated to the Telecommunications Equipment Fund. The PUC will also require the authority to collect revenue data on inter-state calls and from wireless carriers. The Bureau of Rehabilitative Services in the Department of Labor (DOL) will be responsible for contacting telecommunications carriers and collecting the special assessment. To protect the proprietary concerns of telecommunications carriers, a "protective order" must be included in law that requires DOL to secure the confidentiality of revenue data provided by carriers. Legislation to implement the TTY Commission recommendations will be drafted for submission to the 119th Legislature in January, 1999.

Needs assessment

This inquiry states that the PUC "will contemplate a three-part universal service fund" that includes the establishment and funding of a Telecommunications Access Fund (TAF) which would provide explicit funding for currently-mandated support programs (i.e., Lifeline, Link-Up, Telecommunications Relay Services and Telecommunications Equipment Fund). While the TTY Commission is aware that the PUC may take action to implement a state universal service fund that alters the manner in which these currently-mandated support programs are financed, TTY Commissioners recommend that the PUC defer action regarding the dual-purpose funding mechanism supporting the Telecommunications Equipment Fund until after Fiscal Year 2001-02. By waiting three years, the PUC will be in a position to better understand the telecommunications needs of Deaf, hard-of-hearing, speech-impaired and individuals with disabilities across the State and to assess the effectiveness of this funding approach in meeting those needs.

Two provisions of Public Law 1997, Chapter 751 should also benefit the PUC in assessing the particular telecommunications needs of Deaf, hard-of-hearing, speech-impaired and individuals with disabilities:

- Part A requires the Bureau of Rehabilitation Services in the Department of Labor and the Telecommunications Relay Services Advisory Council, in consultation with a telephone association in this state, the TTY Commission and other advisory councils representing the interests of persons with disabilities, to develop recommendations and a comprehensive plan for a request-for-proposal process to provide direct access to telephone networks for Deaf, hard-of-hearing, speech-impaired and disabled persons. The Division of Deafness must present the plan to the First Regular Session of the 119th Legislature by January 15, 1999.
- Part C requires the Department of Education, in consultation with the Governor Baxter School for the Deaf and advocacy groups for Deaf and hard-of-hearing persons, to conduct an annual survey of all public schools in the State for the purpose of assessing the need for specialized

customer telecommunications equipment in the school system and report its findings to the joint standing committee of the Legislature having jurisdiction over labor matters.

TTY Commissioners would like to see these initiatives continue in their current format for a few years before switching to a new funding mechanism.

Again, thank you for the opportunity to comment on the inquiry into implementing the universal service provisions of the Telecommunications Act of 1996. Please contact one of the TTY Commission staff -- Phil McCarthy or Carrie McFadden -- should you require any further information about the work of the TTY Commission.

Enclosures

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