

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Rules for)
the Telecommunications Relay Service)
Assessment Pursuant to Section 4905.84,) Case No. 08-815-TP-ORD
Revised Code, as Enacted by House Bill)
562.)

ENTRY

The Commission finds:

- (1) On June 24, 2008, the governor of the state of Ohio signed into law House Bill 562, thereby enacting Section 4905.84, Revised Code. This section provides that the Commission shall, not earlier than January 1, 2009, impose on and collect from each service provider that is required under federal law to provide its customers access to telecommunications relay service (TRS) an annual assessment to pay for the costs incurred by the TRS provider for providing TRS in Ohio. Furthermore, Division (F) of Section 4905.84, Revised Code, provides that the Commission shall adopt rules under Section 111.15, Revised Code, to establish the assessment amounts and procedures.
- (2) On February 12, 2008, the governor of the state of Ohio issued Executive Order 2008-04S, entitled "Implementing Common Sense Business Regulation," (executive order). This executive order sets forth factors to be considered in the promulgation of rules.
- (3) The staff of the Commission has prepared proposed rules in accordance with Division (F) of Section 4905.84, Revised Code. A copy of the proposed rules are attached to this entry.
- (4) The Commission requests comments from interested persons to assist in the review of the staff proposal. When considering the proposed rules, the Commission believes it would be useful for commenters to understand the trend in TRS costs over the past four and one-half years. These TRS costs may be summarized as follows:

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| | TRS Minutes | CapTel Minutes | Total |
|------|---------------------------------|--------------------------------------|-------------|
| 2004 | 6,835,416 @ \$.82 = \$5,605,041 | None | \$5,605,041 |
| 2005 | 5,230,722 @ \$.82 = \$4,289,192 | 52,490 @ \$1.35 = \$70,862 (Jun-Dec) | \$4,360,054 |
| 2006 | 4,898,802 @ \$.82 = \$4,017,018 | 227,373 @ \$1.35 = \$306,954 | \$4,323,972 |
| 2007 | 3,755,952 @ \$.82 = \$3,079,881 | 427,737 @ \$1.35 = \$577,445 | \$3,657,326 |

The numbers below include per minute rate increases that began on January 1, 2008:

| | | | |
|------|--|------------------------------|-------------|
| 2008 | 1,376,789 @ \$.90 = \$1,239,110 (Jan-May) | 322,820 @ \$1.45 = \$468,089 | \$1,707,199 |
|------|--|------------------------------|-------------|

Average TRS minutes per month in 2008 are 275,358 @ \$.90 = \$247,822

- (5) Accordingly, comments should be filed in this docket by July 28, 2008, and reply comments should be filed by August 7, 2008. Commenters are encouraged to e-file their initial and/or reply comments in accordance with the procedures established in *In the Matter of the Expansion of the Electronic Filing Pilot Project and Waiver of Procedural Rules 4901-1-02 through 4901-1-04, Ohio Administrative Code*, Case No. 06-900-AU-WVR, entry (May 7, 2008). Within two days after the filing deadline for the filing of initial and/or reply comments, all persons filing such comments must ensure that copies of their initial and/or reply comments are served on all persons filing initial comments. In order to effect service, commenters must check the docket card in this case and serve their initial and/or reply comments either via email or hardcopy to the address provided by each person who filed initial comments.
- (6) To assist the Commission in its evaluation of staff's proposed definition to advanced services and internet protocol-enabled services, as set forth in the last sentence of paragraph (B) of Rule 4901:12-6-24, the Commission requests that interested parties comment on whether the definition should include a cite to the applicable federal law and regulations. If so, what is the definition recommended by the commenting party?

It is, therefore,

ORDERED, That public comments on the attached rules be filed in accordance with finding (5). It is, further,

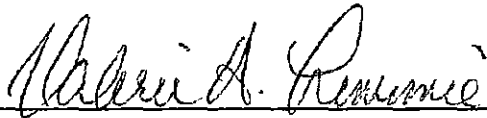
ORDERED, That a copy of this entry, with the attached rules, be served upon all telephone companies under the Commission's jurisdiction, all interested persons of record in Case No. 03-950-TP-COI, the Ohio Telecom Association, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman


Paul A. Centolella


Ronda Hartman Fergus



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Cheryl L. Roberto

CMTP/vrm

Entered in the Journal

JUL 09 2008



Renee J. Jenkins
Secretary

4901:1-6-01 Definitions.

As used within this chapter, these terms denote the following:

- (A) "Alternative operator services (AOS)" means any intrastate operator-assisted services, other than inmate operator service (IOS), in which the customer and the end user are totally separate entities. The AOS provider contracts with the customer to provide the AOS; however, the AOS provider does not directly contract with the end user to provide the services even though it is the end user who actually pays for the processing of the operator-assisted calls. AOS does not include coin-sent calls.
- (B) "Basic local exchange service" means end user access to and usage of telephone company-provided services that enable a customer, over the primary line serving the customer's premises, to originate or receive voice communications within a local service area, and that consist of the following:
 - (1) Local dial tone service.
 - (2) Touch tone dialing service.
 - (3) Access to and usage of 9-1-1 services, where such services are available.
 - (4) Access to operator services and directory assistance.
 - (5) Provision of a telephone directory and a listing in that directory.
 - (6) Per call, caller identification blocking services.
 - (7) Access to telecommunications relay service.
 - (8) Access to toll presubscription, interexchange or toll providers or both, and networks of other telephone companies.

Basic local exchange service also means carrier access to, and usage of, telephone company-provided facilities that enable end user customers originating or receiving voice grade, data, or image communications, over a local exchange telephone company network operated within a local service area, to access interexchange or other networks.

- (C) "Commercial mobile radio service (CMRS)" is specifically limited to include mobile telephone, mobile cellular telephone, paging, personal communication services (PCS), and specialized mobile radio service (SMRS) providers when serving as a common carrier in Ohio. Fixed wireless service is not considered as CMRS.

- (D) "Commission" means the public utilities commission of Ohio.
- (E) "Competitive local exchange carrier (CLEC)" means, with respect to a service area, any facilities-based and nonfacilities-based local exchange carrier that was not an incumbent local exchange carrier on the date of enactment of the Telecommunications Act of 1996 (1996 Act) or is not an entity that, on or after such date of enactment, became a successor or assignee of an incumbent local exchange carrier.
- (F) "Facilities-based CLEC" means, with respect to a service area, any local exchange carrier that uses facilities it owns, operates, manages or controls to provide basic local exchange services to consumers on a common carrier basis; and that was not an incumbent local exchange carrier on the date of the enactment of the 1996 act. Such carrier may partially or totally own, operate, manage or control such facilities. Carriers not included in such classification are carriers providing service(s) solely by resale of the incumbent local exchange carrier's local exchange services.
- (G) "Flat rate usage" means unlimited number of local calls at a fixed charge.
- (H) "Incumbent local exchange carrier (ILEC)" means any facilities-based local exchange carrier that: (1) on the date of enactment of the 1996 act, provided basic local exchange service with respect to an area; and (2)(a) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to 47 C.F.R. 69.601(b); or (2)(b) is a person or entity that, on or after such date of enactment, became a successor or assignee of a member described in clause (2)(a).
- (I) "Inmate operator services (IOS)" means any intrastate telecommunications service initiated from an inmate telephone, i.e., a telephone instrument set aside by authorities of a secured inmate facility for use by inmates.
- (J) "Large ILEC" means any ILEC serving fifty thousand or more access lines within Ohio.
- (K) "Local exchange carrier" means any facilities-based and nonfacilities-based ILEC and CLEC that provides basic local exchange services to consumers on a common carrier basis. Such term does not include an entity insofar as such entity is engaged in the provision of a commercial mobile radio service under section 47 U.S.C. 332(C), effective in accordance with paragraph (G) of rule 4901:1-6-02 of the Administrative Code, except to the extent that the federal communications commission finds that such service should be included in the definition of such term.

- (L) "Local service" means any service in which calls made by an end user customer are not intraLATA or interLATA toll.
- (M) "Long-run service incremental cost (LRSIC)" represents the forward-looking economic cost for a new or existing product that is equal to the per unit cost of increasing the volume of production from zero to a specified level, while holding all other product and service volumes constant. LRSIC does not include any allocation of forward-looking common overhead costs. Forward-looking common overhead costs are costs efficiently incurred for the benefit of a firm as a whole and are not avoided if individual services or categories of services are discontinued. Further, forward-looking joint costs, which are the forward-looking cost of resources necessary and used to provide a group or family of services shall be added to or included in the LRSIC of the products or services.
- (N) "Nonresidential service" means a telecommunication service primarily used for business, professional, institutional or occupational use.
- (O) "Operator services" means any intrastate operator-assisted services, other than IOS, in which the end user has a customer relationship with the provider, the provider contracts with the customer/end user to provide the services, and the customer/end user pays for the actual processing of the operator-assisted calls.
- (P) "Providers of competitive telecommunication services" means a telephone company, as defined in division (A)(2) of section 4905.03 of the Revised Code, (including, but not limited to, interexchange service providers, interexchange switchless rebillers, interexchange resellers, and nonswitched data providers) that exclusively provides competitive tier two telecommunication services and that does not offer basic local exchange service as defined herein.
- (Q) "Regulated services" means services under the jurisdiction of the commission.
- (R) "Residential service" means a telecommunications service provided primarily for household use.
- (S) "Small ILEC" means any ILEC serving less than fifty thousand access lines within Ohio.
- (T) "Tariff" means a schedule of rates, tolls, rentals, charges, classifications, and rules applicable to services and equipment provided by a telephone company that has been filed or posted in such places or in such manner as the commission orders.

