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March 13, 2009

RECEIVED

MAR 16 2009

PUBLIC SERVICE
COMMISSION

Mr. Jeff R. DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

**RE: Case No. 2007-00464--Petition of the Kentucky Commission on the Deaf and
Hard of Hearing to Expand the Funding Base for the Kentucky
Telecommunications Access Program (TAP)**

Dear Mr. DeRouen:

The referenced motion for clarification, filed March 11, included an exhibit that was accidentally omitted from the filing. Enclosed please find eleven copies of Exhibit 1 to the joint motion. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copy and return it to me in the enclosed self-addressed stamped envelope.

Should you have any questions please contact me at your convenience.

Yours very truly,

Douglas F. Brent

DFB:jms

cc: Mary M. Keyer
Parties of Record

433070.130656/568419.1

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Rules for)
 the Telecommunications Relay Service)
 Assessment Pursuant to Section 4905.84,) Case No. 08-815-TP-ORD
 Revised Code, as Enacted by House Bill)
 562.)

FINDING AND ORDER

The Commission finds:

- (1) On June 24, 2008, the governor of the state of Ohio signed into law House Bill 562, thereby enacting Section 4905.84, Revised Code. This section provides that the Commission shall, not earlier than January 1, 2009, impose on and collect from each service provider that is required under federal law to provide its customers access to telecommunications relay service (TRS) an annual assessment to pay for the costs incurred by the TRS provider for providing TRS in Ohio. Furthermore, Division (F) of Section 4905.84, Revised Code, provides that the Commission shall adopt rules under Section 111.15, Revised Code, to establish the assessment amounts and procedures.
- (2) On February 12, 2008, the governor of the state of Ohio issued Executive Order 2008-04S, entitled "Implementing Common Sense Business Regulation," (executive order). This executive order sets forth factors to be considered in the promulgation of rules.
- (3) By entry issued July 9, 2008, the Commission issued staff-proposed rules for comment. Initial comments were filed by: the AT&T Entities¹; tw telecom of ohio llc (TWTC f/k/a Time Warner Telecom of Ohio, LLC); the Ohio Telecom Association (OTA); and Cincinnati Bell Telephone Company, LLC (CBT). The Ohio Cable Association, by letter filed July 28, 2008, reserved the right to file reply comments. Reply comments were filed by OTA on August 7, 2008.

¹ The AT&T Entities are: The Ohio Bell Telephone Company d/b/a AT&T Ohio; AT&T Communications of Ohio, Inc.; TCG Ohio, Inc.; SBC Long Distance, LLC d/b/a AT&T Long Distance; New Cingular Wireless PCS, LLC; Cincinnati SMSA, LP; Dobson Cellular Systems, LLC; and American Cellular, LLC.

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- (4) Throughout this order, references or citations to comments will be designated as "initial" for initial comments and "reply" for reply comments. Rules proposed by staff and issued for comment on July 9, 2008, shall be referred to as "staff-proposed rules." Any recommended change that is not discussed below or incorporated into the amended rules attached to this order should be considered denied.

Rule 4901:1-6-24 TRS assessment procedures

- (5) Staff-proposed paragraph (B) sets forth the service providers that will be assessed to pay for the costs incurred by the TRS provider for providing the service in Ohio. In addition, as proposed by staff, this paragraph stated that "[a]dvanced services and internet protocol-enabled services have the meanings ascribed to them by federal law, including federal regulation."
- (a) As proposed by staff, this paragraph states that "providers of advanced services or internet protocol-enabled services that are competitive with or functionally equivalent to basic local exchange service as defined in section 4927.01 of the Revised Code" will be assessed. The AT&T Entities comment that, by referencing Section 4927.01, Revised Code, the term "basic local exchange service" is limited to the primary line serving the customer's premises. The AT&T Entities believe that, in order to provide a broad funding base of all access lines, or their equivalent, the funding source should not be limited to the primary access lines. Rather, the AT&T Entities advocate that the paragraph should reference the "retail customer access lines" (AT&T initial at 2-3).

