

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's)
Investigation into Continuation of the Ohio) Case No. 08-439-TP-COI
Telecommunications Relay Service.)

OPINION AND ORDER

The Commission finds:

I. Background

The Americans with Disabilities Act of 1990 mandates the establishment of an intrastate telecommunications relay service (TRS). The TRS enables persons with hearing and speech disabilities to communicate by telephone with persons who may or may not have such disabilities. The Commission is certified by the Federal Communications Commission (FCC) to administer the TRS program in Ohio which includes selecting the TRS provider and overseeing the program.

Since the initiation of TRS in Ohio the Commission has, in a series of dockets,¹ using a request for proposal (RFP) process for soliciting bids, selected and authorized a TRS provider to serve pursuant to a contract established in each docket between the state of Ohio, through the Commission, and the TRS provider selected in each docket. The current Ohio TRS vendor's contract will expire at midnight on June 30, 2009.

The Commission has opened this docket, Case No. 08-439-TP-COI (08-439), for the purpose of choosing the vendor who shall be authorized to continue Ohio's intrastate TRS once the Commission's contract with the existing vendor expires. In a 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

¹ The Commission first established the Ohio Relay Service in Case No. 91-113-TP-COI, a generic docket initiated in January 1991. In that case, after reviewing proposals by entities interested in providing the TRS in Ohio submitted in response to the Commission's request for such proposals, and receiving input and comments from persons representing the community of persons with communicative disabilities, the Commission chose an Ohio TRS vendor to serve under a five-year contract period which ran from January 1, 1992 through December 31, 1997. In November 1996, the Commission opened Case No. 96-1139-TP-COI (96-1139) for the purpose of choosing and authorizing the vendor who would continue the Ohio TRS for the five-year contract period running from January 1, 1998 through December 31, 2002. Similarly, within Case No. 01-2945-TP-COI (01-2945), which the Commission opened in November 2001, 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.

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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 has ordered that the TRS Consumer Advisory Group (CAG) should continue to function to consult and advise the Commission in this case. After soliciting and receiving comments in the 08-439 docket, on November 25, 2008, the Commission issued its RFP and established February 2, 2009, as the deadline for the filing of bid proposals by entities interested in providing the TRS upon the expiration of the current vendor's contract.

II. Description of Submitted Bid Proposals

Formal bid proposals have been submitted in this case by two entities, namely, Hamilton Telephone Company dba Hamilton Telecommunications (Hamilton) and Sprint Communications Company L.P. (Sprint). In accordance with the mandates of the RFP, the bid proposals by both companies cover a four-year period running from July 1, 2009 through June 30, 2013. Neither Hamilton nor Sprint submitted a formal proposal to cover any additional contract renewal period.

A. Hamilton's Bid Proposals

Hamilton submitted two separate bid proposals, each of which included proposed per-minute rates for provisioning TRS, and separate, per-minute rates for provisioning CapTel service.² Both of Hamilton's bid proposals included an option allowing the Commission to choose between a single per-minute rate for TRS service that will remain constant over the course of the four-year period covered by the bid, i.e., from July 1, 2009 through June 30, 2013, or, alternatively, a per-minute rate that starts lower than Hamilton's single-rate bid, but increases incrementally on an annual basis over the four-year term of the bid. The difference between Hamilton's two submitted bid proposals, other than price itself, is that the first proposal involves Hamilton provisioning TRS in such a way that the company will designate its TRS relay call center in Wisconsin as the primary center to process ORS calls, whereas under its second proposal, Hamilton will process ORS calls "through a combination of Hamilton TRS centers." Under neither scenario, has Hamilton obligated itself to ensure that any percentage of ORS calls will be processed at a relay center located in the state of Ohio.

As regards its provisioning of CapTel service, there is no variation between Hamilton's two submitted bid proposals. Both of Hamilton's CapTel bid proposals would

² CapTel, a trademark of a company named UltraTec, is a specialized form of Voice Carry Over relay service requiring the 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 telephone conversation through captions generated by a communications assistant.

establish a per-minute rate, for CapTel, of \$1.55 during year one of the period covered by the bid, of \$1.57 during year two and, during the third year, the greater of either five percent of the original price or the percentage change in the Consumer Price Index for all urban consumers. Hamilton has not included a bid price for CapTel service during year four of the proposal, indicating that it would do so during the third year of the contract. Explaining this, Hamilton indicates that it "cannot be tied to the five percent increase at this time since it has not received pricing from its subcontractor beyond year three."

