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Decision 92-11-017 November 6, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion to determine the feasibility of implementing New Funding Sources and Program Reductions in the Deaf and Disabled Program Pursuant to Section 2881 of the Public Utilities Code.	I.87-11-031 (Filed November 25, 1987)

O P I N I O N

On February 24, 1992, the Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC) filed a petition for modification of Decision (D.) 89-05-060. DDTPAC's petition seeks elimination of operator services for the deaf (OSD) expenses from Deaf Equipment Acquisition Fund (DEAF) Trust reimbursement. DDTPAC argues that the Americans with Disabilities Act (ADA; enacted on July 26, 1990) obligates local and long distance telephone companies to provide all services, including services now provided by OSD, in a manner that is accessible to persons with disabilities. Since services provided via OSD are now obligations of the telephone companies, the DDTPAC contends that funding of these services through the DEAF Trust is no longer appropriate.

Responses and oppositions to DDTPAC's petition were filed by AT&T Communications of California, Inc. (AT&T), Pacific Bell, GTE California Incorporated, and the California Association of the Deaf (CAD). These filings argue that DDTPAC misinterprets the ADA, that the petition seeks a substantive change (in conflict with Rule 43 of the Commission's Rules of Practice and Procedure which provides that petitions "...shall only be filed to make minor changes..."), that granting the petition without hearing would violate parties' due process rights, that it is premature to

address the petition unless it is combined with a proceeding to implement Assembly Bill 1077 (Bronzan), that DDTPAC presents no compelling argument, that the ADA makes no reference to the provision of OSD, that the ADA does not specify an OSD funding mechanism, and that granting the petition would result in increased costs without concomitant increased benefits. CAD also contends DEAF Trust funding of OSD provides an impetus for the DDTPAC to oversee OSD operations and for AT&T to cooperate with DDTPAC.

On April 20, 1992, DDTPAC filed a motion to withdraw its petition given the overwhelming negative response. We grant DDTPAC's motion to withdraw its petition.

In its response, CAD also argues that the ADA and implementing regulations require relay services to provide access to operator services and nowhere state there shall be OSD or a similar service beyond that required of relay services. In its motion to withdraw, DDTPAC recommends that we seek Federal Communications Commission (FCC) clarification of CAD's assertion, specifically that Title IV of the ADA requires common carriers to provide access to operator services through their telecommunications relay service.

We note that the ADA requires relay services provide all operator services to the same extent that such access is provided to voice users (47 CFR § 64.604(b)(3)). Voice users do not have single number access to all operator services. OSD and relay services together provide the same or better access and service to the telecommunications network for users of the deaf and disabled telecommunications program as that enjoyed by voice users. We see no need to require that relay services provide the operator services now offered by OSD, and have requested a waiver of this provision from the FCC in our Telecommunications Relay Service State Certification Application dated September 18, 1992. Moreover, we concur with CAD that the current funding approach

promotes DDTPAC oversight of OSD, and cooperation between DDTPAC and AT&T.

Findings of Fact

1. DDTPAC filed a petition for modification of D.89-05-060.

2. Responses and oppositions to DDTPAC's petition were filed by four parties taking issue with DDTPAC's petition.

3. DDTPAC filed a motion to withdraw its petition in light of the overwhelming negative response.

Conclusion of Law

DDTPAC's motion to withdraw its petition to modify D.89-05-060 should be granted.

O R D E R

IT IS ORDERED that the Deaf and Disabled Telecommunications Program Administrative Committee's motion to withdraw its petition to modify Decision 89-05-060 is granted.

This order becomes effective 30 days from today.

Dated November 6, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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

NEAL J. SHULMAN, Executive Director