

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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| 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 AT&T ENTITIES

Introduction

The AT&T Entities, by their attorneys, submit these initial comments in response to the Commission's Entry adopted on July 9, 2008.¹

The AT&T Entities strongly support the principles and objectives of the telecommunications relay service ("TRS") program in Ohio. The AT&T Entities believe that all telecommunications providers should support the TRS program in a manner that is equitable, non-discriminatory, and competitively neutral.

Accordingly, the AT&T Entities have worked with the Ohio Telecom Association ("OTA") and with the Commission Staff in planning for a smooth transition from the tax-credit-based TRS funding mechanism to the assessment mechanism provided for in the enabling legislation and in the Staff's proposed rules. Ohio's current method of funding intrastate TRS through a tax credit taken by the TRS vendor is set to expire at year-end 2008. The broad funding base of the state's general revenue fund via the tax credit taken by the TRS provider has served Ohio well and would still be the most appropriate source of funding for TRS. However, the

¹ The AT&T Entities are the following: The Ohio Bell Telephone Company d/b/a AT&T Ohio, AT&T Communications of Ohio, Inc., TCG Ohio, Inc., SBC Long Distance, LLC d/b/a AT&T Long Distance, New Cingular Wireless PCS, LLC, Cincinnati SMSA, LP, Dobson Cellular Systems, LLC, and American Cellular, LLC.

AT&T Entities recognize that the assessment mechanism is, for the time being, the chosen path and they will work with the Commission and its Staff to ensure it is properly and fairly implemented.²

The approach taken by the Staff in implementing the enabling legislation is a good one, but there are several areas that require modification and clarification with the language of the rule being updated accordingly. Absent such modifications, the assessment will not be equitably assessed nor will the entities being assessed have a clear picture of what is being assessed or how to properly implement a customer billing surcharge or other recovery mechanism.

Determining which access lines are subject to the assessment

First, one area that requires clarification involves determining what access lines are subject to the assessment. By referencing the definition of basic local exchange service in R. C. § 4927.01, one might assume that the assessment for TRS will include only primary lines.³

² Because the FCC has not yet spoken on some of the issues surrounding intrastate TRS funding (for example, as it might be applied to interconnected VoIP providers), the AT&T Entities reserve their rights in that regard. AT&T believes that interconnected VoIP services are subject to the FCC's jurisdiction. However, in a letter dated July 17, 2008, AT&T requested that the FCC make clear that states can require interconnected VoIP providers to contribute to state TRS programs on the same basis as other comparable service providers. AT&T has requested this clarification because it strongly supports TRS policy goals, and such a clarification will better enable states to administer sustainable TRS support mechanisms, as well as ensure more equitable and non-discriminatory support regimes. *See* letter from Robert W. Quinn, Senior Vice President, Federal Regulatory, AT&T, to Kevin Martin, Chairman, FCC, WC Docket No. 04-36, WC Docket No. 06-122, CC Docket No. 96-45 (filed July 17, 2008).

³ R. C. § 4927.01 provides in part as follows:

(A) "Basic local exchange service" means:

(1) 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:

- (a) Local dial tone service;
- (b) Touch tone dialing service;
- (c) Access to and usage of 9-1-1 services, where such services are available;
- (d) Access to operator services and directory assistance;
- (e) Provision of a telephone directory and a listing in that directory;
- (f) Per call, caller identification blocking services;

This is because the term "basic local exchange service" is limited to the primary line serving the customer's premises. But the AT&T Entities believe that the intent of the legislation, and the intent of the Commission's rules implementing it, is to provide a broad funding base of all access lines (or their equivalent) in Ohio. Proposed Rule 24(D)(1) - (4) each speak in terms of the number of the provider's "retail intrastate customer access lines." They are not limited to the primary lines serving a customer's premises, nor do the reports to be utilized in providing access line counts to the Ohio Commission include such specificity so as to allow identification of only the number of *primary* access lines.

The reference to "intrastate" customer access lines might also cause confusion. It is not intended that the lines be only intrastate in nature, and not also used for interstate calling, as most lines are. The AT&T Entities believe that the rule should refer to "retail customer access lines" in Ohio rather than to "retail intrastate customer access lines."

Second, as written, the proposed rule uses different reports to determine providers' access lines, depending on whether the provider is an ILEC, CLEC, CMRS provider, or another service provider. The AT&T Entities recommend instead that the Commission Staff use the number of retail customer access lines or their equivalent as reflected in each provider's most recent FCC Form 477.

(g) Access to telecommunications relay service; and

(h) Access to toll presubscription, interexchange or toll providers or both, and networks of other telephone companies.

(2) 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.

(Emphasis added).

Using the Form 477 reports will ensure that all providers are counting lines using a consistent set of directions, reporting access lines or the equivalent as of the same date, better ensuring that all providers are assessed equitably and in a non-discriminatory and competitively- and technologically-neutral manner.⁴ Using the Form 477 reports will also facilitate carrier administration of the Ohio TRS assessment line reporting requirement since all providers are already required to file the Form 477 reports on a state-by-state basis with the FCC.

The AT&T Entities note that *at this time*, only certain interconnected VoIP providers are required to submit the Form 477 report;⁵ however, last month, the FCC adopted updated Form 477 reporting requirements which will require all interconnected VoIP providers to report their subscriber counts beginning with the Form 477 report due in March 2009.⁶ Because this new reporting requirement was adopted only last month and interconnected VoIP providers will need time to implement it, the AT&T Entities recommend that the Commission refrain from implementing the Ohio TRS contribution requirements, at least with respect to interconnected VoIP providers, until after the March 2009 Form 477 submissions.

