

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ESTABLISHMENT OF DUAL PARTY RELAY)	
TELECOMMUNICATIONS SERVICES FOR)	ADMINISTRATIVE
HEARING-IMPAIRED OR SPEECH IMPAIRED)	CASE NO. 333
PERSONS IN KENTUCKY)	

O R D E R

Procedural Background

Pursuant to the provisions of KRS 278.547 and KRS 278.548, enacted by the 1990 Kentucky General Assembly, state-wide dual party relay service ("DPRS") for hearing-impaired and speech-impaired persons in Kentucky is required to be available no later than October 1, 1991. The Commission initiated this proceeding by Order dated April 25, 1990. Copies of the Order were sent to telecommunications utilities, the Attorney General's Utility and Rate Intervention Division, and all persons and organizations from whom written communications had been received. All interested persons were encouraged to participate in the proceeding. The number of parties to the proceeding now totals 41, including telecommunications utilities, hearing or speech-impaired individuals, organizations representing the hearing/speech-impaired community, churches, and other concerned individuals and organizations.

On June 5, 1990, an informal conference was held for the purpose of sharing information concerning the procedure to be

followed in an administrative docket before the Commission. By Order of August 22, 1990, the Commission provided copies of a draft Request for Proposals ("RFP") to all parties and requested that the parties file comments and suggestions on the content of the RFP. Subsequently, on December 3, 1990, a hearing was held to allow all parties an opportunity to respond to comments previously filed, present testimony, and to question other parties. In addition to testimony presented at the hearing, the Commission has reviewed extensive information from other states offering DPRS, all comments and statements filed by the parties, the draft RFP, and Kentucky Administrative Regulations related to requests for proposals and contracts involving state agencies.

Discussion

In its August 22, 1990 Order, the Commission specifically requested comments and proposals for the appropriate funding mechanism which would meet the statutory requirements.

Cincinnati Bell Telephone Company ("CBT") filed comments on September 21, 1990 which suggested five alternative sources of funding in order of preference as follows: (1) direct user funding; (2) direct state/federal funding; (3) hybrid funding embodying some or all of the other alternatives, (4) access line surcharge funding; and (5) interexchange carrier access charge funding. However, comments filed by other parties advocated a surcharge levied on all ratepayers per access line.

On October 9, 1990, the Kentucky Telephone Association ("KTA") filed comments on the funding mechanism for the DPRS. An industry consensus on the revenue collection method was included.

KTA concluded that the most likely revenue collection method is an addition to the current telephone rates of end-users and that this charge should be shown as a separate line item on the end-user's bill.

Because the DPRS user will be making both local and long distance calls, KTA further recommended that the collection method involve both the Local Exchange Carriers ("LECs") and the Interexchange Carriers ("IXCs"). KTA thought that collection shared by LECs and IXCs was more equitable than LECs conducting the entire collection and might reduce negative customer reaction to a billing increase. Also, it was KTA's position that involvement of all the carriers would better ensure that the revenue collection method would succeed. Finally, KTA thought it would allow carriers the flexibility to tailor specific tariff changes, if needed, based on their own system requirements.

KTA recommended that the LECs collect 85 percent of the needed funds and the IXCs collect 15 percent. The ratepayer assessment to collect the LEC share would be the same regardless of the LEC collecting the funds. A customer allocation method was not proposed for the portion to be collected by the IXCs.

The Commission agrees with the KTA that the revenue for DPRS must come from an additive to the end-user's rates and should be shown as a separate line item on the end-user's bill. Based on the record in this case, however, the Commission rejects the KTA fund collection proposal. The KTA proposal would result in a toll user being assessed a disproportionate amount of the DPRS collections. A surcharge would be collected once based on his

local service and again based on his toll usage. AT&T also testified that its nonrecurring costs to implement the KTA collection proposal, which AT&T supports, would be \$750,000 and would have to be recovered from the DPRS fund.¹

The Commission has determined that a surcharge per access line will be levied on all ratepayers and collected by the LECs. Using this method ratepayers will contribute an equal amount per access line to the fund and statewide collection costs for DPRS will be lower.

The Commission further finds that certain modifications and additional provisions to the draft RFP are necessary, and these changes have been incorporated in the RFP.

IT IS THEREFORE ORDERED that:

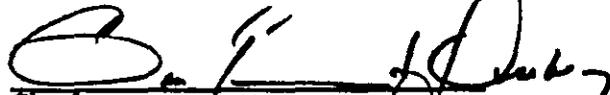
1. The RFP, attached hereto and incorporated herein, constitutes the Commission's formal request for proposals for the provision of DPRS.

2. All telecommunications carriers desiring to be considered as DPRS provider shall submit proposals in compliance with the RFP no later than 4:30 p.m. Eastern Standard Time, March 4, 1991.

¹ T.E., Volume I, page 41.

Done at Frankfort, Kentucky, this 1st day of February, 1991.