Detariffed services are regulated telecommunications services that are not required to be filed in a telephone company's tariffs.

- (U) **"Telecommunications relay service (TRS)" means intrastate transmission services that provide the ability for an individual who has a hearing or speech impairment to engage in a communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech impairment to communicate using voice communication services by wire or radio. TRS includes services that enable two-way communication between an individual who uses a telecommunications device for the deaf or other nonvoice terminal device and an individual who does not use such a device.**
- (~~U~~)(V) **"Telephone company" means a telephone company, for purposes of this chapter, shall have same meaning as defined in division (A)(2) of section 4905.03 of the Revised Code.**
- (~~V~~)(W) **"Toll service" means any service in which calls made by an end user customer are intraLATA or interLATA toll.**
- (~~W~~)(X) **"Traditional service territory" means the area in which an ILEC provided basic local exchange service on the date of enactment of the 1996 act.**

4901:1-6-24 Telecommunication relay services assessment procedures.

- (A) This rule is limited to the commission's administration and enforcement of the assessment for the intrastate telecommunications relay service (TRS) in accordance with section 4905.84 of the Revised Code.**
- (B) For the purpose of funding the TRS, the commission shall collect an assessment to pay for the costs incurred by the TRS provider for providing the service in Ohio, from each service provider that is required under federal law to provide its customers access to TRS, including telephone companies, commercial mobile radio service (CMRS) providers, and providers of advanced services or internet protocol-enabled services that are competitive with or functionally equivalent to basic local exchange service as defined in section 4927.01 of the Revised Code. Advanced services and internet protocol-enabled services have the meanings ascribed to them by federal law, including federal regulation.**
- (C) Each service provider identified in paragraph (B) of this rule shall be assessed according to a schedule established by the commission.**
- (D) The commission staff shall allocate the assessment proportionately among the appropriate service providers using a competitively neutral formula. To determine the assessment amount owed by each provider:**
 - (1) For incumbent local exchange carriers (ILECs), the commission staff shall use the number of retail intrastate customer access lines as reflected in each ILEC's most recent annual report submitted to the commission.**
 - (2) For competitive local exchange carriers (CLECs), the commission staff shall use the number of retail intrastate customer access lines as reflected in each CLEC's most recent federal communications commission (FCC) form 477 submitted to the commission staff in accordance with rule 4901:1-7-27 of the Administrative Code.**
 - (3) For CMRS providers, the commission staff shall use the number of the provider's retail intrastate customer access lines or their equivalent contained in the most recent report submitted to the commission staff in accordance with section 4931.64 of the Revised Code.**
 - (4) All other providers, including, but not limited to, providers of competitive telecommunication services, nonfacilities-based CLECs, and providers of advanced services or internet protocol-enabled services that are competitive with or functionally equivalent to basic local exchange service as defined in section 4927.01 of the Revised Code, one hundred twenty days prior to the due date of the assessment payment set forth in paragraph (C) of this rule, shall submit to the commission one of the following:**

- (a) The relevant parts of the provider's most recent FCC form 477 filed with the FCC which contains the number of the provider's retail intrastate customer access lines or their equivalent.
 - (b) A completed form, as prescribed by the commission staff, which contains the number of the provider's retail intrastate customer access lines or their equivalent.
- (E) Sixty days prior to the date each service provider is required to make its assessment payment in accordance with paragraph (C) of this rule, the commission staff shall notify each service provider of its proportionate share of the costs to compensate the TRS provider.
- (F) The commission staff shall annually reconcile the funds collected with the actual costs of providing TRS when it issues the assessment in accordance with paragraph (E) of this rule and shall either proportionately charge the service providers for any amounts not sufficient to cover the actual costs or proportionately credit amounts collected in excess of the actual costs.
- (G) In accordance with division (C) of section 4905.84 of the Revised Code, each service provider that pays the assessment shall be permitted to recover the cost of the assessment. The method of the recovery may include, but is not limited to, a customer billing surcharge. Any telephone company, other than a CMRS provider, that proposes a customer billing surcharge or a change in the surcharge shall file a thirty-day automatic approval application for tariff amendment.
- (H) In accordance with division (D) of section 4905.84 of the Revised Code, the commission shall take such measures as it considers necessary to protect the confidentiality of information provided pursuant to paragraph (D) of this rule.
- (I) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this rule.