

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**STATE OF WASHINGTON
KITSAP COUNTY SUPERIOR COURT**

THE WASHINGTON STATE
COMMUNICATION ACCESS
PROJECT, a Washington Non-Profit
Corporation,

Plaintiff,

v.

STATE OF WASHINGTON
DEPARTMENT OF
TRANSPORTATION,

Defendant.

NO. 08-2-01670-8

AGREED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER

After review of the pleadings on file, the discovery responses, and the applicable law, Plaintiff Washington State Communication Access Project (“Wash-CAP”) and Defendant State of Washington Department of Transportation, Washington State Ferries (“State”), agree on the material facts and on the legal effect of those facts. To avoid further litigation over matters about which there is no dispute, and to move forward on implementing a resolution of the matters placed at issue in this case, the parties request entry of the following Findings of Fact, Conclusions of Law, and Final Order:

I. FINDINGS OF FACT

1. Plaintiff Wash-CAP is a Washington non-profit membership corporation whose stated purpose is to advocate for the interests of people with hearing loss. Many of Wash-CAP’s members have significant hearing losses.

1 2. Washington State Ferries (“WSF”) is a division of the State of Washington
2 Department of Transportation (“WSDOT”). WSF owns and operates the nation’s largest fleet
3 of auto/passenger ferries, and operates terminals throughout the Puget Sound area of Western
4 Washington. Some of Wash-CAP’s members regularly patronize WSF’s vessels and
5 terminals, and will continue to do so in the future.

6 3. All of WSF’s terminals and vessels are equipped with public-address systems,
7 that are used to make announcements intended to inform the patrons and passengers at the
8 terminals and aboard the vessels.

9 4. People with hearing loss, including members of Wash-CAP, are unable to
10 understand some or all of the messages, made using the public-address system, that are meant
11 to be perceived aurally.

12 5. Information, conveyed over the public-address systems aboard WSF vessels and
13 at WSF terminals that is meant to be perceived aurally can be made accessible to persons with
14 hearing loss using currently available technology.

15 6. WSF is currently investigating whether it is technically and architecturally
16 possible to install and operate systems capable of converting announcements made over the
17 public-address systems into text on its vessels and in its terminals.

18 7. On/at certain vessels and terminals, WSF has installed or has allowed third
19 party concessionaires to install video monitors that display both informational programs and
20 advertising. Some but not all of that material is subtitled.

21 8. WSF leases space on/at certain vessels and terminals to private vendors,
22 including establishments that serve food and drink. One or more of those establishments have
23 televisions for patrons to view. If manufactured after 1993, those televisions are equipped to
24 display closed-captioned programming.

25 9. WSF is currently investigating how it can best install and operate systems
26 capable of converting announcements made over the public-address system into text on its

1 vessels and at its terminals, and the timetable in which this can be done. WSF agrees to take
2 the following steps, which Wash-CAP stipulates are reasonable and adequate:

- 3 a. WSF currently provides the general safety announcements in written form in all
4 terminals and on all vessels. WSF agrees to continue to do so.
- 5 b. WSF currently captions the aural component of all WSF content that it approves
6 to be displayed on the video monitors on/at its vessels and terminals. WSF
7 agrees to continue to do so.
- 8 c. When soliciting proposals from potential vendors or suppliers who may offer
9 video monitors with an aural component, WSF will request that the proposals
10 include a description of how that component can be subtitled or captioned.
11 Where choices are available, WSF will grant a reasonable evaluation preference
12 to vendors or suppliers who can furnish captioned material or information.
- 13 d. WSF agrees to install and maintain visual alarms (e.g., beacons) in accordance
14 with the recommendations of the Passenger Alarms Advisory Committee,
15 which was created to make recommendations to the Access Board on issues
16 related to the effectiveness of emergency alarm systems for passengers who are
17 deaf or hard of hearing.
- 18 e. Upon completion of WSF vessel modifications to incorporate the equipment
19 referenced in Paragraph (c), WSF will revise the written safety announcements
20 referenced in Paragraph (a) to include a statement informing passengers what to
21 do when the visual alarm is activated.
- 22 f. WSF will issue a Request for Information (RFI) two weeks after the entry of
23 this order by the court, requesting information from equipment vendors who
24 specialize in developing and providing equipment capable of converting vessel
25 and terminal announcements into text, in an accurate and efficient manner that
26

1 will provide effective communication to deaf or hard of hearing passengers and
2 patrons.

3 g. After receiving responses to the RFI, WSF agrees to provide the responses to
4 Wash-CAP and to other community groups serving the needs of people who are
5 deaf or hard of hearing and to seek input from those groups to assist WSF in
6 drafting a Request for Proposal (RFP). WSF will consult with Wash-CAP and
7 the other community groups for a period of eight weeks. This time period will
8 be extended if additional time is requested by one of the community groups.
9 The RFP will be to procure and install equipment (e.g., video monitors and/or
10 other technology) capable of converting announcements made over the public-
11 address system into text on WSF vessels and at its terminals.

12 h. No later than three weeks after the end of the consultation period, WSF will
13 issue an RFP seeking proposals from vendors for the procurement and
14 installation of equipment that meets the requirements as identified in the RFP to
15 provide effective communication to deaf or hard or hard of hearing passengers
16 and patrons.

17 i. After an equipment vendor is selected, WSF will have the selected equipment
18 installed on the Jumbo Mark II class ferries M.V. Tacoma and M.V. Wenatchee,
19 and in the Seattle (Colman Dock/Pier 52) and Bainbridge Island ferry terminals.
20 Vessel installations will be completed in conjunction with the ferry fleet
21 maintenance schedule. Following installation, WSF will conduct a six (6)
22 month test/evaluation of the equipment at each location.

23 j. WSF agrees to provide Wash-CAP a written, estimated schedule for installing
24 the equipment on/at the vessels and terminals for the test/evaluation after it
25 selects a vendor through the RFP process and assesses how such installations
26 can be accomplished in conjunction with the WSF vessel maintenance schedule.

1 In accordance with standard procedure, the WSF vessel maintenance schedule
2 remains in draft form, subject to revision at any time to meet WSF operational
3 requirements. WSF will provide Wash-CAP with any/all updates to the vessel
4 maintenance schedule that may affect the equipment installations.

5 k. If the test is successful, WSF agrees to act expeditiously to install similar
6 equipment on/at appropriate vessels and terminals.

7 l. WSF agrees to provide Wash-CAP a written, estimated schedule for installing
8 the post-test equipment on/at the appropriate vessels and terminals after it
9 assesses how such installations can be accomplished in conjunction with the
10 WSF vessel maintenance schedule. In accordance with standard procedure, the
11 WSF vessel maintenance schedule remains in draft form, subject to revision at
12 any time to meet WSF operational requirements. WSF will provide Wash-CAP
13 with any/all updates to the vessel maintenance schedule that may affect the
14 equipment installations.

15 m. Beginning in 2010 and continuing until installation is complete for all vessels
16 and terminals, WSF will send brief written reports to Wash-CAP during the last
17 weeks of March, June, September and December confirming installations that
18 have been made as scheduled.

19 II. CONCLUSIONS OF LAW

20 1. Wash-CAP has standing to bring this action.

21 2. WSF's vessels and terminals, and certain spaces rented to vendors at WSF
22 facilities, are "public accommodations" within the meaning of the Washington Law Against
23 Discrimination (WLAD), 49.60 *et seq.*

24 3. Under the WLAD and the duly adopted implementing regulations, public
25 accommodations must make information meant to be perceived aurally understandable to
26

1 persons with hearing loss to the extent that it is reasonably possible under the circumstances to
2 do so.

3 4. Converting information meant to be perceived aurally into text is one way to
4 convey that information to terminal patrons and vessel passengers with hearing loss.

5 5. WSF is required to ensure that the essence of the communication delivered over
6 the public address system is communicated to patrons who are deaf or hard of hearing to the
7 extent it is reasonably possible to do so under the circumstances.

8 6. If it believes that installation and operation of a captioning system is not
9 reasonably possible on/at any of its vessels or terminals, WSF bears the burden of producing
10 evidence and the burden of proof on that issue.

11 7. Conformity to the terms of this Order constitutes the limit of what is reasonably
12 possible under the circumstances for WSF to undertake.

13 8. Any Finding of Fact more properly denominated a Conclusions of Law shall be
14 treated as such, and any Conclusion of Law more properly denominated as a Finding of Fact
15 shall also be treated as such.

16 III. ORDER

17 Based on the foregoing Findings of Fact and Conclusions of Law, the parties agree to
18 the following, and **IT IS SO ORDERED** that:

19 1. WSF is hereby ORDERED to undertake those steps set out in Finding of Fact
20 No. 7, subsections a-j.

21 2. WSF will act in good faith to procure, install and operate the selected equipment
22 as soon as possible after selecting a vendor(s) through the RFP process, and to maintain that
23 equipment thereafter. Except in those instances, if any, where installation and operation of
24 captioning systems are not technically or architecturally possible, the installations specified in
25 Section I, Paragraph 7(i) will be completed and the captioning systems will be made
26 operational on or before June 30, 2011. WSF will notify Wash-CAP in writing if the

1 installation and operation cannot be completed by that date following a good faith effort. If the
2 test is successful, WSF will provide Wash-CAP with a schedule for the installation of the
3 selected equipment on/at other vessels and terminals.

4 3. Should WSF determine that it is not technically or architecturally possible to
5 install or operate captioning equipment on/at one of its vessels or terminals, it will notify
6 Wash-CAP in writing of the basis for its belief.

7 4. WSF will subtitle all WSF content with an audio component that it approves to
8 be shown on video monitors on/at any of its vessels and terminals.

9 5. To the extent legally permissible, WSF will add a requirement in any future
10 lease for space at any WSF property that any televisions meant to be viewed by the public at
11 the lessee's facility have the closed-caption function engaged at all times when the television is
12 on for public viewing.

13 6. The State will pay Wash-CAP attorney fees and costs in the amount of \$17,000.

14 7. Any action to enforce any provisions of this Agreed Order will be brought in
15 this Superior Court for Kitsap County.

16 DATED this _____ day of _____, 2009.

17
18 _____
19 District Judge

20 **AGREED TO AND ENTRY REQUESTED**

21 ROBERT M. MCKENNA
22 ATTORNEY GENERAL

23 _____
24 AMANDA PHILLY, WSBA # 37667
25 Assistant Attorney General
26 Attorney for Defendant State of Washington
7141 Cleanwater Dr. SW
P.O. Box 40113
Olympia, WA 98504-0113

JOHN F. WALDO, WSBA # 36109
Attorney for Plaintiff Washington State
Communication Access Project
151 Finch Pl. SW, Ste. C
Bainbridge Island, WA 98110