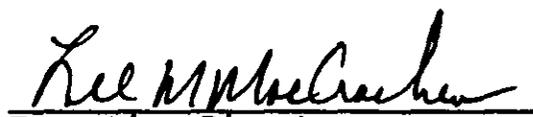
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

APPENDIX A

**APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN ADMINISTRATIVE CASE NO. 333 DATED 2/01/91**

**COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION**

**REQUEST FOR PROPOSAL
FOR DUAL PARTY RELAY TELECOMMUNICATIONS SERVICE
PROPOSALS TO BE CONSIDERED MUST BE RECEIVED BY
4:30 p.m. EST**

KEY DATES

**Proposals Due Date: March 4, 1991
Selection of Vendor: By April 15, 1991
Operation Date: On or Before October 1, 1991**

TABLE OF CONTENTS

- 1.0 INTRODUCTION**
- 2.0 SERVICE SPECIFICATIONS**
- 3.0 INFORMATION REQUIRED FROM VENDOR**
- 4.0 FUNDING MECHANISM**
- 5.0 CONDITIONS**
- 6.0 PROPOSAL EVALUATION**

1.0 INTRODUCTION

- 1.1 PURPOSE - This Request For Proposal ("RFP") provides interested vendors with the information necessary to prepare and submit proposals to the Kentucky Public Service Commission ("PSC or Commission") to provide statewide Dual Party Relay Telecommunications Service ("DPRS"). The purpose of DPRS is to provide hearing-impaired and speech-impaired individuals equivalent communications access to normal hearing and voice-capable persons. The DPRS will enable a deaf, hearing-impaired or speech-impaired individual to communicate with a hearing and/or speech-capable person via a Telecommunications Device for the Deaf ("TDD"), a Teletypewriter ("TTY"), Personal Computer ("PC") or any other automated device capable of transmitting and receiving text via ASCII or TTY transmission protocol, with the assistance of specially trained operators.
- 1.2 AUTHORITY - This service is being established pursuant to KRS 278.547 and KRS 278.548, enactments of the 1990 General Assembly of the Commonwealth of Kentucky.
- 1.3 DESCRIPTION - The General Assembly enacted establishment of DPRS to provide the hearing-impaired and speech-impaired access to the telecommunications network equal to that provided to hearing and voice-capable individuals. The legislature specified that the DPRS shall be in operation no

later than October 1, 1991. Furthermore, it required the PSC to file a report no later than July 1, 1991 with the Legislative Research Commission regarding the establishment and implementation of DPRS.

1.4 PROPOSALS - Bid proposals shall be evaluated based upon the vendor's ability to meet or exceed all technical, service, quality, and other requirements as outlined in this RFP. The PSC reserves the right to reject any or all proposals made pursuant to this RFP or to negotiate with any and all respondents to this RFP. There is no assurance, expressed or implied, that an award will necessarily be made pursuant to this RFP. This RFP shall not give any right to any respondent for indemnification claims. Response to RFP constitutes agreement with RFP conditions.

1.5 SUBMISSION DATE - To be considered for selection, the original and 15 copies of the vendor's complete formal response to this RFP must arrive by 4:30 p.m. EST on March 4, 1991 at the following address:

Executive Director
Kentucky Public Service Commission
730 Schenkel Lane
P.O. Box 615
Frankfort, Kentucky 40602

1.6 QUESTIONS - All format and procedural questions pertaining to this RFP shall be directed in writing to the Executive Director at the above address no later than February 8,

1991. Any party submitting questions concerning format or procedure shall serve copies of the questions on all other parties. The Executive Director shall respond to the questions and shall serve copies of the response to all parties by February 18, 1991.

1.7 FORMAT - The format of the vendor's proposal shall follow requirements set forth in Sections 2 and 3. All responses shall be valid and binding for ninety (90) days.

1.8 COST OF RFP - The vendor shall be responsible for all costs incurred in preparation of a response to this RFP.

1.9 DECISION - The PSC shall establish a time for oral presentations of each proposal, and shall render a decision awarding the bid on or before April 15, 1991.

2.0 SERVICE SPECIFICATIONS

2.1 GENERAL REQUIREMENTS - DPRS shall be designed to provide relay service for all Kentucky exchanges at all times 24 hours a day, 7 days a week, 52 weeks a year. Callers utilizing DPRS shall be able to place and receive calls through DPRS from their primary locations and locations other than their

primary locations and shall be able to utilize alternate billing arrangements.

The DPRS shall be capable of accepting TDD/TTY communications using either ASCII or Baudot code. The DPRS operator center shall be accessed via a toll-free number(s).

Whether the vendor leases or buys the equipment used in DPRS, the vendor shall provide the latest advancements in technology that can provide a cost-effective service without decreasing quality of service. Additionally, the vendor shall make use of features that will assist the relay operator in relaying conversations as quickly as possible.

The vendor shall provide the following basic services for local and intrastate toll calls:

- A. Accept a call from a TDD, TTY or computer-equipped caller, place a call to a hearing and voice-capable individual and then translate electronic messages to voice messages and voice messages to electronic messages in order to complete the communications link.
- B. Accept a call from a hearing and voice-capable caller, place a call to a TDD, TTY, or computer-equipped individual and then translate voice messages to electronic

messages and electronic messages to voice messages in order to complete the communications link.

C. The relay center may also have the capability to allow the hearing-impaired customer with voice abilities to speak directly to a hearing customer, and the speech-impaired customer with hearing abilities to listen directly to the speaking customer.

2.2 SCOPE - Types of calls to be provided by the DPRS are incoming and outgoing intrastate calls including non-coin sent paid, third number, calling card and collect calls. The DPRS shall provide access to the telecommunications network functionally equivalent to that of other users; however, it is not required to include 900 or 976 calls.

The DPRS shall not duplicate any interstate relay services. However, the DPRS shall be capable of accommodating any interstate relay service that may be authorized and funded through federal jurisdiction or may be offered as a service enhancement by the vendor.

The DPRS shall not provide directory assistance; however, the relay operator shall refer any requests from a TDD caller for directory assistance to the toll-free TDD Directory Assistance number.

2.3 COMPONENTS OF DPRS - DPRS shall have the following capabilities:

- A. Switching and transmission of the call.
- B. Oral and print translations by either live or automated means between hearing-impaired and/or speech-impaired individuals who use TTY, TDD, computers, or similar automated devices and those who do not have such equipment.
- C. Sufficient operators and facilities to meet the grade and quality of service standards described in this RFP.
- D. Appropriate procedures to handle emergency calls.
- E. Confidentiality regarding existence and content of conversation.
- F. Methods of accessing and being accessed by computers of up to and including 300 baud via ASCII codes, and up to 1200 baud if technically feasible.
- G. Methods of providing sufficient information to allow calls to be accurately billed.

H. Methods of providing for new technological features including hearing carryover and voice carryover, and other features as they become available.

2.4 PROVISION OF FACILITIES - The vendor shall supply a complete description of how it will comply with the components of DPRS to include but not be limited to the following:

A. Relay center building, real estate, furniture, office equipment, telecommunications, and other facilities and equipment.

B. All telecommunications trunks, cable or lines required to be connected to the relay center in order to receive or to initiate telecommunications.

C. All staff and operations personnel and the training of such personnel.

D. Maintenance of records so as to permit the review and determination of relay service results.

E. Creation of billing records for each relay-assisted call including: telephone number or credit card number to be billed, originating telephone number, terminating telephone number, date, start time of call, ending time of call.

2.5 NETWORK CONFIGURATION - The vendor shall explain the type of equipment and staffing requirements necessary to meet the service standards and handle the type of calls and projected call volumes as detailed in this RFP.

The proposal shall contain a description of the network configuration to be used to provide DPRS including how calls will access the service and how the vendor will handle the traffic. All necessary schematics shall be included. The proposal shall also include a description of the vendor's capability, if any, to provide DPRS through connection with a regional relay center and the network configuration necessary to provide DPRS through such regional relay center.

2.6 RATES AND CHARGES - Calls placed through the DPRS shall be billed to the users of the DPRS at the same rate that would apply if the calls had been placed without the use of the relay operator.

A. Local calls

Relay calls in which the called and calling parties originate and terminate within the same toll-free local calling area shall be billed to the calling party at an effective rate no higher than the tariffed rates for the local service provided by the local exchange carrier serving the customer.

B. Intrastate Long-Distance Calls

Calls that would normally result in intraLATA or interLATA toll rates shall be billed to the calling party at an effective rate no higher than the tariffed rates.

2.7 SERVICE STANDARDS - The vendor shall, at a minimum, meet the following system service standards:

- A. There shall be no restrictions on length or number of calls placed by customers through the relay center.
- B. Under normal circumstances, no more than one call in 100 shall receive a busy signal when calling the relay center.
- C. The DPRS may be provided through one statewide relay center located within the Commonwealth of Kentucky, an out of state location, or other relay center arrangements which will ensure the minimum service quality specified herein and the maximum cost benefit.
- D. The DPRS shall be designed to handle 15,000 intrastate relay calls per month with capabilities to expand facilities, as traffic requires, up to 40,000 per month.

- E. After reaching the relay center, 85 percent of all calls shall be answered by the relay center within ten (10) seconds during all times of the day. The average answer time shall not exceed 3.3 seconds.
- F. Relay transmission circuits shall meet or exceed interexchange performance standards for circuit noise and loss.
- G. The DPRS shall be able to accept communications transmitted in either ASCII or Baudot codes.
- H. The vendor shall be responsible for obtaining the proper call information for billing purposes and creating billing records for each relay-assisted call.
- I. The DPRS vendor shall provide alternate power and equipment in order to ensure service reliability and integrity.

2.8 PROCEDURES AND POLICY MANUAL - It is essential that the relay operators possess good typing, spelling, and customer service, skills, and an awareness of the communications needs of the hearing- and speech-impaired. The vendor shall provide documentation detailing methods and procedures, training guidelines and confidentiality codes to enforce the operator standards outlined below:

- A. Operators shall be required to pass a typing skills test with a minimum of 35 words per minute.

- B. Operator training shall include an orientation to deaf culture, the written syntax of American Sign Language ("ASL"), ASL to standard English translation, and TDD etiquette. Vendor shall also include any proposal to provide multi-lingual operators.

- C. Operators shall be required to maintain the confidentiality of each relayed conversation and shall strictly adhere to the secrecy of communications.

- D. Written and electronic scripts of relay calls shall not be maintained by the center. Any recorded or printed conversation of customers shall be destroyed within 24 hours.

- E. Operators should not be subject to criminal prosecution for relaying any message and should not be held legally responsible for errors due to transcription, transmission or transliteration. The vendor shall provide liability insurance for the relay operators.

- F. Relay service operators shall not counsel, advise or interject personal opinions or add information into any communication.

2.9 REPORTING REQUIREMENTS

A. The vendor shall be responsible for maintaining all records relating to the operation of the relay center. The vendor shall be required to furnish monthly reports to the PSC regarding the center's operation. These reports shall include, but are not limited to, studies detailing:

1. Blockage rates (number of calls reaching a busy signal when calling the relay center).
2. Number of calls in queue.
3. Length of time in queue.
4. Percentage of calls originated by TDD/TTY users versus hearing and voice customers.
5. Average speed of answer.
6. Compliance with service standards specified herein and in Commission regulations.

B. The vendor shall also be responsible for maintaining the accounting and financial records which include the expenses incurred in operating the relay center. These

records and reports shall be subject to audit on an annual basis.

2.10 SERVICE ENHANCEMENTS - Carriers submitting proposals to provide DPRS may propose enhancements to the basic service described above. These enhancements may include, but are not limited to, the following:

A. Interstate calling capability. The carrier's cost of providing any such interstate service shall be calculated by the carrier in accordance with the Federal Communications Commission Rules regarding separation of interstate and intrastate costs.

B. Service to users of foreign languages other than ASL.

C. Establishments of a TDD distribution program for leased TDD, and other adaptive equipment.

3.0 INFORMATION REQUIRED FROM VENDOR

3.1 SERVICE PROVIDER QUALIFICATIONS - Each vendor, in its response to this RFP, shall provide documents and other information necessary to allow the PSC to evaluate the ability and fiscal integrity of the vendor to deliver the service.

3.2 PREVIOUS EXPERIENCE - Each vendor shall include a complete and descriptive history of any prior experience in providing proposed services. This history shall include a copy of any brochures publicizing the service, any publicly available information regarding cost of the service, and statistics on call volumes, call duration, and toll percentage. The vendor shall also supply the names, titles and telephone numbers of references from other states utilizing the vendor's DPRS.

3.3 FINANCIAL INFORMATION - The proposal shall contain the following:

A. The most recent Annual Report to stockholders of the vendor and its parent company.

B. Any investment advisory and rating agency reports issued during the past year about the vendor and its parent company.

3.4 QUOTATION OF PRICES - The vendor shall quote prices for the DPRS based on the cost of providing the service. Prices shall be based on average month call volumes as described in paragraph 3.5, and rates as described in Section 2.6. Prices shall be provided for each of the following categories:

- A. Start-up Expenses. Based on call volumes set forth in Section 3.5, include all non-recurring costs incurred prior to the relay center becoming operational, including but not limited to: promotional material, design and planning of facilities, pre-purchase down payments, procurement of facilities, hiring and training of attendants, building renovation, installation, and testing of equipment and facilities.
- B. Recurring Charges attributable solely to Relay Service shall include, but are not limited to: building rent, maintenance and utilities, carrying and maintenance charges for furniture, office equipment and telecommunications equipment, advertising, service management, billing and collection, wages, salaries and benefits for attendants, miscellaneous; office expenses such as supplies, postage, delivery; miscellaneous staff management expenses such as travel and education; relay center management staff and other overhead expenses.
- C. The vendor shall quote the lowest rate of return that it would be willing to accept for providing the required services. Such rate of return shall be quoted as a percentage of investment directly attributable to the provision of DPRS during the period of the contract. Direct costs shall not include any allocation of overhead

costs unless such costs can be shown to have been directly increased as result of providing DPRS.

3.5 COST ANALYSIS - The vendor shall include cost information in the format presented on pages 41 through 44, however, the vendor may also include additional cost analyses relating to cost per minute information. Recurring and non-recurring prices shall be based on the following two scenarios:

A. Twelve months of operation with an average call duration of 7 minutes and average calling volumes of 15,000 calls per month.

B. Twelve months of operation with an average call duration of 7 minutes and average calling volumes of 40,000 calls per month.

