COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY, PLEASE
REFER TO OUR FILE
2002.0146
M-00900239

November 9, 2007

Marlene H. Dortch, Secretary
Federal Communications Commission
455 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: PA TRS Recertification Application – Renewal for 2008 – 2013
PA CTRS Certification Application – Initial for 2008 – 2013
CG Docket No. 03-123

Dear Secretary Dortch:

Enclosed is the captioned Application.

Please time-stamp the additional copy of this cover letter and return in the provided envelope.

If you have any questions concerning this application, please feel free to call Eric Jeschke at 717-783-3850 or me at 717-787-8866.

Sincerely,

Louise Fink Smith
Assistant Counsel

For the Pennsylvania Public Utility Commission

Enclosure

691759

cc: Pam Gregory, FCC Consumer & Governmental Affairs Bureau
455 12th Street, SW, Room 5-A741, Washington, DC 20554
Chuck Hafferman, AT&T Communications, Inc.
Mitch Levy, Hamilton Communications, Inc.
Diana Bender, Chair, PA TRS Advisory Board
James J. McNulty, Secretary, PA PUC
Kim Barrow, PA PUC Office of Special Assistants
Holly Frymoyer, PA PUC Bureau of Consumer Services
Eric Jeschke, PA PUC Bureau of Fixed Utility Services

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Recertification Telecommunications Relay Service	))	CG Docket No. 03-123

Application for Recertification of
Pennsylvania Telecommunications Relay Service

and

Application for Certification of
Pennsylvania Captioned Telecommunications Relay Service

for

2008 - 2013

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Application for Recertification of Pennsylvania Telecommunications Relay Service and for Certification of Pennsylvania Captioned Telecommunications Relay Service for 2008 - 2013

BACKGROUND

Pursuant to Title IV of the Americans with Disabilities Act of 1990, § 225 of the Communications Act of 1934, as amended, and §§ 64.601 – 64.605 of the Code of Federal Regulations, 47 C.F.R. §§ 64.601 – 64.605, and in accordance with the Federal Communications Commission's (FCC) Public Notice, released June 22, 2007, at DA 07-2761 (attached), the Pennsylvania Public Utility Commission (PA PUC), on behalf of the Commonwealth of Pennsylvania, hereby applies for renewal of its Telecommunications Relay Services (TRS) certification (recertification) and for initial certification of its Captioned Telephone Relay Service (CTRS)[1] for the 5-year period beginning July 26, 2008, and ending July 26, 2013. The PA TRS has been certificated since July 26, 1993. This is the first application for certification of the PA CTRS.

TRS AND CTRS PROVIDERS

AT&T Communications of Pennsylvania, LLC, (AT&T) continues to be the state-certificated service provider for the Pennsylvania TRS (PA TRS) and assisted in the preparation of this application. Hamilton Telephone Company, d/b/a Hamilton Telecommunications (Hamilton), is the newly contracted provider for the Pennsylvania CTRS (PA CTRS) and also assisted in the preparation of this application.

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[1] Initially, the term "CTVRS" or "captioned telecommunications voice-carry-over relay service" was used in Pennsylvania to describe what is now called "CTRS" or "captioned telecommunications relay service." Thus, any references to "CTVRS" or "captioned telecommunications voice-carry-over relay service" in the appendices to this Application should be understood to be references to "CTRS" or "captioned telecommunications relay service."

COMPLIANCE WITH 47 C.F.R. § 64-604

Pursuant to 47 C.F.R. § 64.605(b)(1), the PA TRS and PA CTRS must:

1. Meet all operational, technical, and functional minimum standards contained in 47 C.F.R. § 64.604;
2. Be subject to adequate procedures and remedies for enforcement of requirements.
3. In no way conflict with federal law.

1. Operational Technical and Functional Standards

With respect to the meeting minimum federal requirements, the documentation supporting this application for TRS recertification and CTRS certification details the compliance of the PA TRS and the PA CTRS with the FCC's operational, technical, and functional minimum standards contained in 47 C.F.R. § 64.604.

2. Enforcement

With respect to enforcement, AT&T operates the PA TRS pursuant to its filed tariff. Hamilton operates the PA CTRS pursuant to a contract that was negotiated with the PA PUC after being selected in a competitive request-for-proposals process. A service provider's failure to provision service equal to or better than the requisite standards could result in sanctions up to and including the loss of privilege to provide the service for either service provider. Specifically, the legislative mandate in the Commonwealth's enabling legislation, the *Universal*

Telecommunications and Print Media Access Act (PA TRS Act), codified at 35 P.S. §§ 6701.1 – 6701.4 (*see* Appendix 3.3), endows the PA PUC with the responsibility "to design and implement a telecommunications relay service program for the Commonwealth that is consistent with and meets or exceeds the requirements of the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327)." Section 6701.4(b) of the PA TRS Act further authorizes the PA PUC "to seek on behalf of this Commonwealth certification of the telecommunications relay service program from the Federal Communications Commission." Furthermore, pursuant to the provisions of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 101 - 3316, the PA PUC has the power to revoke a public utility's certificate of public convenience and impose civil penalties for violation of the Public Utility Code, Commission regulation, final direction or order. (*See, e.g.*, 66 Pa. C.S. §§501 – 502.) The PA PUC is committed to ensuring that the PA TRS and the PA CTRS will continue to make adequate procedures and remedies available for enforcing the requirements of the state program and to ensure compliance with FCC re-certification requirements.

3. No Conflicts

With respect to conflicts with federal law, the PA TRS and PA CTRS service providers are not authorized to operate in any way that conflicts with the federal law. The only change to the service available in Pennsylvania since the last FCC recertification in July 2003 is the initiation of CTRS. CTRS is an optional offering pursuant to the federal regulations. Thus, this enhancement does not materially affect or detract from compliance with the FCC's operational, technical, and functional minimum standards contained in 47 C.F.R. § 64.604.

EXEMPTIONS FOR COIN SENT-PAID CALLS

Finally, we note that in our prior PA TRS recertification applications, we requested and were granted exemptions from the requirement to handle coin sent-paid calls until such time as the technology will allow provisioning of such calls. We note that presently calls made from payphones in Pennsylvania are in accordance with the FCC's "Alternative Plan" at CC Docket No. 90571, which enables TRS users: (1) to make local TRS payphone calls free of charge and (2) to make toll calls by calling card or prepaid (debit) cards with rates equivalent to or less than those that would apply to a similar non-TRS call made using coin sent-paid service. There is no CPE in the field today that act as a pay phone; thus these rules do not apply to Captioned Telephone. Accordingly, we request a continuing exemption from the requirement that the PA TRS handle these types of calls until such time as the technology will allow such call provisioning and a similar exemption for PA CTRS.

TIMING OF FILING

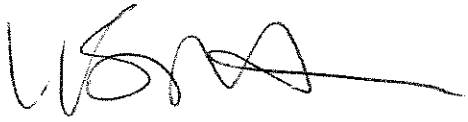
On September 20, 2007, pursuant to instructions from Nicole McGinnis (FCC Deputy Chief, Consumer and Governmental Affairs), the PA PUC filed its September 20, 2007 letter with FCC Secretary Marlene H. Dortch, with a copy to the FCC's Diane Mason, advising that the PAPUC would not be able to file this Application by October 1, 2007. (*See* Appendix 2). Ms. McGinnis had provided the information on the process to follow if a state were not going to be able to file by October 1, 2007, at the National Association for State Relay Administration (NASRA) conference in September 2007.

CONCLUSION

Therefore, the Pennsylvania Public Utility Commission, on behalf of the Commonwealth of Pennsylvania, seeks recertification of the Pennsylvania Telecommunications Relay Service and certification of the Pennsylvania Captioned Telecommunications Relay Service.

If you have any questions concerning this application for certification renewal, please feel free to call Louise Fink Smith, PA PUC Law Bureau, at 717-787-8866 or finksmith@state.pa.us, or Eric Jeschke, PA PUC Telecom Group, Bureau of Fixed Utility Services, at 717-783-3850 or ejeschke@state.pa.us.

Respectfully submitted,
Pennsylvania Public Utility Commission



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Dated: November 9, 2007

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Appendix

No. 1

FCC Public Notice DA 07-2761,

June 22, 2007, CG Docket No. 03-123

with Appendix §64.604 Mandatory

Minimum Standards

PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

DA 07-2761
June 22, 2007

CONSUMER & GOVERNMENTAL AFFAIRS BUREAU REMINDS STATES THAT CURRENT TELECOMMUNICATION RELAY SERVICE (TRS) CERTIFICATION WILL EXPIRE ON JULY 26, 2008, AND PROVIDES A TIMELINE FOR SEEKING RECERTIFICATION

CG Docket No. 03-123

The current TRS certifications for all states and territories will expire on July 26, 2008. Under the TRS regulations, states can apply for "renewal" one year prior to expiration, *i.e.*, July 26, 2007. 47 C.F.R. § 64.605(c).

BACKGROUND

TRS enables persons with hearing and speech disabilities to access the telephone system to communicate with voice telephone users. Congress created the TRS program in Title IV of the Americans with Disabilities Act of 1990 (ADA), codified at Section 225 of the Communications Act of 1934. 47 U.S.C. § 225. Under the statute, TRS services are intended to be functionally equivalent to voice telephone service. The TRS regulations set forth mandatory minimum standards that TRS providers must follow in offering service, and are intended to ensure that TRS meets the functional equivalency mandate. *See* 47 C.F.R. §64.604 (set forth in the attached Appendix).

Because the states have primary responsibility for the oversight and compensation of intrastate TRS, the regulations also set forth the process by which state TRS programs may be certified. 47 C.F.R. § 64.605; *see also* 47 U.S.C. §§ 225(c) & (d)(3)(B). The state certification process is intended to ensure that TRS is provided in a uniform manner throughout the United States and territories. The relevant sections of § 64.605 are set forth in the Appendix.

APPLICATIONS FOR CERTIFICATION:

Applications for certification (or renewal of certification) may be filed with the Commission beginning July 26, 2007. All certified state TRS programs are required to provide traditional (TTY-based) TRS, interstate Spanish language traditional TRS, and Speech-to-Speech (STS) service. If a state program also offers Internet Protocol (IP) Relay, Video Relay Service (VRS), Captioned Telephone Service, or IP Captioned Telephone Service, the state must also demonstrate that it provides these services consistent with the rules.

Although there is no deadline for filing, renewal applications should be filed by October 1, 2007, to give the Commission time to review and rule on the applications prior to the expiration of the prior certification.

Applications for certification are reviewed to determine whether the state TRS program has sufficiently documented that it meets all of the applicable mandatory minimum standards set forth in Section 64.604. If the program exceeds the mandatory minimum standards, the state must certify that the program does not conflict with federal law.

PROCEDURES FOR FILING: All filings must reference CG Docket No. 03-123.

Electronic Filers: Filings may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/. Follow the instructions provided on the website for submitting electronic filings.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the filing for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic filing by Internet email. To get filing instructions, filers should send an email to ecfs@fcc.gov, and include the following words in the subject line or body of the message: get form <your email address>. A sample form and directions will be sent in response.

Paper Filers: Parties who choose to submit by paper must submit an original and four copies of each filing on or before October 1, 2007. To expedite the processing of complaint log summaries, states and interstate TRS providers are encouraged to submit an additional copy to Attn: Diane Mason, Federal Communications Commission, Consumer & Governmental Affairs Bureau, 445 12th Street, SW, Room 3-A503, Washington, D.C. 20554 or by email at Diane.Mason@fcc.gov. Parties should also submit electronic disk copies of their certification filing on a standard 3.5 inch diskette or CD-Rom formatted in an IBM compatible format using Word 2003 or compatible software. The electronic media should be submitted in "read-only" mode and must be clearly labeled with the state's name, the filing date and captioned "TRS Certification Application."

Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-B204, Washington, D.C. 20554.

SUMMARY OF STATE TRS PROGRAM CERTIFICATION TIMELINE:

DATE	ITEM	FCC ACTION
October, 2007	Public Notices are issued indicating that applications have been received by the Commission and seeking comment	**Public Notices** are released seeking comment on the filing. Comments due within 30 days and then an additional 15 days for reply comments.
September 2007 – May 2008	Applications for TRS recertification are reviewed for compliance with 47 C.F.R. §§ 64.604 & 64.605.	**Deficiency letters** are sent to request additional information that demonstrates compliance with the mandatory minimum requirements.
May - July, 2008	Public Notices informing states that their applications for recertification have been reviewed and certification has been renewed.	**Public Notice**

ADDITIONAL INFORMATION

A copy of this *Public Notice* and related documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Suite CY-A257, Washington, D.C. 20554, (202) 418-0270. These documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI at their web site: www.bcpiweb.com or by calling 1-800-378-3160. Filings also may be found by searching on the Commission's Electronic Comment Filing System (ECFS) at http://www.fcc.gov/cgb/ecfs (insert CG Docket No. 03-123 into the Proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This *Public Notice* also can be downloaded in Word or Portable Document Format (PDF) at: http://www.fcc.gov/cgb/dro.

For further information regarding this *Public Notice*, please contact Diane Mason, Consumer & Governmental Affairs Bureau, Disability Rights Office, at (202) 418-7126 (voice), (202) 418-7828 (TTY), or e-mail at **Diane.Mason@fcc.gov**.

APPENDIX

RELEVANT RULES:

§64.604 MANDATORY MINIMUM STANDARDS[1]

The standards in this section are applicable December 18, 2000, except as stated in paragraphs (c)(2) and (c)(7) of this section.

(a) *Operational standards*—(1) *Communications assistant (CA).* (i) TRS providers are responsible for requiring that all CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities.

(ii) CAs must have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette. CAs must possess clear and articulate voice communications.

(iii) CAs must provide a typing speed of a minimum of 60 words per minute. Technological aids may be used to reach the required typing speed. Providers must give oral-to-type tests of CA speed.

(iv) TRS providers are responsible for requiring that VRS CAs are qualified interpreters. A "qualified interpreter" is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(v) CAs answering and placing a TTY-based TRS or VRS call must stay with the call for a minimum of ten minutes. CAs answering and placing an STS call must stay with the call for a minimum of fifteen minutes.

(vi) TRS providers must make best efforts to accommodate a TRS user's requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA.

(vii) TRS shall transmit conversations between TTY and voice callers in real time.

(2) *Confidentiality and conversation content.* (i) Except as authorized by section 705 of the Communications Act, 47 U.S.C. 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. STS CAs may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user. The caller may request the STS CA to retain such information, or the CA may ask the caller if he wants the CA to repeat the same information during subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls.

(ii) CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay user specifically requests summarization, or if the user requests interpretation of an ASL call. An STS CA may facilitate the call of an STS user with a speech disability so long as the CA does not interfere with the independence of the user, the user maintains control of the conversation, and the user does not object. Appropriate measures must be taken by relay providers to ensure that confidentiality of VRS users is maintained.

(3) *Types of calls.* (i) Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services.

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[1] Note that some of these requirements have been waived for certain forms of TRS.

(ii) Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call.

(iii) Relay service providers are permitted to decline to complete a call because credit authorization is denied.

(iv) Relay services shall be capable of handling pay-per-call calls.

(v) TRS providers are required to provide the following types of TRS calls: (1) Text-to-voice and voice-to-text; (2) VCO, two-line VCO, VCO-to-TTY, and VCO-to-VCO; (3) HCO, two-line HCO, HCO-to-TTY, HCO-to-HCO.

(vi) TRS providers are required to provide the following features: (1) Call release functionality; (2) speed dialing functionality; and (3) three-way calling functionality.

(vii) Voice mail and interactive menus. CAs must alert the TRS user to the presence of a recorded message and interactive menu through a hot key on the CA's terminal. The hot key will send text from the CA to the consumer's TTY indicating that a recording or interactive menu has been encountered. Relay providers shall electronically capture recorded messages and retain them for the length of the call. Relay providers may not impose any charges for additional calls, which must be made by the relay user in order to complete calls involving recorded or interactive messages.

(viii) TRS providers shall provide, as TRS features, answering machine and voice mail retrieval.

(4) *Handling of emergency calls.* Providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to an appropriate Public Safety Answering Point (PSAP). An appropriate PSAP is either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.

(5) *STS called numbers.* Relay providers must offer STS users the option to maintain at the relay center a list of names and telephone numbers which the STS user calls. When the STS user requests one of these names, the CA must repeat the name and state the telephone number to the STS user. This information must be transferred to any new STS provider.

(b) *Technical standards*—(1) *ASCII and Baudot.* TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.

(2) *Speed of answer.* (i) TRS providers shall ensure adequate TRS facility staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(ii) TRS facilities shall, except during network failure, answer 85% of all calls within 10 seconds by any method which results in the caller's call immediately being placed, not put in a queue or on hold. The ten seconds begins at the time the call is delivered to the TRS facility's network. A TRS facility shall ensure that adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(A) The call is considered delivered when the TRS facility's equipment accepts the call from the local exchange carrier (LEC) and the public switched network actually delivers the call to the TRS facility.

(B) Abandoned calls shall be included in the speed-of-answer calculation.

(C) A TRS provider's compliance with this rule shall be measured on a daily basis.

(D) The system shall be designed to a P.01 standard.

(E) A LEC shall provide the call attempt rates and the rates of calls blocked between the LEC and the TRS facility to relay administrators and TRS providers upon request.

(iii) Speed of answer requirements for VRS providers are phased-in as follows: by January 1, 2006, VRS providers must answer 80% of all calls within 180 seconds, measured on a monthly basis; by July 1, 2006, VRS providers must answer 80% of all calls within 150 seconds, measured on a monthly basis; and by January 1, 2007, VRS providers must answer 80% of all calls within 120 seconds, measured on a monthly basis. Abandoned calls shall be included in the VRS speed of answer calculation.

(3) *Equal access to interexchange carriers.* TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to voice users.

(4) *TRS facilities.* (i) TRS shall operate every day, 24 hours a day. Relay services that are not mandated by this Commission need not be provided every day, 24 hours a day, except VRS.

(ii) TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use.

(5) *Technology.* No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to person with disabilities. TRS facilities are permitted to use SS7 technology or any other type of similar technology to enhance the functional equivalency and quality of TRS. TRS facilities that utilize SS7 technology shall be subject to the Calling Party Telephone Number rules set forth at 47 CFR 64.1600 *et seq.*

(6) *Caller ID.* When a TRS facility is able to transmit any calling party identifying information to the public network, the TRS facility must pass through, to the called party, at least one of the following: the number of the TRS facility, 711, or the 10-digit number of the calling party.

(c) *Functional standards*—(1) *Consumer complaint logs.*(i) States and interstate providers must maintain a log of consumer complaints including all complaints about TRS in the state, whether filed with the TRS provider or the State, and must retain the log until the next application for certification is granted. The log shall include, at a minimum, the date the complaint was filed, the nature of the complaint, the date of resolution, and an explanation of the resolution.

(ii) Beginning July 1, 2002, states and TRS providers shall submit summaries of logs indicating the number of complaints received for the 12-month period ending May 31 to the Commission by July 1 of each year. Summaries of logs submitted to the Commission on July 1, 2001 shall indicate the number of complaints received from the date of OMB approval through May 31, 2001.

(2) *Contact persons.* Beginning on June 30, 2000, State TRS Programs, interstate TRS providers, and TRS providers that have state contracts must submit to the Commission a contact person and/or office for TRS consumer information and complaints about a certified State TRS Program's provision of intrastate TRS, or, as appropriate, about the TRS provider's service. This submission must include, at a minimum, the following:

(i) The name and address of the office that receives complaints, grievances, inquiries, and suggestions;

(ii) Voice and TTY telephone numbers, fax number, e-mail address, and web address; and

(iii) The physical address to which correspondence should be sent.

(3) *Public access to information.* Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TTY numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of all forms of TRS. Efforts to educate the public about TRS should extend to all segments of the public, including individuals who are hard of hearing, speech disabled, and senior citizens as well as members of the general population. In addition, each common carrier providing telephone voice transmission services shall

conduct, not later than October 1, 2001, ongoing education and outreach programs that publicize the availability of 711 access to TRS in a manner reasonably designed to reach the largest number of consumers possible.

(4) *Rates.* TRS users shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from the point of origination to the point of termination.

(5) *Jurisdictional separation of costs*—(i) *General.* Where appropriate, costs of providing TRS shall be separated in accordance with the jurisdictional separation procedures and standards set forth in the Commission's regulations adopted pursuant to section 410 of the Communications Act of 1934, as amended.

(ii) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Except as noted in this paragraph, with respect to VRS, costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under §64.605, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section. Costs caused by the provision of interstate and intrastate VRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism.

(iii) *Telecommunications Relay Services Fund.* Effective July 26, 1993, an Interstate Cost Recovery Plan, hereinafter referred to as the TRS Fund, shall be administered by an entity selected by the Commission (administrator). The initial administrator, for an interim period, will be the National Exchange Carrier Association, Inc.

(A) *Contributions.* Every carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of interstate end-user telecommunications revenues as described herein. Contributions shall be made by all carriers who provide interstate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

(B) *Contribution computations.* Contributors' contribution to the TRS fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to interstate end-user telecommunications revenues. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years' contributions. Each subject carrier must contribute at least $25 per year. Carriers whose annual contributions total less than $1,200 must pay the entire contribution at the beginning of the contribution period. Service providers whose contributions total $1,200 or more may divide their contributions into equal monthly payments. Carriers shall complete and submit, and contributions shall be based on, a "Telecommunications Reporting Worksheet" (as published by the Commission in the Federal Register). The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Consumer & Governmental Affairs Bureau may waive, reduce, modify or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

(C) *Data collection from TRS Providers.* TRS providers shall provide the administrator with true and adequate data necessary to determine TRS fund revenue requirements and payments. TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment in general accordance with part 32 of the Communications Act, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements. The administrator and the Commission shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments.

(D) [Reserved]

(E) *Payments to TRS providers.* TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. The administrator shall file schedules of payment formulas with the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval. Such formulas shall be based on total monthly interstate TRS minutes of use. TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed interstate TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit. In addition to the data required under paragraph (c)(5)(iii)(C) of this section, all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments. The administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. The TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in §64.604, and after disbursements to the administrator for reasonable expenses incurred by it in connection with TRS Fund administration. TRS providers receiving payments shall file a form prescribed by the administrator. The administrator shall fashion a form that is consistent with parts 32 and 36 procedures reasonably tailored to meet the needs of TRS providers. The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the fund administrator. The fund administrator shall have authority to audit TRS providers reporting data to the administrator. The formulas should appropriately compensate interstate providers for the provision of VRS, whether intrastate or interstate.

(F) TRS providers eligible for receiving payments from the TRS Fund are:

(*1*) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to §64.605; or

(*2*) TRS facilities owned by or operated under contract with a common carrier providing interstate services operated pursuant to §64.604; or

(*3*) Interstate common carriers offering TRS pursuant to §64.604; or

(*4*) Video Relay Service (VRS) and Internet Protocol (IP) Relay providers certified by the Commission pursuant to §64.605.

(G) Any eligible TRS provider as defined in paragraph (c)(5)(iii)(F) of this section shall notify the administrator of its intent to participate in the TRS Fund thirty (30) days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS, and failure to file may exclude the TRS provider from eligibility for the year.

(H) Administrator reporting, monitoring, and filing requirements. The administrator shall perform all filing and reporting functions required in paragraphs (c)(5)(iii)(A) through (c)(5)(iii)(J) of this section. TRS payment formulas and revenue requirements shall be filed with the Commission on May 1 of each year, to be effective the following July 1. The administrator shall report annually to the Commission an itemization of monthly administrative costs which shall consist of all expenses, receipts, and payments associated with the administration of the TRS Fund. The administrator is required to keep the TRS Fund separate from all other funds administered by the administrator, shall file a cost allocation manual (CAM) and shall provide the Commission full access to all data collected pursuant to the administration of the TRS Fund. The administrator shall account for the financial transactions of the TRS Fund in accordance with generally accepted accounting principles for federal agencies and maintain the accounts of the TRS Fund in accordance with the United States Government Standard General Ledger. When the administrator, or any independent auditor hired by the administrator, conducts audits of providers of services under the TRS program or contributors to the TRS Fund, such audits shall be conducted in accordance with generally accepted government auditing standards. In administering the TRS Fund, the administrator shall also comply with all relevant and applicable federal financial management and reporting statutes. The administrator shall establish a non-paid voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers, which will meet at reasonable intervals (at least semi-annually) in order to

monitor TRS cost recovery matters. Each group shall select its own representative to the committee. The administrator's annual report shall include a discussion of the advisory committee deliberations.

(I) *Information filed with the administrator.* The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. Subject to any restrictions imposed by the Chief of the Consumer & Governmental Affairs Bureau, the TRS Fund administrator may share data obtained from carriers with the administrators of the universal support mechanisms (*See* 47 CFR 54.701 of this chapter), the North American Numbering Plan administration cost recovery (*See* 47 CFR 52.16 of this chapter), and the long-term local number portability cost recovery (*See* 47 CFR 52.32 of this chapter). The TRS Fund administrator shall keep confidential all data obtained from other administrators. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers. Contributors may make requests for Commission nondisclosure of company-specific revenue information under §0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information.

(J) The administrator's performance and this plan shall be reviewed by the Commission after two years.

(K) All parties providing services or contributions or receiving payments under this section are subject to the enforcement provisions specified in the Communications Act, the Americans with Disabilities Act, and the Commission's rules.

(6) *Complaints*—(i) *Referral of complaint.* If a complaint to the Commission alleges a violation of this subpart with respect to intrastate TRS within a state and certification of the program of such state under §64.605 is in effect, the Commission shall refer such complaint to such state expeditiously.

(ii) Intrastate complaints shall be resolved by the state within 180 days after the complaint is first filed with a state entity, regardless of whether it is filed with the state relay administrator, a state PUC, the relay provider, or with any other state entity.

(iii) *Jurisdiction of Commission.* After referring a complaint to a state entity under paragraph (c)(6)(i) of this section, or if a complaint is filed directly with a state entity, the Commission shall exercise jurisdiction over such complaint only if:

(A) Final action under such state program has not been taken within:

(*1*) 180 days after the complaint is filed with such state entity; or

(*2*) A shorter period as prescribed by the regulations of such state; or

(B) The Commission determines that such state program is no longer qualified for certification under §64.605.

(iv) The Commission shall resolve within 180 days after the complaint is filed with the Commission any interstate TRS complaint alleging a violation of section 225 of the Act or any complaint involving intrastate relay services in states without a certified program. The Commission shall resolve intrastate complaints over which it exercises jurisdiction under paragraph (c)(6)(iii) of this section within 180 days.

(v) *Complaint procedures.* Complaints against TRS providers for alleged violations of this subpart may be either informal or formal.

(A) *Informal complaints*—(*1*) *Form.* An informal complaint may be transmitted to the Consumer & Governmental Affairs Bureau by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate a complainant's hearing or speech disability.

(*2*) *Content.* An informal complaint shall include the name and address of the complainant; the name and address of the TRS provider against whom the complaint is made; a statement of facts supporting the complainant's allegation that the TRS provided it has violated or is violating section 225 of the Act and/or requirements under the Commission's rules; the specific relief or satisfaction sought by the complainant; and the complainant's preferred format or method of response to the complaint by the Commission and the defendant TRS provider (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate the complainant's hearing or speech disability).

(*3*) *Service; designation of agents.* The Commission shall promptly forward any complaint meeting the requirements of this subsection to the TRS provider named in the complaint. Such TRS provider shall be called upon to satisfy or answer the complaint within the time specified by the Commission. Every TRS provider shall file with the Commission a statement designating an agent or agents whose principal responsibility will be to receive all complaints, inquiries, orders, decisions, and notices and other pronouncements forwarded by the Commission. Such designation shall include a name or department designation, business address, telephone number (voice and TTY), facsimile number and, if available, internet e-mail address.

(B) *Review and disposition of informal complaints.* (*1*) Where it appears from the TRS provider's answer, or from other communications with the parties, that an informal complaint has been satisfied, the Commission may, in its discretion, consider the matter closed without response to the complainant or defendant. In all other cases, the Commission shall inform the parties of its review and disposition of a complaint filed under this subpart. Where practicable, this information shall be transmitted to the complainant and defendant in the manner requested by the complainant (e.g., letter, facsimile transmission, telephone (voice/TRS/TTY) or Internet e-mail.

(*2*) A complainant unsatisfied with the defendant's response to the informal complaint and the staff's decision to terminate action on the informal complaint may file a formal complaint with the Commission pursuant to paragraph (c)(6)(v)(C) of this section.

(C) *Formal complaints.* A formal complaint shall be in writing, addressed to the Federal Communications Commission, Enforcement Bureau, Telecommunications Consumer Division, Washington, DC 20554 and shall contain:

(*1*) The name and address of the complainant,

(*2*) The name and address of the defendant against whom the complaint is made,

(*3*) A complete statement of the facts, including supporting data, where available, showing that such defendant did or omitted to do anything in contravention of this subpart, and

(*4*) The relief sought.

(D) *Amended complaints.* An amended complaint setting forth transactions, occurrences or events which have happened since the filing of the original complaint and which relate to the original cause of action may be filed with the Commission.

(E) *Number of copies.* An original and two copies of all pleadings shall be filed.

(F) *Service.* (*1*) Except where a complaint is referred to a state pursuant to §64.604(c)(6)(i), or where a complaint is filed directly with a state entity, the Commission will serve on the named party a copy of any complaint or amended complaint filed with it, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy or answer the complaint in writing within the time specified in said notice of complaint.

(*2*) All subsequent pleadings and briefs shall be served by the filing party on all other parties to the proceeding in accordance with the requirements of §1.47 of this chapter. Proof of such service shall also be made in accordance with the requirements of said section.

(G) *Answers to complaints and amended complaints.* Any party upon whom a copy of a complaint or amended complaint is served under this subpart shall serve an answer within the time specified by the Commission in its

notice of complaint. The answer shall advise the parties and the Commission fully and completely of the nature of the defense and shall respond specifically to all material allegations of the complaint. In cases involving allegations of harm, the answer shall indicate what action has been taken or is proposed to be taken to stop the occurrence of such harm. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Matters alleged as affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve an answer within the time and in the manner prescribed may be deemed in default.

(H) *Replies to answers or amended answers.* Within 10 days after service of an answer or an amended answer, a complainant may file and serve a reply which shall be responsive to matters contained in such answer or amended answer and shall not contain new matter. Failure to reply will not be deemed an admission of any allegation contained in such answer or amended answer.

(I) *Defective pleadings.* Any pleading filed in a complaint proceeding that is not in substantial conformity with the requirements of the applicable rules in this subpart may be dismissed.

(7) *Treatment of TRS customer information.* Beginning on July 21, 2000, all future contracts between the TRS administrator and the TRS vendor shall provide for the transfer of TRS customer profile data from the outgoing TRS vendor to the incoming TRS vendor. Such data must be disclosed in usable form at least 60 days prior to the provider's last day of service provision. Such data may not be used for any purpose other than to connect the TRS user with the called parties desired by that TRS user. Such information shall not be sold, distributed, shared or revealed in any other way by the relay center or its employees, unless compelled to do so by lawful order.

[65 FR 38436, June 21, 2000, as amended at 65 FR 54804, Sept. 11, 2000; 67 FR 13229, