

Decision 87 10 073 OCT 28 1987

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
California Association of the Deaf, Inc.;  
Deaf Counseling, Advocacy and Referral  
Agency, Inc.,

Complainants,

vs.

AT&T Communications of California, Inc.,

Defendant.

Case 86-12-004  
(Filed December 1, 1986)

O P I N I O N

Complaint

On December 1, 1986, the California Association of the Deaf, Inc. and the Deaf Counseling, Advocacy and Referral Agency, Inc. (complainants) filed this complaint against AT&T Communications of California, Inc. (defendant). Complainants allege that defendant intends to restrict telephone calls placed through the statewide relay system<sup>1</sup> to intrastate calls only and to refuse to relay any interstate or international calls, whether made to or by deaf telephone subscribers residing in California.

According to complainants such restriction of calls violates Ordering Paragraph One of Commission Decisions (D.) 86-02-042 and D.86-05-023, Public Utilities (PU) Code §§ 453(b) and 2881(b), and Civil Code Section 54.1(a).

<sup>1</sup> A system whereby third party intervention is used to connect deaf or severely hearing-impaired persons with persons of normal hearing by use of Telecommunications Devices for the Deaf (TDDs) and the telephone system.

Complainants are California nonprofit corporations whose stated purpose is to advance the interest of deaf and hearing-impaired persons. The membership of these organizations consists of deaf and hearing-impaired persons.

Defendant is the Commission designated entity to implement and operate the deaf relay center authorized by the above-mentioned decisions.

Defendant's Response to Complaint

On December 15, 1986, defendant filed its response to the complaint. In its response, defendant confirmed the allegation that interstate and international calls would not be relayed through the deaf relay center. Although defendant is willing and able to relay interstate and international calls,<sup>2</sup> defendant contends that it is precluded from doing so because of jurisdictional problems and cost considerations.

According to defendant the Commission has no jurisdiction over the relay of interstate or international calls. Such jurisdiction lies solely with the Federal Communications Commission (FCC).

Furthermore, the routing of calls originating out-of-state would result in an unpredictable drain on the funding available for the relay system. This is because, under the present system design, customers initiating calls through the relay system are billed as if the calls are routed directly from end user to end user, although the calls are routed over an 800 service line to the relay center, located in San Fernando Valley, and relayed to their final destination via a wide area telecommunications services (WATS) line.

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<sup>2</sup> Although defendant indicates its willingness and ability to relay interstate and international calls, there is no indication of defendant's efforts to implement such service.

The Deaf Equipment Acquisition Fund (DEAF) Trust pays for all calls routed over the 800 line and relayed to their final destination via a WATS line. The local exchange company receives from the end user placing the call an amount of revenue equal to the revenue it would receive without the use of the relay service. In turn, the revenue which the local exchange company receives is passed over to the DEAF Trust to defray the costs incurred by the relay system. The only other source of funding the DEAF Trust receives is generated from a surcharge on local exchange service throughout the state.

Should calls originating out-of-state be allowed, these same revenues would not be available because the local exchange company in the originating area outside of the state would not be required to turn over the revenues, thereby, resulting in an unpredictable drain on the funding available to the DEAF Trust.

#### Prehearing Conference

A prehearing conference was held in San Francisco before Administrative Law Judge (ALJ) Galvin on January 22, 1987. At this conference, both complainants and defendant agreed that jurisdictional problems and cost considerations needed to be addressed. Since the parties agreed that the jurisdictional issue could be addressed by brief, the ALJ requested parties to file opening and reply briefs, respectively.

An opening brief was filed by complainants on February 23, 1987 and a reply brief by defendant on March 13, 1987. No other briefs were filed.

#### Discussion of Briefs

Complainants concede that the Commission has jurisdiction over telecommunications services within California and that the FCC has jurisdiction over interstate services. However, complainants allege that the Commission, not the FCC, has jurisdiction over the relay service because such service is not an "interstate service"

as defined by the Communications Act of 1934 (Act). Similarly, complainants allege that defendant is not acting as a "carrier" in providing such service, and that the relay service is neither a "telephone exchange" nor a "toll service" within the meaning of the Act.