3.6 ALTERNATE USAGE PROJECTIONS - If the vendor has reason to believe that call volumes, call duration, or percentage of toll usage will be amounts other than those used in the assumptions in this RFP, it shall indicate what those projections are, provide justification for such projections, and provide cost estimates based on those projections. Additionally, vendors shall indicate whether there are certain other specific breakpoints that would cause costs to be significantly higher or lower than the trends that can be observed from analyzing the completed cost matrices.

4.0 FUNDING MECHANISM

- 4.1 FUNDING MECHANISM - Each local exchange company shall surcharge a specific amount per local access line and shall add this amount as a separate line item charge on each customer's monthly bill.

The PSC will review the surcharge revenues at least semi-annually for the first two years of operations and annually thereafter. If the Commission determines that the revenue collected differs significantly from the amount necessary to satisfy the contract amount for the period, the surcharge shall be recalculated to "true-up" the under- or over-collections. The recalculated surcharge shall be based on an annualization of the average number of local access lines for the most recent three month period for which such information is available.

- 4.2 COMPENSATION TO THE VENDOR - The vendor shall be compensated for providing DPRS at the rates, terms, and conditions established by contract with the PSC. The vendor will be reimbursed for costs specifically incurred as a result of providing DPRS that are not included in standard utility rates and charges. These costs may include a return on investment required to provide service and the cost of unbillable and uncollectible calls placed through the service.

4.3 FIDUCIARY RESPONSIBILITY - Each local exchange company shall deposit monthly all monies collected from the surcharge for the provision of DPRS into a single, interest-bearing, cash-management escrow account to be established at a financial institution located within the state of Kentucky and selected by the PSC. The account shall be designated as the "Kentucky Dual Party Relay Service Fund" and shall be managed by the financial institution under the terms and conditions of an agreement between the financial institution and vendor as approved by the PSC. The Kentucky DPRS Fund shall be utilized for all monies collected or disbursed in connection with the provision of DPRS. The financial institution shall maintain all records and documentation of all financial transactions and provide reports of the type, form, content, and frequency specified in the agreement.

5.0 CONDITIONS

5.1 GENERAL - The contract between the PSC and the vendor shall consist of (1) the RFP and any amendments thereto, and (2) the Contractor's offer submitted in response to the RFP. In the event of a conflict in language between the two 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 with the concurrence of the vendor, and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP or the vendor's proposal. In all other matters not affected by the written clarification, the RFP shall govern.

No modification or change of any provision in the contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the vendor and the Commission, and incorporated as a written amendment to the contract. Memoranda of understanding and correspondence shall not be construed as amendments to the contract.

The contract shall be construed according to the laws of the Commonwealth of Kentucky. Any legal proceedings against the Commission regarding this RFP or any resultant contract shall be brought in Commonwealth of Kentucky administrative or judicial forums. Venue will be in Franklin County, Commonwealth of Kentucky.

5.2 DEVIATIONS FROM THE CONTRACT - The stated requirements appearing elsewhere in this RFP shall become a part of the terms and conditions of any resulting contract. Any deviations therefrom must be specifically defined in the

vendor's proposal which, if successful, shall become part of the contract, but such deviations must not be in conflict with the basic nature of this offer.

5.3 ENTIRE AGREEMENT - This contract represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral, between the parties hereto relating to the subject matter herein and shall be independent of and have no effect upon any other contracts.

5.4 ADVERTISING AWARD - The vendor 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 PSC or the Commonwealth of Kentucky.

5.5 NOTICES - After contract award, all notices under this contract shall be deemed duly given when: (1) delivered by hand against receipt or (2) sent by registered mail, receipt requested, and received no later than 3 days after posting.

All notices are to be delivered to the Executive Director of the Commission.

5.6 TITLES - Titles of paragraphs used herein are for the purpose of facilitating ease of reference only and shall not be construed to infer a contractual construction of language.

5.7 CONTRACT TERM

- A. The contract established from this RFP shall begin on the date following the award and shall terminate five (5) years from that date.
- B. After the first four (4) years of service, the Commission shall review the service for renewal purposes.
- C. The PSC shall have an option to renew the contract to be exercised within 60 days of the contract's termination.

5.8 TERMINATION OF CONTRACT - The contract resulting from this RFP shall be subject to the following termination provisions. The contract may be terminated by the Commission for:

Default

Vendor bankruptcy

Unavailability of funds

Convenience

- A. TERMINATION FOR DEFAULT - Any vendor who is determined in writing by the Commission to be in breach of any of the terms and conditions of a contract with the Commission shall, in the discretion of the Commission, be declared in default and such contract may be terminated as a result of such default.

A default in performance by a vendor for which a contract may be terminated shall include, but shall not necessarily be limited to, failure to perform the contract according to its terms, conditions and specifications; failure to make delivery within the time specified or according to a delivery schedule fixed by the contract; late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services as evidenced by mechanics liens filed pursuant to the provision of KRS Chapter 376, or letters of indebtedness received from creditors by the purchasing agency; failure to diligently prosecute the work under a contract for construction services.