The Commission agrees that the source of funding is not limited to the primary access lines. The funding base shall include voice-grade end user access lines, or their equivalent. Therefore, the Commission finds that this paragraph should be amended in order to reflect the intent. Accordingly, the reference to "basic local

exchange service as defined in section 4927.01 of the Revised Code" should be replaced with the phrase "voice-grade end user access lines."

In the July 9, 2008, entry, the Commission specifically requested comments from interested parties regarding the definition of advanced services and internet protocol-enabled services. OTA comments that the definition of these terms is not found in the Code of Federal Regulations (C.F.R.) (OTA initial at 5). However, OTA recommends, and the AT&T Entities agree, that the Commission should define "advanced services and internet protocol-enabled services" using the definition employed at the federal level to define interconnected voice over Internet protocol (VoIP), found in 47 C.F.R. 64.601(a)(9). According to OTA and the AT&T Entities, the use of this definition will make Ohio's treatment of TRS assessments consistent with the definition used at the federal level (OTA initial at 5; AT&T initial at 8). CBT believes that the Commission need not define providers of advanced services and internet protocol-enabled services or any other service providers required to be assessed under the Ohio statute. Rather, since the Ohio statute requires the Commission to mirror the federal law, CBT advocates that the Commission reference the federal rules regarding the provision of TRS service set forth in 47 C.F.R. 64.603 and the definition of providers set forth in 47 C.F.R. 64.601, and forgo attempting to develop a definition for Ohio TRS purposes (CBT initial at 2). TWTC agrees with the definition as proposed by the staff. TWTC explains that the federal law and regulations pertaining to advanced services and internet protocol-enabled services are unsettled and may change from time-to-time. Therefore, TWTC believes that, if there are changes to the federal regulations, the blanket reference to the federal law and regulations proposed by staff would not require a change to paragraph (B) of this rule. TWTC offers that there

is no countervailing benefit to including a citation to the C.F.R. in paragraph (B) of this rule (TWTC initial at 2).

Upon consideration of the comments submitted, the Commission agrees with TWTC that there is no benefit to including a citation to the C.F.R. in the rule, especially since, as pointed out by OTA, these terms are not found in the C.F.R. Therefore, we conclude that the definition of advanced services and internet protocol-enabled services proposed by staff which references "federal law, including federal regulation," without setting forth a specific citation would best serve the purpose of the statute in this regard. Accordingly, staff's proposal should be adopted.

- (6) Staff-proposed paragraph (C) states that each provider shall be assessed according to a schedule established by the Commission.
 - (a) OTA recommends, and the AT&T Entities agree, that the rule should include a provision that requires that an entry will be issued annually by the Commission which will delineate the Commission's calculations and validate that the costs comport with the TRS provider's contract (OTA initial at 4; AT&T initial at 6-7). In addition, the AT&T Entities propose that the entry identify each provider's pro rata share of the annual assessment (AT&T initial at 7). OTA submits that the entry should provide interested parties an opportunity to object. According to OTA, this process is consistent with the practice of the Federal Communications Commission (FCC) and provides an essential check and opportunity for review that benefits all interested parties (OTA initial at 4).

The Commission envisions that the TRS assessment process will be similar to the process we have employed for decades in order to collect the annual assessment for our operating budget

from regulated companies. With regard to the annual operating budget, the Commission issues an entry annually directing regulated utilities to submit annual reports to the Commission, and the information in those reports is used to calculate the assessment for the operating budget. Likewise, with regard to the TRS assessment, the Commission intends to issue an entry on an annual basis setting forth the estimated costs to provide TRS for the upcoming year, including any reconciliation of the TRS assessment from the previous year, and directing the providers subject to the TRS assessment to submit their payments to the Commission in accordance with the schedule established in the entry.

- (b) OTA and the AT&T Entities point out that the proposed rule provides no specificity as to the timeframe for implementing the assessment. Therefore, OTA and the AT&T Entities recommend that the Commission set forth a timetable in the rule for the reporting of data, the calculation of the assessment, the billing of the assessment, and the payment of the bills (OTA initial at 3; AT&T initial at 4-5). OTA submits that the permanent assessment and payment schedule should be based on Ohio's fiscal year, July 1 through June 30. OTA proposes an interim schedule to account for the assessment from January 1, 2009, through June 30, 2009, after which the permanent schedule would be followed (OTA initial at 3-4). CBT agrees that the assessment period should coincide with the federal TRS funding year, which happens to correspond with Ohio's fiscal year, July 1 through June 30 (CBT initial at 2). In addition, CBT agrees with OTA that an interim assessment process should be established to fund the first six months of 2009, and CBT set forth a proposed schedule for this interim assessment. CBT recommends that, in September 2008, each commercial mobile radio service (CMRS) provider should either provide the Commission with a copy of its

September 2008 FCC form 477 (which reflects data through June 30, 2008) or file a certified statement indicating the number of subscribers it reported in Ohio on the form, and each interconnected VoIP provider should submit a certified statement indicating the number of its end-user and resale subscribers in Ohio as of June 30, 2008. Since each incumbent local exchange carrier (ILEC) and competitive local exchange carrier (CLEC) is already required to submit a copy of its FCC form 477, CBT states that no further provisions are needed to obtain access line data from ILECs and CLECs. CBT then recommends that, no later than November 1, 2008, the Commission should estimate the costs of the TRS provider for the interim period, January 1, 2009, through June 30, 2009, and issue an entry explaining the methodology. Subsequently, CBT submits that, by November 20, 2008, the Commission should notify each provider of its assessment for the interim period (CBT initial at 6-7).

The Commission agrees with the commenters that the assessment period should correspond with Ohio's fiscal year, July 1 through June 30. We also agree that an interim assessment process for January 1, 2009, through June 30, 2009, should be established. However, as we stated previously, we will be processing the TRS assessment like we have been processing the assessment for the Commission's operating budget. To that end, we will be issuing an entry in the near future setting forth the estimated costs for the Ohio TRS for the first six months of 2009 and establishing a schedule for the payment of that assessment. After this interim period, we intend on issuing an entry on an annual basis setting forth a schedule that will cover the upcoming fiscal year. Accordingly, we find that paragraph (C), as proposed by staff, should be adopted.

- (c) CBT next proposes that, if a provider's assessment amount is less than \$600 for the interim period, January 1, 2009, through June 30, 2009, the provider should be required to make the payment in full by January 20, 2009; however, if the assessment is more than \$600, the provider should be given the option of either paying the entire assessment on January 20 or making six monthly payments which will be due by day 20 of each month beginning in January 2009 (CBT initial at 6-7). OTA proposes that, similar to an option permitted for the federal TRS, the Commission permit providers to pay the TRS assessment on a monthly basis, if the monthly payment would exceed \$100 (OTA initial at 4).

Similar to the Commission's annual assessment for our operating budget, it is our expectation that providers will submit payment in full by a date that will be established by the Commission's entry setting forth the TRS assessment schedule; however, we will consider payment plans on a case-by-case basis. Therefore, the Commission finds that the commenters' requests for an explicit provision for a monthly payment option should be denied.

- (7) Staff-proposed paragraph (D) sets forth the information the Commission will use in determining the assessment amount owed by each provider.
- (a) Staff-proposed paragraphs (D)(1) through (D)(3) establish that, for ILECs, CLECs, and CMRS providers, the number of retail "intrastate" customer access lines be used to determine the assessment amount owed by these providers. The AT&T Entities submit that reference to "intrastate" customer access lines might cause confusion, since it is not intended that the lines be only intrastate in nature. Therefore, the AT&T Entities recommend that the word "intrastate" be deleted (AT&T initial at 3). The Commission agrees that the reference to "intrastate" may be

confusing and, therefore, the request should be granted and the word "intrastate" should be deleted from these paragraphs.

- (b) *Staff-proposed paragraphs (D)(1) through (D)(4)* provide that the information used to determine the assessment amounts will be: annual reports for ILECs; FCC form 477 for CLECs; reports submitted in accordance with Section 4931.64, Revised Code, for CMRS providers; and either FCC form 477 or a form prescribed by the Commission staff for all other providers. CBT comments that the staff proposal does not satisfy the statutory requirement that the assessment be allocated among providers using a competitively neutral formula based upon retail intrastate customer access lines or their equivalent because of the disparate sources of access line data staff proposes using to determine the assessment and the possibility that the data would be from different time periods for different contributors (CBT initial at 2-3). OTA advocates that the Commission work from a common set of principles for all contributors in measuring and reporting the data required (OTA initial at 2-3). Rather than utilize different reports to determine providers' access lines, OTA, CBT, and the AT&T Entities recommend that the Commission use the number of retail customer access lines, or their equivalent, as reflected in each provider's most recent FCC form 477 (OTA initial at 2-3; CBT initial at 3; AT&T initial at 4). The AT&T Entities and OTA point out that all providers, including CMRS providers, are required to file form 477 with the FCC on a state-by-state basis (AT&T initial at 4; OTA reply at 1). CBT explains that providers file FCC form 477 semiannually, on September 1 and March 1, reporting lines and subscribers as of June 30 and December 31, respectively (CBT initial at 3).

With regard to VoIP providers, the AT&T Entities note that, beginning with the FCC form 477 report

due in March 2009, all interconnected VoIP providers must file their subscriber counts with the FCC. Therefore, the AT&T Entities recommend that, with respect to the interconnected VoIP providers, the Commission refrain from implementing the Ohio TRS assessment requirements until after March 2009. In support of their proposal, the AT&T Entities maintain that using FCC form 477 reports will ensure that all providers are counting lines in a consistent manner, that the reporting will occur as of the same date, and that all providers will be assessed equitably and in a nondiscriminatory and competitively and technologically neutral manner (AT&T initial at 4). In addition, OTA points out that, by utilizing FCC form 477, the information will be current because, for example, the information on the form filed in March of each year reflects data from the preceding December, so the information is only 90 days old (OTA initial at 3). CBT and OTA point out that the ILECs and CLECs are already required, under Rule 4901:1-7-27, Ohio Administrative Code (O.A.C.), to submit a copy of their form 477 with the Commission (CBT initial at 3; OTA initial at 2). Therefore, CBT recommends that the Commission require CMRS and interconnected VoIP providers to file a copy of their FCC form 477. CBT states that, at a minimum the CMRS and interconnected VoIP providers should be required to file a certified statement indicating the number of wireless subscribers and interconnected VoIP subscribers that they report in their March FCC form 477 (CBT initial at 3).

The Commission agrees that it would be optimal to utilize the same report in order to determine providers' access lines for purposes of the TRS assessment. As pointed out by the commenters, all providers are required to file FCC form 477 with the FCC on a state-by-state basis, and VoIP providers will also be required to file FCC form 477 beginning in March 2009. Therefore, we find

that the commenters' requests should be granted and FCC form 477 should be used to determine the assessment amount owed by each provider. These paragraphs should be amended accordingly.

- (c) CBT recommends that the Commission clarify that the liability for the assessment only applies to providers that had assessable lines or subscribers on December 31 of the preceding calendar year and that a new provider that begins operating on December 31 would not be assessed for the upcoming funding year. Furthermore, in case of a merger or acquisition, CBT advocates that the successor company should be responsible for paying the assessment based on any lines or subscribers that the acquired company had in service at year end (CBT initial at 3).

The Commission agrees with CBT, that a new provider that begins operation on December 31 should not be assessed for the upcoming funding year, if the provider does not have any subscribers at the point in time that the assessment is being measured. We also agree that it is the successor company in a merger or acquisition that would be responsible for the payment of the assessment based on any lines or subscribers that the acquired company had in service at year end.

- (8) Staff-proposed paragraph (E) provides that, sixty days prior to the date each provider is required to make its payment, the Commission staff will notify the provider of its proportionate share of the costs to pay the TRS provider.
 - (a) CBT proposes that, based on the estimate of the Ohio TRS costs for the upcoming year and the reconciliation required under staff-proposed paragraph (F), the Commission should notify each provider by May 20 of its proportionate share of the annual assessment (CBT initial at 4).

The Commission appreciates CBT's comment, but, as stated previously, we will be issuing an entry setting forth the TRS assessment schedule for the upcoming fiscal year and, as stated in paragraph (E), each provider will be notified sixty days prior to the date the assessment payment is due regarding its proportionate share of the costs.

