

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

Comes now the Commission to address the letter submitted by Intervenor T-Mobile USA, Inc., Powertel/Memphis, and T-Mobile Central LLC (“T-Mobile”) on February 8, 2008. T-Mobile requested clarification from the Commission as to whether the petition, as filed by the Kentucky Commission on the Deaf and Hard of Hearing (“KCDHH”), will be reviewed pursuant to KRS Chapter 13A. By Order dated February 15, 2008, the Commission stated that all parties could provide substantive response comments on the T-Mobile letter within 20 days of the Order. To date, no comments have been submitted.

On March 17, 2008, an informal conference was held in this matter, wherein the procedural questions raised by T-Mobile were discussed. During the informal conference, the parties agreed to submit comments and recommendations on the procedure that should be followed by the Commission in addressing KCDHH’s petition. Parties were also allowed to comment on the competitive advantages and disadvantages of assessing the telecommunications relay service (“TRS”) surcharge and telecommunications access program (“TAP”) surcharge only upon wireline

customers. In response to the discussions held during the informal conference, KCDHH submitted an amended petition wherein it removed joint references to TRS and TAP and focused the petition solely on modifications to the TAP surcharge.¹

Although T-Mobile submitted its request by letter, the Commission regards the letter to be a motion for clarification on procedure and process for this matter. Therefore, by this Order, the Commission shall address the substance of that motion. The Commission has carefully reviewed KCDHH's original and amended petitions, T-Mobile's request for clarification, and the responses and replies thereto.² Having reviewed the record and the statutes germane to this matter, the Commission finds that its authority to modify the funding mechanisms of TRS and TAP is set forth within KRS Chapter 278, specifically KRS 278.548, KRS 278.549, and KRS 278.5499. The General Assembly has plainly delegated to the Commission the authority to determine the appropriate mechanisms to fund TRS and TAP. KRS 278.549 states, "The Commission shall determine the appropriate funding mechanism for the telecommunications relay system. . . ." KRS 278.5499 also states, "The Public Service Commission shall determine the appropriate funding mechanism for the Telecommunications Access Program established pursuant to KRS 163.525." Neither a review under KRS Chapter 13A nor the promulgation of a new regulation is required should the Commission determine that adjustments to the TRS and TAP surcharges are

¹ See Verified Amended Petition to Expand the Funding Base for the Kentucky Telecommunications Access Programs (TAP), filed March 31, 2008 (hereinafter "Amended Petition").

² The Commission received comments from KCDHH and AT&T Kentucky, New Cingular Wireless and Cincinnati SMSA (collectively "AT&T"), dated March 31, 2008 and April 1, 2008, respectively. Response comments were submitted by T-Mobile and dated April 15, 2008.

reasonably necessary, including a determination to expand the base of telecommunications customers required to contribute to each fund.³ The Commission's ability to modify these surcharges is authorized within the statutory language. The promulgation of an administrative regulation to address the collection of TRS and TAP surcharges would be redundant to the authority already outlined and provided within those sections already provided for by law.

In submitting an amended petition, KCDHH has requested the Commission to review only the current funding mechanism for TAP.⁴ However, the Commission finds that, in the context of this particular case, TRS and TAP should be reviewed jointly and modified jointly if the Commission determines during the course of this proceeding that the base of customers from whom those surcharges are collected should include those with wireless access lines.

To ensure that the record is adequately developed, the Commission shall establish a procedural schedule, attached hereto as Appendix A. Modifications to this schedule may occur, but only upon Order by the Commission.

IT IS HEREBY ORDERED that:

1. The Commission shall proceed with a review and decision of this matter pursuant to KRS Chapter 278, as provided herein.

³ See Administrative Case No. 372, Request for Proposal and Selection of a Vendor for Telecommunications Relay Service, Order dated May 31, 2006. In this Order, the Commission required local exchange companies to modify their collections of TRS and TAP in light of a temporary increase to TAP pursuant to budget legislation passed by the 2006 General Assembly.

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

2. All parties shall follow the procedural schedule set forth in Appendix A.
3.
 - a. Responses to requests for information shall be appropriately bound, tabbed, and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided, with copies to all parties of record and 4 copies to the Commission.
 - b. Each response shall be under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.
 - c. Any party shall make timely amendment to any prior responses if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.
 - d. For any requests to which a party fails to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.
4. Motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.
5. All documents that this Order requires to be filed with the Commission shall be served upon all other parties.
6. Service of any document or pleading shall be made in accordance with Administrative Regulation 807 KAR 5:001, Section 3(7), and Kentucky Civil Rule 5.02.


7. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

Done at Frankfort, Kentucky, this 25th day of April, 2008.

By the Commission

Commissioner Clark Abstains.

ATTEST:


Executive Director *for Stephanie Stumbo*
by permission

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN ADMINISTRATIVE CASE NO. 2007-00464 DATED
APRIL 25, 2008

All parties and Commission Staff shall serve their requests
for information to KCDHH no later than.....05/09/08

KCDHH shall file with the Commission and serve upon all
parties of record its responses to the requests for information
no later than.....05/30/08

All parties and Commission Staff shall serve their
supplemental requests for information upon KCDHH no later than06/13/08

KCDHH shall file with the Commission and serve
upon all parties of record its responses to the
supplemental requests for information no later than.....07/03/08

Informal conference is to begin at 10:00 a.m., Eastern
Daylight Time, at the Commission's offices at 211 Sower
Boulevard, Frankfort, Kentucky, for the purpose of discussing
issues related to the petition, data requests, and
responses..... 07/16/08