

ORIGINAL

Decision No. 70450

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LOUIS R. (LEW) LAURIA, an
individual owner and operator
of telephone answering bureaus,

COMPLAINANT,

vs

THE PACIFIC TELEPHONE COMPANY,
a corporation,

DEFENDANT.

Case No. 7967
(Filed July 31, 1964)

Lewis R. Lauria, complainant, in propria persona.
Pillsbury, Madison & Sutro, John A. Sutro,
George A. Sears, John A. Sutro, Jr., and
Arthur T. George, by George A. Sears and
John A. Sutro, Jr., for defendant.

Avery H. Simon, for Pacific Communications
Corporation, dba "Your Secretary";
Bert Levy, for Tel-Rad Telephone Answering
Bureau, Inc.; Stanley Sackin, for Telephone
Answering Services of California; and
Smith & Pepper, by E. Stratford Smith, for
Telephone Answering Services of California
and Associated Telephone Answering Ex-
changes, Inc.; interveners.

Homer Harris, for Allied Telephone Companies
Association, interested party.

O P I N I O N

Complainant is and has been actively engaged in the
telephone answering service business as an owner and operator
since June 14, 1941, and is president and treasurer of Lauria's
Telephone Answering Service, Inc., in Hollywood, California.
Complainant is also part owner of and serves in the following
capacities in other California telephone answering bureaus:
Vice President of Hollywood Call Board, Hollywood; Secretary-
Treasurer of Pacific Communications Corporation, doing

business as "Your Secretary", Ventura; and Secretary-Treasurer of Tel-Rad, Inc., San Jose. Complainant founded and served five years as president of Telephone Answering Services of California, Inc. (TASC), a trade association representing telephone answering bureaus in California. He is the recipient of a life membership in TASC but he resigned as a dues-paying member in May 1964, following his last term as president.

Leave to intervene was granted to Pacific Communications Corporation, doing business as "Your Secretary", and to Tel-Rad, Inc. by Commission order dated November 24, 1964, and to Telephone Answering Services of California, Inc. (TASC) and to Associated Telephone Answering Exchanges (ATAE) by Commission order dated November 25, 1964. ATAEE is an international trade association purporting to represent the interests of the telephone answering industry in the United States and Canada.

Public hearings were held before Examiner Patterson in Los Angeles on December 1, 2 and 3, 1964 and January 12, 13, 14 and 15, 1965, and the matter was submitted upon receipt of closing briefs on March 22, 1965.

Complainant requests an order of the Commission requiring defendant to remove from its tariffs all restrictions against the bridging of calls through telephone answering service switchboards.

It will be helpful in understanding the issues presented in this proceeding to consider first the manner in which telephone answering service is provided to the public. Telephone answering bureaus are independent private businesses which are not regulated by this Commission. They are subscribers to public utility

telephone service and they use telephone circuits, switchboards and other services and facilities generally as provided by the telephone utility. Defendant provides such service to its subscribers under tariff schedule Telephone Answering Service, Cal. P.U.C. No. 100-T.

An individual who desires that his telephone be answered in his absence may become a customer of a particular answering bureau by subscribing to a secretarial line from the telephone utility. The secretarial line is simply an extension from the individual's telephone line at the utility central office to a switchboard on the premises of a telephone answering bureau. This arrangement enables the bureau to answer incoming calls on the secretarial line and thus take any messages for the bureau's customer or give information to the caller according to instructions given by the customer.

In addition to performing such message functions the telephone answering bureau's operator can hold the calling party on the line, dial out to the bureau's customer on a trunk line, and then physically interconnect the incoming secretarial line with the outgoing trunk line so that the calling party can talk directly with the bureau's customer. This practice is commonly referred to as bridging or patching the call.

The terms bridging or patching are not used in defendant's tariffs but the practice is not permissible under those tariffs by reason of the restrictions imposed in Cal. P.U.C. No. 100-T, 4th Revised Sheet 9, Special Condition 3,c, (1) which states in part as follows:

"Secretarial line service is not offered for;
. . .

- (c) Connections between the secretarial line and a central office line or other secretarial line through the telephone answering equipment. . . ."

In essence, it is complainant's position that the practice of bridging telephone calls by telephone answering bureaus within the State of California is a necessary and integral part of telephone answering service which is designed to and does satisfy a public need and that defendant should be required to amend its tariffs so as to authorize or permit such practice.

The complainant testified that he has engaged in patching during the 23 years that he has been in the answering service business and estimates that over that period he has patched more than one million calls. He stated that prior to 1955 he patched calls through his board using only the integral parts thereof. Early in that year a Concentrator-Identifier (C-I) was installed which prevented patching on C-I boards involving C-I lines without use of a special device. He stated that after the advent of C-I he was advised by defendant to install the conference circuits it was offering, which permitted, and in his opinion, encouraged the continuation of patching.

Complainant further testified that through meetings prior to 1962 with defendant's representatives he received assurances that eventually the company would get around to legalizing bridging. In 1962, however, it appeared that the Bell System affiliates voted 19 to 2 against providing for bridging (defendant being one of those voting against) and that a new pushbutton console was being designed for answering services which would not

necessarily incorporate patching capabilities. Still later, in September 1963, he believed that the matter was again under review by defendant but learned in July 1964 that a recommendation for patching was not adopted. He testified that this led to the filing of his complaint.

Complainant presented statistical summaries based upon his telephone answering bureau operation in Hollywood indicating that approximately 44 per cent to 47 per cent of his clients demand or require bridging of all or some of their calls (Exhibits 10 and 10A). He testified that doctors especially have a requirement for bridging their calls and in Exhibit 13 he presented figures showing that for a representative test period 20.41 per cent of doctors' calls in his bureau were bridged as compared with 9.85 per cent for nonmedical clients. The combined figure for his bureau shows that 10.37 per cent of the calls were bridged for all clients. The 27 doctors subscribing to his service represent only 3.1 per cent of the total of his clients. Through Exhibits 11A and 12 complainant developed figures showing that doctors comprise approximately one-fourth of the total clientele of the 647 telephone answering bureaus in California. This may be compared with the figure in the A.T. & T. Instructor's Guide (Exhibit 9) that on the Bell System approximately one-third of the answering bureau clients are doctors.

The particular requirements which doctors have for bridging was further brought out by the testimony of an individual, with 33 years experience in the telephone answering business, who operates two telephone answering bureaus in the Los Angeles area, one of which is entirely for medical clients. He testified

that he serves some 700 to 800 physicians and that about 90 per cent of them require patching to one degree or another whereas only 8 per cent to 10 per cent of the nonmedical clients require patching. He testified that if patching were to be eliminated his business would continue to exist. He did not know whether or not his business would be diminished by such a step but he felt that the public would suffer through the lack of coverage for emergency services. He stated he has patched calls ever since he entered the answering service business.

An operations manager for several telephone answering bureaus, called as an adverse witness by complainant, testified that he had engaged in patching since 1949. He testified as to the types of equipment he had used for patching including an experimental device provided by defendant some years ago. He stated that he finds patching to be useful to members of the medical profession and to their patients. He also stated that only 1 per cent or 2 per cent of the nonmedical clients ask for it. This same witness testified later for intervener Tel-Rad Inc. on a basis favorable to complainant. He stated he had changed his position as he believed his feelings had not been truly represented during the first three days of the hearing. In the intervening period he had conducted a survey of seven telephone answering bureaus in northern California and he proceeded to present the results in Exhibit 29. His study shows that about 19 per cent of all the calls handled by these bureaus were patched calls. He stated that of the accounts included in the study 31 per cent were medical. The exhibit further shows that extending the results of this survey to the 1,335 telephone answering boards served by defendant would result in a figure of more than ten million bridged calls handled annually.

The General Counsel for the Los Angeles County Medical Association presented a resolution passed on November 24, 1964, by the Committee for Emergency Action of the California Medical Association reflecting the desire of that association to have the practice of transferring telephone calls to a physician through a switchboard continued as a matter of vital importance to physicians and patients (Exhibit 1).

