

- (4) **TRS CAG.** In an prior case involving the selection of the Ohio Relay Service (ORS) vendor during an earlier contract term, namely Case No. 96-1139-TP-COI, the Commission established a TRS Consumer Advisory Group (CAG), a special panel composed of persons from within Ohio's communicatively impaired community and/or from state agencies with close associations to that community, whose function is to consult and advise the Commission in the selection of the Ohio TRS vendor. In Section I(A) of the RFP in this case, i.e., the 08-439 docket, the Commission indicates that the TRS CAG should, within the context of the instant case, continue to function in this capacity.
- (5) **Appendix C.** We have modified the RFP in an effort to include a more thorough description of the manner in which each submitted bid will be evaluated by the Commission. Within Section V(B)(1) of the RFP, we specify that failure by a bidder to meet all mandatory requirements of the RFP will result in immediate disqualification. In this regard, we have added, as Appendix C to the RFP, a pass/fail chart that lists all of the mandatory requirements that a bidder must be able to meet in order to have its bid proposal qualify for consideration. In Section II(H) of the RFP, we have reserved the right to, at our own discretion, notify and allow a bidder, once its bid is filed, a limited opportunity to cure minor irregularities to the bid, including those that pertain to the bids compliance with all mandatory requirements of the RFP.
- (6) **100-point Scoring System.** Within Section V(B)(2) of the RFP, we have created a 100-point scoring system, that the Commission will use in evaluating, using its own discretion, the extent to which qualified bids, i.e., those which meet all mandatory requirements set out in Appendix C to the RFP, meet certain specific additional criteria, as spelled out in Section V(B)(2) of the RFP.
- (7) **CapTel.** The proposed RFP at Page 9, Section III-A-2-f, states that the TRS provider must provide CapTel.¹ In its initial comments, AT&T suggests that the final RFP should be modified so as to clarify that the TRS vendor, or a contractor responsible to the TRS

¹ CapTel, a trademark of a company named Ultratec, is a specialized form of Voice Carry Over relay service requiring use of a specialized telephone that, by making use of UltraTec's proprietary technology, provides a text display of the other end of the user's phone conversation through captions generated by a communications assistant.

vendor, may provide CapTel service (AT&T Initial Comments at 2). We agree with AT&T on this issue and have modified the RFP accordingly.

- (8) **In-state/Out-of-state relay center.** The proposed RFP at Page 13, Section III-C-5, requires that a minimum of 85 percent of all Ohio Relay Service (ORS) calls must be processed by a relay center located in the state of Ohio.

In its comments, Hamilton argues that a continued decline in TRS minutes of use (from 220,000 projected in the 2002 RFP to the 78,000 projected in the current proposed RFP) "would certainly inflate the cost of an in-state center." Hamilton recommends that the proposed RFP be revised to include an out-of-state call processing solution to keep the per-minute rate costs down and prices competitive (Hamilton Initial Comments at 1).

AT&T supports the comments of Hamilton on the issue of eliminating the in-state relay center requirement (AT&T Reply Comments at 1, 2). In its initial comments, AT&T says the 85 percent requirement is "the most objectionable part of the draft RFP" and contends that the public interest would be served by eliminating it. AT&T points out that it has a call center located in New Castle, Pennsylvania that is fully staffed and has the capacity to provide the ORS. Allowing ORS calls to be handled by existing centers, even though located outside Ohio, would be a more efficient approach than that proposed in the draft RFP. The costs associated with establishing a new center in Ohio would be prohibitive (AT&T Initial Comments at 2, 3; AT&T Reply Comments at 2).

In the past, the Commission has required the selected vendor to process a minimum of 85 percent of ORS calls at a relay center(s) located in the state of Ohio. While the Commission is still interested in exploring the economic viability of maintaining the provision of a large percentage of ORS calls through a relay center(s) located in Ohio, upon review of the comments, the Commission is no longer making this a prerequisite to being selected as the chosen Ohio TRS vendor. The Commission has refashioned the RFP in a manner that is open to bids that contemplate the provision of TRS through either a single relay center located outside of Ohio, a combination of multiple relay centers all located outside of Ohio, or a combination of multiple

relay centers, one or more of which are located inside of Ohio, with the others located outside of Ohio. In fact, the Commission has structured the RFP in a way that allows bid proposals to set forth more than one rate quote. In such an instance, each submitted rate quote must constitute a separate and final offer that sets forth the lowest rate offered by the bidder that would apply under service parameters and conditions that are clearly delineated and proposed as applicable to the particular rate quote. So, for example, a bidder could submit one quote that represents its lowest and final offer involving the provision of TRS in such a way that all ORS traffic is handled at relay centers outside of Ohio, while at the same time, submitting a separate rate quote representing its lowest and final offer involving the provision of TRS in such a way that a given percentage of ORS traffic is handled at Ohio relay center(s), with all remaining ORS traffic handled at relay centers outside of Ohio.

- (9) **Network Documentation.** The proposed RFP, at page 21, Section IV-A, requires all bids to include a description of how the bidder will provide the relay service, as well as a description of various "components of TRS" including such things as the real estate, facilities, equipment, supplies, furniture, and personnel required for the provision of TRS.

AT&T, in its initial comments, questions why all of this information must be submitted with the bids, as opposed to being requested by the Staff from the eventual winning bidder. AT&T says it is doubtful that variations in the network plans would be a differentiating factor among bidders. AT&T thinks that much of the information required would be proprietary, but notes that the RFP says that all of the information submitted with the bids will become public after the winner is chosen. AT&T says that the network documentation requirements should be eliminated from the RFP and imposed only on the winning bidder. At least, says AT&T, the Commission should recognize the proprietary nature of much of the requested information and provide for its exemption from public disclosure (AT&T Initial Comments at 3).

Upon review of these comments, we have found it appropriate to overhaul the section of the proposed RFP pertaining to network documentation. We have revised it to require, more generally, a complete description of how the bidder proposes to provision the TRS, along with a few other specific types of information, including copies of interconnection agreements, an explanation of how

records will be maintained and made available, and some specific information concerning the operation and design of the bidder's proposed relay network.

- (10) **Advertising.** The proposed RFP at Page 22, Section IV-B-2, calls for all of the advertising copy a bidder intends to utilize and a detailed media strategy to be included in the bid response. AT&T says it would, like most bidders, probably develop many of these resources upon award of the contract. At most, says AT&T, the RFP should call for examples of advertising that the bidder has used in relay operations elsewhere, or, a satisfactory indication of what they would create if awarded the contract (AT&T Initial Comments at 4). We agree with AT&T on this issue and have modified the RFP, with regard to advertising and educational materials, accordingly.
- (11) **Cost and Financial Submissions.** The proposed RFP at Page 25, Section IV-C-5-b, calls for the bidder to submit, when available, any investment advisory and rating agency reports about the company or its parent company issued during the past year. AT&T says the requirement should be narrowed so as to require the submission of only a representative sample of such reports. AT&T points out that some bidders may not even be aware of some of these reports that are created about them and that circulate among financial professionals or investors. AT&T itself, for example, is the subject of likely hundreds of such reports (AT&T Initial Comments at 4). Upon consideration of AT&T's comments, we have modified this provision of the RFP to require the submission of reports, if available, only from three named credit rating agencies, specifically: Standard and Poor's, Moody's Investor Service, and Fitch Ratings, Ltd.
- (12) **Deviation from the RFP.** The proposed RFP at page 28, Section VI-C, says:

The stated requirements appearing elsewhere in this RFP shall become a part of the terms and conditions of any resulting contract and Commission order. Any deviations from the RFP must be specifically defined in the bidder's proposal which, if successful, shall be come part of any resulting contract and Commission order, but such deviations must not be in conflict with the terms of this RFP and shall be expressly approved by the Commission.

AT&T says the language and intent of this section is not clear. AT&T believes that any deviation would, by definition, conflict with the RFP (AT&T Initial Comments at 4, 5).

Upon review, the Commission has, for purposes of clarification, revised the language of this section of the RFP to state:

The stated requirements appearing elsewhere in this RFP shall become a part of the terms and conditions of any resulting contract and Commission order. Any deviations from the RFP must be specifically defined in the bidder's proposal and expressly approved by the Commission.

- (13) **Assignment to subcontractor of obligation to perform.** The proposed RFP, at Page 29, Section V-K, requires that the provider not assign the obligation to perform in accordance with the RFP and the Commission's order in whole or in part without the prior written consent of the Commission.

Hamilton makes use of a subcontractor who is responsible for hiring, training, and managing communication assistants (CAs) in Hamilton's Wisconsin facility. This subcontractor also processes specialty type calls such as Speech-to-Speech and Spanish calls in Hamilton's Wisconsin facility. Hamilton recommends that the proposed RFP be revised to include subcontractors if such usage is approved by the state (Hamilton Initial Comments at 2). Similarly, Sprint requests that the provider be permitted to assign the agreement to a parent company, controlled affiliate, affiliate under common control, or an entity that has purchased all or substantially all of its assets upon written notice to the Commission (Sprint Initial Comments at 1).

Upon review of these comments, we find no need to modify the language of the RFP with regard to the assignment of any obligation to perform under the TRS contract. After all, the proposed RFP already allows for such an assignment, but merely requires that such assignment should not occur without the prior written consent of the Commission. As a practical matter, we expect that, to the extent that any bidder intends to assign an obligation to perform, a detailed description about the particulars of that assignment would be contained in the bid proposal.

Commission selection of a vendor whose bid contained prior written notice of such an intention to assign would thus constitute Commission consent to such an assignment.

- (14) **Provider's Personnel.** The proposed RFP, at Page 30, Section V-L, states:

Personnel commitments identified in the provider's proposal shall be considered mandatory to the work performed under this RFP. Replacement of such personnel shall be with personnel of equal ability and qualifications. The Commission reserves the right to require the provider to reassign or otherwise remove any provider employees found by the Commission not to be qualified.

Sprint requests removal of the sentence allowing Commission removal or reassignment. Such a requirement may, says Sprint, conflict with the operation as an independent contractor, and may violate labor, employment, and anti-discrimination laws. Explaining further, Sprint claims it is committed to customer satisfaction and recognizes the importance of reliable, qualified, and experienced account teams servicing customers. Sprint says it uses good faith efforts to ensure that its account team meets such high standards. In the event that it becomes necessary to change the membership of the account team, Sprint says it will notify the Commission of all significant changes as far in advance as possible. Sprint claims it will make commercially reasonable efforts to consider the concerns of the Commission in its decisions regarding replacement personnel and that the qualifications of replacement personnel shall be at least equal to the replaced personnel (Sprint Initial Comments at 1).

Upon review of these comments, the Commission agrees that the last sentence of this section of the proposed RFP is unnecessarily overbroad in terms of reserving to the Commission control over the selected vendor's employment practices. Consequently, we have removed the sentence from the final RFP.

- (15) **Insurance.** The proposed RFP, at page 30-31, Section VI-P, says, in pertinent part:

The TRS provider shall furnish and maintain such public liability and property damage insurance sufficient to protect itself and any subcontractor from claims for damages for personal injury, including accidental death.... The amounts of such insurance shall be \$2 million for public liability, and \$1 million for property damage

The contractor shall furnish the Commission with certificates of insurance covering each of the several items of insurance heretofore mentioned.

AT&T suggests that the Commission allow a self-insurance option in this section. AT&T is a self-insurer up to certain limits with excess coverage by carriers over those limits. Self-insurance is permitted for the performance bond requirement, notes AT&T, and should be permitted here as well. In allowing this option, says AT&T, it would be reasonable for the Commission to require adequate documentation of self-insurance (AT&T Initial Comments at 5).

Upon review, the Commission agrees with AT&T's suggestion of permitting the vendor the option of self-insurance, so long as adequate documentation of self-insurance is provided to the Commission if this option is exercised. The final RFP has been revised accordingly.

- (16) **Performance Bond.** The proposed RFP, at page 31, Section VI-Q, requires the selected TRS provider to procure a performance bond in the amount of \$1 million annually.

Due to the declining call volumes, Hamilton recommends that the proposed RFP be revised to require either a performance bond equaling 3 months worth of projected costs or a reference letter from a financial institution attesting to the provider's ability to provide the necessary capital to manage the Ohio Relay Service (Hamilton Initial Comments at 2). AT&T, in its reply comments, agrees with Hamilton's "3-month projected costs" suggestion. AT&T says the option to self-insure should be retained and the 3-month amount adopted (AT&T Reply Comments at 3).

Upon review of these comments, the Commission declines to revise the performance bond provisions of the RFP in the manner

proposed by Hamilton and AT&T. For one thing, the \$1 million annual amount of the bond required under the proposed RFP is not out-of-line with performance cost projections that are based on historical and recent reported call volumes. Secondly, language already exists in the RFP which will allow the TRS provider to seek to have the Commission make adjustments to the amount of the bond as the years of the contract unfold.

- (17) **Accounting Requirements.** The proposed RFP, at Page 32, Section VI-S, states:

The provider shall establish an accounting system in accordance with the applicable FCC Uniform System of Accounts or generally accepted accounting principles (GAAP). The accounting system shall maintain records pertaining to the tasks defined in the RFP and any other costs and expenditures. Specific accounting records and procedures are subject to Commission approval, and the costs properly applicable to the provision of the TRS shall be readily ascertainable therefrom.

Hamilton notes that, because TRS is a competitively bid service, relay providers do not customarily provide and maintain project specific cost accounting (Hamilton Initial Comments at 2). As a result, Hamilton recommends that the last two sentences (as quoted above) be revised to read "Provider shall maintain and provide upon request or audit all records reasonably required to substantiate all billings under the terms of this agreement and the RFP."

Upon review of these comments, the Commission has determined that the two involved sentences shall be revised to read as follows:

The accounting system shall maintain records pertaining to the tasks defined in the RFP and any other related costs and expenditures. The costs properly applicable to the provision of the TRS shall be readily ascertainable from such records.

- (18) **Contract Extensions by Mutual Agreement Only.** The proposed RFP at page 27, Section VI-A-4, states that the Commission shall consider retaining the provider for three subsequent 2-year periods.

Sprint suggests that this language be modified so as to clarify that any contract extensions beyond the initial term would come about based upon a mutual agreement between the Commission and the provider (Sprint Initial Comments at 1).

Upon review, the Commission agrees with this suggestion by Sprint and has modified the RFP accordingly. In fact, the Commission has gone a step or two further, by indicating that all bid proposals submitted in response to the RFP should cover a four-year period, running from July 1, 2009, through June 30, 2013. It is the Commission's intention to establish a contract that will remain in effect for four years, plus any optional renewal periods. However, the RFP acknowledges that such contract will be subject to biennial review and approval by the Controlling Board of Ohio (Controlling Board). Elaborating further, the RFP indicates:

Unless the contract is terminated, it will remain in effect for four years, plus any optional renewal periods. However, the Commission cannot commit that the Controlling Board will approve the contract beyond a biennium period. Thus, at the end of the first biennium, which is June 30, 2011, the Commission shall, absent the selected bidder's failure to meet the terms and conditions of the contract, submit the contract to the Controlling Board for its approval for the second biennium, under the terms of the original bid. If the Controlling Board fails to approve the renewal of the contract, the Commission will still try to negotiate a mutually acceptable agreement with the selected bidder that meets with the Controlling Board's approval.

Acceptance by the Commission of a bid proposal that includes only a four-year initial contract period would not preclude the Commission from later considering retaining the selected bidder for an optional renewal contract period. Any contract extension beyond the four-year initial contract period should be based upon a mutual agreement between the Commission and the selected bidder and may include terms, conditions, or prices that

differ from those that apply during the four-year initial contract between the Commission and the selected bidder.

- (19) **Changes in Scope of the Contract by Mutual Consent Only.** The proposed RFP, at Page 29, Section VI-I states that:

The Commission may at any time, by written order make changes within the general scope of the performance requirements. No changes in scope are to be conducted except with approval of the Commission. If any such change causes an increase or decrease in the cost of, or time required for, the performance of any part of the work under the contract, whether changed or not changed by any such order, an adjustment may be made in the performance requirements and shall be modified in writing according to the requirements of this RFP. To the extent such a change affects the contract, necessary amendments shall be made.

Sprint requests that any changes to the general scope of performance requirements be made only upon mutual consent between the Commission and the provider (Sprint Initial Comments at 1).

Upon review, the Commission rejects Sprint's request that the RFP be modified to indicate that any changes to the general scope of performance requirements be made only upon mutual consent between the Commission and the provider. The Commission must retain the ability to change, upon its own motion, the general scope of performance requirements. This could become necessary, for example, if the Commission ever finds itself in need of adapting the general scope of performance requirements of the Ohio TRS to comply with any new or future federally mandated scope of performance TRS requirements. In any event, however, due process would require that the TRS provider should get notice of, and an opportunity to be fairly heard on the matter before the Commission could proceed to make any substantive change to the general scope of performance requirements of the Ohio TRS. In light of this situation, the Commission has modified the first sentence of the section so as to now read:

The Commission may by written order and in response to directives issued by the FCC pertaining to TRS performance requirements, make changes within the general scope of the performance requirements of the ORS.

- (20) **Force Majeure.** The proposed RFP, at Page 30, Section VI-M, states:

The provider will not be liable for failure to perform its obligation in accordance with the RFP and the Commission's order if such failure arises out of causes beyond the control and without the fault or negligence of the provider. The provider will take all possible steps to recover from such occurrences.

At page 1 of its initial comments, Sprint requests that the following sentence be added at the end of this section:

Force majeure events include, but are not limited to: natural disasters (e.g., lightning, earthquakes, hurricanes, floods); wars, riots, terrorists activities, and civil commotions; inability to obtain parts or equipment from third party suppliers, cable cuts by third parties, a LEC's activities, and other acts of third parties; explosions and fires; embargoes, strikes, and labor disputes; and governmental decrees.

The Commission, upon review, has revised this section by adding back a second sentence that appeared in our prior TRS RFPs but that was somehow left out of the RFP proposed in this case. The sentence states, in essence, that force majeure events include, but are not limited to, acts of God, fires, quarantine restriction, strikes, and freight embargoes.

- (21) **Audit Requirements.** The proposed RFP, at page 32, Section VI-T, states, in part, that:

The selected vendor will be subject to an independent audit when required by the Commission.

Sprint requests that this section be modified to limit the number of potential audits to one annually (Sprint Initial Comments at 2).

Upon review, we decline to adopt Sprint's suggestion. However, we note that it is not our intent to require regular audits just for the sake of having audits. Rather we reserve the right to require an independent audit to be performed at any time so long as we have grounds to find that such an action is warranted. Nevertheless, we have modified this section of the RFP to indicate that the Commission will not require an independent audit to be performed on a regular basis, but rather will only require it if and when it makes a formal determination that, due to extraordinary circumstances, such an audit might prove useful or be necessary in order to protect the integrity of the ORS.

- (22) **Records Retention.** The proposed RFP, at Page 33, Section VI-U, states:

Authorized Commission representatives shall have access to and the right to examine and copy the items listed below. Delivery of and access to the listed items shall be at no cost to the Commission. Specifically, the provider shall preserve and make available to the Commission the following:

- (1) All books, documents, papers, and records related to the provision of the TRS for a period of six years from the expiration or termination of the provision of the TRS.
- (2) Records involving matters in litigation shall be kept for one year following the termination of litigation and associated appeals if the litigation has terminated within the six years.

Sprint, at page 2 of its initial comments, requests that this section of the RFP be modified to provide the following:

Upon reasonable prior written notice, provider shall make records relating to the contract available to the Commission at provider's business offices during normal business hours for inspection, examination,

or audit. Further, due to the highly sensitive and proprietary nature of provider's records, any third party auditor acting on behalf of the Commission shall be subject to prior approval by provider and may be required at provider's sole discretion to execute provider's standard Non-Disclosure Agreement prior to examining, inspecting, copying, or auditing provider's records.

The Commission's authority to supervise public utilities is very broad and originates in Section 4905.06, Revised Code. It includes authority to, through its commissioners, inspectors, or authorized employees, enter in and upon, for purposes of inspection, any property of any public utility. It may be that the Commission and its staff, in a particular set of circumstances, would be willing to agree to some of the same terms and conditions for inspection of the TRS provider and its records that Sprint has here sought to have the Commission mandate through its proposed revisions to the RFP. However, on balance, the Commission declines to adopt Sprint's proposed revisions to this section of the RFP, seeing no reason to narrow its general supervision authority in the manner proposed by Sprint.

The Commission also does not agree with Sprint's suggestion that the Commission may not engage any third-party auditor to act on behalf of the Commission without obtaining the TRS provider's prior approval.

- (23) **Hold Harmless.** The proposed RFP, at page 34, Section VII, states, in part:

The provider agrees to indemnify, defend, and hold harmless, the state of Ohio, its officers, agents, and employees from:

- (1) Any claims or losses for service rendered by the provider, person, or firm performing or supplying services, materials, or supplies in connection with the provision of the TRS;
- (2) Any claims or losses to any person or firm injured or damaged by the acts of the provider, its officers or employees by the

publication, translation, reproduction, delivery, performance, use, or disposition of any data processed in a manner not authorized by the Commission, or by federal or state regulations or statutes....

Sprint believes that the proposed RFP's "Hold Harmless" section is overly broad and unduly burdensome on providers. Sprint requests that the phrase "third party" be inserted before the word "claims" in paragraphs (1) and (2). It requests that the words "in connection with" be replaced with the words "arising directly from." It also requests, at Page 2 of its initial comments, that the following language be added to the section:

To be indemnified, the Commission must (1) give the provider prompt written notice of the claim, (2) give the provider full and complete authority, information, and assistance for the claim's defense and settlement, and (3) not, by any act including but not limited to any admission or acknowledgement, materially prejudice the provider's ability to satisfactorily defend or settle the claim. The provider will retain the right, at its option, to settle or defend the claim, at its own expense and with its own counsel. The Commission will have the right, at its option, to participate in the settlement or defense of the claim, with its own counsel and at its own expense, but the provider will retain the sole control of the claim's settlement or defense.

Upon review, the Commission declines to adopt Sprint's proposed revisions to this section of the RFP, seeing no reason to condition indemnification in the manner proposed by Sprint. Instead, we will keep using the same language regarding indemnification as we have included in the RFPs issued in our prior TRS dockets.

- (24) **Termination.** At page 2 of its initial comments, Sprint requests that the "Termination" section of the proposed RFP, found at Page 34, Section VIII, be modified to provide for 30 days written notice of any potential termination for default, and an opportunity for the provider to cure such potential default.

Upon review, the Commission agrees with these comments and has revised the RFP accordingly.

