

**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.)	

INITIAL COMMENTS OF THE OHIO TELECOM ASSOCIATION

THE OHIO TELECOM ASSOCIATION, for and on behalf of its members (“OTA”), hereby submits its Initial Comments in this matter as requested by the Commission’s Entry of July 9, 2008 (the “Entry”). The Entry addresses the new requirements of Revised Code §4905.84 as enacted by H.B. 562; that statute requires the Commission to develop and implement a method for assessment of costs associated the Telecommunications Relay Service (“TRS”) in Ohio, subject to certain guidelines set forth in the statute.

To that end, the Entry proposed a new set of rules, to be adopted as §4901:1-6-24 of the Administrative Code (“Rule 24”). In these Initial Comments, the OTA recommends enhancement of Rule 24 to conform the Ohio assessment method, as much as possible, to the federal system for assessing TRS cost recovery.¹ Additionally, the Entry specifically requested comments concerning the definition of “advanced service and internet protocol-enabled services” as required by H.B. 562. Consistent with the foregoing, the OTA recommends adoption of the federal definition of “interconnected VoIP.”

¹ The OTA expects to provide a revised proposed Rule 24 in connection with its Reply Comments, upon assimilation of comments from other interested parties.

Comments

While H.B. 562's requirement to assess carriers for the cost of TRS is new to Ohio, it is not new to OTA members. The Federal Communications Commission has funded the interstate TRS system through use of a similar assessment mechanism (employing an outside contractor, currently the National Exchange Carrier Association) for many years.² That system now applies to essentially the same universe of carriers contemplated by H.B. 562: LECs, CMRS carriers, and VoIP providers.³ As a result, it only makes sense for this Commission to adopt, to the extent feasible within the requirements of H.B. 562, the federal approach toward TRS assessment; to do so will simplify methods for carriers, will lead to more accurate assessments, and minimize effort of the Staff.

1. Equivalent Data – Form 477

First and foremost, the Commission should begin with equivalent data for all contributors. For federal purposes, this is accomplished through a universal obligation to file Form 499-A.⁴ Form 499-A is not useful for purposes of H.B. 562, however, because it reports revenue information, not access-line information as required by Revised Code §4905.84(2)(C). Instead, the Commission should obtain LEC, CLEC and VoIP access-line data from federal Form 477, which all ILECs and CLECs already file with the Commission pursuant to Ohio Admin. Code §4901:1-7-27. For purposes of TRS assessment a similar requirement to file Form 477 must apply to VoIP providers (which also report end-user and resale subscribers on Form 477), together with a requirement to provide Ohio-specific data. As respects CMRS providers,

² See generally 47 CFR 64.601 et seq.

³ See 47 CFR §64.604.

⁴ 47 CFR §64.604

the OTA is currently investigating whether a CMRS provider's Form 477 supplies data that meet the statute's requirement to employ "a competitively neutral formula . . . based on retail intrastate access lines or their equivalent," or whether other reports or databases more fully meet that standard. The OTA will supply a definitive recommendation in its Reply Comments. In any case, the Commission's objective must be for all providers to work from a common set of principles in measuring and reporting data the Commission requires.

In addition to its equivalence, the approach has the virtue of currency. A Form 477 filed in March of any given year reflects data effective as of December 31 preceding – only 90 days old. A PUCO Annual Report, by contrast, reflects data that may be a year or more old; if, for example, the Commission were to require an assessment in January of a given year (say, 2009) based on the most recently-filed annual report (which would be the 2007 report filed in April, 2008), that data would be more than a year old. Given the fast-moving telecommunications marketplace, the Commission should not accept such flawed information for assessment purposes.

2. A Specific Reporting and Payment Schedule Based on Ohio's Fiscal Year

Next, the Commission should establish, by rule, a specific schedule for reporting data, calculating assessments, billing assessments, and paying bills. Following a six-month transition, the schedule, like Ohio's Agreement with its TRS provider, should turn on a fiscal year. Again, this is comparable to the federal system for funding interstate TRS.⁵

⁵ 47 CFR §64.604. *See also* Instructions for Form 477-A. *See also* http://www.neca.org/source/NECA_Resources_216.asp

For Ohio, OTA recommends the following interim and permanent schedules:

	Date	Filing
Interim	September, 2008	All carriers file Form 477s
Interim	November, 2008	Commission Entry proposing monthly assessments for January – June 2009
Interim	December, 2008	Bill monthly assessments for January – June 2009
Interim	January, 2009	Pay monthly assessments for January – June 2009
Permanent	March, 2009	All carriers file Form 477s (12/08 data)
Permanent	May 1, 2009	Commission Entry proposing assessments for July 2009 – June 2010
Permanent	June, 2009	Bill assessments for July 2009 – June 2010
Permanent	July, 2009	Pay assessments for July 2009 – June 2010 ⁶

With this schedule, all involved can transition over the first half of 2009 and then proceed on a fiscal-year basis thereafter. Further, filing of Form 477s with this Commission would coincide with federal filings, and the 60-day advance notice called for by Rule 24(E) would remain.

Importantly, the OTA also recommends retaining the federal option to pay TRS assessments on a monthly basis if that monthly payment would exceed \$100.⁷ As a result, carriers would have the option to pay a full year's assessment each July, or to pay a monthly allocation of that assessment each month beginning in July and extending through the following June.

Finally, the OTA highlights that the Commission's assessments should be set forth in an Entry to be docketed well in advance of an assessment's due date. Included in that Entry should be the Commission's calculations, confirmation that the costs submitted by the TRS Provider reasonably comport with its contract, and opportunity to object. This approach is not only

⁶ Option to pay monthly or lump-sum.

⁷ 47 CFR §64.604

consistent with the FCC's practice, but is an essential check and opportunity for review that benefits all interested parties.

3. Tariffs Should Be Effective On Filing

Rule 24(G) implements the provisions of Revised Code §4905.84(C), which authorizes surcharges (at the carrier's election) to recover TRS assessments. Rule 24(G), however, establishes an uneven system for establishing such surcharges by requiring a thirty-day approval process for tariffs. Because CMRS and VoIP carriers have no such tariff obligations, they have the ability to establish surcharges on a zero-day basis, and the same should be true for those LECs and CLECs that do file tariffs. Thus, the Commission should reach uniform results by permitting zero-day, notice-only filing for those carriers required to file tariffs, while requiring all carriers to provide at least fifteen days prior notice to customers.

4. The Commission Should Employ the Definition of 47 CFR §64.601(a)(9)

Finally, the Entry requests references to a federal definition of "advanced services and internet protocol-enabled services." No definition of those terms exists in the Code of Federal Regulations. As a result, and again consistent with federal treatment of TRS assessments, the OTA suggests the employment of the definition found in 47 CFR §64.601(a)(9):

(9) Interconnected VoIP service.

An interconnected Voice over Internet protocol (VoIP) service is a service that:

- (i) Enables real-time, two-way voice communications;
- (ii) Requires a broadband connection from the user's location;
- (iii) Requires Internet protocol-compatible customer premises equipment (CPE); and

- (iv) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

Through this definition, the FCC has established the obligation of “interconnected VoIP service” providers to report data for TRS assessment and to pay assessments that result.⁸ It represents the closest federal analogue to “advanced services and internet protocol-enabled services,” and so the OTA recommends its employment.

Conclusion

The foregoing establishes general principles advocated by the OTA for use in fashioning Rule 24 into final form. To the extent that the Rule 24 appended to the Entry is inconsistent with them, the OTA objects. As noted, the OTA expects, upon consideration of others’ initial comments, to develop and recommend a substitute Rule 24 in keeping with the foregoing. Accordingly, the OTA urges the Commission to consider the foregoing and to adopt rules consistent therewith.

Respectfully submitted,

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⁸ 47 CFR 64.604.

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Summary: Comments - Initial Comments of the Ohio Telecom Association electronically filed by Mr. Thomas E Lodge on behalf of Ohio Telecom Association