

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE ANNUAL
REPORTS FOR CALENDAR YEAR 2019 FOR
THE FISCAL ASSESSMENT OF ALL
REGULATED ENTITIES.

CASE NO. 20-01-AU-RPT

IN THE MATTER OF THE ANNUAL
REPORTS FOR THE FISCAL ASSESSMENT
OF TELECOMMUNICATIONS RELAY
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

ENTRY ON REHEARING

Entered in the Journal on October 21, 2020

I. SUMMARY

{¶ 1} The Commission grants rehearing to the August 26, 2020 Finding and Order and rescinds forfeitures as discussed further below.

II. DISCUSSION

A. *Procedural Background*

{¶ 2} Pursuant to R.C. 4905.10, by Entry issued January 29, 2020 in Case No. 20-01-AU-RPT, the Commission directed all regulated entities to file a 2019 annual report for fiscal assessment through the Commission's web-based filing system known as the PUCO Community by April 30, 2020.

{¶ 3} Similarly, pursuant to R.C. 4905.84, by Entry issued January 29, 2020 in Case Nos. 08-815-TP-ORD and 20-03-TP-RPT, the Commission directed all service providers required under federal law to provide customers with access to telecommunications relay service (TRS) to complete and submit, through the Commission's web-based filing system

known as the PUCO Community, a response to the Telecommunications Relay Service Reporting Form (TRS form) by April 30, 2020.

{¶ 4} A list of all regulated entities who were instructed to file a 2019 annual report was submitted by Staff on the docket for Case No. 20-01-AU-RPT on January 30, 2020.¹ Moreover, a list of all service providers instructed to file the TRS form for 2019 was submitted by Staff on the docket for Case Nos. 08-815-TP-ORD and 20-03-TP-RPT on January 29, 2020.²

{¶ 5} All regulated entities were put on notice that the Commission expected timely compliance regarding the filing of the 2019 annual report. All regulated entities were advised that a civil forfeiture of up to \$10,000, may be assessed, pursuant to R.C. 4905.54, against any company that fails to comply by the April 30, 2020 annual report filing deadline absent good cause shown. Such forfeiture would be in addition to any amounts owed to the Commission.

{¶ 6} Similarly, all TRS providers were put on notice that the Commission expected timely compliance regarding the submission of the 2019 TRS form by the April 30, 2020 deadline. All TRS providers were put on notice that a civil forfeiture of up to \$1,000 per day, may be assessed, pursuant to R.C. 4905.84(E), against any company that failed to comply by the April 30, 2020 deadline, absent good cause shown. Such forfeiture would be in addition to any amounts owed to the Commission.

{¶ 7} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. Further, on March 22, 2020, as amended on April 2, 2020,

¹ For further information about annual reports in general, visit:
<https://www.puco.ohio.gov/docketing/annual-reports-for-fiscal-assessment/>.

² For further information about TRS in general, visit:
<https://puco.ohio.gov/wps/portal/gov/puco/utilities/telecom/resources/telecommunications-relay-service-form>.

the Director of the Ohio Department of Health issued an order (Stay at Home Order) intended to ensure that the maximum number of Ohioans self-isolate in their residences to the maximum extent feasible, while enabling essential services to continue and help slow the spread of COVID-19.

{¶ 8} In light of the governor's declaration of a state of emergency and the Stay at Home Order, by Entry dated April 22, 2020, in Case No. 20-01-AU-RPT, the Commission extended the April 30, 2020 annual report deadline to June 29, 2020.

{¶ 9} Because of the same reasoning, by Entry dated April 22, 2020 in Case Nos. 08-815-TP-ORD and 20-03-TP-RPT, the Commission extended the April 30, 2020 TRS form filing deadline to June 29, 2020.

{¶ 10} By attorney examiner Entry issued June 30, 2020, the deadline for filing the required annual reports and TRS forms was extended to July 6, 2020, due to a state-wide issue affecting the Commission's web-based filing system shortly before the deadlines set forth in the April 22, 2020 Commission Entries in these matters.

{¶ 11} By Finding and Order issued August 26, 2020, the Commission disclosed those regulated entities and service providers listed in the attachments to the Finding and Order that failed to file an annual report and/or TRS form by the extended July 6, 2020 deadline. As each of the companies listed in the attachments to the Finding and Order failed to submit a 2019 annual report and/or a 2019 TRS form by the extended July 6, 2020 deadline, the Commission directed Staff to assess a civil forfeiture of \$1,000 on these companies pursuant to R.C. 4905.54 for the failure to file a 2019 annual report or R.C. 4905.84 for the failure to file a 2019 TRS form.

{¶ 12} Furthermore, each listed company was instructed to file its 2019 annual report and/or its 2019 TRS form by September 25, 2020, through the Commission's web-based filing system known as the PUCO Community. Those entities that did not file by the September 25, 2020 deadline would be in noncompliance of a Commission directive and

could be assessed an additional forfeiture pursuant to R.C. 4905.54 and 4905.84. Failure to file could also result in the Commission rescinding the entities' certificate and order them to cease providing regulated service in the state of Ohio under the listed certificate.

