

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Telecommunications Division

San Francisco, California

Date: September 3, 1997

RESOLUTION T-16084

RESOLUTION

RESOLUTION T-16084 TO AUTHORIZE ENTRY OF SPRINT COMMUNICATIONS COMPANY (SPRINT) AS A SECONDARY RELAY SERVICE PROVIDER IN CALIFORNIA. THIS AUTHORIZATION IS GRANTED PURSUANT TO TERMS OF A MODIFIED MASTER AGREEMENT NEGOTIATED BETWEEN THE DEAF AND DISABLED TELECOMMUNICATIONS EQUIPMENT PROGRAM AND SPRINT.

SUMMARY

This resolution authorizes Sprint Communications Company (SPRINT) to begin offering Relay Services to Californians as a secondary provider. This authorization is granted pursuant to terms negotiated in an Amended Master Agreement between the Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC) and SPRINT pursuant to Commission Resolution T-16031. In general, SPRINT may offer relay services at a reimbursement rate of \$0.89 per conversation minute provided it meets all the requirements of the Amended Master Agreement and Commission Resolutions T-16017 and T-16031. When questions arise with respect to interpretations, Commission Resolutions will govern. This resolution also requires the DDTPAC to seek assistance from Commission staff in case it needs help interpreting such orders, and to follow Commission practices and procedures if orders need to be amended.

BACKGROUND

In compliance with state legislation, the Commission implemented three telecommunications programs for California residents who are deaf, hearing impaired, and disabled:

- o Telecommunications Devices for the Deaf (TDDs) distribution, per Senate Bill (SB) 597 (Chapter 1142, 1979);
- o Dual Party Relay System, using a third-party intervention, to connect persons who are deaf, severely hearing impaired, or speech impaired with persons of normal hearing, per SB 244 (Chapter 741, 1983);
- o Supplemental Telecommunications Equipment for persons who are disabled, per SB 60 (Chapter 585, 1985).

These programs are all funded by the Deaf and Disabled Telecommunications Program (DDTP) Consolidated Budget (Program Budget).

Decision (D.) 89-05-060 (I.87-11-030) established that the annual Program Budget be submitted to the Executive Director and approved by a Commission resolution in accordance with the procedure discussed in the Decision.

On October 1, 1996, the Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC) filed the proposed 1997 Program Budget that totaled \$37,875,771. On April 9, 1997, the Commission adopted an interim 1997 Program Budget amount of \$37,765,826 (Resolution T-16017).

On March 5, 1997, the DDTPAC filed a budget augmentation request of \$4,813,279 to increase the reimbursement rate to provider of the California Relay Service (CRS), to attract other CRS providers, and to possibly improve the quality of relay service. On June 11, 1997, the Commission, by Resolution T-16031 (Resolution), approved an augmentation of DDTPAC's 1997 budget by \$2,915,990. That Resolution authorized the DDTPAC to negotiate the provision of Relay Services in California by other Relay Providers (Secondary Providers).

The DDTPAC negotiated a contract with Sprint Communications Company (SPRINT) for offering Relay services to Californians. Its negotiations resulted in an "Amended Master Agreement" that the DDTPAC submitted to the Commission's Executive Director, for approval, on August 8, 1997. The Commission's Executive Director declined to approve the request by the DDTPAC because the Amended Master Agreement contained additional revisions to the contract that required Commission review and approval. However, the Executive Director informed the DDTPAC that if it re-submitted an Amended Master Agreement (Revised Amended Agreement)

that more closely conformed to the scope of the Resolution by August 26, 1997, staff would bring the matter before the Commission for a vote as soon as September 3, 1997.

The DDTPAC filed a "Revised Amended Agreement" with the Commission's Executive Director on August 26, 1997. In its filing, the DDTPAC requested the Commission to act on its filing on an emergency basis so SPRINT could start offering Relay Services to Californians on the earliest date possible.

DISCUSSION

Currently, the DDTPAC has a contract with MCI Telecommunications Corporation (MCI) to provide state-wide dual party telecommunications relay service. The terms and conditions of this contract are specified in an agreement, called the "Master Agreement", between the DDTPAC and MCI. MCI is designated as the Primary Contractor with the responsibility of offering CRS on a state-wide basis. Other contractors, as alternative providers, may offer CRS under the same terms and conditions of the Master Agreement, but have not elected to do so. As the primary contractor, MCI is able to use the current CRS 800 numbers in its operations.

One of the terms in the Master Agreement is "Compensation". The primary contractor is reimbursed at \$0.699 per conversation minute for calls using MCI's relay service.¹ The Master Agreement also specifies "Liquidated Damages For Failure To Meet Performance Requirements". There are two performance requirements:

- (1) Excessive Call Blockage: [t]he minimum standard is that no more than a daily average of 1% of all calls to CRS shall receive a busy signal. Liquidated damages are \$2,000 per day for each calendar day the blockage rate requirement is not met.
- (2) Excessive Time to Answer Calls: [t]he minimum standard is that calls to CRS be answered with an average daily answer time of 7 seconds, to assure that 85% of all calls are answered within 10 seconds. Liquidated damages are \$2,000 per day for each calendar day the answer time requirement is not met.²

¹ Page 68 of Master Agreement between MCI and the DDTPAC.

² Id., page 75.

Currently, there are no other Relay providers in California except MCI. To provide incentives to other providers and possibly to improve the quality of service, the Commission authorized the payment of up to \$0.89/conversation minute to new Relay Providers in California by Resolution T-16031 (Resolution). However, to receive the higher reimbursement rate, the provider had to agree to offer services that meet more stringent service quality requirements as well as certain other reporting requirements.³ The Resolution also required all providers to provide the Commission with "subscriber lists to the extent the CRS provider(s) collect and maintain this data...".⁴ Such information is required to "periodically assess, through customer surveys, the quality of service offered by contracting carriers."⁵ The Resolution also stipulated that a Revised Master Agreement must contain enhanced liquidated damages to be paid by contracting carriers who do not meet the performance requirements contained in the Master Agreement. The DDTPAC was authorized to negotiate the reimbursement rate as well as the start date for new CRS vendors.⁶ Any and all Revised Master Agreements were required to be submitted to the Commission's Executive Director for approval prior to implementation.⁷ To ensure that sufficient funds were available for payment of the higher reimbursement rates to providers, the Commission augmented DDTP's interim budget that was approved in Resolution T-16017.

AMENDED MASTER AGREEMENT SUBMISSION BY DDTPAC

The DDTPAC entered into negotiations with SPRINT to offer Relay Services to Californians as a Secondary Provider. On August 8, 1997, pursuant to requirements of the Resolution, OP 4, the DDTPAC submitted an Amended Master Agreement for approval. On August 21, 1977, the Commission's Executive Director declined to approve the DDTPAC's request because the Amended Master Agreement negotiated between the DDTPAC and SPRINT

³ Resolution T-16031, OP 7 requires new CRS providers to file monthly service quality reports while OP 8 requires the filing of an emergency plan for maintaining quality of service in case of natural disasters or unplanned increase in traffic volumes.

⁴ Resolution T-16031, Finding 10, p. 12.

⁵ Ibid, p.8

⁶ Ibid, pp. 6 -8-

⁷ Ibid, OP 4, p. 13.

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contained additional provisions requiring Commission review and approval. In a letter explaining his decision, the Executive Director listed five items that needed to be deleted or modified before he could approve the Amended Master Agreement without Commission review.⁸ These included the removal of some language that had no bearing on the contract, the deletion of a date for providing the Relay Service, removal of language interpreting the intent of the Resolution, and modification of two technical requirements in the Master Agreement. In his letter, the Executive Director acknowledged SPRINT's desire to offer Relay Service as early as possible, and suggested that if the DDTPAC were to resubmit a revised Amended Master Agreement addressing all of his concerns by August 26, 1997, he would have staff present it for vote by the Commission on September 3, 1997.

On August 26, the DDTPAC filed a revised "Amended Master Agreement" (Revised Agreement). That Revised Agreement addressed most of the concerns that were raised by the Executive Director in his letter of August 21, 1997. SPRINT was willing to comply with all requirements of the Master Agreement but sought waivers from the following two technical requirement:

(a) Elimination of the requirements for providing enhanced protocol.

In defense of the elimination of providing enhanced protocol, the DDTP asserts that the elimination of this requirement is necessary to induce SPRINT to provide CRS in California. It further states that the elimination of this requirement will not reduce the quality of CRS service.

SPRINT has indicated that if it were to offer enhanced protocol, it would have to use a proprietary protocol called "turbo-code" to comply with the requirements of the Master Agreement. It has been unable to reach a licensing agreement with the vendor to use that technology. Instead, SPRINT is suggesting that it be allowed to use ASCII and Baudot formats for use for communicating with TTY's.⁹

MCI, in a letter to the Commission's Executive Director, indicated that it would be disadvantaged if the enhanced protocol requirements are removed from the Master Agreement. It based its premise on the fact that MCI expended considerable resources to develop its

⁸ Letter from Wesley Franklin to Shelley Bergum dated August 21, 1997.

Enhanced Protocol technology. That feature should therefore be required from all CRS providers.

The staff notes that MCI experienced operational difficulties in the deploying its Enhanced Protocol features. Even though MCI started offering CRS on October 11, 1996, the Enhanced Protocol features were not operational until approximately May 16, 1997. That was seven months after MCI was supposed to offer the feature. A new vendor similarly may require some period of time to have that technology operational.

(a) Eliminate the requirements for operator assistance for TTY users.

Section II.T of the Master Agreement requires operators to provide operator assistance for TTY users for all calls requiring operator assistance. The details are described in the relevant section of the Master Agreement.

SPRINT has indicated that it is currently unable to provide all the operator assistance requirements listed in the Master Agreement. Staff believes that SPRINT or any other vendor should be able to comply with the requirements of that feature of the Master Agreement. We would expect SPRINT to require no more than four months to implement the requirements of Section II.T of the Master Agreement.

DDTPAC'S REQUEST FOR COMMISSION ACTION ON THE AMENDED MASTER AGREEMENT ON AN EMERGENCY BASIS

The DDTPAC also requested that the Commission should deal with the Amended Master Agreement on an emergency basis because 1) SPRINT had made public announcements that it would start providing CRS to Californians from September 1, 1997, 2) all appropriate actions had been taken on a timely basis, and 3) neither the DDTPAC nor SPRINT believed that a vote of the full Commission was necessary for the approval of contract changes.⁹

We are persuaded that the need to offer choice in the provision of Relay Service to deaf and disabled customers in California as soon as possible is consistent with our prior orders and mandated by the public interest. Accordingly, we are acting on the DDTPAC's request pursuant to Section 11125.3(a)(2) of the Government Code, as there exists a need to take immediate action

⁹ Letter from Richard Purkey to Wesley Franklin, dated August 26, 1997, at p. 2

and the need came to the Commission's attention subsequent to the posting of the agenda on August 22, 1997.

PROVISION OF UNAUTHORIZED SERVICE BY SPRINT

In a letter dated August 20, 1997, MCI asserted that SPRINT was providing relay services in California without authorization. According to MCI, SPRINT was advertising some toll free numbers that could be used for obtaining Relay services from SPRINT on September 1, 1997. No mention was made of the fact that the offering of Relay Services in California by SPRINT were contingent on obtaining authorization from the Commission. To prove its assertions, MCI attached actual TTY tapes of conversations using SPRINT's advertised toll free numbers.¹¹

In response to MCI's assertions, SPRINT refuted MCI's claims and stated that it was not providing CRS in California because it was not authorized to do so. Any calls that might have been made as MCI claimed were inadvertently made because one of its technicians had forgotten to "take steps necessary to preclude completion of calls to SPRINT TRS centers on these lines. However, the error was short-lived and has now been corrected."¹²

Staff has independently verified that SPRINT's advertised numbers could not be used to complete any CRS calls. We expect that SPRINT will be more careful in the future.

We are concerned that SPRINT's advertising of Relay Service offerings in California without proper authorization might have contributed to public confusion. We expect SPRINT to refrain from any future advertising for its Relay Services that is misleading in any way.