Defendant takes the opposite view. Not only does defendant contend that the relay system, to the extent used to complete calls from one state to another, is subject to FCC jurisdiction, but also that defendant would be considered a carrier by virtue of holding itself out for hire. That is, defendant's cost of operating the relay system is reimbursed by the DEAF Trust, whose funds are derived from users of the system.

Furthermore, defendant contends that the relay service pertaining to interstate and international calls would be classified as toll service because such service meets the definition of toll service. That is, the relay service involving interstate calls would employ stations (telephones) in different exchange areas for which customers using the relay service would be billed separately and apart from exchange service. Once a service is determined to be interstate in nature, the facilities over which that service is provided may also become subject to FCC jurisdiction, to the extent those facilities are used for interstate service.

Complainants did not attempt to support its allegation. Conversely, defendant, not required to shoulder the burden of proof in a complaint case, supported its position that the relay system, as it relates to interstate or international calls, is an interstate service subject to FCC jurisdiction.

We find defendant's argument persuasive. Therefore, we deem the relay system, as it relates to interstate or international calls, to be under FCC jurisdiction.

Complainants also contend that the relay service is analogous to an answering service. That is, like a relay service, an answering service receives a call and forwards a message over an existing telephone network to the party ultimately being called. Complainants assert that the relay system is a third party dispatcher and as such (exclusive of radio paging systems) is not subject to the FCC's jurisdiction.

According to complainants, the primary difference between these two services is that, usually, the answering service is not connected to both parties simultaneously to allow conversation.

Defendant disagrees with complainants' answering service analogy. It contends that the relay service is more comparable to a switching device because the service is interactive.

We concur with defendant. The service relays whole conversations, both ongoing and immediate, while an answering service acts only as a repository of information, passing on to its subscribers minimal information and only when the service subscriber calls for the information.

Complainants assert that even if the FCC considered the relay of interstate or international calls an interstate service, the FCC expressly left such jurisdiction to the states. In support, complainants cite an FCC proceeding on access to telecommunications equipment by the hearing impaired and other disabled persons wherein the FCC stated:

"We are not precluding cooperative efforts by states and carriers, including subsidies if necessary, to provide incidental services to TDD users which go beyond the basic requirements of...."

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3 (1983) CC Docket No. 83-427, FCC 83-565, 49 Fed. Reg. 1352, January 11, 1984.

Although complainants believe that this FCC decision provides the Commission a reasonable basis to assert jurisdiction over the provision of relay service, including out-of-state calls made to or from deaf California subscribers, the above-mentioned quote, as defendant points out in its brief, relates to the provision of hearing-aid compatible customer premise equipment and does not address the question of jurisdiction over interstate TDD relay services.

Defendant did not address, as did complainants, a second issue: whether D.86-02-04, D.86-05-023, and/or PU Code § 2881(b) require the relay system to relay interstate or international calls.

Defendant contends that the jurisdictional issue was the only issue under consideration. However, defendant did state that it was worth noting that complainants admit that the above-mentioned decisions do not clearly require defendant to relay interstate or international calls.

Contrary to complainants belief, this additional matter was not identified as an issue for briefing and; therefore, complainants' comment on this issue should not be addressed. However, defendant's answer to the complaint, filed on December 15, 1986, shows a need to re-examine Commission decisions which implemented the deaf relay system. Specifically, we are referring to defendant's statement: "The simple fact is that the planning for the California Relay Service never contemplated the receipt of calls from out-of-state."

D.85-08-015 required the design of the relay system to provide reasonable access in accordance with major respondent utilities' (defendant, Pacific Bell, and General Telephone Company of California) comments on Appendix C of the investigation.