To illustrate the requirements which certain other nonmedical clients have for bridging of calls complainant presented four witnesses. These witnesses were a bail bondsman, an actor, a manager of a driving school and a lawyer who assists in the operation of a lawyers' referral service. Each of these individuals testified in substance that the bridging of calls was necessary in the conduct of his business affairs and that if it were not to be provided he would have little or no need for telephone answering service.

It is complainant's position that while at one time patched calls could not be adequately supervised by the switchboard operator, as there was no means of indicating when the conversation on a patched call had been completed, now this situation has been rectified through devices manufactured by Telephonic Research Institute. The present owner of that organization testified on behalf of complainant. This witness stated that he became active in the telephone answering business in 1934 and for some 29 years thereafter operated an answering service in Santa Monica. Prior to 1957 he developed and experimented with a unit he called a Patchnik for use in patching and

in 1957 he and the complainant formed the Telephonic Research Institute to make and market the equipment. Subsequent models of this device were called Telebridger, Tinypatcher and Telepatcher. The record shows that this witness purchased complainant's interest in the company in 1959. The witness testified that his current model of the patching device does not cause a transmission drop of more than one-tenth of a decibel. He stated that he is not aware that any of the patching devices he has produced has caused any problem to telephone company central office equipment. He stated that later models operate more efficiently than did earlier ones and that his latest model of Telepatcher will provide supervision with all types of central office equipment used by defendant including No. 1 Crossbar. In the aggregate his patching devices are presently located in some 100 California localities with approximately 865 patching circuits now being in use. He estimated that there are some 25 to 30 of his patching devices in use outside of California. He indicated that he did not pursue non-California outlets because, among other things, there did not seem to be the keen interest elsewhere that there is in California.

With respect to the quality of transmission on bridged calls it is complainant's position that complaints as to poor transmission level are so negligible as to constitute no problem. No statistical information was presented as to the actual number of such complaints but the testimony of complainant and his witnesses indicates that on the average bridged call transmission level is not a problem.

In general, answering bureau operators make separate charges to their clients for bridging calls. One operator

testified that he charges ten cents for each bridging operation.

It is defendant's position that the objectionable effects of bridging require the continuance in the tariffs of the restriction against bridging. Defendant expressed four principal objections to the bridging of telephone calls. First, bridging impairs the quality of transmission. Second, there is not adequate supervision over bridged calls. Third, bridging creates inequities and discrimination in telephone rates between subscribers. Fourth, bridging involves resale of telephone service and the performance of telephone company switching functions by unregulated third parties.

An engineer for defendant testified that the telephone network is designed for telephone transmission paths with two end loops. These end loops are comprised of the loop from the calling party's telephone to the central office and the loop from the central office to the telephone answering bureau switchboard. The typical end loop involves a loss of five decibels at 1,000 cycles and thus with the two loops in a series an average loss of 10 decibels is experienced. When an answering bureau bridges a call it adds two more loops to the transmission path, one additional loop from the telephone answering switchboard to the central office and one additional loop from the central office to the answering bureau customer. This irregular connection not contemplated by telephone system design will on the average double the transmission loss and thereby result in substandard transmission on bridged calls. He stated that correction of the transmission difficulties inherent in bridging would in effect necessitate

turning answering bureau switchboard arrangements into telephone company central office facilities which would be economically impracticable.

The same engineer testified as to the difficulties involved in adequately supervising calls bridged through an answering bureau switchboard. Such switchboards are not intended to be used for bridging calls and they do not indicate to answering bureau operators when a bridged conversation has been concluded. This can result in degradation of service for failure to disconnect the circuit promptly upon conclusion of the conversation, tying up both answering bureau lines and customer lines, and can result in excessive holding times on telephone company central office equipment. He further testified that none of the devices for bridging which have been furnished in violation of tariffs have been satisfactory. He stated that the earlier models of the equipment such as Patchnik and Telebridger would not operate in conjunction with all types of central office equipment. Although the latest model of Telepatcher will operate in conjunction with all types of central office facilities, he was of the opinion that it is not well designed from a safety standpoint, as the case is not grounded and the fuse block is exposed. Thus he believed that it could present a safety hazard to answering service and telephone company personnel. He was of the opinion that it would probably violate local electrical codes and that it would not be accepted for listing by the Underwriters Laboratory. He stated that in about 1957 defendant had experimented with a device to provide supervision over calls bridged by answering bureaus. This experimental device proved

unsuitable and defendant determined that in light of other objections to bridging there was no basis for further efforts to develop an adequate supervisory device.

