

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

- (1) The Commission opened this docket for the purpose of selecting, through a competitive bidding process, the vendor who would be authorized to continue Ohio's intrastate telecommunications relay service (TRS) during the four-year contract period that commenced on July 1, 2009. By Opinion and Order issued on March 23, 2009, the Commission selected Sprint Communications Company L.P. (Sprint). The current TRS vendor contract between the state of Ohio and Sprint is scheduled to expire on June 30, 2013, but, as explained on page 30 of the Request for Proposal (RFP) issued on November 25, 2008, the contract provides for the possibility of an "optional renewal period." Further elaborating on this topic, the RFP, which has been wholly incorporated among the terms and conditions of the existing TRS vendor contract, indicates:

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 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 vendor.

- (2) On September 20, 2012, as amended on October 23, 2012, Sprint filed a formal request for extension of the TRS vendor contract, for an additional four-year term. As part of its request, Sprint indicates that it is also offering the Commission, as an alternative, the option to select a shorter extension term of two years, if preferred. Sprint points out that it is proud to have served as the Ohio Relay Service provider since 1997. Sprint claims that its desire to renew the Ohio TRS contract and continue as Ohio's relay service provider is based on the value it places on its relationship with the Commission and with the Ohio relay user communities.
- (3) If it is awarded the contract extension, Sprint will continue to provide services in compliance with the existing contract (subject to the two proposed contract modifications described below) including TRS and Captioned Telephone (CapTel),¹ as well as an annual outreach budget of \$45,000.
- (4) In its motion for contract extension, Sprint is proposing two modifications to the existing contract that, if adopted, would apply during the extension period. The first contract modification entails elimination, during the contract extension period, of Sprint's current obligation to provide, over the entire course of the existing contract period expiring on June 30, 2013, up to 10,000 minutes of Relay Conference Captioning (RCC) and Mobile RCC services. The purpose behind this current obligation was to create an opportunity for both Sprint and the Commission to evaluate the demand by relay users for such services in Ohio. Sprint reports that, over the past four years, approximately 3,700 total minutes of RCC and Mobile RCC services have been used. Based on this limited usage, Sprint recommends, and is seeking, discontinuation of the current requirement to include RCC and Mobile RCC services as part of the Ohio Relay Service.

¹ 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.

- (5) The second modification to the contract that Sprint has proposed entails an increase in the rates at which Sprint would be reimbursed by the state of Ohio (per session minute) for providing standard TRS and CapTel service during the extension period, over those rates that now apply under the current contract. Under the current contract, the reimbursement rate (in session minutes) for the Ohio Relay Service is \$0.88 for standard TRS and \$1.49 for CapTel service. The prices proposed by Sprint for the contract extension period will be discussed in more detail below, but first, we will address and rule on the motions that Sprint has filed seeking to protect the confidentiality of its contract extension price proposals.
- (6) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term “public records” excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the “state or federal law” exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).
- (7) Ohio law defines a trade secret as “information . . . that satisfies both of the following: (a) it derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) it is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Section 1333.61(D), Revised Code.
- (8) Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), provides in pertinent part that the Commission may issue any order which is necessary to protect the confidentiality of information contained in a document filed under seal, to the extent that state or federal law prohibits the release of the information, including where the information is

deemed by the Commission to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. Further, Rule 4901-1-24, O.A.C., provides that, unless otherwise ordered, any order prohibiting public disclosure, pursuant to Rule 4901-1-24(D), O.A.C., shall automatically expire eighteen months after the date of its issuance, and such information may then be included in the public record of the proceeding. A party wishing to extend a protective order beyond eighteen months shall file an appropriate motion at least forty-five days in advance of the expiration date of the existing order. The motion shall include a detailed discussion of the need for continued protection from disclosure.

- (9) On both September 20, 2012, and later on October 23, 2012, Sprint filed a motion for protective order seeking to protect the confidentiality of certain price information that it filed, in unredacted form, under seal, as part of its motion for contract extension. A publicly filed version was also filed on September 20, 2012, and October 23, 2012. All of the price information for which Sprint seeks protective treatment is contained on two charts. The first chart sets forth the reimbursement rates (per session minute) that Sprint is proposing should apply during the extension period. The second chart contains information regarding existing TRS contract prices that apply in four unidentified states, other than Ohio, in which Sprint, during the past 12 months, has signed new relay service contracts and/or contract extensions. In its memoranda in support of its motions for protective order, Sprint contends that "the proprietary and confidential pricing information" for which protective status is sought qualifies as trade secret information under Section 1333.61(D), Revised Code.
- (10) Upon review, the Commission finds that the information pertaining to TRS prices established in other states (which, as already noted was twice filed, under seal, in this case both on September 20, 2012, and on October 23, 2012,) constitutes trade secret information as defined under Ohio

law and, as such, is entitled to the protective treatment being sought by Sprint. Therefore, Sprint's motions for protective order are, as regards this information pertaining to TRS prices established in other states, well made and should be granted. The protective order being granted here to Sprint will, unless renewed pursuant to the procedure described in Rule 4901-1-24(F), O.A.C., or unless the Commission otherwise so orders, expire on a date 18 months from the date of this finding and order.

- (11) As noted on Page 7 of the RFP, it has been the Commission's policy throughout this case to protect the confidentiality of proposed submitted prices during the period when they are under consideration as price proposals but, upon acceptance of a proposed price, to publicly announce the new contract price. Because, by today's finding and order, the Commission is accepting Sprint's proposed four-year contract extension proposal, we now find it appropriate to publicly release Sprint's pricing plan associated with that proposal. The contract extension prices (in session minutes) proposed by Sprint, and accepted by the Commission in this finding and order, are as follows:

<u>Service</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>
TRS	\$0.97	\$0.97	\$0.97	\$0.97
CapTel	\$1.60	\$1.60	\$1.64	\$1.64

- (12) Sprint's Motion for Contract Extension, filed on October 23, 2012, contains additional language, concerning Sprint's TRS calling center in Dayton, Ohio, that was not included in Sprint's September 20, 2012, request for contract extension. Although this additional language was redacted from a publicly filed version of Sprint's October 23, 2012, Motion for Contract Extension, and was simultaneously filed, in unredacted form, under seal; nevertheless, Sprint did not address this additional information in its October 23, 2012, motion for protective order and,

ultimately, Sprint has provided no arguments, rationale, or justification for extending protective status to any of the information it has filed concerning its Dayton TRS calling center. Therefore, the Commission finds that such information, although filed under seal by Sprint, shall not be protected from immediate public release, and shall not be the subject of any protective treatment being issued through today's finding and order.

- (13) Upon review of the record as a whole, for the reasons elaborated in this particular finding, we find it appropriate for the Commission to accept Sprint's proposed four-year TRS contract extension proposal, including the two contract modifications proposed by Sprint, as described above. We choose Sprint's proposed four-year extension term over the alternative two-year option also offered, because it represents the greater value by providing protection against pricing increases for a longer period of time. Although Sprint is proposing prices that are higher than those that apply under the current contract, Sprint explains that this is appropriate because, as the total number of TRS calls being placed drops by approximately ten percent each year, the cost of providing TRS is expected to trend in the opposite direction. The proprietary information that Sprint has provided, under seal, regarding the rates established in some other states in which Sprint has recently signed TRS contracts, reveals that the new prices Sprint has proposed for Ohio are, in fact, highly competitive, lower than many recent competitive bids, and, argues Sprint, lower than current industry standards. Sprint has pointed out that these other states, unlike Ohio, are served by regional (rather than in-state) call centers.

This highlights another among the reasons why we favor Sprint's contract renewal proposal: it will provide continued economic benefit to the state of Ohio through the Dayton, Ohio call center. Sprint has explained that, even as the number of TRS calls and required number of communication assistants (CAs) needed to process those calls continues to decline, the popularity of CapTel service

continues to attract increasing numbers of customers. Because of the popularity of CapTel service nationwide, over the last six months, Sprint has expanded one of its TRS centers to include CapTel CA positions and is working on doing the same thing in a second center. Sprint has indicated that, as part of its commitment to maintaining jobs in the Dayton area, Sprint has targeted the Dayton TRS call center as one of the next centers for expansion of CapTel technology. Moving forward, says Sprint in its motion for contract renewal, Sprint anticipates that the Dayton center will be the next domestic TRS center for CapTel expansion. Depending upon the continued growth of the CapTel product, Sprint is expecting that the Dayton center will begin this expansion process in 2013.

- (14) In choosing to accept Sprint's four-year contract renewal proposal, it is the Commission intention to establish a contract, pursuant to the terms discussed in this finding and order, between the state of Ohio (through the Commission) and Sprint that, unless it is terminated sooner, will remain in effect for four years beyond the June 30, 2013, expiration date of the existing TRS contract period. However, Ohio's TRS vendor contract has been, and will remain throughout this docket, subject to biennial review and approval by the Controlling Board of Ohio. The Commission cannot commit that the controlling board will approve the contract for either of the biennium periods included in the intended four-year extension period. Thus, the Commission will, in 2013, when the timing for doing so is most appropriate, submit to the Controlling Board of Ohio, for its approval, a contract drafted in accordance with today's decision, intended to cover the first biennium of the four-year extension period, running from July 1, 2013 through June 30, 2015. Sometime in 2015, the Commission will submit to the Controlling Board of Ohio, for its approval, a contract drafted in accordance with today's decision, intended to cover for the second biennium of the four-year extension period, running from July 1, 2015, through June 30, 2017. Each time, if the Controlling Board of Ohio fails to approve the submitted contract renewal, the

Commission will still try to negotiate a mutually acceptable agreement with Sprint that meets with the approval of the Controlling Board of Ohio.

- (15) The Commission hereby reserves its ability to, in the future, consider retaining Sprint for another optional renewal contract period, which might follow the four-year renewal period covered by this finding and order, running from July 1, 2013, through June 30, 2017. Any such contract extension should be based upon a mutual agreement between the Commission and Sprint and may include terms, conditions, or prices that differ from those that apply under the contract extension contemplated by and addressed here in today's decision.

It is, therefore,

ORDERED, That, in accordance with the above findings, the Commission hereby accepts Sprint's proposed four-year TRS contract extension proposal, including the two contract modifications proposed by Sprint, namely: (1) elimination of any obligation for Sprint to provide RCC and Mobile RCC Services as part of the Ohio Relay Service, during the contract extension period; and (2) adoption of Sprint's submitted price proposal, submitted in connection with its four-year TRS contract extension proposal. It is, further,

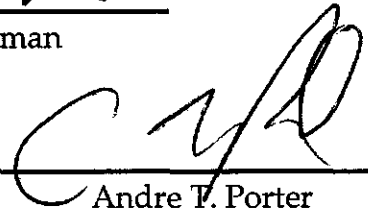
ORDERED, That Sprint's motions for protective order, filed on September 20, 2012, and October 23, 2012, are granted, as regards the information, filed under seal, pertaining to TRS prices established in other states, but are denied as regards all other information filed under seal in Sprint's pleadings dated September 20, 2012, and October 23, 2012. The protective order being granted here to Sprint will, unless renewed pursuant to the procedure described in Rule 4901-1-24(F), O.A.C., or unless the Commission otherwise so orders, expire on a date 18 months from the date of this finding and order. It is, further,


ORDERED, That a copy of this finding and order be served upon Sprint and upon all other interested parties of record.

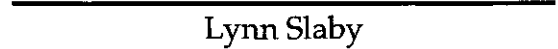
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