



STOLL · KEENON · OGDEN
PLLC

2000 PNC Plaza
500 West Jefferson
Louisville, KY 40202
(502) 333-6000
Fax: (502) 333-6099
www.skofirm.com

DOUGLAS F. BRENT
(502) 568-5734
douglas.brent@skofirm.com

April 14, 2008

RECEIVED

APR 15 2008

PUBLIC SERVICE
COMMISSION

Ms. Stephanie L. Stumbo
Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602

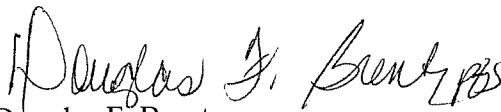
RE: Case No. 2007-00464 – Petition of KCDHH to Expand TAP Surcharge

Dear Ms. Stumbo:

Enclosed please find an original and ten copies of Comments of T-Mobile USA, Inc., Powertel/Memphis, and T-Mobile Central LLC. Please indicate receipt of this filing by your office by placing a file stamp on the extra copy and returning to me via the enclosed self-addressed, postage prepaid envelope.

Very truly yours,

STOLL KEENON OGDEN PLLC


Douglas F. Brent

Enclosures

433070.348744/504735.1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

APR 15 2008

PUBLIC SERVICE
COMMISSION

In the Matter of:

PETITION OF THE KENTUCKY COMMISSION)
ON THE DEAF AND HARD OF HEARING TO)
EXPAND THE FUNDING BASE FOR THE) CASE NO.
KENTUCKY TELECOMMUNICATIONS ACCESS) 2007-00464
PROGRAM (TAP))
)

T-MOBILE'S COMMENTS

T-Mobile USA, Inc., Powertel/Memphis, Inc., and T-Mobile Central LLC (collectively, "T-Mobile") submit these comments in response to Verified Amended Petition and Response filed by the Kentucky Commission on the Deaf and Hard of Hearing ("Petitioner" or "KCDHH"). In its Amended Petition, KCDHH clarifies that it is only asking the Commission to review the funding mechanism for the Telecommunications Access Program ("TAP"), and not for the Telecommunications Relay Service program. KCDHH also asks the Commission to impose a TAP fee on all wireless customers in Kentucky, claiming this is "nothing more than an adjustment of the "telecommunications utilities" over which the PSC has authority."¹ T-Mobile addresses each of these issues below.

I. Response to the Amended Petition to Expand Funding

T-Mobile takes no position on whether the Commission should impose the TAP surcharge on wireless customers.² KCDHH has not yet provided enough information in support of its request. For example, the Commission will need to determine why most equipment

¹ KCDHH Comments at 3.

² Should the Commission decide to impose the TAP surcharge on wireless carriers, T-Mobile would need at least 60 (sixty) days to prepare its systems in order to be able to implement the surcharge in a timely matter.

KCDHH provides is only usable on wireline networks. This is important because the Petitioner has claimed that the popularity of wireless service alone is reason enough for the Commission to expand the funding base for an equipment program which is designed for wireline networks.

KCDHH asserts that it has added wireless devices to the distribution list for the TAP.³ However, the Amended Petition itself suggests that KCDHH has made very modest expenditures—perhaps less than \$700.00 over the past two fiscal years—to provide wireless TTY/TDD equipment which can be used on a cellular network.⁴ KCDHH does not say whether there has been demand for the equipment which it cannot meet. Instead, the Amended Petition makes a generalized claim that “inability of KCDHH to provide wireless devices to its constituents is a safety issue.” KCDHH claims its constituents are “switching to internet and wireless” then cites growth statistics on wireless service, which may not be directly relevant to the question of *equipment needs*.

II. Reply to KCDHH on Prerequisites to Expanding the TAP Charge

In early February T-Mobile asked the Commission to clarify whether it will review the (now-amended) Petition using the process established by the Kentucky Administrative Regulations statute, KRS Chapter 13A. T-Mobile’s concerns were set forth in a letter. At the March 17, 2008 informal conference, parties discussed these concerns and T-Mobile clarified that they related primarily to charges imposed for the TRS program. Subsequently, KCDHH clarified its request by filing the Amended Petition which states that KCDHH’s request is limited to the TAP program. However, in the prayer for relief of the Amended Petition, KCDHH renews its request for review of TRS funding, “if deemed necessary by the PSC.” In addition,

³ Amended Petition at par. 14.

⁴ Amended Petition, Exhibit B, “Breakdown of expenditures for equipment distributed to consumers” during FY 05-06 and 06-07 (indicating expenditures for three “Compact/C-TDD” devices during a two year period).

responding to the February 8 letter from T-Mobile, KCDHH states that the Commission is not bound in this case by Chapter 13A because expanding the TAP charge would be a simple matter of exerting the Commission’s authority to set “fair, just, and reasonable rates.”⁵ If that premise were true, it might also apply to the Petitioner’s alternative request related to TRS funding. Accordingly, T-Mobile must reply to the argument.

First, regardless of whether the issue is TAP funding or TRS funding, KCDHH could not ask the Commission to set “rates” for the wireless industry—the Commission does not set wireless rates.⁶ Therefore, whether considering TAP or TRS, the Commission must consider the separate statutory requirements which apply to most state agency requests to impose new fees. The Petitioner cannot simply explain away Kentucky’s administrative rulemaking statute by appealing to the Commission’s authority over ratemaking.

Accordingly, if the Commission considers collecting this government charge from additional customers, it should consider the rulemaking requirements of KRS Chapter 13A. In the case of TAP, the maximum fee of one cent per month is set by KRS 278.5499(1). However, if the Commission considers the Petitioner’s alternative request related to TRS funding, it should consider whether a new administrative regulation is required. TRS fees are not set by statute.

⁵ *Id.*

⁶ See KRS 278.54611(1)(b) (“ . . .the commission shall not impose any requirement upon a commercial mobile radio services provider with respect to. . .[t]he rates, terms, and conditions for, or entry into, the provision of commercial mobile radio service.”)

Dated: April 14, 2008

Respectfully submitted,

A handwritten signature in black ink that reads "Douglas F. Brent". The signature is written in a cursive style and is positioned above a horizontal line.

Kendrick R. Riggs

Douglas F. Brent

STOLL KEENON OGDEN PLLC

2000 PNC Plaza

500 West Jefferson Street

Louisville, Kentucky 40202-2828

Telephone: (502) 333-6000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion for Full Intervention has been served by U.S. mail on those persons whose names appear below this 14th day of April, 2008:

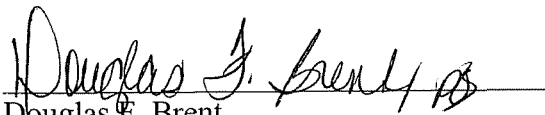
Lawrence W. Cook
Assistant Attorney General
Office of the Attorney General
Office of Rate Intervention
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601-8204

Virginia L. Moore
Interim Executive Director
Kentucky Commission on the Deaf and Hard of Hearing
632 Versailles Road
Frankfort, Kentucky 40601

Howard Kent Cooper
Cooper & Associates
404 Monument Square
P.O. Box 650
Jamestown, Kentucky 42629

Bridget L. Dunaway
Taylor, Keller & Dunaway & Tooms Attorneys
1306 West Fifth Street
P.O. Box 905
London, Kentucky 40743-0905

Mary K. Keyer
General Counsel/Kentucky
BellSouth Telecommunications, Inc. d/b/a AT&T KY
601 West Chestnut Street
Room 408
P.O. Box 32410
Louisville, Kentucky 40232



Douglas F. Brent