- (25) **Termination for Default.** The proposed RFP, at Page 34, Section VIII -A.1., allows for immediate termination of the contract by the Commission upon a determination "in writing" of a breach of duty of any of the "performance requirements."

AT&T suggests that there should be a requirement that the Commission provide notice and that the provider be given a reasonable opportunity to cure the *alleged breach* before the contract can be terminated. This approach is consistent with contract law and the concept of commercial reasonableness. To do otherwise would be severe and not in the public interest (AT&T Initial Comments at 5).

Upon review, the Commission agrees with these comments and has revised the RFP accordingly.

- (26) **Sprint-proposed additional RFP language on Limitation of Liability.** At page 2 of its initial comments, Sprint requests that a "limitation of liability" section be added to the RFP, which it proposes should read:

- (A) The provider's maximum liability for damages caused by its failure(s) to perform its obligations under this agreement is limited to: (A) proven direct damages for claims arising out of personal injury or death, or damage to real or tangible personal property, caused by the party's negligent or willful misconduct; or (B) proven direct damages for all other claims arising out of this agreement, excluding service disruptions, not to exceed the aggregate, in any 12 month period, of an amount equal to the Commission's total net payments for the affected products and services purchased in the 6 months prior to the event giving rise to the claim. The Commission's payment obligations and the provider's indemnification obligations under this agreement are excluded from this provision.
- (B) In no event shall either party be liable to the other party for indirect, consequential, incidental, special,

or punitive damages, or lost profits, lost revenues, and loss of business opportunity.

In its reply comments, AT&T disagrees with Sprint's limitation of liability arguments, saying such language may be appropriate as between the Commission and the provider, but it need not extend to liability between the provider and third parties. This is because Ohio law, namely Section 4931.35(C), Revised Code, already provides limitation of liability. It states:

A CA or a TRS provider is not subject to criminal prosecution and is not liable in damages in any civil action on account of the act of transliterating or the content of any communication transliterated, or any injury, death, or loss to person or property allegedly arising from the act of transliterating or the content of any communication transliterated, between the end users of a TRS service, except in cases of willful or wanton misconduct.

AT&T says the Commission is likely without authority to expand or reduce that limitation on liability as between end users and the provider, and it should not attempt to do so here. Sprint's suggested language, if adopted at all, should address only the liability as between the TRS provider and the state of Ohio, says AT&T (AT&T Reply Comments at 3).

Upon review of these comments, the Commission declines to add any new provisions to the RFP regarding limitation of liability. We are satisfied that, as between the TRS provider and the state of Ohio, the subject is already adequately addressed by existing rules and statutes and, thus, need not be directly addressed within the RFP. Likewise, the Commission does not intend to use the RFP as a vehicle by which to address the topic of limitation on liability as between end users and the TRS provider.

- (27) The deadline for submission of formal bids in response to the RFP shall be February 2, 2009.

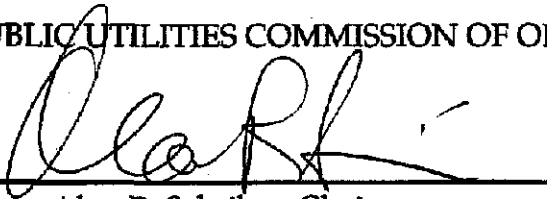
It is, therefore,

ORDERED, That the Commission hereby formally issues its RFP in this docket, as set forth in the attachment to this entry. It is, further,

ORDERED, That the deadline for the submission of bid proposals in response to the RFP shall be February 2, 2009. It is, further,

ORDERED, That a copy of this entry be served upon on the Ohio Telecom Association; the Office of the Ohio Consumers' Counsel; all entities who filed comments and/or reply comments in response to the April 16, 2008 entry in this case; all parties of record in the 01-2945-TP-COI docket; and upon all other interested persons of record.

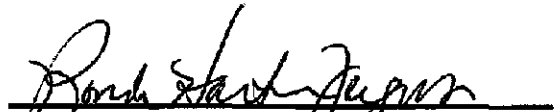
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

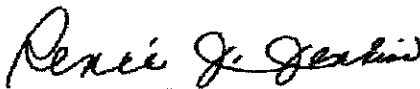


Cheryl L. Roberto

DEF;geb

Entered in the Journal

NOV 25 2008



Renee J. Jenkins
Secretary

PUBLIC UTILITIES COMMISSION OF OHIO
REQUEST FOR PROPOSAL
Docket No. 08-439-TP-COI
Telecommunications Relay Service

I.	INTRODUCTION.....	3
A.	Background	3
B.	Purpose	4
C.	Communication Restriction	4
II.	PROPOSALS	5
A.	Proposals.....	5
B.	Proposal Format	5
1.	Cover Letter.....	5
2.	Executive Summary	6
3.	Bidder Profile	6
4.	References	6
5.	Body of Response	6
C.	Submission Date	6
D.	Withdrawn or Modified Proposal.....	7
E.	Valid Responses.....	8
F.	Cost of the RFP.....	8
G.	Presentations	8
H.	Additional Information	8
III.	SCOPE OF SERVICE AND GENERAL REQUIREMENTS	8
A.	Operational standards	9
1.	Communication Assistants (CA).....	9
2.	Types of calls.....	9
3.	Handling of emergency calls.	11
4.	In-call replacement of CAs.....	11
5.	CA gender preferences	11
6.	STS called numbers	12
B.	Technical standards.....	12
1.	ASCII and Baudot.....	12
2.	Speed of answer	12
3.	Equal access to interexchange carriers	12
4.	TRS facilities	12
5.	Telecommunications Service Priority (TSP) Program.....	13
6.	Technology	13
7.	Voice mail and interactive menus	13
C.	TRS System Standards	13
1.	Billing	13
2.	Advancements	14
3.	Customer Access	14
4.	Call Processing.....	14

D.	TRS Service Standards	14
1.	Timing of Calls	14
2.	Person-to-Person Calls	14
3.	Intrastate Toll Discounts	15
4.	Answering Machines	15
E.	TRS CA Standards (Bidder must provide detailed information in its proposal explaining how it will meet these requirements)	15
1.	Training Requirements	15
2.	Confidentiality Requirements	16
3.	Additional Methods and Procedures	17
F.	Monthly Requirements for Billing and Auditing	18
1.	Calling Characteristics & Traffic Data	18
2.	Accounting & Financial Information	19
G.	Complaints and Inquiries Procedures	20
H.	Treatment of TRS customer information	21
I.	Additional Considerations	21
IV.	INFORMATION REQUIRED FROM BIDDER	22
A.	Network Documentation	22
B.	Administrative Documents	23
1.	Personnel	23
2.	Advertising and educational materials	23
3.	Billing Information	23
C.	Cost and Financial Submissions	23
D.	Supplemental Submissions	26
V.	SELECTION CRITERIA	27
A.	Selection Process	27
B.	Evaluation Criteria	27
C.	Award	29
VI.	CONDITIONS	29
A.	Performance	29
B.	Term	30
C.	Conflicts	31
D.	Deviations from the RFP	31
E.	Modification	31
F.	Contract and Order Variation	31
G.	Waiver	31
H.	Entire Agreement	32
I.	Federal and Ohio Laws	32
J.	Changes in the Scope of the Contract and the Performance Requirements	32
K.	Provider's Responsibility	33

L.	Performance Assignment	33
M.	Provider's Personnel	33
N.	Force Majeure.....	33
O.	Advertising- Award.....	33
P.	Permits, Licenses, Taxes, and Registrations	33
Q.	Insurance.....	34
R.	Performance Bond	34
S.	Employment Practices	35
T.	Accounting Requirements.....	36
U.	Audit Requirements.....	36
V.	Records Retention.....	36
W.	Independent Price Determination.....	37
X.	Offer of Gratuities.....	37
VII.	HOLD HARMLESS.....	37
VIII.	TERMINATION.....	38
A.	The obligation to perform resulting from this RFP shall be subject to the following termination provisions:	38
B.	Procedure for Termination.....	39
C.	Termination Claims.....	39

I. INTRODUCTION

A. Background

On November 16, 1990, the Federal Communications Commission (FCC) released a Notice of Proposed Rulemaking in CC Docket No. 90-571 pursuant to the Americans with Disabilities Act of 1990 (ADA). The ADA, which was signed by the President on July 26, 1990, mandates that interstate and intrastate telecommunications relay services (TRS or services) be established on or before July 26, 1993, for those persons with communication disabilities, i.e., deaf, hearing disabled, or speech disabled individuals. The FCC, pursuant to the directives of the ADA, developed specific requirements for the services which were released in CC Docket No. 90-571 on July 26, 1991. Moreover, the ADA allows the FCC to extend jurisdictional authority to a state over its intrastate services, if the state's TRS satisfies the FCC's certification criteria.

The Public Utilities Commission of Ohio (Commission) first established the Ohio Relay Service (ORS) in Case No. 91-113-TP-COI, a generic docket initiated in January 1991. In that case, the Commission chose an Ohio TRS vendor to serve under a five-year contract period which expired on December 31, 1997. The Commission in Case No. 96-1139-TP-COI (96-1139) chose the vendor who would be authorized to continue the Ohio TRS for a five-

year contract period running from January 1, 1998 through December 31, 2003. Similarly, within Case No. 01-2945-TP-COI (01-2945), the Commission chose and authorized the vendor who would continue the Ohio TRS for the five-year contract period running from January 1, 2003 through December 31, 2007. By Entry issued October 24, 2007, the Commission both modified and extended, as modified, the contract established in the 01-2945 case for a period of 18 months from January 1, 2008 through June 30, 2009. The Commission has initiated Case No. 08-439-TP-COI (08-439) both for the purpose of establishing the process for choosing the vendor who shall be authorized to continue Ohio's intrastate TRS once the Commission's contract with the existing vendor expires and also, for the purpose of actually choosing such vendor.

Within the 96-1139 docket, the Commission established a TRS Consumer Advisory Group (CAG), a special panel composed of persons from within Ohio's communicatively impaired community and/or from state agencies with close associations to that community, whose function is to consult and advise the Commission in the selection of the Ohio TRS vendor. The Commission finds it appropriate that in the 08-439 case, the TRS CAG should continue to function to consult and advise the Commission as the Commission proceeds in this case to select the next ORS provider.

B. Purpose

This request for proposal (RFP) provides interested vendors with the requisite information to prepare and submit proposals to the Commission to provide statewide TRS. The purpose of TRS is to provide Ohioans with communication disabilities with intrastate telecommunications services that are functionally equivalent to those that are provided to persons who are without such disabilities.

The TRS will enable an individual who is communicatively disabled to communicate through an intermediary with persons who are hearing and/or speech-capable via a text telephone (TTY), e.g., telecommunications device for the deaf (TDD), teletypewriter, personal computer (PC), telebraille, or any other automated device capable of transmitting and receiving text via ASCII or Baudot transmission protocol. The TRS provides specially trained communication assistants (CAs) who act as intermediaries between persons on a TRS call.

C. Communication Restriction

With the exception of any Commission-designated pre-bid or post-bid conferences, bidder presentations, and Commission solicited information (see II, G and H) if any, a bidders, including but not limited to their employees, agents, assigns, and legal

representatives, shall not communicate with any state staff or Commissioner concerning this RFP from the date that it is released for bid until a bidder has been selected and the Commission has issued its order selecting the vendor. If a bidder attempts any unauthorized communication, the state shall reserve the right to reject that bidder's proposal.

II. PROPOSALS

A. Proposals

Bid proposals shall be evaluated based on the bidder's ability to meet or exceed all technical, service quality, and other requirements as outlined in this RFP at the least cost to the state of Ohio consistent with the delivery of quality service to persons who are members of the communicatively disabled community. The Commission reserves the right to reject any or all proposals made pursuant to this RFP and to modify terms of this RFP upon notice to all applicants. Response to the RFP constitutes an agreement with the conditions set forth in this RFP, and acknowledgement that the Commission has the responsibility to establish the requirements for the TRS and enforce performance of those requirements. This RFP establishes the key terms, conditions, and requirements to be performed by the successful bidder (i.e., provider).

B. Proposal Format

These instructions describe the required format for bidders' proposals. Additional information deemed pertinent by the bidder may be included. An identifiable tab sheet shall precede each section for ease of reference. The filed proposal shall follow the same format as described below. All pages, except preprinted technical inserts, shall be sequentially numbered. Any filed proposal shall contain the following sections:

1. Cover Letter

The cover letter shall contain the name of the project; the name and address of the firm; the name, address, and current telephone number of a contact person with authority to answer questions regarding the proposal; and the name, address, and current telephone number of a contact person to be notified regarding contractual issues. Wherever possible, please use representatives within the boundaries of the state of Ohio.

The cover letter shall be signed by a representative authorized to legally bind the bidder, and shall include the following: an identification of the bidder as a corporation or other legal entity; a statement that the bidder does not discriminate on the basis of race,

religion, national origin, color, sex, sexual orientation, age, disabilities, or veteran status; a statement that the bidder has sole and complete responsibility for delivery of the required services; and a statement that the proposal will be valid for 180 days.

2. Executive Summary

The bidder shall clearly specify its competitive advantages and its proposed ability to meet the terms, conditions, and requirements as defined in this RFP.

3. Bidder Profile

This section shall include, but not be limited to, recent data describing the following: the corporate philosophy; the current organization; the date of incorporation; ownership; the number of years in business; the total number of employees, including percentages of women and minorities both in senior level positions and throughout the company; the number of staff, both in total and in Ohio; the number of offices both in total and in Ohio (including the location of the Ohio offices); the revenue totals for the last fiscal year; the home office location; and other appropriate company profile information, including TRS offerings provided in other states. Finally, the bidder shall include a statement describing how bidder resources and experience will support the proposed TRS, including access to back-up staff and facilities if needed.

4. References

Five professional references shall be provided that demonstrate the ability of the bidder to provide TRS. The references must include the name of a contact person, his or her title and affiliation, and telephone number.

5. Body of Response

Bidders are required to adhere to the outline organization as set forth in Sections III and IV of this RFP.

C. Submission Date

- (1) To be considered for selection, the bidder's formal response to this RFP must be filed by a date and time to be established within an order to be issued by the Commission in Case No. 08-439-TP-COI.
- (2) An original and 15 copies of each bidder's complete formal response, excluding any information filed under seal and for which the bidder has submitted a

motion for protective order, shall be filed with Docketing in Case No. 08-439-TP-COI. Any information that is filed under seal in this case, should include the filing, under seal, of an original and ten copies.

- (3) All filed complete responses will be reviewed by the Commission and the Commission's staff, as described in Section V of this RFP. All materials received in response to this RFP shall become the property of the Commission and may be returned only at the Commission's option. Unless otherwise directed by the Commission, the cost portions of the complete responses shall be treated in a proprietary manner until the Commission formally selects the successful bidder, at which time the bid prices will be publicly disclosed. Bidders seeking to protect the confidentiality of any information submitted with their bid that they consider to be proprietary should do so by filing their bids, along with a motion for protective order, in accordance with Rule 4901-1-24(D), O.A.C.

The Commission will share copies of all nonproprietary materials with members of the CAG. Beyond this, although the Commission will not provide CAG members with the actual bid prices (to the extent that they are not otherwise publicly disclosed information), the Commission will share with CAG members information concerning how all of the submitted rate quotes from all bidders rank in comparison to each other, and concerning the range of variation that exists between the various submitted rate quotes (e.g. this bid is 4 cents higher than that bid). The CAG members will use this information in completing the analysis that will lead to their recommendation to the Commission. Prior to deliberating for purposes of reaching their recommendation, CAG members will be required by the Commission to sign a document by which they pledge not to publicly disclose this information or anything else, aside from the actual report of recommendation, concerning the substance of such deliberations. Beyond this, bidders who wish to do so are welcome to enter into confidentiality agreements of their own with members of the CAG.

D. Withdrawn or Modified Proposal

Prior to the proposal due date, a submitted proposal may be withdrawn from consideration or modified by the bidder. Any such request must be signed by a person authorized to sign for the bidder. After filing, the proposals shall not be modified, except upon direction of the Commission for good cause shown.

E. Valid Responses

All responses shall be valid and binding for 180 days from the date that responses are due.

F. Cost of the RFP

The state of Ohio is not liable for any cost associated with the preparation of proposals or any other costs incurred by any bidder.

G. Presentations

Prior to rendering a decision as to the successful bidder, the Commission may decide to establish a time for oral presentations to be provided on behalf of all bidders that have met or exceeded the minimum requirements of this RFP. Advance notice will be provided to any bidder requested to make a presentation.

H. Additional Information

A bidder that files a proposal that meets the requirements of this RFP may be requested to provide additional information in writing or to meet with representatives of the Commission to discuss the specifics of their bid in greater detail.

The Commission reserves, at its own discretion, the right to notify and allow a bidder, once its bid is filed, a time period to be specified by the Commission to cure minor irregularities to the bid found to exist by the Commission, including either those that pertain to the bid's compliance with all mandatory requirements of this RFP, or those that pertain to any of the specified selection criteria that are subject to scoring and evaluation by the Commission in making its selection.

III. SCOPE OF SERVICE AND GENERAL REQUIREMENTS

TRS is designed to provide ubiquitous virtual access to the telecommunications network for persons with hearing and/or speech disabilities. In fact, a primary objective of the ADA's mandate is to provide persons who are disabled with telephone service "functionally equivalent" to that enjoyed by individuals who are not disabled.

The TRS contemplated by this RFP will be comprised of one or more operator centers accessible to all Ohioans. Relay calls may be initiated by persons who are either non-disabled or disabled. In addition to regular voice transmission, the TRS must be capable of receiving and relaying calls placed by text telephones (TTYs).

When a person wishes to use the relay center, he or she will place a toll-free call to the TRS. The TRS must provide its users with a single, toll-free telephone number to access the relay, which is universally available throughout the state of Ohio. At the relay center, a communication assistant will answer the call and obtain the necessary information to assist the person in reaching the intended called party. Once the connection is made, the TRS CA relays the conversation by converting the text transmitted by the individual who is disabled to a spoken message for the person who is not disabled, and vice-versa.

By utilizing the TRS, any business or residence that has a standard telephone can reach or be reached by individuals with communication disabilities. The specific parameters within which the Ohio TRS will operate are described below.

A. Operational standards

1. Communication Assistants (CA)

TRS providers are responsible for requiring that CAs be sufficiently trained to effectively meet the specialized communication needs of individuals with hearing and speech disabilities; and that CAs have competent skills in typing, grammar, spelling, interpretation of typewritten American sign language (ASL), and familiarity with hearing and speech disability cultures, languages, and etiquette. CAs must possess clear and articulate voice communications. CAs must provide a typing speed of a minimum of 60 words per minute. Technological aids may be used to reach the required typing speed. Providers must give oral-to-type tests of CA speed.

2. Types of calls

In addition to the processing of typical TRS calls, the following types of calls apply:

(a) Voice Carryover (VCO):

The TRS must accept calls from a voice-capable caller who is hearing-disabled and permit this caller to speak his or her own message directly to a call recipient who is hearing-capable without such transmission being processed by the relay CA. The TRS must also provide Two-Line VCO calls, VCO-to-TTY calls, and VCO-to-VCO calls.

(b) Hearing Carryover (HCO):

The TRS must accept calls from a hearing-capable caller who is speech-disabled and permit this caller to receive transmission directly from the other party without any

intervention from the CA. The TRS must also provide Two-Line HCO calls, HCO-to-TTY calls, and HCO-to-HCO calls.

(c) Speech-to-Speech Relay Service (STS):

The TRS must provide access to a CA who understands the speech patterns of persons with speech disabilities and can repeat the words spoken. The TRS may utilize a dedicated toll-free telephone number to access STS service.

(d) Pay-Per-Call Calls:

The TRS provider must provide access to pay-per-call services (e.g., 900 calls). However, in no event shall the Ohio Relay Service incur the charges assessed by the pay-per-call vendor. Rather, such charges shall be billed to the calling party.

(e) Spanish Speaking Services:

The provision of intrastate Spanish speaking relay service is required. The provider shall be compensated for the intrastate transliteration of such calls at the rate-per-minute bid price. The TRS may utilize a dedicated toll free telephone number to provide this service.

(f) Captioned Telephone VCO Service (CapTel)

The TRS provider, or a subcontractor responsible to the TRS vendor, must provide CapTel, including Two-Line CapTel. CapTel is a specialized form of VCO which is a trademark of Ultratec and requires use of a specialized telephone which makes use of Ultratec's proprietary technology. The provider will be compensated at a rate-per-session minute bid price, separate from the standard TRS rate-per-session minute bid price, for intrastate calls. The service will not include provision of the telephone instruments needed in using the service. The Commission reserves the right to determine the number of phones to be distributed per month.

(g) Additional Call Types:

Consistent with the obligations of common carrier operators, CAs are prohibited from refusing a single or sequential call or limiting the length of calls utilizing relay services. TRS shall be capable of handling any type of call normally provided by common carriers and the burden of proving the infeasibility of handling any type of call will be placed on the carriers. Providers of TRS are permitted to decline to complete a call because credit authorization is denied. The scope of this RFP and the consequent bids must only

include the processing of intrastate TRS calls. The intrastate relay system will not be required by this RFP to process interstate calls. The intrastate TRS, however, must be capable of accommodating interstate TRS, which is authorized and funded through the federal jurisdiction. Should the provider elect to carry interstate calls, such calls should be recorded separately and distinctly from all intrastate calls and shall not be billed under the contract, consistent with the FCC's TRS separations requirements. Bidders, within their proposals, shall identify those types of calls that they believe to be technologically infeasible, and further must explain, in detail, such infeasibility. The TRS shall also provide its users with conference and three-way calling, and other customer calling features as they become available, to the extent technically feasible. Charges assessed to TRS users for such ancillary services, whether or not traditionally provided by local exchange carriers (LECs), must not exceed the rates assessed to those persons without communication disabilities.

3. Handling of emergency calls.

Providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately provides the nearest public safety answering point (PSAP) with the caller's telephone number. In addition, a CA must pass along the caller's telephone number to the PSAP when a caller disconnects before being connected to emergency services. The TRS must accept emergency calls and must be capable of relaying such calls to local emergency numbers. This service will not be recommended to replace TTY-TDD 9-1-1 emergency service or any other direct TTY access to emergency service agencies. Promotional materials should, in fact, expressly discourage the use of the TRS for processing emergency calls if more direct means are available.

4. In-call replacement of CAs

CAs answering and placing a TTY-based TRS call must stay with the call for a minimum of ten minutes. CAs answering and placing an STS call must stay with the call for a minimum of fifteen minutes.

5. CA gender preferences

TRS providers must make best efforts to accommodate a TRS user's requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA.

6. STS called numbers

Relay providers must offer STS users the option to maintain at the relay center a list of names and telephone numbers which the STS user calls. When the STS user requests one of these names, the CA must repeat the name and state the telephone number to the STS user. This information must be transferred to any new STS provider.

B. Technical standards

1. ASCII and Baudot

TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.

2. Speed of answer

TRS shall include adequate staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network. TRS shall, except during network failure, answer 85 percent of all calls within 10 seconds by any method which results in the caller's call immediately being placed, not put in a queue or on hold. The ten seconds begins at the time the call is delivered to the TRS center's network. The call is considered delivered when the relay center's equipment accepts the call from the local exchange carrier and the public switched network actually delivers the call to the TRS center. Abandoned calls shall be included in the speed-of-answer calculation. A provider's compliance with this rule shall be measured on a daily basis. The system shall be designed to a P.01 standard. No more than one call in 100 will receive a busy signal when calling the TRS. The TRS must measure its technical performance on a daily basis.

3. Equal access to interexchange carriers

TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to persons without communication disabilities.

4. TRS facilities

TRS shall operate every day, 24-hours a day. TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use. TRS shall transmit conversations between TTY

and voice callers in real time. The TRS must have a sufficient number of CAs, trunks, circuits, and other facilities to achieve the standards and handle the types of calls required in this RFP. Adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

5. Telecommunications Service Priority (TSP) Program

The TRS must be enrolled in the FCC's TSP program. In the event of a natural disaster or a regional or national crisis, the LECs would be required to restore service to the TRS call center(s) as rapidly as possible consistent with the priority status assigned to the call center(s).

6. Technology

No regulation set forth in this RFP is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to persons with disabilities. VCO, HCO, and Caller ID technology are required to be standard features of TRS. Technology such as turbocode, which allows faster data transmission, is also required to be a standard feature of the TRS.

7. Voice mail and interactive menus

CAs must alert the TRS user to the presence of a recorded message and interactive menu through a hot key on the CA's terminal. The hot key will send text from the CA to the consumer's TTY indicating that a recording or interactive menu has been encountered. Relay providers shall electronically capture recorded messages and retain them for the length of the call. Relay providers may not impose any charges for additional calls which must be made by the relay user in order to complete calls involving recorded or interactive messages.

C. TRS System Standards

1. Billing

The relay system must include methods of providing interexchange carriers with sufficient billing information to allow calls to be billed accurately. The system must be capable of providing, at a minimum: automatic number identification (ANI), which includes the relay code; the called number; the billing start and end time; and the type of call, i.e., person-to-person, etc.

2. Advancements

The TRS shall strive to provide the latest advancements in technology that can provide a cost-effective service without decreasing the quality of service. Furthermore, the relay system must make use of features that will assist the relay CA in relaying conversations as quickly as possible.

3. Customer Access

The successful bidder shall provide access to its relay service and administrative assistance via the same toll-free telephone numbers (1-800-750-0750 & 1-800-325-2223, respectively) in use on the date of issuance of this RFP. Each number shall be available for both voice and TTY calls and, with the exception of the provision of STS calls, intrastate Spanish-speaking services, and TRS access to pay-per-call services, no additional numbers shall be utilized for the actual relaying of calls. Consistent with the FCC's requirements, all LECs and two-way commercial mobile radio service providers are required to provide their respective end users 7-1-1 access to state relay services.

4. Call Processing

All calls processed at relay centers used by the provider in provisioning the TRS must be processed in compliance with the terms of this RFP.

D. TRS Service Standards

1. Timing of Calls

For the purpose of assessing toll charges, timing of the relay call will begin immediately upon the called party answering.

2. Person-to-Person Calls

When placing a person-to-person toll call through the TRS, callers must explicitly request that they wish to place a person-to-person call in order to communicate with a specific individual in a household or business.

3. Intrastate Toll Discounts

Intrastate toll charges (assessed to all persons billed) for calls placed through the TRS must reflect the toll discounts mandated by the Commission in Case No. 87-206-TP-COI. The discounts shall not apply to calls placed to pay-per-call services, such as 900 or 900-like services, to the extent these services are available.

4. Answering Machines

In the event a person with a communication disability places a toll call through the TRS and is connected to an answering machine, no additional toll charges shall be assessed to the caller if it is necessary for the CA to place an additional call to the answering machine to complete the message.

E. TRS CA Standards (Bidder must provide detailed information in its proposal explaining how it will meet these requirements).

1. Training Requirements

- (a) TRS CAs must be trained in aspects of hearing and speech disability cultures and languages, including ASL, Standard English Translation, Cued Speech, Fingerspelling, Manual English, Speechreading and Speech Amplification, as well as sensitivity to any other special needs of persons who are communicatively disabled.
- (b) Each CA's training must include appropriate testing to document that the required proficiency has been achieved.
- (c) A CA must be trained when new procedures and/or equipment are introduced.
- (d) Each TRS CA must possess a minimum 60 wpm typing speed.
- (e) TRS CAs must be able to process calls in English, including written English which has been influenced by the syntax of ASL, should interpretation be requested.

Each CA will be monitored, including oral-to-type testing, with sufficient frequency to ensure that the required proficiency is consistently maintained.

2. Confidentiality Requirements

- (a) Callers will not be required to provide any personal identifying information, except to the extent necessary to allow for proper billing.
- (b) TRS CAs are only permitted to leave messages with third parties when instructed to do so by the calling party.
- (c) TRS CAs will not intentionally alter a relayed call.
- (d) Any breach of confidentiality by a CA must result in appropriate disciplinary action, after such breach is confirmed by the relay system manager.
- (e) When training new CAs by the method of sharing past experiences, the trainers will not reveal any of the following information:
 - (a) The names, genders, or ages of the parties to a relay call;
 - (b) The originating or terminating points of a relay call; and
 - (c) The specific information conveyed in a relay call.
- (f) TRS CAs will not make any value judgments regarding the content of the message and its legality or obscenity.
- (g) All communications made by or to a person with a communication disability, in any TRS call, is deemed to be confidential and privileged and must not be disclosed by a CA in any judicial, legislative, or administrative proceeding, unless the persons involved in the confidential communication waive such privilege or unless otherwise required by law.
- (h) The TRS providers will not maintain any form of permanent records of call contents. All printouts, recordings, or notes of relay calls must be destroyed upon completion of the call, with the exception of billing information and information retained at the request of the calling party in order to facilitate STS calls. The STS CA is permitted to retain information from a particular call in order to facilitate consecutive calls when requested by the calling party and may also retain a list of frequently called numbers when requested by the calling party.
- (i) Except as authorized by 47 U.S.C. § 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content and, with a limited exception for STS CAs, from keeping records of the content of any conversation

beyond the duration of a call, even if to do so would be inconsistent with state or local law. STS CAs may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user. The caller may request the STS CA to retain such information, or the CA may ask the caller if he wants the CA to repeat the same information during subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls. CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state, or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay user specifically requests summarization, or if the user requests interpretation of an ASL call. An STS CA may facilitate the call of an STS user with a speech disability so long as the CA does not interfere with the independence of the user, the user maintains control of the conversation, and the user does not object.

- (j) The CA must adhere to the Relay System Code of Ethics (Appendix A), or a similar pledge that, at a minimum, includes the requirements set forth in Appendix A, before relaying any calls. CAs must also comply with any applicable federal or state laws or regulations pertaining to CA conduct or confidentiality (e.g., 47 C.F.R. 64.604 and Section 4931.35 of the Ohio Revised Code).

3. Additional Methods and Procedures

- (a) Relay system CAs will not counsel, advise, or interject personal opinions into any communication which they are translating, nor shall they offer their opinion or advice after either of the relay parties has hung up.
- (b) TRS CAs will not disconnect calls against the wishes of the calling or called parties without the prior consent of the relay center supervisor. In the case of disconnection, the supervisor must log the reason for such action and sign the log. Such termination will only occur where one or both parties are abusive towards, or intentionally uncooperative with, the CA.
- (c) Relay system CAs must disconnect promptly at the end of each call to avoid additional charges.
- (d) The CA shall not speak in third person to the called and/or calling party.

F. Monthly Requirements for Billing and Auditing

1. Calling Characteristics & Traffic Data

- (a) The TRS must create, for each relay-assisted call, a record containing, at a minimum:
 - (i) the telephone number (NPA-NXX-XXXX) or credit card number for all end user billable calls, i.e., local or toll;
 - (ii) the terminating and originating telephone number (NPA-NXX-XXXX) for all calls toll in nature;
 - (iii) the date of the call;
 - (iv) the start and end time of the call as identified for end user billing purposes in Section III (C) (1);
 - (v) the start and end time of the call as defined for provider compensation purposes in Section IV (C) (2) (a);
 - (vi) call type, e.g., person-to-person, collect, etc.;
 - (vii) preferred IXC for interLATA calls, or preferred IXC or LEC for intraLATA calls (to the extent that intraLATA 1+ dialing parity is available within the caller's local service area); and
 - (viii) the two-digit relay identification code.
- (b) The TRS provider must forward the record for each call to the designated intrastate billing agent, i.e., LEC, IXC, or independent billing vendor, within 14 days of the date such service was supplied.
- (c) The TRS provider must maintain all records and reports relating to the operation of the relay center, and shall make such records and reports available for audit by the Commission. Such reports must include, but are not limited to, monthly traffic studies detailing the following:
 - (i) blockage rates;

- (ii) the number of calls in queue;
 - (iii) the length of time in queue;
 - (iv) the traffic patterns identifying the area codes from which the calls originate, and the percentage of calls originated by TTY users versus customers who are hearing and voice capable;
 - (v) the average speed of answer;
 - (vi) the total number of calls;
 - (vii) the total minutes of use (MOUs) for provider compensation; and,
 - (viii) the average duration of calls, as defined in Section IV(C)(2)(a) of this RFP.
- (d) The TRS provider must submit to the Commission a detailed annual report of operations, service standards, and traffic patterns about the relay system. The initial report must be submitted by September 30 following the date the contract is awarded. The initial report shall cover the period from initial operation under this contract through the end of the calendar year. Such reports must contain, at a minimum:
- (i) the traffic study criteria listed in Sections III(F)(1) of this RFP;
 - (ii) any recommendations to reporting specifications which the TRS provider deems necessary to improve its rendition of the relay service; and
 - (iii) a report on any complaints received during the period covered by the report, and the TRS response to the same.
- (e) Following the initial report, an annual, calendar year report must be submitted to the Commission by September 30 of each year.

2. Accounting & Financial Information

The relay system provider must maintain accounting and financial records detailing the expenses incurred in operating the TRS.

G. Complaints and Inquiries Procedures

- (1) The TRS provider and Commission shall entertain informal complaints regarding the provision of intrastate TRS. The Commission and/or TRS provider shall ensure that the complaint include the following information: name and address of the complainant; the name and address of the TRS provider against whom the complaint is made; a statement of facts supporting the complainant's allegation; the specific relief or satisfaction sought by the complainant; and the complainant's preferred format or method of response.
- (2) The TRS provider shall file with the Commission a statement designating an agent or agents whose principal responsibility will be to receive all complaints, inquiries, orders, decisions, and notices and other pronouncements forwarded by the Commission. Such designation shall include a name or department designation, business address, telephone number (voice and TTY), facsimile number and, if available, internet e-mail address.
- (3) The TRS provider must provide its users with a means to file service quality complaints, to offer suggestions, and to make general inquiries regarding the service. The TRS provider must accept and respond to complaints received by both mail and telephone within ten business days. The TRS provider must display a toll-free customer service telephone number (1-800-325-2223) and address on all brochures and educational materials, as well as the Commission's public intrastate 800 voice and TDD phone numbers, for this purpose.
- (4) The TRS provider must employ all reasonable means available to resolve a complaint. In the event a complaint cannot be resolved by the TRS provider, it must refer the complaint to the Commission's Service Monitoring and Enforcement Department's Investigation and Audit Division. If the complaint cannot be resolved to the customer's satisfaction by the Investigation and Audit Division personnel, a formal complaint form will be provided to the complainant. The complaint form will provide TRS users with the necessary information concerning how to file a formal complaint with the Commission. The Commission will entertain formal complaints to determine whether the TRS provider is meeting the requirements set forth by this RFP, the FCC, and the ADA. As required by the ADA, the Commission will take final action regarding any complaint within 180 days from the date it is filed. That is, all complaints will be resolved by the Commission within 180 days after the complaint is first filed with a state entity, regardless of whether it is filed with the state relay administrator, the Commission, the relay provider, or with any other state entity.

- (5) The TRS provider must maintain a log of consumer complaints. The log shall include, at a minimum, the date the complaint was filed, the nature of the complaint, the date of resolution, and an explanation of the resolution. Summaries of logs must be submitted monthly to the Commission and annually to the FCC, consistent with the FCC's rules.
- (6) Informal complaints may be transmitted to the Commission's Investigation and Audit Division by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet email, or some other method that would best accommodate a complainant's hearing or speech disability.

H. Treatment of TRS customer information

All future contracts between the Commission and the TRS provider shall provide for the transfer of TRS customer profile data from the outgoing TRS provider to the incoming TRS provider. Such data must be disclosed in usable form at least 60 days prior to the provider's last day of service provision. Such data may not be used for any purpose other than to connect the TRS user with the called parties desired by that TRS user. Such information shall not be sold, distributed, shared, or revealed in any other way by either the TRS provider, the relay center, or any of its employees, unless compelled to do so by lawful order.

I. Additional Considerations

- (1) Upon the stated commencement date, the TRS provider must be prepared to process all intrastate relay traffic in accordance with the terms of this RFP.
- (2) All TRS records must be made available during normal business hours for inspection by the Commission or any Commission-approved personnel.
- (3) The Commission believes that it is crucial that the provider be aware of the needs of the TRS users to ensure that the service is meeting the day-to-day requirements of persons who are communicatively disabled. Therefore, a Consumer's Advisory Board (CAB) shall be formed by the provider to provide input to the TRS provider on issues of personnel training, outreach, and customer service. The CAB will meet periodically, as necessary, to develop and submit recommendations to the provider. The TRS provider must be responsive to the CAB's input concerning personnel training, outreach, and customer service, and shall provide written responses to the CAB's inquiries or comments.

- (4) Prior to release for the general public, all promotional and educational materials must be submitted for review to the Commission's staff, in order to ensure the effectiveness and appropriateness of the material.
- (5) The TRS provider must keep the Commission's staff apprised of any operational situations (e.g., labor disputes, strikes, changes in management and/or staffing levels) that could potentially have a significant adverse impact on overall ORS service quality once that potential becomes apparent.

IV. INFORMATION REQUIRED FROM BIDDER

A. Network Documentation

- (1) All bids must include a complete description of how the bidder proposes to provision the TRS. In addition, all bids must include a copy of any interconnection agreement or other type of agreement that the bidder has entered into with any other telecommunications provider(s) in order to provision the TRS in the manner proposed, and/or a description of any such agreement(s) that the bidder intends to enter into in order to so provision the TRS.
- (2) The bidder's system design must illustrate:
 - (a) the network configuration to be used to provide the TRS, including the way callers will access the service and the way the provider will process the traffic; and
 - (b) the manner in which the records will be maintained and made available in order to permit review and evaluation by the Commission staff.
 - (c) to the extent that the bid includes an in-state Ohio call center, the proposed number of full-time equivalent personnel who will be employed at the in-state Ohio call center.
 - (d) the location of all relay centers that will be utilized.
- (3) The bidder must provide an explanation of how it will enable the TRS caller to choose the IXC for the call.

B. Administrative Documents

1. Personnel

The bidder must provide a complete description of the personnel, including supervisory personnel, necessary to staff the TRS. Such description must also include:

- (1) how the personnel will be selected, screened, and trained;
- (2) the procedures to be implemented to ensure objectivity, sensitivity, and confidentiality in relaying calls;
- (3) the procedures to be instituted to ensure that the required levels of CA proficiency in their tasks are attained and maintained;
- (4) the procedures for any refresher training and for implementation of improved procedures;
- (5) the disciplinary procedures to be applied to CAs for misconduct or failure to attain and maintain required task proficiency levels; and
- (6) staffing levels relative to changes in average call duration or call volumes, i.e., usage of the center.

2. Advertising and educational materials

The bidder must provide either examples of advertising and educational materials that it has used in relay operations elsewhere, or a satisfactory indication of, if it were awarded the contract, what advertising and educational materials it would propose to use in order to promote Ohio Relay Service usage.

3. Billing Information

The bidder must provide a complete description of how billing records for end user billing and provider compensation will be created and maintained.

C. Cost and Financial Submissions

- (1) The bidder must quote its lowest and final offer concerning rates for the TRS.

- (2) For each of the services (TRS and CapTel), the bidder must identify (in the format shown in Appendix B) one or more rate-per-session-minute quote(s), each quoted rate, in the event it is chosen as the winning bid, to be utilized throughout the term of the contract (July 1, 2009 through June 30, 2013) for purposes of calculating the winning bidder's due compensation. The rate quote(s) submitted must be based on the following assumptions:
 - (a) Any call which is answered by a relay CA must count as one call to the relay center, regardless of whether the call is completed to the called party. Further, the entire duration of all calls, including those which do not successfully reach the called party, must be counted in the bidder's calculations for determining average call durations. Duration, for purposes of call averaging, shall be measured from the time a live CA answers a call until the call is terminated by the calling and called parties. Call duration information must be rounded to the nearest second. Additionally, once a caller contacts the TRS, he or she must be permitted to make an unlimited number of calls without redialing the center. For purposes of calculating volume and duration statistics, this type of calling must count as only one call to the TRS center.
 - (b) All costs, including, but not limited to, initial start-up costs (including those costs associated with interconnecting with other carriers), and a return on investment, will be assumed to be imputed in the rate per minute quote for each of the services (Appendix B) submitted by the bidder.
 - (c) To the extent a bidder's system design requires another telephone company to incur network costs, which are not recovered through tariffed charges, the successful bidder will be responsible for reimbursing such carrier.
- (3) The bidder must quote rates for relay services based on the annual call volumes and average call durations. The per-minute rates shall be the sole mechanism by which the successful bidder will be compensated. The successful bidder's reimbursement from the state of Ohio will be based on session minutes, defined as the amount of time from when the calling party first accesses the relay center to when the call is terminated by both parties.
- (4) In the past, the Commission has required that a minimum of 85 percent of Ohio Relay Service (ORS) calls must be processed by a relay center located in the state of Ohio. Although this is no longer a prerequisite to having a bid either considered or even selected as the winning bid, the Commission is still interested in exploring the

economic viability of maintaining provision of the ORS through this type of arrangement. Therefore, bidders are encouraged to submit a rate quote that is based on the bidder's commitment to process a minimum of 85 percent of ORS calls through a relay center or centers located in Ohio.

Beyond this, however, the Commission is also open to bids that contemplate the provision of TRS through either a single relay center located outside of Ohio, a combination of multiple relay centers all located outside of Ohio, or a combination of multiple relay centers, one or more of which are located inside of Ohio, with the others located outside of Ohio. All bids that contemplate multiple relay centers, wherever situated, must be supported by an explanation of how the system of relay centers will be configured and operated.

If a bid proposal sets forth more than one rate quote, each submitted rate quote shall be considered as constituting a separate, and in each instance final, offer that sets forth the lowest rate offered by the bidder that would apply under service parameters and conditions that are clearly delineated and proposed as applicable to the particular rate quote.

- (5) Bidders must procure a bid bond equal to no less than five percent of the total cost of the first year of service, assuming an average call duration of six minutes, and a monthly calling volume of 78,000 incoming TRS calls and an average call duration of two minutes and a monthly calling volume of 23,000 incoming CapTel calls. Bidders must submit, within their bid, verification (i.e., confirmation from the bonding entity) that such a bid bond has been procured.

Bidders who are financially able shall have the option to self-insure such bid bond. In the event a bidder elects to exercise this option, it shall provide sufficient assurance to the Commission that the bidders own organization, its parent, or an affiliate stands ready to dedicate the financial resources necessary to ensure that the bidder is able to meet the obligations required by this RFP. The bidder shall further demonstrate that its organization, parent, or affiliate possesses the necessary financial resources to fund the requirements of this RFP, and that its organization, parent, or affiliate is financially sound. If assurance is provided by a parent or affiliate, the bidder shall furnish at a minimum, an attested statement from its parent or affiliate that it will dedicate the financial and other resources necessary to perform the duties required by this RFP, in the event the bidder is unable to meet its obligations.

- (6) The bidder must submit with its proposal copies of its latest published financial reports and any other documents and information sufficient to enable the Commission to assess the bidder's corporate and financial integrity, history, and ability to provide the TRS being proposed. Further, the Commission may request additional information if initial submissions are not deemed sufficient. The financial reports must include:
 - (a) the most recent annual report and Securities and Exchange Commission (SEC) 10K and 10Q forms of the company submitting the proposal, and of any parent company;
 - (b) when available, investment advisory and rating agency reports issued during the past year about the company or its parent company, by any of the following three credit rating agencies, namely, Standard and Poor's, Moody's Investor Service, and Fitch Ratings, Ltd.; and
 - (c) for companies not rated by Value Line, the financial statements covering the past five years.
- (7) Each proposal must contain evidence of adequate insurance to cover claims of liability.

D. Supplemental Submissions

- (1) Any bidder with past or present experience regarding the provision of relay service in another state must include a description of such service, a copy of any brochures publicizing the service, any publicly available information regarding the cost of the service, and statistics on call volumes, call duration, and toll percentage. Additionally, the names, titles, and telephone numbers of state administrator contacts concerning the bidder's provision of TRS to other states should be provided.
- (2) The bidder shall retain the name, Ohio Relay Service, for the service it proposes and shall not include in that name any references to or endorsements of the bidder's company.
- (3) Bidders may propose enhancements to the basic service, however, such enhancements shall be compensated at the per minute rate identified by the bidder in Appendix B of this RFP, unless otherwise noted. The proposed enhancements may include, but are not limited to, the following:

- (a) interstate calling capability, however, costs resulting from the provision of interstate calling will not be borne by the state and adequate safeguards must be established to ensure that intrastate service quality and fiscal accountability are maintained. Further, the bidder must identify the specific safeguards which it will use to ensure that no such costs arising from interstate service will be paid by the state;
 - (b) service to users of languages other than ASL, Spanish, and English.
- (4) Bidders must submit an explanation as to how they intend to handle input, i.e., recommendations and concerns from the CAB.
 - (5) Bidders must submit an explanation as to how they will satisfy the requirement to handle emergency calls from both: (1) callers in regions served by 9-1-1, and (2) callers in regions not served by 9-1-1.

V. SELECTION CRITERIA

A. Selection Process

Following receipt of all timely filed proposals, Commission staff will review all timely filed responses, and submit its recommendation to the Commission. Staff will base its recommendation on the bidder's proposal which is most advantageous to the state of Ohio considering: price; the interests of persons who are members of the communicatively disabled community in having access to a high-quality, technologically-advanced telecommunications system; and all other factors identified in this RFP.

B. Evaluation Criteria

(1) Disqualification for Failure to Meet RFP's Mandatory Requirements

Failure by the bidder to demonstrate its ability to meet all mandatory requirements of this RFP, as set forth in the Pass/Fail Chart comprising Appendix C to this RFP, will result in immediate disqualification. The Commission shall use its own judgment to select a provider based on the record as a whole and its own assessment of the submitted, qualified bids considering: price; the interests of persons who are members of the communicatively disabled community in having access to a high-quality, technologically-advanced telecommunications system; and all other factors identified in this RFP.

(2) 100-Point Scoring System, Applicable to Specific Criteria Beyond the RFP's Mandatory (Pass/Fail) Requirements

The Commission will use a 100-point scoring system in evaluating, using its own discretion, the extent to which qualified bids, i.e., those which meet all mandatory requirements set out in Appendix C to this RFP, meet certain specific additional evaluation criteria. These additional evaluation criteria, along with the maximum number of points assigned to each, out of the 100-point scoring system are depicted on the following chart.

<u>Evaluation Criteria</u>	<u>Maximum Points Applicable to this Evaluation Criterion</u>
1) Experience in providing TRS	(total of 10 possible points)
2) References from outside sources, submitted by the bidder as part of the bid submission process, to be evaluated on how well they describe or otherwise substantiate the bidder's wherewithal to provide TRS in an excellent manner.	(total of 5 possible points)
3) Evidence of bidder's ability and/or willingness to provide the latest advancements in technology without decreasing the quality or value from a cost perspective of TRS service.	(total of 10 possible points)
4) Method for transition between contract periods, from one carrier to another, if necessary, in a timely and efficient manner.	(total of 10 possible points)
5) Demonstrated willingness to hire and promote those from the community of communicatively disabled persons.	(total of 10 possible points)
6) Method of regularly obtaining and making use of feedback on service quality issues pertaining to TRS.	(total of 10 possible points)

- 7) **Lowest qualified submitted rate quote. All bidders will be ranked by price. The highest price bidder will receive the lowest number of points and the lowest price bidder will receive the highest number of points.** (total of 15 possible points)
- 8) **Bidder commitment to process up to 85 percent of ORS calls through an Ohio relay center.** (total of 5 possible points)
- 9) **The quality, overall, of the relay service that the bidder is proposing to provide to Ohio's citizens.** (total of 25 possible points)

C. Award

The Commission shall issue an order in Case No. 08-439-TP-COI setting forth the chosen bidder.

VI. CONDITIONS

A. Performance

- (1) The Commission expects all bid proposals submitted in response to this RFP to cover a four-year period, running from July 1, 2009, through June 30, 2013. In making its selection, it is the Commission's intention to establish a contract between the state of Ohio (through the Commission) and the selected bidder that, unless it is terminated sooner, will remain in effect for four years, plus any optional renewal periods. However, such contract will be subject to biennial review and approval by the Controlling Board of Ohio (Controlling Board). The Commission shall issue an order selecting the provider for the TRS for the period of July 1, 2009 through June 30, 2011. The order will establish the performance requirements which the provider will be required to meet. The order shall include, either implicitly or explicitly:
- (a) the RFP and any amendments thereto;
 - (b) the provider's offer submitted in response to the RFP; and

- (c) any additional terms and conditions deemed by the Commission to be in the public interest.
- (2) The Commission reserves the right to negotiate with the provider or make other additions, deletions, or changes to the order, provided that no such addition, deletion, or change would, in the sole discretion of the Commission, unduly affect the evaluation criteria set forth in this RFP.
- (3) At any time, the Commission may consider the introduction of additional technologies and corresponding services, upon a demonstration of the viability of such services on both a technological and economical basis.
- (4) None of the rights, duties, or obligations in this Contract will be binding on the State, and the contractor will not begin performance, until all of the following conditions have been met:
 - (a) the Director of the Office of Budget and Management has certified the availability of funds, as required by Section 126.07 of the Ohio Revised Code; and
 - (b) approval of this contract is given by the Controlling Board of Ohio.

B. Term

Unless this contract is terminated, it will remain in effect for four years, plus any optional renewal periods. However, the Commission cannot commit that the Controlling Board will approve the contract beyond a biennium period. Thus, at the end of the first biennium, which is June 30, 2011, the Commission shall, absent the selected bidder's failure to meet the terms and conditions of the contract, submit the contract to the Controlling Board for its approval for the second biennium, under the terms of the original bid. If the Controlling Board fails to approve the renewal of the contract, the Commission will still try to negotiate a mutually acceptable agreement with the selected bidder that meets with the Controlling Board's approval.

Acceptance by the Commission of a bid proposal that includes only a four-year initial contract period would not preclude the Commission from later considering retaining the selected bidder for an optional renewal contract period. Any contract extension beyond the four-year initial contract period should be based upon a mutual agreement between the Commission and the selected bidder and may include terms,

conditions, or prices that differ from those that apply during the four-year initial contract between the Commission and the selected bidder.

C. Conflicts

In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the RFP shall govern. In the event that an issue is addressed in one document that is not addressed in the other document, no conflict in language shall be deemed to occur. However, the Commission reserves the right to clarify any contractual relationship in writing and such written clarification must govern in case of conflict with the applicable requirements stated in the RFP or the provider's proposal. In all other matters not affected by the written clarification, the RFP shall govern. The Commission shall resolve conflicts pursuant to the authority granted to it by the ADA, the FCC, and the state of Ohio.

D. Deviations from the RFP

The stated requirements appearing elsewhere in this RFP shall become a part of the terms and conditions of any resulting contract and Commission order. Any deviations from the RFP must be defined in the bidder's proposal and expressly approved by the Commission.

E. Modification

No modification or change of any provision in the performance requirements shall be made, or construed to have been made, unless such modification is incorporated as a written amendment by order of the Commission.

F. Contract and Order Variation

If any provisions of the contract or performance requirements of the order (including terms incorporated by reference) is declared or found to be illegal, unenforceable, or void, then the Commission and the provider shall be relieved of all obligations arising under such provision. If the remainder of the contract or order is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

G. Waiver

No covenant, condition, duty, obligation, or undertaking contained in or made a part of either the contract or performance requirements of the order will be waived except

by the written agreement of the parties with the concurrence of the Commission. Forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply. Furthermore, until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, any other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence. Any consent by any party to or waiver of a failure by the other, whether express or implied, shall not constitute a consent of, waiver of, or excuse for any other different or subsequent failure.

H. Entire Agreement

The contract and performance requirements of the order shall represent the entire agreement between the parties with respect to the services provided under the contract and order and supersede all prior negotiations, representations, or agreements, either written or oral, between the Commission and the provider and shall be independent of and have no effect upon any other agreements.

I. Federal and Ohio Laws

- (1) This RFP and the contract are subject to the laws of the state of Ohio and, where applicable, federal law.
- (2) The contract shall be construed according to the laws of the state of Ohio. Any legal proceedings regarding this RFP or the resultant contract shall be brought before the Commission.

J. Changes in the Scope of the Contract and the Performance Requirements

The Commission may by a written order and in response to directives issued by the FCC pertaining to TRS performance requirements make changes within the general scope of the performance requirements of the ORS. No changes in scope are to be conducted except with the approval of the Commission. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the contract, whether changed or not changed by any such order, an adjustment may be made in the performance requirements and shall be modified in writing according to the requirements of this RFP. To the extent such a change affects the contract, necessary amendments shall be made.

K. Provider's Responsibility

Any contracts that may result from the RFP shall specify that the provider chosen by the Commission is solely responsible for fulfillment of the contract.

L. Performance Assignment

The provider shall not assign the obligation to perform in accordance with the RFP and the Commission's order in whole or in part without the prior written consent of the Commission.

M. Provider's Personnel

Personnel commitments identified in the provider's proposal shall be considered mandatory to the work performed under this RFP. Replacement of such personnel shall be with personnel of equal ability and qualifications.

N. Force Majeure

The provider will not be liable for failure to perform its obligation in accordance with the RFP and the Commission's order if such failure arises out of causes beyond the control and without the fault or negligence of the provider. Such causes may include, but are not limited to, acts of God, fires, quarantine restriction, strikes, and freight embargoes. The provider will take all possible steps to recover from such occurrences.

O. Advertising- Award

The provider agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commission or the state of Ohio.

P. Permits, Licenses, Taxes, and Registrations

- (1) The provider shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all federal, state, and local governments in which work to provide the TRS is performed.
- (2) The provider shall pay any and all sales, use, property, or other taxes arising out of its provision of the TRS. Any taxes levied upon this transaction, and the equipment or services delivered pursuant hereto, shall be borne by the provider.

- (3) The provider must furnish certification of authority to conduct business in the state of Ohio. Certification is obtained from the secretary of state. The provider need not be registered with the secretary of state before responding to this RFP.

Q. Insurance

The TRS provider shall furnish and maintain such public liability and property damage insurance sufficient to protect itself and any subcontractor from claims for damages for personal injury, including accidental death, except by persons protected by workers compensation statute, and from claims for property damages, which may arise from operations and provision of the TRS, whether such operations be those of the TRS provider or a subcontractor or anyone directly or indirectly employed by either of them. The amounts of such insurance shall be \$2 million for public liability, and \$1 million for property damage.

Unless the self-insurance option is exercised, the contractor shall furnish the Commission with certificates of insurance covering each of the several items of insurance heretofore mentioned.

The TRS provider, if it can sufficiently document to the Commission its financial ability to do so, shall have the option to meet the insurance obligations required under this section through self-insurance. In the event a bidder elects to exercise this option, it shall provide sufficient assurance to the Commission that the bidder's own organization, its parent, or an affiliate stands ready to dedicate the financial resources necessary to protect itself and any subcontractor from claims for damages for personal injury, including accidental death, except by persons protected by workers compensation statute, and from claims for property damages, which may arise from operations and provision of the TRS, whether such operations be those of the TRS provider or a subcontractor or anyone directly or indirectly employed by either of them. The amounts of such self-insurance shall be \$2 million for public liability, and \$1 million for property damage.

R. Performance Bond

Upon the Commission's selection of the provider, and prior to actual commencement of service, the TRS provider must procure a performance bond necessary to guarantee uninterrupted provision of TRS. The amount of the performance bond will be \$1 million annually. The Commission may require and/or the TRS provider may request an adjustment to the amount of the bond in subsequent years.

Bidders who are financially able shall have the option to self-insure such performance bond. In the event a bidder elects to exercise this option, it shall provide sufficient assurance to the Commission that the bidder's own organization, its parent, or an affiliate stands ready to dedicate the financial resources necessary to ensure that the bidder is able to meet the obligations required by this RFP. The bidder shall further demonstrate that its organization, parent, or affiliate possesses the necessary financial resources to fund the requirements of this RFP, and that its organization, parent, or affiliate is financially sound. If assurance is provided by a parent or affiliate, the bidder shall furnish, at a minimum, an attested statement from its parent or affiliate that it will dedicate the financial and other resources necessary to perform the duties required by this RFP, in the event the bidder is unable to meet its obligations.