- (b) According to CBT, consistent with the federal TRS assessment, providers with annual assessment amounts of \$1,200 or more should have the option of either paying the assessment in one lump sum in July or paying in twelve equal monthly installments beginning in July. CBT states that installments should be due by day 20 of each month. However, CBT recommends that providers with an annual assessment of less than \$1,200 should be required to make the full payment by July 20 (CBT initial at 4).

As we stated previously, while we will consider payment plans on a case-by-case basis, it is our expectation that providers will submit payment in full by a date that will be established by the Commission's entry setting forth the TRS assessment schedule. Accordingly, we find that CBT's request for an explicit provision for a monthly payment option should be denied.

- (9) Staff-proposed paragraph (F) provides that the Commission staff shall annually reconcile the funds collected with the actual costs and shall either proportionately charge the providers for the amounts not sufficient to cover the actual costs or credit amounts collected in excess of the actual costs. CBT recommends that the Commission issue an entry 30 days prior to the date providers are notified of their proportionate share of the assessment, giving interested parties an opportunity to comment, explaining the methodology used to estimate the upcoming year's costs, providing data upon which the forecast is based, and documenting the annual reconciliation required by Section 4905.84(C), Revised Code (CBT initial at 5).

As mentioned earlier, an entry will be issued on an annual basis setting forth an estimation of how much the Ohio TRS will cost in the upcoming year, including any reconciliation of the TRS assessment from the previous year, and directing the providers subject to the TRS assessment to submit their payments to the Commission in accordance with the schedule established in the entry. We believe that this process is appropriate and in keeping with the Commission's current annual assessment process.

- (10) Staff-proposed paragraph (G) provides that, in accordance with Section 4905.84(C), Revised Code, each service provider may recover the cost of the assessment by methods that may include, but are not limited to, a customer billing surcharge. Furthermore, the staff proposed that telephone companies, other than CMRS providers, that propose a surcharge or a change in the surcharge shall file a 30-day automatic approval application for tariff amendment with the Commission.
- (a) The AT&T Entities submit that the Commission should clarify that the surcharge contemplated in this paragraph need not begin at the same time as the assessment is paid. According to the AT&T Entities, this clarification is needed because some of the entities will need to make programming and system changes in order to implement a customer surcharge. Further, because some providers may need additional time to implement a billing surcharge initially, the AT&T Entities state that the rule should be clarified to allow providers to have a one-time catch-up billing to recover the costs of assessments they have already paid. According to the AT&T Entities, the telephone companies that are required to describe billing and collection mechanisms in their tariffs could explain the details in their tariffs. The AT&T Entities advocate that it should be clarified that the providers have the option to bill the surcharge one time, on an annual basis, in arrears or in advance, or to spread the surcharge out over multiple billing periods (AT&T initial at 5-6).

Initially, the Commission would point out that the surcharge permitted by Section 4905.84, Revised Code, is the result of a federally mandated program, is strictly voluntary on the part of each provider, and that neither the Ohio statute or the Commission are mandating that providers implement a surcharge. Furthermore, if a carrier chooses to implement a surcharge, it may only pass-through its proportionate share of the TRS assessment. Since the surcharge is not a mandated charge, the Commission will not dictate in what increment, monthly or yearly, it could be assessed. However, we do emphasize that any pass through surcharge can not be for a period greater than one year and that the provider may not charge customers in advance for an assessment that the provider has not yet paid to the Commission. Finally, we note that, a standard of reasonableness will be applied to any surcharge imposed by a provider and any such surcharge is subject to review by the Commission.

- (b) OTA, CBT, and the AT&T Entities advocate that, in order to provide greater parity between the providers that file tariffs and those that do not, the paragraph be modified to require a zero-day, notice-only filing (OTA initial at 5; CBT initial at 6; AT&T initial at 6). The Commission finds that the commenters' request is reasonable and, therefore, the paragraph should be amended accordingly.
- (c) The AT&T Entities propose, and CBT and OTA agree, that, consistent with Rule 4901:1-6-16(D), O.A.C., all providers imposing a surcharge on their customers be required to provide notice to customers a minimum of fifteen days prior to the effective date of the surcharge (AT&T initial at 6; CBT initial at 6; OTA initial at 5). The Commission agrees that all regulated providers that choose to pass through the TRS costs must provide notice to their customers. The Commission encourages those providers that are

not rate-regulated by the Commission to give their customers reasonable notice prior to imposing a surcharge. Therefore, the commenters' request is granted and the notice requirement should be added to the rule.

- (11) Staff-proposed paragraph (H) provides that, in accordance with Section 4905.84(D), Revised Code, the Commission shall take such measures as it considers necessary to protect the confidentiality of information provided pursuant to this rule. The AT&T Entities state that this paragraph merely mirrors the statutory language and does not take the necessary steps to implement the statutory language. Therefore, the AT&T Entities aver that the Commission should specify, in this paragraph, that the providers may request confidential treatment of nonpublic information, such as the competitively sensitive nonpublic access line count information contained in FCC form 477. In addition, the AT&T Entities propose that such information for which confidential treatment is requested should be automatically protected from public disclosure. Finally, the AT&T Entities submit that such information should be protected indefinitely and the protection should not expire in 18 months, which is the time frame set forth in Section 4901-1-24(F), O.A.C., and the burden should be on the party seeking public release to demonstrate that the information should no longer be protected (AT&T initial at 7).

Consistent with the statute, the Commission will automatically treat all information that providers are required to submit in order for the Commission to determine the assessment amount as confidential. Since the information required by this rule will be submitted to the Commission's staff and will not be filed, the 18-month expiration time frame set forth in Section 4901-1-24(F), O.A.C., and referred to by the AT&T Entities, does not apply. With regard to the information that will be submitted to the staff, the Commission has a longstanding process which we will follow, if we receive a public records request from an outside entity for the information submitted by the providers. Therefore, we conclude that it is unnecessary to amend the rule to include further explanation of the well-established measures that will be taken to protect the information submitted by the providers.

- (12) Upon consideration of the staff proposal and the initial and reply comments, the Commission concludes that existing Rule 4901:1-6-01, O.A.C., should be amended and new Rule 4901:1-6-24, O.A.C., should be adopted.


It is, therefore,

ORDERED, That attached amended Rule 4901:1-6-01, O.A.C., and new Rule 4901:1-6-24, O.A.C., should be adopted and should be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

ORDERED, That the final rules be effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the review date for Chapter 4901:1-6, O.A.C., shall be May 31, 2012. It is, further,

ORDERED, That a copy of this finding and order, with the attached rules, be served upon all telephone companies under the Commission's jurisdiction, all interested persons of record in Case No. 03-950-TP-COI, the Ohio Telecom Association, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman

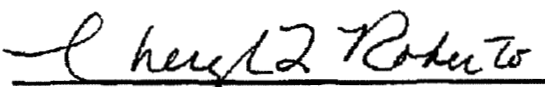


Paul A. Centolella




Ronda Hartman Fergus

Valerie A. Lemmie



Cheryl L. Roberto

CMTP/vrm
Entered in the Journal
AUG 27 2008



Renee J. Jenkins
Secretary

***** DRAFT – NOT FOR FILING *****

4901:1-6-01 **Definitions.**

As used within this chapter, these terms denote the following:

(A) "Alternative operator services (AOS)" means any intrastate operator-assisted services, other than inmate operator service (IOS), in which the customer and the end user are totally separate entities. The AOS provider contracts with the customer to provide the AOS; however, the AOS provider does not directly contract with the end user to provide the services even though it is the end user who actually pays for the processing of the operator-assisted calls. AOS does not include coin-sent calls.

(B) "Basic local exchange service" means end user access to and usage of telephone company-provided services that enable a customer, over the primary line serving the customer's premises, to originate or receive voice communications within a local service area, and that consist of the following:

(1) Local dial tone service.

(2) Touch tone dialing service.

(3) Access to and usage of 9-1-1 services, where such services are available.

(4) Access to operator services and directory assistance.

(5) Provision of a telephone directory and a listing in that directory.

(6) Per call, caller identification blocking services.

(7) Access to telecommunications relay service.

(8) Access to toll presubscription, interexchange or toll providers or both, and networks of other telephone companies.

Basic local exchange service also means carrier access to, and usage of, telephone company-provided facilities that enable end user customers originating or receiving voice grade, data, or image communications, over a local exchange telephone company network operated within a local service area, to access interexchange or other networks.

(C) "Commercial mobile radio service (CMRS)" is specifically limited to include mobile telephone, mobile cellular telephone, paging, personal communication services (PCS), and specialized mobile radio service (SMRS) providers when serving as a common carrier in Ohio. Fixed wireless service is not considered as CMRS.

(D) "Commission" means the public utilities commission of Ohio.

***** DRAFT – NOT FOR FILING *****

- (E) "Competitive local exchange carrier (CLEC)" means, with respect to a service area, any facilities-based and nonfacilities-based local exchange carrier that was not an incumbent local exchange carrier on the date of enactment of the Telecommunications Act of 1996 (1996 Act) or is not an entity that, on or after such date of enactment, became a successor or assignee of an incumbent local exchange carrier.
- (F) "Facilities-based CLEC" means, with respect to a service area, any local exchange carrier that uses facilities it owns, operates, manages or controls to provide basic local exchange services to consumers on a common carrier basis; and that was not an incumbent local exchange carrier on the date of the enactment of the 1996 act. Such carrier may partially or totally own, operate, manage or control such facilities. Carriers not included in such classification are carriers providing service(s) solely by resale of the incumbent local exchange carrier's local exchange services.
- (G) "Flat rate usage" means unlimited number of local calls at a fixed charge.
- (H) "Incumbent local exchange carrier (ILEC)" means any facilities-based local exchange carrier that: (1) on the date of enactment of the 1996 act, provided basic local exchange service with respect to an area; and (2)(a) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to 47 C.F.R. 69.601(b); or (2)(b) is a person or entity that, on or after such date of enactment, became a successor or assignee of a member described in clause (2)(a).
- (I) "Inmate operator services (IOS)" means any intrastate telecommunications service initiated from an inmate telephone, i.e., a telephone instrument set aside by authorities of a secured inmate facility for use by inmates.
- (J) "Large ILEC" means any ILEC serving fifty thousand or more access lines within Ohio.
- (K) "Local exchange carrier" means any facilities-based and nonfacilities-based ILEC and CLEC that provides basic local exchange services to consumers on a common carrier basis. Such term does not include an entity insofar as such entity is engaged in the provision of a commercial mobile radio service under section 47 U.S.C. 332(C), effective in accordance with paragraph (G) of rule 4901:1-6-02 of the Administrative Code, except to the extent that the federal communications commission finds that such service should be included in the definition of such term.
- (L) "Local service" means any service in which calls made by an end user customer are not intraLATA or interLATA toll.
- (M) "Long-run service incremental cost (LRSIC)" represents the forward-looking economic cost for a new or existing product that is equal to the per unit cost of increasing the volume of production from zero to a specified level, while holding all

***** DRAFT – NOT FOR FILING *****

other product and service volumes constant. LRSIC does not include any allocation of forward-looking common overhead costs. Forward-looking common overhead costs are costs efficiently incurred for the benefit of a firm as a whole and are not avoided if individual services or categories of services are discontinued. Further, forward-looking joint costs, which are the forward-looking cost of resources necessary and used to provide a group or family of services shall be added to or included in the LRSIC of the products or services.

- (N) "Nonresidential service" means a telecommunication service primarily used for business, professional, institutional or occupational use.
- (O) "Operator services" means any intrastate operator-assisted services, other than IOS, in which the end user has a customer relationship with the provider, the provider contracts with the customer/end user to provide the services, and the customer/end user pays for the actual processing of the operator-assisted calls.
- (P) "Providers of competitive telecommunication services" means a telephone company, as defined in division (A)(2) of section 4905.03 of the Revised Code, (including, but not limited to, interexchange service providers, interexchange switchless rebillers, interexchange resellers, and nonswitched data providers) that exclusively provides competitive tier two telecommunication services and that does not offer basic local exchange service as defined herein.
- (Q) "Regulated services" means services under the jurisdiction of the commission.
- (R) "Residential service" means a telecommunications service provided primarily for household use.
- (S) "Small ILEC" means any ILEC serving less than fifty thousand access lines within Ohio.
- (T) "Tariff" means a schedule of rates, tolls, rentals, charges, classifications, and rules applicable to services and equipment provided by a telephone company that has been filed or posted in such places or in such manner as the commission orders. Detariffed services are regulated telecommunications services that are not required to be filed in a telephone company's tariffs.
- (U) "Telecommunications relay service (TRS)" means intrastate transmission services that provide the ability for an individual who has a hearing or speech impairment to engage in a communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual, who does not have a hearing or speech impairment, to communicate using voice communication services by wire or radio. TRS includes services that enable two-way communication between an individual who uses a telecommunications device for the deaf or other nonvoice terminal device and an individual who does not use such a device.

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~~(U)~~(V) "Telephone company" means a telephone company, for purposes of this chapter, shall have same meaning as defined in division (A)(2) of section 4905.03 of the Revised Code.

~~(V)~~(W) "Toll service" means any service in which calls made by an end user customer are intraLATA or interLATA toll.

~~(W)~~(X) "Traditional service territory" means the area in which an ILEC provided basic local exchange service on the date of enactment of the 1996 act.

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4901:1-6-24

Telecommunication relay services assessment procedures.

- (A) This rule is limited to the commission's administration and enforcement of the assessment for the intrastate telecommunications relay service (TRS) in accordance with section 4905.84 of the Revised Code.
- (B) For the purpose of funding the TRS, the commission shall collect an assessment to pay for the costs incurred by the TRS provider for providing the service in Ohio, from each service provider that is required under federal law to provide its customers access to TRS, including telephone companies, commercial mobile radio service (CMRS) providers, and providers of advanced services or internet protocol-enabled services that are competitive with or functionally equivalent to voice-grade, end user access lines. Advanced services and internet protocol-enabled services have the meanings ascribed to them by federal law, including federal regulation.
- (C) Each service provider identified in paragraph (B) of this rule shall be assessed according to a schedule established by the commission.
- (D) The commission staff shall allocate the assessment proportionately among the appropriate service providers using a competitively neutral formula. To determine the assessment amount owed by each provider the commission staff shall use the number of voice-grade, end user access lines, or their equivalent, as reflected in each provider's most recent federal communications commission (FCC) form 477 submitted to the commission staff. All local exchange carriers shall submit their FCC form 477 to the commission staff in accordance with rule 4901:1-7-27 of the Administrative Code. All other providers subject to the TRS assessment shall submit to the commission staff, on a semi-annual basis and at the same time it is filed with the FCC, the Ohio-specific relevant parts of their most recent FCC form 477 which contains the number of the voice-grade, end user access lines or their equivalent.
- (E) Sixty days prior to the date each service provider is required to make its assessment payment in accordance with paragraph (C) of this rule, the commission staff shall notify each service provider of its proportionate share of the costs to compensate the TRS provider.
- (F) The commission staff shall annually reconcile the funds collected with the actual costs of providing TRS when it issues the assessment in accordance with paragraph (E) of this rule and shall either proportionately charge the service providers for any amounts not sufficient to cover the actual costs or proportionately credit amounts collected in excess of the actual costs.
- (G) In accordance with division (C) of section 4905.84 of the Revised Code, each service provider that pays the assessment shall be permitted to recover the cost of the assessment. The method of the recovery may include, but is not limited to, a customer billing surcharge. Any telephone company, other than a CMRS provider,

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that proposes a customer billing surcharge or a change in the surcharge shall file a zero-day tariff application (ZTA) with the commission, in accordance with the application process rule 4901:1-6-06 of the Administrative Code. The ZTA will be subject to the approval time frames found in paragraph (B) of rule 4901:1-6-08 of the Administrative Code. Each regulated provider imposing a surcharge on its customers must provide notice to its customers a minimum of fifteen days prior to the effective date of the surcharge in accordance with paragraph (D) of rule 4901:1-6-16 of the Administrative Code..

- (H) In accordance with division (D) of section 4905.84 of the Revised Code, the commission shall take such measures as it considers necessary to protect the confidentiality of information provided pursuant to paragraph (D) of this rule.
- (I) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this rule.