{¶ 13} The Commission delayed the effective date of the forfeitures assessed through the August 26, 2020 Finding and Order for 30 days in order to afford the companies listed in the attachments an opportunity to file an application for rehearing pursuant to R.C. 4903.10.

{¶ 14} R.C. 4903.10 provides that, in any uncontested proceeding, any affected person may file an application for rehearing within 30 days after the entry of any final Commission order. In addition, R.C. 4903.10 requires that an application for rehearing must set forth the specific ground or grounds upon which the applicant considers the order to be unreasonable or unlawful.

B. *Consideration of the Applications for Rehearing*

1. *Ohio MSA Application for Rehearing*

{¶ 15} An application for rehearing in both the annual reports docket, Case No. 20-01-AU-RPT, and in the TRS dockets, Case Nos. 08-815-TP-ORD and 20-03-TP-RPT, was filed by Ohio MSA LLC (Ohio MSA or Company) on September 25, 2020. In support, Ohio MSA claims that the annual report and TRS notices were sent by the Commission to persons no longer employed by the Company. Ohio MSA has corrected its contacts with the Commission to prevent a recurrence. Additionally, the Company notes that it has now submitted both its annual report and its TRS form. Finally, Ohio MSA maintains that no party has been substantially harmed by the late filing as the Company's financial assessment based on the annual report will be de minimis and it will have no contribution obligation based on the TRS form. Accordingly, Ohio MSA requests that the Commission grant rehearing and rescind the forfeiture imposed on the Company by the August 26, 2020 Finding and Order.

{¶ 16} Ohio MSA has established good cause for granting the Company's application for rehearing. Accordingly, the forfeitures rendered against Ohio MSA for failure to submit its 2019 annual report and 2019 TRS form are canceled.

2. *T-Mobile Application for Rehearing*

{¶ 17} An application for rehearing in the TRS dockets, Case Nos. 08-815-TP-ORD and 20-03-TP-RPT, was filed on September 25, 2020, by Nextel West Corporation (Nextel West), Nextel WIP Lease Corp. (Nextel WIP), and Virgin Mobile USA LP (collectively, T-Mobile). In support, T-Mobile asserts that Nextel West and Nextel WIP did not receive notification of the need to submit the 2019 TRS forms and were not listed in the Commission's web-based system as requiring 2019 TRS forms. Virgin Mobile's situation is somewhat different as, consistent with past practice which has been accepted by the Commission, T-Mobile prepared the report for Sprint Corporation which included all Virgin Mobile information. As it was following past practice, T-Mobile believed it had timely submitted its TRS form covering all of Virgin Mobile's activities through the Sprint Corporation filing. Further, T-Mobile asserts that when notified by Commission Staff, T-Mobile personnel acted promptly to review, discuss with the Staff, and correct the situation. All three outstanding reports were filed by September 4, 2020. Under these circumstances, T-Mobile opines that the Commission should find good cause exists to grant rehearing for all three companies and should cancel the outstanding forfeitures in this instance.

{¶ 18} The Commission determines that T-Mobile has established good cause to grant rehearing and to cancel the forfeitures outlined in the August 26, 2020 Finding and Order against Nextel West, Nextel WIP, and Virgin Mobile.

3. *Charter Application for Rehearing*

{¶ 19} Time Warner Cable Information Services, LLC (TWCIS) and Time Warner Cable Business LLC (TWCB) (collectively, Time Warner Cable or TWC) and collectively with Charter Fiberlink OH-CCO, LLC, TWC Digital Phone LLC, and Spectrum Mobile LLC

(Charter) filed an application for rehearing on September 25, 2020. Charter asserts that the it believed it had submitted all necessary TRS forms required of the Charter entities in June 2020 before the deadline and had correspondence from Commission Staff to that effect. When it was discovered on August 25, 2020, that forms were still outstanding for TWCIS and TWCB, Charter immediately contacted Staff and attempted to file the required documents; however, due to technical difficulties with accessing the TWC accounts in the PUCO Community, Charter was unable to file the TWCIS and TWCB forms until August 27, 2020. Because Charter worked promptly and cooperatively with Staff when it learned that two 2019 TRS forms remained outstanding and due to the technical issues encountered to rectify the delinquent filings until August 27, 2020, Charter asserts that good cause exists to grant rehearing and to reverse the forfeiture rulings against TWCIS and TWCB.

{¶ 20} The Commission determines that, under the circumstances presented, good cause exists to grant rehearing and to cancel the forfeiture rulings against TWCIS and TWCB.

4. *TDS Companies' Application for Rehearing*

{¶ 21} Continental Telephone Company (Continental), Oakwood Telephone Company (Oakwood), Vanlue Telephone Company (Vanlue), and Arcadia Telephone Company (Arcadia)³ filed an application for rehearing in the TRS dockets, 08-815 and 20-03, on September 25, 2020. In support, the TDS Companies assert that, in response to the Commission's January 29, 2020 directive to submit TRS forms by April 30, 2020, the TDS Companies, as they have in prior years, submitted one TRS form under the TDS parent company name which included total access lines for all five TDS Companies. Following the August 26, 2020 Finding and Order, a TDS representative confirmed with Commission staff that in fact the Commission had received the required forms for each of the five Ohio telephone companies and the filings were timely received. Accordingly, the TDS

³ These four telephone companies along with Little Miami Communications Corporation collectively are referred to as the TDS Companies.