S. Employment Practices

- (1) The provider shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliations, or disability. The provider must take affirmative action to ensure the employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliations, or disability. Such action shall include, but is not limited to, the following: employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Bidders are strongly encouraged to employ throughout their organization persons who are communicatively disabled. Submitted bid proposals should demonstrate how this goal is or will be accomplished.
- (2) The provider shall, in all solicitations or advertisements for employees placed by or on behalf of the provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability, except where it relates to a bona fide occupational qualification.
- (3) The provider shall comply with the nondiscriminatory clause contained in the Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor of the United States and with 41 C.F.R. § 60. The provider shall comply with related state of Ohio laws and regulations.

The provider shall comply with regulations issued by the Secretary of Labor of the United States, pursuant to the provisions of Executive Order 11758 and the Federal Rehabilitation Act of 1973. The provider shall comply with the Civil Rights Act of 1964, and any amendments thereto, and the rules and regulations thereunder.

T. Accounting Requirements

The provider shall establish and maintain an accounting system in accordance with the applicable FCC Uniform System of Accounts or generally accepted accounting principles (GAAP). The accounting system shall maintain records pertaining to the tasks defined in the RFP and any other related costs and expenditures. The costs properly applicable to the provision of the TRS shall be readily ascertainable from such records.

U. Audit Requirements

The selected provider will be subject to an independent audit when required by the Commission. However, the Commission will not require an independent audit to be performed on a regular basis, but rather will only require it if and when it makes a formal determination that, due to extraordinary circumstances, such an audit might prove useful or be necessary in order to protect the integrity of the ORS. This audit will verify the service's usage patterns and calling volumes. The cost of this audit will be borne by the successful bidder. The independent auditor shall be selected by the successful bidder, subject to approval by the Commission.

V. Records Retention

Authorized Commission representatives shall have access to and the right to examine and copy the items listed below. Delivery of and access to the listed items shall be at no cost to the Commission. Specifically, the provider shall preserve and make available to the Commission the following:

- (1) All books, documents, papers, and records related to the provision of the TRS for a period of six years from the expiration or termination of the provision of the TRS.
- (2) Records involving matters in litigation shall be kept for one year following the termination of litigation and associated appeals if the litigation has terminated within six years.

W. Independent Price Determination

By submission of a proposal, the bidder certifies the following:

- (1) The prices in the proposal have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such costs with any other bidder or with any competitor.
- (2) Unless otherwise required by law, the prices that have been quoted in the proposal have not been knowingly disclosed by the bidder to any competitor.
- (3) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.

X. Offer of Gratuities

By submission of a bid, the bidder certifies that no member of or delegate of Congress, nor any elected or appointed official or employee of the state of Ohio, has or will benefit financially or materially from this procurement. This procurement and contracts arising out of such procurement may be terminated by the Commission if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned officials or employees, from the bidder, his or her agent or employee in return for such procurement.

VII. HOLD HARMLESS

The provider agrees to indemnify, defend, and hold harmless the state of Ohio, its officers, agents, and employees from the following:

- (1) Any claims or losses for service rendered by the provider, person, or firm performing or supplying services, materials, or supplies, in connection with the provision of the TRS;
- (2) Any third party claims of losses to any person or firm injured or damaged by the acts of the provider, its officers or employees by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed in a manner not authorized by the Commission, or by federal or state regulations or statutes; and

- (3) Any failure of the provider, its officers, or employees to observe Ohio laws, including but not limited to labor laws and minimum wages.

VIII. TERMINATION

- A. The obligation to perform resulting from this RFP shall be subject to the following termination provisions:

- (1) Termination for Default

- (a) Any provider who is determined in writing by the Commission to be in breach of any of the terms and conditions of the performance requirements may, in the discretion of the Commission, be declared in default and such contract may be terminated as a result of such default. Before reaching any such written determination, the Commission will provide the provider with reasonable notice of the Commission's intention to examine whether such a determination is warranted and allow the provider a reasonable opportunity both to be heard on the matter and to cure any alleged breach before the contract can be terminated.
- (b) A default in performance by a provider for which the obligation to perform may be terminated shall include, but shall not be limited to, a failure to perform according to the terms, conditions, and specifications established by the RFP and the Commission's order.

- (2) Termination for Provider Bankruptcy - In the event of the filing of a petition in bankruptcy by or against the provider, the Commission shall have the right to require the termination of the obligation to perform upon the same terms and conditions as a termination for default.
- (3) Termination for Unavailability of Funds - In the event that the Commission determines that funding becomes unavailable, the Commission shall have the right to terminate both the obligation to perform and the contract without penalty and upon the same terms and conditions as a termination for convenience. Availability of funds will be determined at the sole discretion of the Commission.

B. Procedure for Termination

Upon delivery by certified mail to the provider of a notice of termination specifying the nature of the termination, the extent to which performance of work is terminated and the date upon which performance of work is terminated becomes effective, the provider shall:

- (1) stop work on the date and to the extent specified in the notice of termination;
- (2) place no further orders for materials, services, or facilities, except as may be necessary for the completion of the work as is not terminated;
- (3) terminate all orders to the extent that they relate to the performance of work terminated by the notice of termination;
- (4) complete the performance of such part of the work as shall not have been terminated by the notice of termination; and
- (5) take such action as may be necessary, or as the Commission may direct, for the protection and preservation of the property and which is in the possession of the provider and in which the Commission has or may acquire an interest.

C. Termination Claims

- (1) After receipt of a notice of termination, the provider shall submit to the Commission any termination claim in the form and with the certification prescribed by the Commission. Such claim shall be submitted promptly, but in no event later than six months from the effective date of termination, unless one or more extensions in writing are granted by the Commission within such six-month period or authorized extension thereof. However, if the Commission determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such six-month period or extension thereof.
- (2) Upon failure of the provider to submit its termination claim within the time allowed, the Commission may, subject to any review required by state procedures in effect as of the date of the initiation of the performance obligation determine, on the basis of information available to it, the amount, if any, due to the provider by reason of termination and shall thereupon cause to be paid to the provider the amount so determined.

- (3) Subject to the provisions of the previous paragraph and subject to any review required by state procedures in effect as of the date of the initiation of the performance obligation, the provider and the Commission may agree upon the amounts to be paid to the provider by reason of the total or partial termination of the work pursuant to this RFP. The Commission order establishing the performance requirements shall be amended accordingly.
- (4) In the event of the failure of the provider and the Commission to agree, in whole or in part, as to the amounts with respect to the costs to be paid to the provider in connection with the total or partial termination of work pursuant to this RFP, the Commission shall determine, on the basis of information available, the amount, if any, due to the provider by reason of termination.

APPENDIX A

RELAY SYSTEM CODE OF ETHICS

When handling relay telephone calls, the Relay System Operator functions in the role of a communications assistant (CA). As such, the Relay System Operator has a responsibility to relay the two parts of the conversation accurately and faithfully. It is important to avoid the temptation to paraphrase. Every word that is spoken by the hearing person should be typed on the TT, and every word typed by the person who is hearing and/or speech disabled should be spoken to the person who is hearing. In other words, it is not your role to talk one-to-one to the person who is hearing but rather to act in an interpreting role. An exception to this is when there is an ASL-English translation situation. The full spirit and information of the call is relayed in this case.

As a relay CA, you may wish to remind the party who is hearing that your role is to type every word spoken - that you are simply a middle-person. This will alert the party who is hearing and protect you. If the person who is hearing becomes impatient while the person who is hearing and/or speech disabled is typing their message and begins talking to you directly, remind them that you are the Relay System Operator and all questions and statements should be directed to the party who is hearing and/or speech disabled.

Relay System Operators are expected to abide by the following Code of Ethics, based on the Code of Ethics of the Registry of Interpreters for the Deaf:

1. Relay System Operators shall guard all confidences entrusted to them.

Everything you say and hear while relaying is confidential. Nothing is to be discussed with anyone outside the Relay Center.

2. Relay System Operators shall render a faithful interpretation, always conveying the content and the spirit of the speaker.

Type the words spoken and speak words typed. If one party is rude, convey this.

3. Relay System Operators shall not counsel, advise, or give personal opinions.

It is important for the caller to make his/her own decisions.

APPENDIX B

RATE PER SESSION MINUTE BIDS

For the Period July 1, 2009 through June 30, 2011

- (1) **Rate per minute for TRS** provisioned in such a way that the bidder obligates itself, to ensure that up to 85 percent of all ORS calls would be processed at a relay center located in the state of Ohio.
- (a) TRS rate per minute.....\$_____
- (b) CapTel rate per minute.....\$_____
- (2) **Rate per minute for TRS** provisioned in such a way that the bidder does not obligate itself to ensure that any percentage of all ORS calls would be processed at a relay center located in the state of Ohio.
- (a) TRS rate per minute.....\$_____
- (b) CapTel rate per minute.....\$_____

Appendix C

RFP Section	Mandatory Requirement Checklist	Pass	Fail
II. B. 1.	RFP Format: Cover Letter		
II. B. 2.	RFP Format: Executive Summary		
II. B. 3.	RFP Format: Bidder Profile		
II. B. 4.	RFP Format: Five References		
II. B. 5.	RFP Format: Organization of Response		
II. C. 1.	Filed by Submission Date		
III. A. 1.	Operational Standards: Minimum CA Qualifications and Testing		
III. A. 2.	Operational Standards: Types of Calls		
III. A. 3.	Operational Standards: Handling of Emergency Calls		
III. A. 4.	Operational Standards: In-call Replacement of CAs		
III. A. 5.	Operational Standards: CA Gender Preferences		
III. A. 6.	Operational Standards: Speech To Speech Called Numbers		
III. B. 1.	Technical Standards: ASCII and Baudot		
III. B. 2.	Technical Standards: Speed of Answer		
III. B. 3.	Technical Standards: Equal Access to Interexchange Carriers		
III. B. 4.	Technical Standards: TRS Facilities		
III. B. 5.	Technical Standards: Telecommunications Service Priority Program		
III. B. 6.	Technical Standards: Technology		
III. B. 7.	Technical Standards: Voice Mail and Interactive Menus		
III. C. 1.	TRS System Standards: Billing		
III. C. 2.	TRS System Standards: Advancements		
III. C. 3.	TRS System Standards: Customer Access		
III. C. 5.	TRS System Standards: Call Processing		
III. D. 1.	TRS Service Standards: Timing of Calls		
III. D. 2.	TRS Service Standards: Person-to-Person Calls		
III. D. 3.	TRS Service Standards: Intrastate Toll Discounts		
III. D. 4.	TRS Service Standards: Answering Machines		
III. E. 1.	TRS CA Standards: Training Requirements		
III. E. 2.	TRS CA Standards: Confidentiality Requirements		
III. E. 3.	TRS CA Standards: Additional Methods and Procedures		
III. F. 1.	Monthly Requirements for Billing and Auditing: Calling Characteristics/Traffic Data		
III. F. 2.	Monthly Requirements for Billing and Auditing: Accounting & Financial Information		
III. G.	Complaints and Inquiries Procedures		
III. H.	Treatment of TRS Customer Information		
III. I.	Additional Considerations		
IV. A.	Network Documentation		
IV. B. 1.	Administrative Documents: Personnel		
IV. B. 2.	Administrative Documents: Advertising and Educational Materials		
IV. B. 3.	Administrative Documents: Billing Information		
IV. C.	Administrative Documents: Cost and Financial Submissions		
IV. D.	Administrative Documents: Supplemental Submissions		