Concerning Hamilton's proposal to provide Ohio TRS using a primary relay call center in Wisconsin (Hamilton's Wisconsin call center plan), Hamilton's proposed per-minute rate for TRS service, under the option which would keep the rate constant over the four-year period, is \$1.40 per minute. Under the option calling for the rate to gradually increase each year, the Wisconsin plan price begins at \$1.34 during year one, increases to \$1.38 during year two, climbs to \$1.42 during year three, and ends at \$1.47 in year four.

Within Hamilton's proposal to provide Ohio TRS using a combination of various Hamilton relay call centers (Hamilton's combination-of-call-centers plan), Hamilton's proposed per-minute rate for TRS service, under the option which would keep the rate constant over the four-year period, is \$1.29 per minute. Under the option calling for the rate to gradually increase each year, the combination-of-call-centers plan price begins at \$1.24 during year one, increases to \$1.28 during year two, climbs to \$1.32 during year three, and ends at \$1.36 in year four.

B. Sprint's Bid Proposals

Sprint presented two separate bid proposals, each of which included a proposed per-minute rate for provisioning TRS, and a separate, per-minute rate for provisioning CapTel service. Both of Sprint's bid proposals included rates that will remain fixed for the entire four-year period of July 1, 2009 through June 30, 2013. The difference between Sprint's two submitted bid proposals, other than price itself, is that the first proposal involves Sprint provisioning TRS in such a way that the company will obligate itself to ensure that up to 85 percent of all ORS calls would be processed a relay center located in the state of Ohio (Sprint's Ohio call center plan), whereas under its second proposal, Sprint has not obligated itself to ensure that any percentage of ORS calls will be processed at a relay center located in the state of Ohio (Sprint's out-of-state call center plan). Sprint's Ohio call center plan bid price is \$0.88 per-minute for TRS. Sprint's out-of-state call center plan bid price is \$0.80 per-minute for TRS. The Commission notes that both of these bid prices proposed by Sprint are not only lower than all those proposed by Hamilton in this case, but are also actually below the rate of \$0.90 for TRS which exists under the state's current TRS contract.³

³ The current rate of \$0.90 per-minute for TRS service was authorized by the Commission in its October 24, 2007, entry in *In the Matter of the Commission's Investigation into Continuation of the Ohio Telecommunications Relay Service*, Case No. 01-2945-TP-COI (01-2945).

With regard to its provisioning of CapTel service, there is no variation between Sprint's two submitted bid proposals. Both of Sprint's CapTel bid proposals would establish a per-minute rate for CapTel of \$1.49 throughout all four years of the contract. The Commission notes that this is six cents lower than the lowest annual CapTel rate offered by Hamilton, namely, a rate of \$1.55 during year one of the contract, subject to yearly increases in each of the three remaining years of the contract. It is also four cents higher than the CapTel rate, of \$1.45, that exists under the state's current TRS contract.⁴ Sprint notes in its bid proposal that its CapTel service is offered only in the Milwaukee and Madison CapTel Relay Centers. Thus Sprint's Ohio call center plan proposal, under which the company offers to provide 85 percent of ORS calls in Ohio, does not include CapTel traffic. Sprint has indicated in its proposal that it will work with the Commission to discuss options to handle CapTel traffic in Ohio if, during the term of the proposed contract, CapTel Relay Service is offered on the Sprint Network (Appendix B, Cost Proposal, of Sprint's Response to the RFP; at page 245).

Both of Sprint's proposals include Sprint's provision of service, at no additional cost, of up to 10,000 minutes annually of Relay Conference Captioning (including Mobile Relay Conference Captioning). Sprint points out, too, that it offers ORS users a 70 percent discount on intrastate long distance rates on either TRS or CapTel ORS calls. The Commission notes that Sprint, in doing so, is merely meeting a Commission mandate required in Section III(D)(3) of the RFP. Additionally, however, Sprint will, under its bid proposal, "continue to subsidize the cost of the CapTel phone (\$99) and offer discounted plans for wireless services for the deaf and hard of hearing communities in Ohio" (*Id.*).

III. Scope of Review

Section V(A) of the RFP indicates that, following receipt of all timely filed proposals, the Commission's staff will review all timely filed responses and submit its recommendation to the Commission. The RFP indicates that the 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 the RFP. The CAG has balanced these same factors in coming up with its own recommendation. Indeed, the RFP also indicates that the Commission, itself, will balance these same considerations in exercising its own judgment to select the winning bid.