- B. TERMINATION FOR CONTRACTOR BANKRUPTCY - In the event of the filing of a petition in bankruptcy by or against the vendor, the Commission shall have the right to terminate the contract upon the same terms and conditions as a termination for default.
- C. TERMINATION FOR UNAVAILABILITY OF FUNDS - In the event that the Commission determines that funds for the contract become unavailable, the Commission shall have the right to terminate 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.

- D. TERMINATION FOR CONVENIENCE - The Commission shall be authorized to terminate for its own convenience all contracts for the procurement of supplies and services when the Commission has determined that such terminations will be in the public interest. When it has been determined that a contract should be terminated for the convenience of the Commission, the Commission shall be authorized to negotiate a settlement with the vendor according to terms deemed just and equitable by the Commission. Compensation to a vendor for lost profits on a contract terminated for convenience of the Commission shall not exceed an amount proportionate to the sum that the vendor's total expected margin of profit on the contract bore to the contract price based on the total out-of-pocket expense incurred by the vendor as of the date of termination of the contract. Whenever a contract is terminated for the convenience of the Commission, the vendor shall have the burden of establishing the amount of the compensation to which he believes himself to be entitled by submission of complete and accurate cost data employed in submitting his bid or bid for the contract and evidence of expenses paid or incurred in performance of the contract from the date of award through the date of termination. Payment

of the sum agreed to in settlement of a contract terminated for convenience of the Commission shall be made from the same source of funds or account as the original contract.

5.9 PROCEDURE ON TERMINATION - Upon delivery by certified mail to the vendor of a Notice of Termination specifying the nature of the termination, the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective, the vendor shall:

- A. Stop work under the contract on the date and to the extent specified in the Notice of Termination.
- B. Place no further orders for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated.
- C. Terminate all orders to the extent that they relate to the performance of work terminated by the Notice of Termination.
- D. Assign to the Commonwealth in the manner and to the extent directed by the Contracting Officer all of the right, title, and interest of the Contractor under the orders so terminated. In which case the Commonwealth

shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders with the approval or ratification of the Contracting Officer, settle all outstanding liabilities and all claims arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provision of the contract.

E. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination.

F. Take such action as may be necessary, or as the Commission may direct, for the protection and preservation of the property related to the contract and which is in the possession of the vendor and in which the Commission has or may acquire an interest.

The vendor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this clause.

5.10 TERMINATION CLAIMS - After receipt of a Notice of Termination, the vendor 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 (6) months from the effective date of termination, unless one or more extensions in writing are granted by the Commission within such six (6) 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 (6) month period or any extension thereof. Upon failure of the vendor to submit its termination claim within the time allowed, the Commission may, subject to any review required by the Commonwealth procedures in effect as of the date of execution of the contract, determine, on the basis of information available to it, the amount, if any, due to the vendor by reason of the termination and shall thereupon cause to be paid to the vendor the amount so determined.

Subject to the provisions of the previous paragraph and subject to any review required by the Commonwealth procedures in effect as of the date of the execution of the contract the vendor and the Commission may agree upon the amounts to be paid to the vendor by reason of the total or partial termination of work pursuant to this RFP. The contract shall be amended accordingly.

In the event of the failure of the vendor and the Commission to agree in whole or in part as to the amounts with respect

to costs to be paid to the vendor 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 vendor by reason of termination and shall pay to the vendor the amount so determined.

The vendor shall have the right of appeal, as stated under Disputes from any such determination made by the Commission.

5.11 CONTRACTOR PERSONNEL - Personnel commitments identified in the vendor's proposal shall be considered mandatory to the work to be performed under this RFP. No redeployment of such personnel will be made by the vendor without prior written consent of the Commission. Replacement of such personnel, if approved, shall be with personnel of equal ability and qualifications. During the course of the contract, the Commission reserves the right to require the vendor to reassign or otherwise remove any vendor employees found not qualified or otherwise unacceptable by the Commission.

5.12 CHANGES IN SCOPE - The Commission may, at any time by a written order, make changes within the general scope of the contract. No changes in scope are to be conducted except at 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 contract,

whether changed or not changed by any such order, a mutually satisfactory adjustment shall be made in the contract and shall be modified in writing accordingly.

5.13 FORCE MAJEURE - The vendor will not be liable for any excess cost if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the vendor. Such causes may include, but are not restricted to, acts of God, fires, quarantine restriction, strikes and freight embargoes. In all cases, the failure to perform must be beyond the control and without fault or negligence of the vendor. The vendor will take all possible steps to recover from such occurrences.

5.14 DISPUTES - Prior to the institution of any action in a court concerning any contract, claim, or controversy, the Commission is authorized, subject to any limitations or conditions imposed by regulations, to settle, compromise, pay or otherwise adjust the claim by or against, or controversy with, the vendor relating to a contract entered into by the Commission, including a claim or controversy based on breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

5.15 DISCLOSURE OF PROPOSAL CONTENTS - The contents of any proposal in response to this RFP shall be confidential and shall not be disclosed to anyone other than the PSC and its

staff until a contract selection is made. Each proposal shall be delivered in a sealed envelope. Upon selection of a proposal by the Commission, the proposal of the contractor selected to perform the service and the proposals of all unsuccessful contractors shall be made available for public inspection.

For any portions of proposals which applicants wish to maintain confidentiality, applicants shall note clearly which narrative sections and/or analyses are requested to be kept confidential. For each requested instance of confidentiality, the applicant must cite the appropriate exception from the Kentucky Open Records Act (KRS 61.878), and applicant shall state why the sections and/or analyses meet the exceptions of the Kentucky Open Records Act. Such explanation should be presented in a sworn affidavit attached to the RFP.

5.16 CONFIDENTIALITY OF CONTRACT TERMS - The vendor and the Commission agree that all information communicated between them before the effective date of the agreement shall be received in strict confidence, shall not be necessarily disclosed by the receiving party, its agents, or employees without prior written consent of the other party. Such material will be kept confidential subject to Commonwealth and federal disclosure laws.

5.17 PRIME CONTRACTOR RESPONSIBILITY - Any contracts that may result from the RFP shall specify that the prime vendor is solely responsible for fulfillment of the contract with the Commission. The prime vendor should be designated in the proposal.

5.18 CONTRACTOR AFFILIATION - If any affiliate (as hereinafter defined) of the vendor shall take any action which, if done by the vendor, would constitute a breach of this agreement, the same shall be deemed a breach by such party with like legal effect. "Affiliate" shall mean a parent, subsidiary or other company controlling, controlled by or in common control with a party.

5.19 ASSIGNMENT - The vendor shall not assign the contract in whole or in part or any payment arising therefrom without the prior written consent of the Commission. Any purported assignment is void.

5.20 HOLD HARMLESS - The vendor agrees to indemnify, defend, and hold harmless the Commonwealth, its officers, agents, and employees from:

A. Any claims or losses for service rendered by the vendor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the contract;

- B. any claims or losses to any person or firm injured or damaged by the erroneous or negligent acts of the vendor, its officers or employees in the performance of the contract; any claims or losses resulting to any person or firm injured or damaged by the vendor, its officers or employees by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in use, or disposition of any data processed under the contract in a manner not authorized by the contract, or by federal or Commonwealth regulations or statutes;
- C. Any failure of the vendor, its officers or employees to observe Kentucky laws, including but not limited to labor laws and minimum wage laws.

5.21 PERMITS, LICENSES, TAXES AND COMMONWEALTH REGISTRATION - The vendor 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 under this contract is performed.

The vendor shall pay any sales, use or personal property taxes arising out of this contract and the transaction contemplated hereby. Any other taxes levied upon this

contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the vendor.

The vendor must furnish certification of authority to conduct business in the Commonwealth of Kentucky as a condition of contract award. Certification is obtained from the Secretary of State. The vendor need not be registered with the Secretary of State before responding to this RFP.

5.22 EMPLOYMENT PRACTICES - The vendor 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 handicap. The vendor must take affirmative action to ensure that 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 handicap. Such action shall include, but is not limited to, the following: employment, promotion, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this clause.

The vendor shall, in all solicitations or advertisements for employees placed by or on behalf of the vendor, 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 handicap, except where it relates to a bona fide occupational qualification.

The vendor shall comply with the nondiscrimination clause contained in 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 and with 41 CFR Chapter 60. The vendor shall comply with related Commonwealth laws and regulations.

The vendor shall comply with regulations issued by the Secretary of Labor of the United States in 20 CFR Part 741, pursuant to the provisions of Executive Order 11758 and the Federal Rehabilitation Act of 1973.

The contractor shall comply with the Civil Rights Act of 1964, and any amendments thereto, and the rules and regulations thereunder, and Section 504 of Title V of the Vocational Rehabilitation Act of 1973 as amended, and the Kentucky Civil Rights Act.

5.23 CONFORMANCE WITH COMMONWEALTH AND FEDERAL LAWS/REGULATIONS -

This contract is subject to the laws of the Commonwealth of Kentucky and, where applicable, federal law.

5.24 RIGHTS AND REMEDIES - The rights and remedies of the Commission provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

5.25 WAIVER - No covenant, condition, duty, obligation, or undertaking contained in or made a part of the contract will be waived except by the written agreement of the parties, and 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; and 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.

5.26 CONTRACT VARIATIONS - If any provision of the contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Commission and the vendor shall be relieved of all obligations arising under such provision. If the remainder of the contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

5.27 INSURANCE - The vendor will provide public liability, property damage and worker's compensation insurance, insuring as they may appear, the interest of all parties of agreement against any and all claims which may arise out of the vendor operations under the terms of this contract. It is agreed that in the event any carrier of such insurance exercises cancellation, notice will be made immediately to the Commission of such cancellation.

5.28 ACCOUNTING REQUIREMENTS - The vendor shall establish and maintain an accounting system in accordance with the Uniform System of Accounts. The accounting system shall maintain records pertaining to the tasks defined herein and any other costs and expenditures made under the contract. Specific accounting records and procedures are subject to Commission approval. The vendor's accounting procedures and practices shall conform to the Uniform System of Accounts, and the costs properly applicable to the contract shall be readily

ascertainable therefrom. The contractor must develop a cost allocation plan and document costs.

5.29 AUDIT REQUIREMENTS - The vendor shall maintain books, documents, and other evidence pertaining to the administrative costs and expenses of the contract to the extent necessary and in such detail as shall properly reflect all revenues, all net costs, direct and apportioned, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract. Accounting procedures, policies and records shall be completely open to the Commission and federal audit at any time during the contract period and for six years thereafter from the date of the last contract payment or until audited.

5.30 CONTRACT RECORDS RETENTION - The vendor agrees to the following terms for access to records relating to the contract:

A. The vendor shall preserve and make available all books, documents, papers, and records related to the contract for a period of six years from the date of expiration or termination of the contract.

B. Records involving matters in litigation shall be kept for one year following the termination of

litigation and associated appeals if the litigation has not terminated within the six years.

C. Authorized Commission representatives shall have access to and the right to examine and copy the items listed above during the contract period and during the periods described above. During the contract period, the access to these items shall be provided at the vendor's office in Kentucky, at all reasonable times. During periods subsequent to the contract, delivery of and access to the listed items shall be at no cost to the Commission.

5.31 CONFLICT OF INTEREST - No official or employee of the Commission and no other public official of the Commonwealth of Kentucky or the federal government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in this contract or proposed contract.

The vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The vendor further covenants that in the performance of the contract no person having any known interest shall be employed.

5.32 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 Commonwealth of Kentucky has or will benefit financially or materially from this procurement. Any contract arising from this 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 agent or employee.

5.33 LEGAL FEES - In the event that either party deems it necessary to take legal action to enforce any provision of the contract, and in the event the Commission prevails, the vendor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation as set by the court or hearing officer.

5.34 INDEPENDENT PRICE DETERMINATION - By submission of a proposal the vendor certifies the following:

- A. 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 prices with any other vendor or with any competitor.

B. Unless otherwise required by law, the prices that have been quoted in the proposal have not been knowingly disclosed by the vendor and will not knowingly be disclosed by the vendor prior to award directly or indirectly to any other vendor or to any competitor.

C. No attempt has been made or will be made by the vendor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

5.35 REQUESTING ADDITIONAL INFORMATION - The PSC reserves the right to request additional written data, information, oral discussion or presentation to support any written proposal or to clarify any aspect of any proposal.

5.36 ADDITIONAL INFORMATION AND COMMENTS - Proposals shall include any other information that a vendor believes to be pertinent but that is not specifically requested elsewhere.

6.0 PROPOSAL EVALUATION

6.1 PROCEDURE - The Commission and staff will conduct a fair, and impartial evaluation of proposals received in response to this RFP. The evaluation will be conducted based on the following areas:

A. Mandatory requirements of the RFP.

B. Technical requirements of the RFP.

- 1. Corporate capabilities and experience.**
- 2. Project schedule.**
- 3. Technical approach.**

C. Cost Proposal

- 1. Consistency with technical approach.**
- 2. Accuracy of calculations.**

TOTAL ANNUAL COSTS

Projected Call Duration: 7 Minutes

Average Calls Per Month

15,000

40,000

RECURRING COSTS

Represents the anticipated monthly costs for operating the center.

Total Recurring Costs

START-UP COSTS

Represents the non-recurring costs incurred prior to the opening of the center.

Total Start-Up Costs

TOTAL ANNUAL COSTS

Schedule of On-Going
Annual Costs*

Wages and Salaries

Benefits

Hiring/Training

Telecommunications Services

Office Facilities

Maintenance

Depreciation

Building Rent

Utilities

Advertisement

Promotion

Billing and Collection

Office Expenses

Transport Cost

Taxes

Other

Total Operating Expenses

Return on Investment

Total Cost of Service

*Provide back-up schedules supporting entries.

Schedule of
Start-Up Costs*

Investment in Equipment/Plant

- DPRS Equipment
- Installation
- Switching Equipment
- Testing
- Other Equipment

Other

Subtotal

Office Facilities

- DPRS Station Set-Up
- Design and Planning
- Procurement
- Renovation
- Other Costs
- Other

Subtotal

Employee Hiring/Training

- Hiring
- Training
- Other

Subtotal

Other

- Promotional Material

-

Subtotal

Total

***Provide back-up schedules supporting entries.**