Included as an Appendix C issue was the issue whether any particular conditions should apply to interstate calling through the relay system. Adopted comments from the major utilities on this and other issues were not specifically stated in the above-mentioned order because of their length. The adopted comments of the major utilities, including defendant's, on the interstate calling issue were:

- o Interstate calls should be handled in the same way as intrastate calls are handled. (defendant).
- o Interstate calls should be handled by the relay system on the condition that either the originating or terminating end of the call is located in California. (Pacific Bell).
- o Interstate calls should be permitted on the condition that any presubscribed interstate carrier of the TDD user would not necessarily be used by the relay system. Rather, the relay system would use its own interstate carrier. (General Telephone).

Subsequently, by D.86-02-042, major respondents' joint report on a proposed design for the relay system was adopted. The only specific mention of interstate calls was in a brief discussion in the network configuration section of the report which stated that, for the purpose of the design report, costs were evaluated based on calls originating and terminating in California; the 1% of traffic estimated to be interstate was not included.

Clearly, it was the intent of all parties to the investigation that the relay of calls, whether intrastate or interstate, be incorporated into the design of the relay system. However, it was not the intent of the Commission to assert jurisdiction over the relay of interstate or international calls.

Since we conclude that the Commission has no jurisdiction over the relay of interstate or international calls through the relay system, the complaint should be dismissed. There is no need to address the remaining issue of cost.

However, in designing and implementing the statewide relay system it was not our intent to preclude California deaf subscribers from utilizing the relay system for interstate or international calls. Therefore, we encourage defendant to follow through with the FCC on defendant's willingness and ability to extend the statewide relay system to include interstate and international calls by seeking an extension of the relay system on a cost effective basis.

We also invite defendant, to the extent we have jurisdiction, to file a petition of modification of D.86-02-042 and D.86-05-023, to implement such an extension of the relay system on a cost effective basis.

Subsequent to the filing of opening and reply briefs, we were informed that the FCC is seeking comments on assisting the hearing impaired and other disabled people in obtaining reasonable access to telecommunications services. We are encouraged by the FCC's action and take this opportunity to express our interest to the FCC in extending the relay service to include interstate and international calls on a cost-effective basis.

#### Findings of Fact

1. Defendant refuses to relay any interstate or international calls through the statewide relay system, whether made to or by deaf telephone subscribers residing in California.
2. Defendant is willing and able to relay interstate and international calls.
3. Defendant does not indicate the extent of its efforts to relay interstate or international calls.



4. Defendant contends that it is precluded from relaying interstate or international calls because of jurisdictional problems and cost considerations.

5. Customers initiating calls through the relay system are billed as if the calls are routed directly from end user to end user.

6. Relay calls are actually routed over an 800 service line to the relay center, located in San Fernando Valley, and relayed to their final destination via a WATS line.

7. The DEAF Trust pays for all calls routed over the 800 line and relayed to their final destination via a WATS line.

8. The revenue which the local exchange company receives from the customers initiating calls through the relay center is passed over to the DEAF Trust.

9. The only other source of funding the DEAF Trust receives is generated from a surcharge on local exchange service throughout the state.

10. Defendant contends that the relay of interstate and international calls would result in an unpredictable drain on the funding available to the DEAF Trust.

11. Complainants and defendant agreed at the prehearing conference that jurisdictional problems and cost considerations needed to be addressed.

12. Parties agreed that jurisdictional problems could be addressed by briefs first, with cost considerations to follow.

13. Complainants filed an opening brief on February 23, 1987, and defendant filed a reply brief on March 13, 1987.

14. Complainants concede that the Commission has jurisdiction over telecommunications services within California and that the FCC has jurisdiction over interstate services.

15. Complainants allege that the Commission has jurisdiction over the relay service because such service is not an "interstate service" as defined by the Act.

16. Complainants allege that defendant is not acting as a "carrier" in providing such service, and that the relay service is neither a "telephone exchange" nor a "toll service" within the meaning of the Act.

17. Defendant contends that the relay system, by definition, is subject to FCC jurisdiction in instances where the relay system is used to relay interstate or international calls.