Schedule for Assessing and Paying the Assessment

The proposed rule provides no specificity as to the timeframe for implementing the assessment. While the recently enacted legislation prompting the creation of these rules clearly prescribes that the Commission will not impose the TRS assessment earlier than January

⁴ Utilization of ILEC annual reports to determine the ILECs' portion of the assessment is inequitable. Recognizing that the annual report is updated only once a year and is released 4 months after the end of the year, the access line data contained in the annual report may be very outdated by the time it is utilized in determining the TRS assessment. In contrast, FCC rules require all providers to update their Form 477 reports twice annually.

⁵ See Report & Order and Further Notice of Proposed Rulemaking, *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, FCC 08-89, ¶¶ 25-31 (Adopted March 19, 2008; Released June 12, 2008).

⁶ *Id.*

1, 2009, and the AT&T Entities presume that the assessment will indeed become effective on January 1, 2009, there is no delineation in the rules as to any other relevant dates. The rules as currently written do not address the timetable for processing the TRS assessment. For example, there is no timetable for reporting data, calculating the assessment, billing the assessment or paying the bills. The rules should be amended to provide a clear roadmap with respect to these relevant dates. Therefore, the AT&T Entities urge the Commission to adopt the schedule set forth by the OTA.

Recovery of the Assessment Costs from Customers

The manner in which the entities that are assessed may recover the cost of the assessment from their customers is also in need of clarification. Proposed Rule 24(G) permits the recovery of the cost of the assessment by methods that may include, but are not limited to, a customer billing surcharge. The Commission should clarify that the billing surcharge need not begin at the same time that the assessment is paid. At least some of the AT&T Entities will face programming and other system changes in order to implement a customer billing surcharge, as contemplated in proposed Rule 24(G).

The Commission should also clarify that service providers have the option to bill the surcharge one time on an annual basis, in arrears or in advance, or to spread the surcharge out over multiple billing periods. Some providers might choose a monthly surcharge to align it with their monthly billing practices while others might find it more feasible to assess the surcharge annually. And, because it might take some service providers additional time to implement a billing surcharge initially, they should be permitted a one-time "catch up" billing to recover the costs of assessments already paid. For example, if a customer billing surcharge for TRS will

amount to 2 cents per month beginning in January 2009 but the service provider cannot bill that amount until June 2009, it should be permitted to bill 12 cents in June (2 cents per month x 6 months), and then reduce the surcharge to 2 cents in its July and succeeding bills. The Commission should clarify that these kinds of variations in the billing and collection of the TRS assessment from customers are permitted.⁷

In addition, Revised Code § 4905.84(C) permits, but does not mandate, carriers to recover TRS assessments via customer surcharges. Further, the proposed rule requires telephone companies, other than CRMS providers, to set forth such customer surcharges in their tariffs. In order to ensure greater parity between providers who file tariffs and those who do not, the AT&T Entities propose that the rule be modified to require a zero-day, notice-only filing and that all providers imposing a surcharge on their customers be required to provide notice to customers a minimum of fifteen days prior to the effective date of the surcharge consistent with 4901:1-6-16(D).

Assessment Computation

Inasmuch as the costs resulting from the provision of intrastate TRS are being recovered from a large number of service providers using a shared-funding cost recovery mechanism as detailed in Divisions (B) and (D) of the rules, the assessment should be documented and memorialized such that service providers subject to the assessment are assured that the assessment is proper and accurate. To that end, the AT&T Entities urge the Commission to adopt OTA's proposal that the rules include a provision that requires an annual entry be issued

⁷ For the telephone companies that will be required to describe the billing and collection mechanisms in their tariffs under proposed Rule 24(G), the details can be specified in those tariff provisions.

by the Commission delineating the Commission's calculations, validating the costs and identifying each provider's pro rata share of the annual assessment.

Protection of Confidential/Proprietary Customer Access Line Count Data

The protection of the service providers' confidential and proprietary line count data, where they are not already a public record, is an important issue. As discussed above, the AT&T Entities recommend that the Commission use the FCC Form 477 to determine providers' access lines (or the equivalent). FCC rules allow the release of provider-specific Form 477 data to a state commission provided the state commission has procedures in place that preclude the disclosure of any confidential information.⁸ As written however, proposed Rule 24(H) simply mirrors the statutory language without taking necessary steps to implement it. The Commission should specify in its rule that service providers may request confidential treatment of non-public information and should provide in its rule that information for which confidential treatment is requested will be automatically subject to protection from public disclosure. This protection should not expire in 18 months, the time limit set forth in Section 4901-1-24(F) of the Commission's rules. The Commission should protect competitively-sensitive non-public access line count information indefinitely, and put the burden on a party seeking its public release to demonstrate that it should no longer be protected as confidential information. The AT&T Entities propose the following revision to proposed Rule 24(H):

(H) In providing its Ohio retail customer access line information as required by this rule, a service provider may request that any non-public information be treated as confidential information. The Commission will take such measures as it considers necessary to protect the confidentiality of that information and will not limit the duration of such protection. Any party requesting the public release of that information has the burden of demonstrating that the information should not be treated as confidential information.

⁸ See 47 C.F.R. § 43.11(c).

The Commission Should Use 47 CFR § 64.601(a)(9) to Define "Advanced Services and Internet Protocol-Enabled Services"

Given that the FCC's rules provide a definition for "advanced services and internet protocol-enabled services," the AT&T Entities support the OTA recommendation that the Commission employ 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.

Use of this definition will provide consistency with federal treatment of TRS assessments and with the AT&T Entities' recommendation regarding determining which access lines are subject to the intrastate TRS assessment.

Conclusion

The AT&T Entities recommend that the Commission modify the proposed rules with the suggested clarifications and changes detailed here.

Respectfully submitted,

The AT&T Entities

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Summary: Comments electronically filed by Jon F Kelly on behalf of The AT&T Entities