Section V(B)(1) of the RFP, spells out the evaluation criteria that shall be used. At the outset, it indicates that a failure by a bidder to demonstrate its ability to meet all mandatory

⁴ The current rate of \$1.45 per-minute for CapTel service was authorized by the Commission in its October 24, 2007, entry in 01-2945.

requirements of the RFP, as set forth in the Pass/Fail Chart comprising Appendix C to the RFP, will, unless the Commission orders otherwise, result in the bid's immediate disqualification. Upon review of the record as a whole, the Commission finds that, in all respects, the submitted bid proposals of both Hamilton and of Sprint meet all of the mandatory requirements of the RFP and that no reason appears to exist for disqualifying any submitted bid proposal.

Section V(B)(2) of the RFP sets forth a 100-point scoring system that the Commission will use in evaluating, using its own discretion, the extent to which the submitted, 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. Both the CAG and the staff used this same 100-point scoring system in coming up with their respective recommendations to the Commission.

IV. CAG and Staff Recommendations

On February 26, 2009, presentations concerning the submitted bid proposals, as permitted under the RFP, were made by each of the two bidders before the TRS CAG and the Commission's staff. Following those presentations, both the staff and the CAG met to prepare their recommendations to the Commission, as required by the RFP. The CAG members in attendance for the bid presentations who then participated in making the CAG recommendation to the Commission were CAG consumer members Ms. Laura Gold, Mr. John Bradley, and Mr. Richard Huebner, as well as the CAG member designate from the Ohio Department of Aging, Ms. Barbara Petering. The members of the Commission staff in attendance for the bid presentations who then participated in making the staff recommendation to the Commission were Ms. Lisa Colosimo, Ms. Beth Blackmer, Ms. Jennifer Reed, Mr. Chris Kotting, and Mr. Daniel Fullin.

At the February 26, 2009 meeting, the CAG and the staff each reached consensus regarding which submitted bid proposal each group would recommend to the Commission in this case. According to a memorandum to the Commission from Ms. Colosimo, which reported the results of the meeting held on February 26, 2009, it is the recommendation of the CAG, and also the recommendation of the Commission's staff, that the Commission should accept Sprint's Ohio call center bid proposal.

V. Discussion

In the RFP, the Commission stated that it would be issuing this order, by which we will now select the vendor to continue the Ohio TRS during the upcoming new contract period. In accordance with the RFP, today's order is intended to establish the performance requirements which the Ohio TRS provider is required to meet and, in this regard, includes, either implicitly or explicitly: the RFP, its requirements and any amendments thereto; the

selected bidder's selected bid proposal; and any additional terms and conditions deemed by the Commission to be in the public interest.

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, as indicated in the RFP, such contract will be subject to biennial review and approval by the Controlling Board of Ohio. 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 of Ohio for its approval for the second biennium, under the terms of the original bid. If the Controlling Board of Ohio 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 approval of the Controlling Board of Ohio.

The Commission has carefully considered all of the necessary and relevant factors in arriving at its determination in this case. Based on our evaluation of all the submitted bid proposals, the Commission concludes that both of the bidders appear to be fully capable of providing TRS in Ohio in compliance with all applicable state and federal regulations. As already noted, in all respects, the submitted bid proposals of both Hamilton and of Sprint meet all of the mandatory requirements of the RFP. Thus, we find that neither bidder should be disqualified from consideration based on the failure of any of their submitted bid proposals to comply with existing technical or legal standards. Having said that, we also believe that a sufficient record exists to enable us to make a fair assessment of the comparative strengths and weaknesses of all of the bid proposals submitted in this case and to make a choice in favor of one bid proposal over the others at this time.

Upon review of the record as a whole, and upon consideration of the recommendations made in this case both by the CAG and by the Commission's staff, based on our own evaluation of all of the submitted bid proposals, both with regard to whether they meet the mandatory requirements of the RFP and with regard to how each bid proposal fares when the Commission, using its own judgment and discretion, applies the selection criteria incorporated into the Commission's 100-point scoring system, the Commission hereby accepts Sprint's Ohio call center bid proposal and, based on that bid proposal, announces that Sprint is our choice to continue as the Ohio TRS vendor during the upcoming new contract period.

VI. Order

It is, therefore,

ORDERED, That, in accordance with the above findings, the Commission hereby accepts Sprint's Ohio call center bid proposal to continue as the Ohio TRS vendor during the upcoming new contract period, which begins July 1, 2009. It is, further,

ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any order, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon Hamilton, Sprint, all members of the CAG, all parties who filed comments in this docket, and upon all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

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Entered in the Journal

MAR 25 2009

Renee J. Jenkins
Secretary