COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST FOR PROPOSAL AND SELECTION OF A VENDOR FOR TELECOMMUNICATIONS RELAY SERVICE	)))	ADMINISTRATIVE CASE NO. 372

ORDER

Pursuant to KRS 278.548 the Commission has established a program for Telecommunications Relay Service ("TRS") in its past Orders.[1] The TRS allows callers using text telephones ("TTYs" or "TDDs") to communicate with other people who use standard voice telephones. Special operators relay telephone conversations verbatim simultaneously between TTY and non-TTY users. TRS is currently provided by AT&T Relay Services ("AT&T"). AT&T's contract with the Commission to provide TRS will expire on September 19, 1998 and the Commission finds the contract should again be available for bid by qualified vendors.

Accordingly, the Commission, on its own motion, establishes this case to issue a draft Request for Proposal ("RFP") for comment, a final RFP and ultimately to select a vendor for the provision of TRS in Kentucky. The Commission encourages members of the TRS Advisory Board to comment on the draft RFP.

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1 See Administrative Case No. 333, Establishment of Telecommunications Relay Service for Individuals with Hearing and Speech Disabilities in Kentucky; and Administrative Case No. 357, Telecommunications Relay Services and the Funding Process for the Telecommunications Relay Service and the Telecommunications Devices for the Deaf Programs.

IT IS THEREFORE ORDERED that:

1. The draft RFP, attached as Appendix 1, shall be available for comment until April 9, 1998.

2. All parties who were listed on the service list for Administrative Case No. 357 shall be served with this Order.

3. The Commission will issue a RFP on April 30, 1998.

4. All responses to the RFP will be due no later than June 15, 1998.

5. The Commission will schedule oral presentations on June 25 and 26, 1998.

6. The Commission will select a vendor by no later than July 31, 1998.

Done at Frankfort, Kentucky, this 13th day of March, 1998.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director

APPENDIX 1

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN ADMINISTRATIVE CASE NO. 372 DATED MARCH 13, 1998

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COMMONWEALTH OF KENTUCKY

PUBLIC SERVICE COMMISSION

REQUEST FOR PROPOSAL

FOR TELECOMMUNICATIONS RELAY SERVICE
PROPOSALS TO BE CONSIDERED MUST BE RECEIVED BY 4:30 P.M. EDT

KEY DATES

Proposals Due Date:	June 15, 1998
Selection of Vendor:	July 31, 1998
Operation Date:	September 20, 1998

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1.0 INTRODUCTION

1.1 PURPOSE - This Request For Proposal ("RFP") provides vendors with the information necessary to submit proposals to the Kentucky Public Service Commission ("PSC or Commission") for statewide Telecommunications Relay Service ("TRS"). TRS provides deaf and hard-of-hearing persons or persons with speech disabilities, communications access equivalent to hearing and voice-capable persons. TRS will enable a deaf, hard-of-hearing or speech-disabled individual to communicate with a hearing or speaking 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.

1.3 DESCRIPTION - TRS will provide the deaf, hard-of-hearing and speech-disabled access to the telecommunications network equal to that provided to hearing and voice-capable individuals. TRS shall be in operation at 12:01 a.m. on September 20, 1998, to insure a seamless transition from the current contract. TRS was initially established for Kentucky in September, 1991. American Telephone and Telegraph Company ("AT&T") has provided TRS for Kentucky since that time. Questions regarding AT&T should be forwarded to Maripat Brennan, AT&T, Room 2A28, 745 Route 202-206, Bridgewater, NJ 08807, Phone No. (908) 231-6196.

1.4 PROPOSALS - Bids 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. A vendor may propose additional contract language for the Commission's consideration. the Order awarding the contract to a vendor will accept, reject, or modify the vendor's proposed additional contract language.

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. EDT on June 15, 1998, 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 May 15, 1998. 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 May 27, 1998.

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 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 July 31, 1998.

2.0 SERVICE SPECIFICATIONS

2.1 GENERAL REQUIREMENTS - TRS 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 TRS shall be able to place and receive calls through TRS from their primary locations and locations other than their primary locations and shall be able to utilize alternate billing arrangements.

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

Whether the vendor leases or buys the equipment used in TRS, 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 receive expense vouchers for Advisory Committee member's mileage at state rates to attend quarterly meetings and a maximum of three (3) interpreters per meeting. Total annual expenses for Advisory Committee meetings shall not exceed $4,000.00.

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 deaf or hard-of-hearing customer with voice abilities to speak directly to a hearing customer, and the speech-disabled customer with hearing abilities to listen directly to the speaking customer.

2.2 SCOPE - Types of calls to be provided by TRS are incoming and outgoing intrastate calls including non-coin sent paid, third number, calling card and collect calls. TRS 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.

TRS shall not duplicate any interstate relay services. However, TRS shall be capable of accommodating interstate relay service funded through the federal jurisdiction.

TRS 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 TRS - TRS shall have the following capabilities:

A. Switching and transmission of the call.

B. Oral and print translations by either live or automated means between deaf or hard-of-hearing or speech-disabled 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 2400 baud via ASCII codes, and up to 9600 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 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 TRS to include but not be limited to the following:

A. Location of relay center.

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 TRS 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 TRS through connection with a regional relay center and the network configuration necessary to provide TRS through such regional relay center.

2.6 RATES AND CHARGES - Calls placed through the TRS shall be billed to the users of the TRS 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. This shall include alternative local calling plans such as Area Calling Service ("ACS") and Extended Area Service ("EAS").

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. TRS may be provided through one statewide relay center located within the Commonwealth of Kentucky, an out-of-state location, or other relay center arrangements that will ensure the minimum service quality specified herein and the maximum cost benefit.

D. TRS shall be designed to handle a minimum of 35,000 calls per month with capabilities to expand facilities, as traffic requires. The calls have averaged approximately five minutes each.

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.

F. Relay transmission circuits shall meet or exceed interexchange performance standards for circuit noise and loss.

G. TRS 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. TRS vendor shall provide alternate power and equipment in order to ensure service reliability and integrity.

J. Vendor shall be capable of relaying calls to regionally restricted toll-free numbers.

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 persons with speech or hearing disabilities. 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 45 words per minute.

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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 may also include any proposal to provide multilingual 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, unless the conversation is the subject of a complaint or commendation of relay service. Upon resolution of the complaint or within ten days of the commendation, the recorded or printed conversation shall be destroyed.

E. 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. Percentage of calls originated by TDD/TTY users versus hearing and voice customers.

2. Average speed of answer.

3. Compliance with service standards specified herein and in Commission regulations.

B. The vendor shall also be responsible for maintaining accounting and financial records and call volumes. These records and reports shall be subject to Commission audit.

2.10 SERVICE ENHANCEMENTS - Carriers submitting proposals to provide TRS may propose enhancements to the basic service described above. These enhancements may include video relay or Turbo Code capability. Throughout the contract the vendor may propose trials of new service offerings for Commission review.

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 TRS.

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.

4.0 FUNDING MECHANISM

4.1 FUNDING MECHANISM - Until otherwise ordered by the Commission, 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 shall from time to time review the surcharge revenues. 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.

4.2 COMPENSATION TO THE VENDOR - The vendor shall be compensated for providing TRS at the rates, terms, and conditions established by contract with the PSC.

4.3 FIDUCIARY RESPONSIBILITY - Each local exchange company shall deposit monthly all monies collected from the surcharge for the provision of TRS into a single, interest-bearing, cash-management escrow account 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 PNC Bank of Kentucky, Inc., Louisville, KY 40296, 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 TRS. 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 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 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 TRS.

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 CONTRACT TERM

A. The contract established from this RFP shall begin on September 20, 1998 and shall terminate on September 19, 2000.

B. After the first year of service, the Commission may review the service for renewal purposes.

C. The PSC shall have an option to renew the contract for a period not to exceed 120 days. This option is available to the PSC for the purpose of renegotiation of the contract or selection or transition to a new vendor.

5.7 TERMINATION OF CONTRACT - The contract resulting from this RFP shall be subject to the following termination provisions.

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 except where such default is the result of a force majeure event as defined herein and provided that the Commission gives the vendor a reasonable period of time to cure the 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 provided, however, that the Commission gives vendor written notice of termination effective 120 days after the giving of such notice and the notice

is accompanied by payment of all amounts due under the Contract. Availability of funds will be determined at the sole discretion of the Commission provided, however, that (i) funds are not appropriated and are not otherwise available for the acquisition of services which are the same as or similar to those provided under this Agreement; (ii) such non-appropriation or unavailability of funds has not resulted from any act or failure to act of the Commission; and (iii) the Commission has exhausted all funds legally available for payment under the Agreement and no other legal procedure exists for making payment under the contract.

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 provided, however, that in no event shall such termination be on less than 120 days written notice. 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. 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.

5.8 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. Subject to vendor's contractual obligation relating to the terminated orders, 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 to the vendor 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.

5.9 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.

5.10 CONTRACTOR PERSONNEL - Personnel commitments identified in the vendor's proposal shall be considered mandatory to the work to be performed under this RFP. Replacement of such personnel 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.

5.11 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. In addition, vendor is permitted to make any change in scope or otherwise as may be required by law, including rules or regulations issued by the Federal Communications Commission in implementing the Americans with Disabilities Act of 1990. 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.

5.12 FORCE MAJEURE - The vendor shall not be liable for any loss, cost, damage, expense or delay caused by or due to events beyond its reasonable control and without its fault or negligence. 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 reasonable control and without fault or negligence of the vendor. The vendor will take all possible steps to recover from such occurrences.

5.13 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.

5.14 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 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 meet the exceptions of the Kentucky Open Records Act. Such explanation should be presented in a sworn affidavit attached to the RFP.

5.15 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 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.

5.16 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, whether services are provided by the prime vendor or by a subcontractor specifically identified in the proposal. The prime vendor and any proposed subcontractors shall be designated in the proposal.

5.17 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.

5.18 ASSIGNMENT - Except with respect to an affiliate (as defined in above) 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.

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

A. Any third party 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 third party 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 third party 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.

5.20 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 of 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.

5.21 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.

5.22 CONFORMANCE WITH COMMONWEALTH AND FEDERAL LAWS / REGULATIONS - This contract is subject to the laws of the Commonwealth of Kentucky and, where applicable, federal law.

5.23 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.

5.24 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, and 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.

5.25 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.

5.26 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 even any carrier of such insurance exercises cancellation, notice will be made immediately to the Commission of such cancellation. Moreover, the vendor is permitted to be self-insured.

5.27 AUDIT REQUIREMENTS - The vendor shall maintain books, documents, and other evidence pertaining to Kentucky call volumes associated the provision of service. Accounting procedures, policies and records relating to the contract shall be completely open to the Commission and federal audit at any time during the contract period and for two years thereafter from the date of the last contract payment or until audited.

5.28 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 two 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. In the alternative, TRS records may be kept at a location outside of Kentucky if the Commission is advised of the location and if the records will be provided to the Commission within five (5) business days and at no cost to the Commission. During periods subsequent to the contract, delivery of and access to the listed items shall be at no cost to the Commission.

5.29 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 of 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.

5.30 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.

5.31 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.

5.32 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.

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

5.34 PUBLICITY - Except for Commission Orders, correspondence and press releases issued in the ordinary course of business, any publicity, advertising or other like materials mentioning vendor or vendor's logos in connection with services provided under this Agreement shall be subject to the prior approval of vendor, which approval shall not be unreasonably withheld.

5.35 FAILURE TO PERFORM - Vendor shall have no liability under this Agreement for any loss, cost, claim, injury, or damages caused solely by the Commission's act or omission.

5.36 TITLE TO FACILITIES AND EQUIPMENT - Title to all facilities and equipment employed by vendor in the provision of TRS hereunder shall remain vested in the vendor.

5.37 NONDISCLOSURE - In connection with the implementation of TRS, either party may disclose to the other specifications, drawings, software, data, prototype, or other business or technical information which is considered proprietary and confidential. The information shall be used by the receiving party solely for the purpose of providing TRS and shall be reproduced only to the extent necessary for that purpose. The receiving party agrees to restrict disclosure of the information to its employees with a need to know, and to advise those employees of the obligations of confidentiality arising hereunder. Information will not be disclosed to any third party without the prior written approval of the other party except as may be directed by a court of competent jurisdiction or the Commission. Neither party shall be liable for the inadvertent or accidental disclosure of information, if such disclosure occurs despite the exercise of a reasonable degree of care. These restrictions on the use or disclosure of information by a receiving party shall not apply to any information which (a) is received without restriction from another source having the right to furnish such information; (b) is or has become publicly available; (c) is independently developed by the receiving party or any affiliated company; or (d) is not reasonably known by the receiving party to be proprietary.

6.0 PRICE PROPOSAL

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 Per Session Minute

A Session Minute is defined as the time period a Communications Assistant ("CA"), relay operator or relay agent connects to an incoming relay call until the moment the CA disconnects the last party. This definition includes incomplete calls (busy, no answer, or wrong numbers) that do not reach the intended called party, and includes set-up and wrap-up time.