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February 6, 2008

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PUBLIC SERVICE
COMMISSION

Ms. Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602

RE: Case No. 2007-00464 – Petition to Expand Funding Base for the Kentucky Telecommunications Access Program

Dear Ms. O'Donnell:

By Order dated January 29, 2008, T-Mobile USA, Inc., Powertel/Memphis, and T-Mobile Central LLC (“T-Mobile”) were granted Full Intervention in the above referenced case to consider a petition (“Petition”) filed by the Kentucky Commission on the Deaf and Hard of Hearing (“KCDHH”). The Petition proposes to expand the funding base for the Telecommunications Relay Service (“TRS”) and Telecommunications Access Program (“TAP”) surcharges.

As a preliminary matter, T-Mobile asks the Commission to clarify whether it will review the Petition using the process established under the Kentucky Administrative Regulations statute, KRS Chapter 13A. As discussed below, T-Mobile believes that process may apply here, and seeks guidance from the Commission on the procedures for (1) evaluating the Petition, (2) providing proper notice to those affected by it, and (3) promulgating rules which will ensure that deaf and hearing impaired consumers will have the ability to meet their telecommunications needs using wireless services.¹

The TRS and TAP surcharges support third party programs to assist the hearing disabled community. The surcharges are not retained by telecommunications utilities and are not directly related to the provision of utility service. More importantly, utilities merely collect these fees for distribution to non-utility service providers; end users actually pay them. *See, e.g.*, KRS 278.5499 (“The funding mechanism shall be designed to collect reasonably necessary funds . . .

¹ T-Mobile provides TTY-compatible wireless handsets and unique equipment solutions for the deaf and hearing-impaired community.

from subscribers of telecommunications utilities.”) Accordingly, expansion of the funding base to include wireless customers would directly affect the private interests of most Kentuckians. *See* Petition at ¶ 8 (claiming over 2.4 million wireless lines reported in the most recent CMRS Board Annual Report). Many of these wireless customers are already paying TRS/TAP surcharges in connection with wireline services.

KCDHH is asking the Commission to expand the surcharge program by making it apply to all wireless customers. This would require a binding statement of general applicability or some other form of agency action to implement the funding mechanism. That type of request calls for a Commission directive which would appear to fall neatly within the Chapter 13A definition of “Administrative regulation,”² as it would implement a new government agency policy requiring wireless customers to fund the TRS/TAP programs. Accordingly, this proceeding is subject to KRS 278.040(3) (Commission may adopt regulations “in keeping with Chapter 13A”) and KRS 13A.100 (requiring administrative regulation to implement policy affecting private rights or fees authorized by law and not set by statute). And since KCDHH is asking the Commission to establish or increase a fee not otherwise exempt under KRS 13A.100(3), KRS 13A.255 applies. That statute requires notice to the persons or entities affected by any proposal to establish or increase fees through regulation. It is worth noting that KRS 13A.255 was enacted in 2000, five years after the Commission established the original TDD distribution program as part of Administrative Case No. 352. Following the statutory process now would keep the public fully aware of the objectives of the TRS/TAP programs and the Commission’s activities to facilitate funding. And the policy objectives of that statute seem especially relevant for an intragovernmental agency proposal to increase fees for telecommunications customers.

In closing, T-Mobile notes that KCDHH has used the Chapter 13A rulemaking process to implement eligibility requirements for users³ and equipment vendor participants⁴ in the TAP program, as required by KRS 163.525(5). Accordingly the Petitioner, as a government agency, is already observant of the requirements for promulgating administrative regulations. T-Mobile respectfully requests that the Commission consider this issue and provide guidance to the parties to this proceeding before establishing a procedural schedule.

² "Administrative regulation" means each statement of general applicability promulgated by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any administrative body.

³ *See* 735 KAR 1:010.

⁴ *See* 735 KAR 1:020.

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Please indicate receipt of this filing by your office by placing a file stamp on the extra copy and returning to me in the enclosed prepaid envelope.

Very truly yours,

STOLL KEENON OGDEN PLLC

A handwritten signature in black ink, appearing to read 'DLB', with a long horizontal stroke extending to the right.

Douglas F. Brent

cc: Service List