Companies request that the Commission grant rehearing and find that the TDS Companies complied with the Commission's January 29, 2020 Entry and reverse its assessment of a \$1,000 forfeiture against Continental, Oakwood, Vanlue, and Arcadia.

{¶ 22} The Commission finds that Continental, Oakwood, Vanlue, and Arcadia have demonstrated good cause to grant rehearing and to cancel the assessment against these four TDS Companies.

5. Falcon 1 Application for Rehearing

{¶ 23} Falcon 1, Inc. (Falcon 1 or Company) filed an application on rehearing on September 25, 2020, arguing that the Commission's August 26, 2020 Finding and Order is unlawful and unreasonable as the Company is not required to provide TRS under federal law because Falcon 1 only provides intrastate toll services in Ohio and thus is not a common carrier under federal law. Accordingly, Falcon 1 requests that the Commission grant rehearing to find that the Company is not in violation of a Commission order and reverse the forfeiture assessed against Falcon 1.

{¶ 24} The application for rehearing filed by Falcon 1 is denied. The Commission's jurisdiction requiring telecommunications companies to pay an assessment to fund intrastate TRS is found in R.C. 4905.84. Division (B) of R.C. 4905.84 states, in part, "[F]or the sole purpose of funding telecommunications relay service, the commission shall, not earlier than January 1, 2009, impose on 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 costs incurred by the TRS provider for providing such service in Ohio." (Emphasis added). Under federal law, 47 U.S.C. 225(c) requires every common carrier providing voice transmission service to offer throughout its service area TRS individually, through designees, through a competitively selected vendor, or in concert with other carriers. With respect to intrastate TRS, a common carrier shall be considered in compliance in any state that has a certified TRS program. Ohio is recognized by the Federal Communications Commission as one of the state's having a state-certified TRS program.

Notice of Certification of State Telecommunications Relay Services (TRS) Programs, 83 Fed.Reg 35640 (CG Docket No 03-123/DA 18-733) July 26, 2018. Under 47 U.S.C. 225(a)(1) a common carrier is a carrier engaged in interstate communication by wire or radio and any carrier engaged in intrastate communication by wire or radio.

{¶ 25} Falcon 1 acknowledges that the Company offers intrastate toll service. Telephone toll service is defined in R.C. 4927.01(A)(16) as telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with customers for local exchange service. Telephone toll service has historically included voice service. Under state and federal law as discussed above, Falcon 1 appears to be a common carrier admittedly engaged in intrastate telephone voice transmission services and is, therefore, subject to Ohio's TRS assessment under R.C. 4905.84. Falcon 1 is directed to submit a TRS form for 2019 by November 20, 2020.

{¶ 26} Notwithstanding the above, the Commission acknowledges that, although Falcon 1 has been certified since 2014, the 2019 TRS assessment cycle is the first time the Company has been directed to submit a TRS form and pay the TRS assessment. In light of the Company's understandable confusion over whether it is subject to Ohio's TRS assessment, we will rescind the determination made in the August 26, 2020 Finding and Order that Falcon 1 violated a Commission directive to submit a TRS form for 2019 and rescind the accompanying \$1,000 forfeiture. Falcon 1 is cautioned that from this point forward, the Company should submit timely all future TRS forms and the accompanying TRS assessment.

C. *Other Considerations*

{¶ 27} Based upon further Staff review, it has come to the Commission's attention that a number of entities listed on the attachment to the August 26, 2020 Finding and Order may not have received notice that a TRS form was due as there was no TRS contact listed in the entities' PUCO Community profile or the company timely filed a paper copy of the TRS form instead of using the Commission's web-based filing system. As a result, the

Commission on its own is canceling the forfeiture assessed by the August 26, 2020 Finding and Order against P&R Spectrum Resources, Inc., ViaTalk LLC, Mercury Wireless Indiana, LLC, Agile Network Builders LLC, PeakNet LLC, CSC Wireless LLC, Hello Mobile Telecom LLC, SQF LLC, eNetworks, LLC, Consumer Cellular, Inc., and OneCommunity.

III. ORDER

{¶ 28} It is, therefore,

{¶ 29} ORDERED, That rehearing be granted and/or the forfeitures canceled in accordance with Paragraphs 16, 18, 20, 22, 26, and 27. It is, further,

{¶ 30} ORDERED, That notice of this Entry be served via the Electric-Energy, Gas-Pipeline, Railroad, Telephone, and Water industry listservs; upon all telephone companies and commercial mobile radio service providers under the Commission's jurisdiction through the Ohio Telecom Association; directly upon each company contact for the companies discussed in this Entry on Rehearing; and upon all other interested persons of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JRJ/kck

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Case No(s). 20-0001-AU-RPT, 20-0003-TP-RPT, 08-0815-TP-ORD

Summary: Entry granting rehearing to the August 26, 2020 Finding and Order and rescinding forfeitures. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio