

Before the Public Utilities Commission of Ohio

**In the Matter of the Annual
Reports for the Fiscal
Assessment of
Telecommunications Rely
Service for Calendar Year
2019**

Case No. 20-03-TP-RPT

**In the Matter of the
Adoption of Rules for the
Telecommunications Relay
Service Assessment
Pursuant to R.C. 4905.84**

Case No. 08-815-TP-ORD

Application for Rehearing of Falcon1

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September 25, 2020

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Application for Rehearing of Falcon1, Inc.

Under R.C. 4903.10, Falcon1, Inc. (“Company”) seeks rehearing of the orders of the Public Utilities Commission of Ohio (“Commission”), entered on the Journal of the Commission on August 26, 2020, in which the Commission found the Company failed to comply with the Commission’s order to file a 2019 telecommunications relay service form by April 30, 2020, directing it to file that form before September 25, 2020, and assessing the civil forfeiture of \$1000 against the Company. The orders are unlawful and unreasonable for the following reasons:

1. The finding of the Commission finding that Falcon1 did not file a 2019 telecommunications relay service form is unlawful and unreasonable because the Company is not required to provide telecommunications relay services under federal law.

2. The order of the Commission directing Falcon1 to file telecommunications a relay service form by September 25, 2020 is unlawful and unreasonable because the Company is not required to provide telecommunications relay services under federal law.
3. The order of the Commission assessing Falcon1 a civil forfeiture is unlawful and unreasonable because the alleged failure to comply with a Commission order on which the forfeiture is based is not based on an actual violation of any Commission order as required by R.C. 4905.54 or R.C. 4905.84.

Accordingly, the Commission should grant rehearing, find that Falcon1 was not in violation of any Commission order, reverse the order that Falcon1 file a telecommunications relay service form, and reverse the order assessing a forfeiture of \$1000 against the Falcon1.

Respectfully submitted,

/s/ Frank P. Darr

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Memorandum in Support of Application for Rehearing of Falcon1

R.C. 4905.84 directs the Public Utilities Commission of Ohio to impose and collect from each service provider that is required under federal law to provide its customers access to telecommunications relay service an annual assessment to pay for the costs incurred by the telecommunications relay service provider for providing that service in Ohio. Under R.C. 4905.84, the Commission issued an entry on January 29, 2020 in these cases that directed all service providers required under federal law to provide customers with access to telecommunications relay service to complete and submit through the Commission's web-based filing system known as the PUCO Community a telecommunications relay service reporting form by April 30, 2020.

Under federal law, the requirement to provide funding for telecommunications relay services is limited to common carriers. 47 U.S.C. § 225. A common carrier for purposes of federal law is a carrier for hire "in interstate or foreign communication by wire or radio." Falcon 1, Inc. is certified to provide only intrastate toll services in Ohio.¹ As such, it is not required under federal law to provide telecommunications relay services and thus does not fall under Ohio's requirement to pay an annual assessment for those services.

On August 26, 2020, the Commission issued an Entry finding that several companies had failed to comply with the Commission directive to file a telecommunications relay service reporting form. Despite the fact that Falcon1 is not required to provide telecommunications relay services under federal law, the Commission identified Falcon1 as having failed to comply

¹ See Telecommunications Retail Service Offering Form for Non-BLES Carriers, Falcon1, Inc., viewed at <https://puco.ohio.gov/static/emplibrary/files/docketing/tariffs/Inter-exchange%20carrier/Falcon1%20Inc%20dba%20Minford%20Telephone%20Company/Telecommunications%20Retail%20Service%20Offering%20Form.pdf>.

with the Commission's order. Entry, Attachment B (Aug. 26, 2020). Based on the errant finding that it had not complied with the order to file a telecommunications relay services reporting form, the Commission also assessed a forfeiture of \$1000 on Falcon1 and directed Falcon1 to file a 2019 form. *Id.* at 4. The Commission delayed the effective date of the forfeitures for 30 days to afford companies an opportunity to file an application for rehearing under R.C. 4903.10.

Under R.C. 4903.10, the Commission may grant rehearing and abrogate or modify its prior order if it finds that its order in any respect is unjust or unwarranted or should be changed.

Rehearing in regard to the orders in the August 26, 2020 Entry as applied to Falcon1 is justified since the Commission's finding and order to file the form are based on a factual error that the Company was required to file a telecommunications relay service reporting form. As demonstrated above, the Company is not required to file such a form.

Further, the assessment of forfeitures is unlawful and unreasonable. The Commission assessed the forfeitures in this proceeding based on R.C. 4905.54 and R.C. 4905.84. Entry at 4 (Aug. 26, 2020). R.C. 4905.54 is inapplicable since it does not extend forfeiture authority to an alleged violation of Chapter 4905. Although R.C. 4905.84 separately authorizes a forfeiture for a violation of that section's requirements, that section permits a forfeiture only if the Commission lawfully determines that a service provider has failed to comply with the requirements of the section. The statute itself only imposes a duty to pay an assessment, not to file a form on which an assessment is based. If it is assumed for purposes of this proceeding that the Commission may assess a forfeiture for failure to file the telecommunications relay form, which is the premise of the Commission's August 26, 2020 Entry, however, the assessment of the forfeitures in this instance is not lawful and reasonable because Falcon1 could not be lawfully required to do so.

To correct the errors in the Commission's Entry of August 26, 2020, the Commission should grant rehearing, find that Falcon1 was not in violation of any Commission order, reverse the order that Falcon1 file a telecommunications relay service form, and reverse the order assessing a forfeiture of \$1000 against the Falcon1.

Respectfully submitted,

/s/ Frank P. Darr

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Commission's e-filing system will electronically serve notice of the filing of the Application for Rehearing of Falcon1, Inc. upon the interested parties, this 25th day of September 2020 as provided by the Commission's service notification which is incorporated herein by reference. In addition, service by regular mail has been given to all parties that have entered an appearance in the proceeding as listed below.

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Summary: App for Rehearing Application for Rehearing of Falcon1, Inc. electronically filed by Frank P. Darr on behalf of Falcon1, Inc.