18. Defendant contends that once a service is determined to be interstate in nature, the facilities over which that service is provided may also become subject to FCC jurisdiction.

19. Complainants assert that the relay system is an answering service or third party dispatcher and, as such, is an unregulated service of the FCC.

20. Defendant contends that the relay service is more comparable to a switching device because the service is interactive.

21. Complainants assert that the FCC expressly left jurisdiction of the relay of interstate and international calls to the states.

22. The FCC decision which complainants relied on to assert state jurisdiction relates to the provision of hearing-aid compatible customer premise equipment. The decision does not address the question of jurisdiction over interstate TDD relay system.

23. Complainants addressed a second matter not identified as an issue for briefing.

24. The issue of whether any particular conditions should apply to interstate calling through the relay system was addressed in D.85-08-015.

25. Among the major respondents' comments adopted in Interim Order 2 of D.85-08-015 was defendant's comment that interstate calls should be handled in the same way as intrastate calls are handled.

26. By D.86-02-042 major respondents' joint report on a proposed design for the relay system was adopted.

27. The adopted design report evaluated costs based on calls originating and terminating in California, the 1% of traffic estimated to be interstate was not included.

28. In authorizing the design of the system relay, it was not the intent of the Commission to assert jurisdiction over interstate or international calls.

29. It was not the Commission's intent to preclude California deaf subscribers from utilizing the statewide relay system for interstate or international calls.

#### Conclusions of Law

1. The Commission has retained jurisdiction over the relay of intrastate calls; it does not appear to have jurisdiction over the relay of interstate or international calls.

2. Because the relay service relays whole conversations, both ongoing and immediate, while an answering service acts only as a repository of information, passing on to its subscribers minimal information and only when the service subscriber calls for the information, the relay service should not be considered an answering service or a dispatcher.

3. Because the FCC decision which complainants relied on did not address the question of jurisdiction there is no basis to complainants' assertion that the FCC expressly left such jurisdiction to the states.

4. Because the Commission has no jurisdiction over the relay of interstate or international calls the complaint should be dismissed without prejudice.

5. Absent jurisdiction, the remaining issue of cost considerations should not be addressed.

6. Because defendant is willing and able to relay both interstate and international calls and the Commission did not intend to preclude California deaf telephone subscribers from utilizing the statewide relay system for interstate or international calls, defendant should aggressively seek FCC authorization to provide the extended relay service.

#### ORDER

IT IS ORDERED that:

1. Defendant, upon following through with the Federal Communications Commission on defendant's willingness and ability to extend the statewide relay system to relay interstate and international calls, may file a petition of modification of Decision (D.) 86-02-042 and D.86-05-023, to the extent the Commission has jurisdiction, to relay interstate and international calls on a cost effective basis.

2. The complaint is dismissed without prejudice.  
This order becomes effective 30 days from today.  
Dated OCT 28 1987, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
FREDERICK R. DUDA  
C. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Victor Weisser, Executive Director

JB

24. The issue of whether any particular conditions should apply to interstate calling through the relay system was addressed in D.85-08-015.

25. Among the major respondents' comments adopted in Interim Order 2 of D.85-08-015 was defendant's comment that interstate calls should be handled in the same way as intrastate calls are handled.

26. By D.86-02-042 major respondents' joint report on a proposed design for the relay system was adopted.

27. The adopted design report evaluated costs based on calls originating and terminating in California, the 1% of traffic estimated to be interstate was not included.

28. In authorizing the design of the system relay, it was not the intent of the Commission to assert jurisdiction over interstate or international calls.

29. It was not the Commission's intent to preclude California deaf subscribers from utilizing the statewide relay system for interstate or international calls.

Conclusions of Law

1. The Commission has no jurisdiction over the relay of interstate or international calls.

2. Because the relay service relays whole conversations, both ongoing and immediate, while an answering service acts only as a repository of information, passing on to its subscribers minimal information and only when the service subscriber calls for the information, the relay service should not be considered an answering service or a dispatcher.