CREATION OF USER DATA BASE BY SPRINT

It has been brought to Staff's attention that SPRINT sent requests for information to members of the deaf and disabled communities advertising the offering of relay services on September 1, 1997.¹³ As discussed above, no mention was made that the offering of the service

¹⁰ Letter from Shelley Bergum to Wesley Franklin dated August 26, 1997 at p. 5.

¹¹ Letter from Jennifer Spade to Wesley Franklin, dated August 20, 1997.

¹² Letter from Richard Purkey to Wesley Franklin dated August 26, 1997.

¹³ Letter from John Moore addressed to Californians, dated August 5, 1997.

was contingent on receiving the proper authorizations from the Commission. Further, disabled consumers were requested to provide information regarding their calling preferences, and other personal information so SPRINT could develop a "TRS Customer Database Profile" (Database).

We are not aware of the means SPRINT employed to assemble its list of disabled consumers. The Commission needs to be informed about the sources used by SPRINT to request information from disabled consumers.

OPPORTUNITY FOR PARTIES TO AFFIRM THESE CHANGES

In this resolution, we are changing two of the terms and conditions contained in the Amended Master Agreement. Recognizing that the parties have not agreed to the changes we have made, we must accord SPRINT and the DDTPAC the opportunity to affirm their acceptance of the Amended Master Agreement, as we have modified it. Accordingly, if SPRINT and the DDTP submit to the Commission's Executive Director, within 15 days of our adoption of this Resolution, a copy of the Amended Master Agreement signed by both SPRINT and the DDTPAC, we will deem the changes to have been accepted. If the parties fail to submit a copy of the signed Amended Master Agreement to the Executive Director, we will assume that they have rejected our changes and the Amended Master Agreement will be null and void. In that event, the parties would be free to renegotiate another Amended Master Agreement, but with the knowledge that a later version must conform to the changes we have adopted here.

FINDINGS

1. Pursuant to Commission Resolution T-16031 (Resolution), the DDTPAC submitted an Amended Master Agreement for CRS Services (Amended Agreement) to the Commission's Executive Director on August 8, 1997.
2. The Amended Agreement was negotiated between the DDTPAC and Sprint Communications Company (SPRINT).
3. Ordering Paragraph (OP) 4 of the Resolution required the DDTPAC to file its Amended Agreement with the Commission's Executive Director. The Commission's Executive Director was directed to approve the same, in writing, within fifteen days of the filing of such an agreement by the DDTPAC.

4. The Amended Agreement contained revisions that modified the technical terms of the Master Agreement and certain other "self-effectuating" terms with respect to the starting date of the service offering.
5. The Resolution authorized the DDTPAC to negotiate modifications pertaining to reimbursement levels and start dates for new CRS providers.
6. On August 21, 1997, the Amended Agreement was not approved by the Commission's Executive Director because it contained additional provisions requiring Commission review and approval.
7. In his letter rejecting the Amended Agreement, the Commission's Executive Director informed the DDTPAC that if his concerns were appropriately addressed in a re-negotiated Amended Master Agreement and submitted no later than August 26, 1997, staff would bring the matter before the Commission for a vote as soon as September 3, 1997. He also urged the DDTPAC to include in its request proof that deviations from adopted technical standards met consumer quality service standards.
8. On August 26, 1997, the DDTPAC submitted a revised Amended Agreement to the Commission's Executive Director.
9. The DDTPAC requested emergency consideration of the Amended Master Agreement so it becomes effective on September 1, 1997 or as soon as possible thereafter because:
 - a) SPRINT made public and financial commitments to this Commission and to the deaf and disabled community that SPRINT's CRS service would be in place and available to customers on September 1, 1997.¹¹
 - b) All appropriate actions had been taken on a timely basis to ensure that SPRINT would be able to meet those commitments
 - c) Neither the DDTPAC nor SPRINT believed that a full Commission vote was necessary for approval of the contract.
10. The Amended Master Agreement and the revised Amended Agreement filed by the DDTPAC are both unsigned documents.

11. The revised Amended Agreement contains the following deviations from the Master Agreement:
 - a) deletes the requirement for "enhanced protocol" that is contained in Section IIB of the Master Agreement;
 - b) deletes ASCII and Baudot of Section 6 of the Master Agreement; and
 - c) adds a new Section 36, "Optional Termination", to the Master Agreement.For a discussion of items a) and b) above, see pages 6 and 7 of this Resolution.
12. MCI, the current "Primary CRS Provider" announced that it started offering enhanced protocol in compliance with the requirements of the Master Agreement on May 16, 1997,¹⁴ 15 that was about seven months after it started offering CRS under its contract.
13. It seems reasonable to expect an extension of up to seven months to new providers who wish to provide enhanced protocol to be consistent with MCI's experiences.
14. No modifications to the Master Agreement are authorized by resolution T-16031.
15. In August, 1997, SPRINT started advertising that it would offer CRS services on September 1, 1997 without being authorized to do so by the Commission.
16. In August, 1997, SPRINT sent letters requesting personal information from the disabled community to establish its data base to offer CRS without prior authorization from the Commission.
17. It is not clear at this time where SPRINT obtained the customer address lists for populating its CRS data base.
18. MCI alleged that SPRINT started offering CRS to Californians in August, 1997.
19. SPRINT indicated that some California intrastate CRS calls inadvertently went through while it was testing its new CRS numbers in preparation of its CRS offering.
20. Staff has independently verified that SPRINT's advertised CRS numbers are not operational at this time.

¹⁴ Letter from Shelley Bergum to Wesley Franklin transmitting the "Amended Master Agreement", at p.

5.

¹⁵ California Relay Service Administrative Committee (CRSAC), meeting minutes of May 16, 1997, p. 3.

21. There exists a need to take immediate action on the DDTPAC's request because failure to act would create immediate customer confusion resulting from SPRINT's public commitment to offer Relay Service in early September, and the need to act promptly came to the Commission's attention subsequent to August 22, 1997, when the commission's agenda was posted.

THEREFORE, IT IS ORDERED that:

1. We will act on DDTPAC's request on an emergency basis pursuant to Government Code Section 11125.3(a)(2).
2. SPRINT is authorized to offer Relay Service to Californians pursuant to terms of the Amended Master Agreement and consistent with the terms and conditions set forth in Resolution T-16031. In case of conflicts, Resolution T-16031 shall govern except as noted below:
 - a) SPRINT agrees to satisfy all technical requirements enumerated in the Master Agreement within four months of the effective date of this resolution except Enhanced Protocol, which will be required to be offered within seven months.
3. SPRINT shall make all filings listed in Resolutions T-16017 and T-16031 with the Director of Telecommunications Division.
4. The DDTPAC is directed to file with the Commission's Executive Director and the Director of the Telecommunications Division, a signed copy of the Amended Master Agreement revised to comply with the requirements of this Resolution. The Executive Director shall act on the filing by the DDTPAC within two working days of that filing.
5. The effective date of SPRINT's contract shall be no earlier than the day following the written approval, by the Executive Director, of the Amended Master Agreement and shall continue through October 11, 1999.
6. SPRINT shall desist from advertising its CRS related services until the effective date of SPRINT's contract as set forth in Ordering Paragraph 5 above.
7. Within 30 days of the effective date of this resolution, SPRINT shall file the following information with the Director of the Telecommunications Division:

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- a) an explanation of the source of its address lists used prior to September 1, 1997, for its mailings to the deaf community to populate its data base.
 - b) if the above lists were compiled as a result of providing CRS services under its prior contract, the authority under which it used those lists. In the latter case, SPRINT should quote reasons why it should not be sanctioned for using such information without prior Commission authorization.
8. The DDTPAC is required to consult with the Commission's Telecommunications Division Staff if clarifications of Commission orders are needed. For modifications of Commission resolutions, the DDTPAC should file for such modifications in accordance with standards and procedures established by the Commission.
9. Within 15 days of the effective date of this Resolution, if SPRINT and the DDTPAC agree to the changes we have made to the Amended Master Agreement they must affirm their acceptance by submitting to the Commission's Executive Director a copy of the signed Amended Master Agreement.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on September 3, 1997. The following Commissioners approved it.



WESLEY M. FRANKLIN
Executive Director

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEPPER
RICHARD A. BILAS
Commissioners