A witness who has statewide responsibility for defendant's rates and tariffs testified and presented exhibits (Exhibits 32 to 36) illustrating how bridging of calls by answering bureaus may result in discrimination in exchange message unit and toll charges among subscribers making telephone calls between the same points. This discrimination arises by virtue of the fact that, by performing a telephone company switching function, the answering bureau in effect establishes itself as a rate center unauthorized by tariff provision. The injection of this new rate center not contemplated by the rate structure often results in deviations from the authorized tariffs. In some instances the calling party and the answering bureau customer will pay lower than authorized charges for calls on a bridged circuit and in other instances they will pay higher charges than the authorized tariffs.

This same witness for defendant also testified that bridging by answering bureaus involves a resale of telephone service within the prohibition of Rule 18 of Schedule Cal. P.U.C. No. 36-T, Sheet 64. He stated that when an answering bureau bridges, it switches calls between telephone company subscribers, establishing a new telephone service offering for which it charges unregulated rates. It was his opinion that the injection of an unregulated third party, which results from answering bureaus' bridging calls, deprives both the serving telephone company and the Commission of control over a portion of telephone service

and that therefore the public is denied the assurance of the uniform high quality service to which it is entitled.

Interveners Tel-Rad Telephone Answering Bureau, Inc. and Pacific Communications Corporation, doing business as "Your Secretary", both supported complainant's position and the operator of one of them testified on behalf of complainant. He stated that he had been in the telephone answering business for some 32 years and in California specifically since 1947. He stated that he has been patching calls in California since his 1947 entry and that he had patched calls while engaged in the answering service business in New York. He further stated his belief that he would make more money if he did not engage in patching but that he did patch calls because of the requirements of his clients and because of the competitive nature of the business.

Interveners Telephone Answering Services of California, Inc. (TASC) and Associated Telephone Answering Exchange, Inc. (ATAE) took the position originally that the complaint should be dismissed. During the course of the proceeding they explained their position to be that they believed the practice of patching in California should be continued as a useful and desirable adjunct of the services rendered by telephone answering bureaus, but that it is not a requisite or integral portion thereof. They support the continued use of patching in California as a valuable additional service rendered by the answering bureaus, but they would withdraw such support if the continuance of such practice were to subject the bureaus to Commission regulation.

An individual who is secretary and a director of TASC as well as secretary-treasurer and a director of ATAE testified on behalf of both associations. He stated that he owns four telephone answering bureaus all located in California and has been in that business since 1959. He patches calls in three of these bureaus but not in the fourth. Through this witness there was introduced a manual entitled "How to Operate a Telephone Answering Service Cord Switchboard" (Exhibit 38). This manual had been drafted by a special committee of TASC for instructional and operational use by answering bureaus. Subsequently, defendant published the manual and distributed it throughout California to answering bureau operators, after which it was published in the same form by American Telephone and Telegraph Company and made available to answering services all over the country. Nowhere in the manual is there any mention of the matter of patching or bridging calls. In a statement of fundamentals of telephone answering service which appears in the manual it is stated that telephone answering service is primarily concerned with three functions which are the basis of the business; answering telephone calls, taking messages and delivering messages. The witness admitted, however, that in the explanation of these functions Item I, 6,c ("Any other handling the client has requested"), appearing on page 3 of the manual, could include the practice of bridging or patching. The witness stated that he would not consider patching as an integral or essential part of the telephone answering business but since it has been providing such a useful service to the public the practice should be continued in California, provided that such continuance would not invoke the regulatory authority of the Commission.

Another individual, who is past president of ATAE and has been a director for 11 years, testified on behalf of ATAE and TASC. He stated he had been in the telephone answering service business for some 19 years and is associated in management and official capacities with such concerns in Florida, Pennsylvania, Colorado, Oklahoma, Texas, Illinois, Ohio and Maryland, all of which involved about 90 switchboard and in excess of 7,400 secretarial positions for answering service accounts. He testified that patching is not practiced in many of the bureaus in which he has an interest and that on an overall basis less than 1 per cent of the calls handled are patched. He does not consider patching to be an integral or an essential feature of telephone answering services but feels that withdrawal of the service in California would be difficult because of its prevalence here. As chairman of the association's Liaison Committee with the American Telephone and Telegraph Company he has participated in meetings with telephone company personnel upon a national level to discuss the latter's plans for electronic central office equipment, call diverting possibilities and console switching. According to his testimony, the ATAE position, based chiefly upon the prevalence of patching in California, has been that of urging that console answering equipment be designed and marketed by the telephone companies so as to include patching circuits; the telephone company's position, in turn, has been that if tariffs were modified to provide for patching, no problem would exist in providing patching circuits in the new equipment. This witness testified unequivocally that in the event the practice of patching were to require the industry to be subjected to Commission regulation the position of ATAE

would be to dispense entirely with patching.

Another director of ATAE and a past president thereof also testified on behalf of ATAE and TASC. He was employed by defendant from 1945 to 1953 in various management positions including employment as the liaison representative between defendant and the telephone answering industry. He entered the answering service business in 1953 and has had extensive experience in that industry in California. He stated that currently he is active nationally as a consultant and broker in connection with telephone answering services, owns his own bureau in Phoenix, Arizona and has an interest in a Detroit, Michigan bureau. In general he corroborated the testimony of the other two witnesses for the intervener associations and stated that no patching occurs in either of his two owned bureaus. He stated that in his opinion some 12 per cent to 20 per cent of all telephone answering service calls in California are patched but that not all answering bureaus in California engage in patching. He testified that he has personal knowledge of major bureaus serving bail bondsmen, physicians and actors which do not patch. He considers patching to be a useful adjunct to but not a fundamental or integral part of the telephone answering business; he nevertheless believes it would be desirable for patching to be continued in California because it has been a local practice for a period of time.

The primary issue which is before us in this matter is whether or not the bridging of telephone calls by telephone answering bureaus, not now permissible under the tariffs, should be authorized. In reaching a determination on this issue it will be helpful to consider first the extent of public demand or

necessity which exists for bridging.

The record clearly establishes that bridging is practiced by telephone answering bureaus in California to a much greater extent than in the rest of the country. The extent of bridging in California is not an incidental matter, as it is performed in connection with some 12 per cent to 20 per cent of all telephone calls handled by such answering bureaus. The record shows that telephone answering bureaus on defendant's system have been bridging calls for at least thirty-three years and that presently they bridge more than ten million calls annually. There has been no dispute on this record of the premise that the bridging of calls in emergency situations where life or property is endangered is a valuable public service. The record does not disclose how many of the calls now bridged involve true emergency situations, but the interest and concern which the California medical profession evidences in bridging and in the continuation of that practice is sufficient to persuade us that there is a public demand and necessity for bridging.

Turning now to defendant's objections to bridging, we observe that if bridging were indeed as detrimental to service and to the public interest as defendant would have us believe, defendant has been remiss these many years in not enforcing its tariffs or in bringing the matter to the Commission's attention.

Defendant's claim that bridging impairs transmission cannot be disputed, for it is elementary that placing two electric circuits or loops in series will increase the resistance and loss over that which exists in either of the circuits or loops individually. The important consideration, however, is the degree

of impairment. Defendant argues that the impairment is serious but the opinion of its expert was based solely upon theory and engineering judgment, no tests having been made on bridged circuits. Tests undoubtedly would have shown adequate transmission on many calls, particularly on short loops. It seems clear from this record that complaints of poor transmission on bridged calls are infrequent and there is no indication that the level of service in such instances is unacceptable to the parties, particularly if they are aware that a bridge is involved.

The record shows that with the latest model of patching device available in the industry, adequate supervision may be exercised on bridged calls; such modifications as may be necessary to satisfy safety requirements can readily be made.

It is true that bridging may sometimes result in failure to collect the same charges for calls as would be collected without bridging. There is no indication, however, that as a result there is any significant difference in total revenues collected by defendant. If any discrimination exists as between individual calls, we are of the opinion that it is not adverse to the public interest when weighed against the benefits which accrue from bridging.

The bridging of calls by telephone answering bureaus may well be considered a switching function which normally would be performed by a telephone utility. This is not the appropriate proceeding, however, for determining whether or not the performance of bridging operations by an answering bureau would subject such bureau to regulation as a public utility; we here expressly refrain from consideration of that question.

It may be observed that the bridging of calls by answering bureaus is somewhat comparable to the service performed in hotels by switchboard operators who, through the hotel PBX switchboard, "bridge" calls between the hotel telephone system and the public utility telephone system. The tariff under which Hotel Private Branch Exchange Service is provided by defendant prescribes maximum charges which hotels may bill guests for handling such calls. It might be appropriate if defendant's tariff schedule for Telephone Answering Service were to incorporate a similar provision prescribing the maximum charge which could be applied for bridging calls; there is insufficient evidence in this record, however, to establish the proper level for such a charge at this time.

We do not agree that bridging constitutes resale, as the bridging operation is a service performed solely by the bureau, rather than resale of a service performed by defendant. The passing on to an answering bureau client of the tariff charges for the portion of a bridged call from the bureau to the client might be considered resale but this would hold true equally for an unbridged call.

Upon consideration of the record and in accordance with the foregoing discussion we find that:

1. Bridging of telephone calls by telephone answering bureaus is not permissible under defendant's filed tariffs, being specifically prohibited by Cal. P.U.C. No. 100-T, 4th Revised Sheet 9, Special Condition 3,c,(1),(c).

2. In violation of the filed tariffs, over ten million telephone calls are bridged annually by telephone answering bureaus served by defendant.

3. The bridging of telephone calls by telephone answering bureaus for doctors and their patients provides a vital and useful service to the public.

4. The bridging of telephone calls by telephone answering bureaus for certain non-medical clients provides a useful service for those clients.

5. The bridging of telephone calls by telephone answering bureaus is more prevalent in California than in the rest of the United States.

6. A significant public demand exists for the bridging of telephone calls by telephone answering bureaus in California.

7. Defendant has long been aware of the extensive violation of its filed tariffs restricting bridging of telephone calls by telephone answering bureaus.

8. Defendant has made no apparent effort to enforce its filed tariff restrictions on bridging of telephone calls.

9. The benefits enjoyed by the public as a result of the bridging of calls by telephone answering bureaus outweigh any disadvantages created in quality of service.

10. Any rate discrimination among telephone subscribers created by the bridging of calls by telephone answering bureaus is reasonable.

Based upon the above findings we conclude that all restrictions against bridging by telephone answering service bureaus contained in defendant's filed tariffs, including that contained in Cal. P.U.C. No. 100-T, should be removed.

If defendant is of the view that terms and conditions should be established to govern the bridging of calls by telephone answering service subscribers, defendant may, of course, file a proposed tariff containing such terms and conditions. Regular tariff procedures would afford the Commission and the public (including any party to this proceeding) an opportunity to study such a proposal prior to its going into effect, and, if appropriate, the Commission could schedule public hearings thereon.

ORDER

IT IS ORDERED that The Pacific Telephone and Telegraph Company shall, within ten days after the effective date of this order, revise its filed tariffs so as to remove all restrictions against bridging of calls by telephone answering service subscribers.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 15th day of MARCH, 1966.

Frederick B. Halchuk
President

John E. ...

George H. ...

August ...

William W. Bennett
Commissioners