

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|-------------------------------------|---|----------------|
| PETITION OF THE KENTUCKY COMMISSION |) | |
| ON THE DEAF AND HARD OF HEARING TO |) | CASE NO. |
| EXPAND THE FUNDING BASE FOR THE |) | 2007-00464 |
| KENTUCKY TELECOMMUNICATIONS ACCESS |) | |
| PROGRAM |) | |
| | | |
| REQUEST FOR PROPOSAL AND SELECTION |) | ADMINISTRATIVE |
| OF A VENDOR FOR TELECOMMUNICATIONS |) | CASE NO. 372 |
| RELAY SERVICE |) | |

O R D E R

This matter¹ is now before the Commission on the Kentucky Commission on the Deaf and Hard of Hearing's ("KCDHH") petition requesting a review of the current funding mechanisms for the Telecommunications Access Program ("TAP") fee.² KCDHH requests that the Commission expand collection of the TAP fee to include wireless telecommunications service providers in addition to landline service providers,

¹ The Commission has incorporated Administrative Case No. 372, Request for Proposal and Selection of a Vendor for Telecommunications Relay Service, into this matter for the purpose of amending the current Telecommunications Relay Service ("TRS") fee. The Commission has previously amended the TRS fee pursuant to Orders issued in Administrative Case No. 372. See Administrative Case No. 372, Orders dated October 27, 1998; June 25, 2002; April 16, 2003; May 31, 2006; and June 2, 2008.

² Original Petition filed October 26, 2007. Amended Petition filed March 31, 2008. KCDHH is an agency within the Education and Workforce Development Cabinet of Kentucky's Executive Branch. TAP is a fee established for the purpose of collecting funds for KCDHH to enable the agency to distribute specialized telecommunications equipment to deaf, hard-of-hearing, and speech-impaired citizens so that they may use the telecommunications relay service. It was established, by statute, in 1995.

as currently required. KCDHH requested that the Commission review only the current funding mechanism for TAP.³ However, as noted in the April 25, 2008 Order in this matter, the Commission held that, in the context of this particular case, TRS and TAP should be reviewed jointly and modified jointly if the Commission determines, by final Order in this proceeding, that the base of retail customers from whom those fees are collected should include those with wireless access lines.⁴ Having reviewed the pleadings, comments, responses, and having been otherwise sufficiently advised, the Commission finds by this Order that the contribution base for the TRS and TAP fees shall be expanded to include the retail customers of wireless carriers. The Commission also finds that the TRS and TAP fees shall be modified jointly in reflection of the expansion of the contribution base. The Commission also finds by this Order that the TRS fee amount shall decrease to \$0.02 per access line per month.

PROCEDURE AND STATUTORY AUTHORITY

TRS is the system by which a deaf, hearing-impaired, or speech-impaired caller can use a trained operator as an intermediary in relaying or receiving calls with other telephone customers (both impaired and non-impaired). The Commission's current

³ In its original petition, as filed on October 29, 2007, KCDHH requested that the Commission include "wireless telecommunications providers in the TRS/TAP fee" Original Petition at 4.

⁴ See Order dated April 25, 2008 at page 3. In that Order, the Commission also issued a procedural schedule to allow for the issuance of data requests and scheduling an informal conference once the data request schedule was completed. By Order dated May 25, 2008, the Commission held that this matter was ready for a final decision as no data requests had been issued and no informal conference was needed to address unresolved issues between the parties. By the May 25, 2008 Order, the Commission also allowed the parties to submit final comments on this matter; however, no comments were received.

TRS provider is Hamilton Telecommunications, Inc. ("Hamilton"). Hamilton is not a Kentucky telephone utility but, rather, moderates the ability of hearing-impaired/speech-impaired customers to use the telephone service (both landline and wireless) which those customers pay to access each month. The Commission has the authority to modify the funding mechanisms of TRS and TAP, as set forth within KRS 278.548, KRS 278.549, KRS 163.525, and KRS 278.5499. KRS 163.525(c) permits KCDHH to have an agreement with the Commission for the coordination and oversight of funding and operations to meet the objectives of TAP. TRS and TAP are programs specifically created and enabled by statute, and the Commission has affirmative duties to ensure that mechanisms exist by which each program has the ability to be funded. KRS 278.548 requires the Commission to establish and maintain the TRS program, while KRS 278.549 gives the Commission the authority to determine the appropriate funding mechanism for TRS. TRS is currently funded by a fee of \$0.07.⁵ The Commission's funding mechanism for TRS is currently applied only to landline carriers who collect the monthly fees from their local exchange customers and, in turn, remit the funds to the Commission.

KRS 278.5499 gives the Commission the authority to determine the appropriate funding mechanism for TAP. The funding mechanism shall be designed to collect reasonably necessary funds, not to exceed one cent (\$0.01) per access line per month, from subscribers of telecommunications utilities. Due to a recent legislative change, TAP is currently funded by a fee of \$0.02 per access line per month through June 2010,

⁵ The current fee was set by the Commission, by Order dated May 31, 2006, in Administrative Case No. 372.

when the fee will revert back to \$0.01.⁶ The Commission's funding mechanism for TAP is currently applied only to landline carriers who collect the monthly fees from their local exchange customers and, in turn, the funds are provided to KCDHH.

DISCUSSION

In its petition, KCDHH stated that, by 2030, the segment of Kentucky's population age 80 and over is expected to reach 220,000⁷ and, consequently, the number of persons legitimately needing additional telecommunications assistance due to complete or partial hearing loss or changes in speech abilities is also expected to increase. In addition to the needs of senior citizens, KCDHH must continue to provide TAP equipment to the non-senior citizen portion of Kentucky's deaf, hard-of-hearing, and speech-impaired community. There are approximately 646,683 deaf, hard-of-hearing, or speech-impaired residents in Kentucky.⁸ Within its amended petition, KCDHH stated that there were approximately 2.4 million wireless access lines in Kentucky as of June 30, 2007⁹ and that the number of residential access lines in Kentucky had decreased by

⁶ See Administrative Case No. 372, Order dated June 2, 2008. During the 2008 Legislative Session, in House Bill 406, the General Assembly reauthorized the collection of the TAP fee above the statutory amount of \$0.01. House Bill 406 included the following language for TAP: "Notwithstanding KRS 278.5499, the funding mechanism for the TAP shall allocate not more than two cents per access line per month."

⁷ The U.S. Census Bureau projects that Kentucky will have approximately 903,000 persons over age 65 in 2030 (nearly 20 percent of the state's population).

⁸ Wireless subscribers benefit from the TRS program in the same way as wireline customers, and many specialized wireless devices with text/data features are becoming available and are or will be used by the deaf and hearing/speech-impaired community.

⁹ See ¶ 8 of Amended Petition. KCDHH states that it obtained this information from the Kentucky Office of the 9-1-1 Coordinator/Commercial Mobile Radio Service Board, an agency in the Kentucky Office of Homeland Security.

54 percent as of 2006.¹⁰ As the TRS and TAP fees are currently based only on landline access, the funds generated from landlines to support these programs decreases as that area of telephone use decreases.¹¹ Within the amended petition, KCDHH outlines several factors impacting its ability to reasonably meet the telecommunications needs of Kentucky's deaf, hard-of-hearing, and speech-impaired community, including the lack of money to purchase wireless relay devices in accordance with the increasing requests for those devices by its constituents.¹²

The wireless subscriber customer base has risen significantly since the implementation of the TRS and TAP programs; however, this particular customer base has not been required to support these programs. In the years that TRS (1991) and TAP (1995) were implemented, wireless use was relatively low, both nationwide and in Kentucky, as compared to traditional residential landline use; however, this is no longer the trend. KCDHH argues that, if the Commission continues to require only incumbent local exchange carrier ("ILEC") and competitive local exchange carrier ("CLEC") customers to contribute to TRS and TAP, despite the fact that those customer bases are on the decline, KCDHH will not have the money available to adequately support the telephone relay equipment needs of its constituents.

¹⁰ See ¶ 7 of Petition.

¹¹ See ¶ 11 of Petition.

¹² See generally ¶¶ 11 and 12 of the Amended Petition. KCDHH states that, from June 2002 to June 2006, it increased the amount of distributed TAP equipment by 34 percent. KCDHH states that, by June 2008, it expects to have a 23-percent increase in the number of applications it will receive from Kentucky residents requesting TAP equipment.

The Commission has given fair consideration to KCDHH's petition and the arguments contained therein. KCDHH's arguments as to the projected increase in the number of citizens with speech and hearing needs who will still require some form of telephone use and access is compelling. But, beyond the consideration of that particular community need, the Commission also recognizes that, as only landline local exchange carriers are obligated to bill, collect and remit TRS and TAP, while wireless companies are excluded from this duty, a regulatory imbalance exists between these sets of carriers. Additionally, the Commission finds that the expansion of the customer base is reasonable and equitable, as local exchange customers have borne the responsibility of contributing fees to both programs since their respective inceptions. The Commission also finds that compelling wireless carriers to collect the fees in the same manner as local exchange carriers ("LECs") makes the requirement competitively neutral and non-discriminatory. As related to the issue of supporting the telecommunications needs of Kentucky's speech-impaired and hearing-impaired citizens, the Commission finds that wireless carriers and LECs, on a going-forward basis, are being placed on the same regulatory and administrative "footing" as they are now, each being required to regularly bill, collect, and remit TRS and TAP fees. Additionally, by expanding the base of telephone customers supporting the programs, there will be an equitable sharing of costs spread among the retail customer base of all competitive carriers, when previously, only retail landline customers were obligated to provide support each month.

Presently, all LECs are required to denote each fee within their tariffs filed with the Commission. Pursuant to this Order, they will still be obligated to do so. However,

this particular requirement shall not apply to wireless carriers, as the Commission does not have the statutory authority to compel those carriers to file tariffs.¹³ As provided under KRS 278.5499, the fee amount for TAP is set by statute and can only be changed by legislation. However, the enabling statute for the TRS fee, KRS 278.549, does not limit the design of the funding mechanism to collect money for support of the program. TAP is currently funded by a fee of \$0.02 per access line per month.¹⁴ TRS is currently funded by a fee of \$0.07. As stated in footnote 1 of this Order, the Commission, upon its own motion, has previously amended the TRS fee. In consideration of the expected growth of the TRS fund due to the expansion of the number of customers contributing each month from the wireless section, reasonably measured against the costs needed to adequately fund the provision of the statewide relay service, the Commission hereby finds that the TRS fee shall be reduced to \$0.02 per access line per month. As TAP is currently set at \$0.02 by decision of the Legislature, the Commission finds that the total collected for TRS and TAP shall be \$0.04 per access line per month from each wireless, ILEC, and CLEC retail customer.

¹³ See 47 U.S.C. § 332(c)(3). Also, 47 C.F.R § 20.13 provides that states may petition the FCC for authority to regulate rates for wireless carriers; however, pursuant to KRS 278.54611(1)(b), the Commission is prohibited from imposing rate requirements for the provision of wireless service. See also KRS 278.54611.

¹⁴ See Administrative Case No. 372, Order dated June 2, 2008. During the 2008 Legislative Session, in House Bill 406, the General Assembly reauthorized the collection of the TAP fee above the statutory amount of \$0.01. House Bill 406 included the following language for TAP: "Notwithstanding KRS 278.5499, the funding mechanism for the TAP shall allocate not more than two cents per access line per month."

EFFECTIVE DATE AND NOTICE TO CUSTOMERS

The Commission finds that the effective collection date for TRS and TAP, as outlined in this Order, shall be no later than June 1, 2009. The Commission finds that notice should be given to retail wireless customers prior to the effective collection date of the fees. The purpose of this notice shall be to inform wireless retail monthly customers of the expansion of TRS and TAP to the wireless industry and to inform those customers of the total amount of \$0.04 for TRS/TAP to be collected as of June 1, 2009. Wireless carriers shall notify customers of the TRS and TAP fees through the generation of bill inserts or bill messages for a period of two billing cycles prior to the effective collection date of June 1, 2009. The Commission also finds that ILEC and CLEC retail customers shall be notified that the TRS and TAP fees are reduced to \$0.04, effective June 1, 2009. As the combined TRS/TAP fee is currently set at \$0.09 per access line per month, ILECs and CLECs shall notify their monthly retail customers of the reduction of the TRS and TAP fees through the generation of bill inserts or bill messages for a period of two billing cycles prior to June 1, 2009, the effective date upon which the reduction of the fees shall take place.

The Commission hereby finds that wireless carriers, in the same manner as ILECs and CLECs, shall be required to outline the combined fees on each retail customer's bill as a separate line item denoted as "Kentucky TRS/TAP Fee" or something similar in title. In the same manner as ILECs and CLECs, wireless carriers shall be required to remit their fee collections to the Commission on a monthly or

quarterly basis.¹⁵ Additionally, wireless carriers, like all LECs, shall be required to submit monthly reports to the Commission detailing the number of access lines in service and the exact dollar amount of the TRS and TAP fees remitted to the fund. Specific instructions on collecting and remitting of the fees are outlined in Appendix A of this Order.

The Commission, being sufficiently advised, HEREBY ORDERS that:

1. No later than June 1, 2009, pursuant to the instructions provided herein, all registered wireless carriers shall begin collecting the fees from their retail customers to fund TRS and TAP and shall remit the fees in accordance with the report form outlined in the Appendix attached hereto.

2. No later than June 1, 2009, pursuant to the instructions provided herein, all ILECs and CLECs shall submit tariffs to the Commission reflecting the change to the TRS fee. All ILECs and CLECs shall continue collecting the TRS and TAP fees from their retail customers and remitting the fees in accordance with the report form outlined in the Appendix.

3. For two billing cycles prior to the June 1, 2009 effective collection date, all wireless carriers shall give notice to their retail customers of the upcoming collection of TRS and TAP fees. Such notice shall be made through the generation of bill inserts or bill messages.

¹⁵ The time line for remittance varies based on the number of customers served by each carrier. The Kentucky State Treasurer maintains a separate, interest-bearing cash management trust fund account for the deposit of TRS and TAP fees. See Administrative Case No. 333, Establishment of Dual Party Relay Telecommunications Services for Hearing-Impaired or Speech-Impaired Persons in Kentucky, Order dated April 15, 1991.

4. For two billing cycles prior to the June 1, 2009 effective collection date, all ILECs and CLECs shall give notice to their retail customers of the upcoming reduction of the amount of TRS and TAP fees to be collected. Such notice shall be made through the generation of bill inserts or bill messages.

5. As of June 1, 2009, the TRS fee shall be \$0.02. All wireless carriers, ILECs, and CLECs shall collect a fee of \$0.02 per access line per month for TRS.

6. ILECs and CLECs shall continue collecting \$0.02 per access line per month for all bills rendered after July 1, 2008 and continuing until June 30, 2010, consistent with the Commission's June 2, 2008 Order in Administrative Case No. 372. After that date, the fee for TAP shall revert to \$0.01 per access line per month, unless otherwise ordered by the Commission.

7. Consistent with the Commission's June 2, 2008 Order in Administrative Case No. 372, all wireless carriers shall collect a fee of \$0.02 per access line per month for all bills rendered beginning June 1, 2009 and continuing until June 30, 2010. After that date, the fee for TAP shall revert to \$0.01 per access line per month, unless otherwise ordered by the Commission.

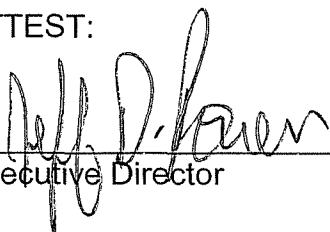
8. In addition to the parties to this action, the Executive Director shall serve this Order upon the following persons:

- a. All wireless carriers;
- b. All ILECs;
- c. All CLECs; and
- d. Kentucky Telephone Association.

Done at Frankfort, Kentucky, this 16th day of February, 2009.

By the Commission

ATTEST:



Executive Director

Case No. 2007-00464
Administrative Case No. 372

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2007-00464 DATED FEBRUARY 16, 2009



2009

COMMONWEALTH OF KENTUCKY
TELECOMMUNICATIONS RELAY SERVICE FUND
TELECOMMUNICATIONS ACCESS PROGRAM FUND

Date _____

Reporting Month _____

| Carrier Information | |
|---------------------|-------|
| Company Name | _____ |
| Company Address | _____ |
| Telephone / Fax | _____ |
| Vendor Number | _____ |

| | | | |
|-------------------------------------|----------------------------|----------------------------|--------------------------------|
| Classification Please Circle One | <input type="radio"/> ILEC | <input type="radio"/> CLEC | <input type="radio"/> Wireless |
|-------------------------------------|----------------------------|----------------------------|--------------------------------|

| Monthly Access Line Data | |
|---|--------|
| 1. Total Access Lines in Service..... | _____ |
| 2. TRS Surcharge Per Access Line..... | \$0.02 |
| 3. Amount of TRS Surcharge Remitted to Fund | _____ |
| 4. TAP Surcharge Per Access Line..... | \$0.02 |
| 5. Amount of TAP Surcharge Remitted to Fund..... | _____ |

| Signature Block | |
|--|--|
| I hereby attest that the information reported herein is true and accurate to the best of my knowledge. | |
| Company Official _____ (Printed) | Title _____ Company Official _____ (Signed) |

Make check payable to: "Kentucky State Treasurer" and send with this report to:

JPMorgan Chase GP# 204519 / 204690
ATTN: Joseph A. Morales AVP.
Escrow Admin. 15th Floor
4 New York Plaza
New York, NY 10004



Send a copy of this report to:

Kentucky Public Service Commission
ATTN: Jim Stevens
211 Sower Blvd.
P.O. Box 615
Frankfort, KY 40602

Instructions for Completing Kentucky Telecommunication Relay Service and Telecommunication Access Program Fund Report

The surcharge rate for the Kentucky Telecommunications Relay Service ("TRS") Fund is two cents (\$0.02) per access line, collected on a monthly basis. The surcharge rate for the Kentucky Telecommunications Access Program ("TAP") is two cents (\$0.02) per access line, collected on a monthly basis. The combined surcharge is four cents (\$0.04) per access line, collected on a monthly basis. Following are instructions for completing the form and definitions of the terms on the form.

All Incumbent Local Exchange Carriers ("ILECs"), Competitive Local Exchange Carriers ("CLECs"), and Wireless Providers are required to collect the surcharges from their customers on a monthly basis.

The surcharges should be collected for all local exchange access lines. Local exchange access lines are defined for this purpose as facilities which provide access to and from the telecommunications network for toll service and for local calling with the exception of Coin, WATS, remote call forwarding, radio common carriers, interlata foreign exchange lines, private line services, mobile, other common carriers, and company official accounts.

The surcharges should be collected for all wireless subscribers including analog and digital cellular and PCS.

Each carrier should collect the surcharge from the customers it serves on a retail basis; wholesale accounts should not be charged the surcharge. The combined surcharge should appear on each customer's bill as "Kentucky TRS/TAP Surcharge" or a similar facsimile.

Carriers may contribute to the fund on a monthly or quarterly basis depending on the number of subscribers served. Carriers with less than 1,000 access lines may contribute on a quarterly basis. Carriers with greater than 1,000 access lines should continue to contribute on a monthly basis. Carriers contributing on a quarterly basis will still be required to submit separate reports for each month but remit them to the fund on a quarterly basis. Reports are due within 15 days following the reporting month.

Form Instructions

Please complete the carrier information at the top of the form; include company name, address, telephone/fax number, vendor number, date report filed and month for reporting data. Please circle your company designation.

Block 3, Monthly Access Line Data

Line 1, this is the total number of access lines in service for the month.

Line 2, the amount of the surcharge is provided.

Line 3, this should be equal to line 1 multiplied by line 2.

Line 4, the amount of the surcharge is provided

Line 5, this should be equal to line 1 multiplied by line 4.

Signature Block

Please date and print the name and title of the company official and sign the form. A company official may be an officer, controller or other responsible person designated to be held accountable for the information submitted on the form.

Please note the two addresses at the bottom of the form and mail within 15 days after the reporting month. Utilities failing to file reports will be subject to penalties in accordance with KRS 278.990.

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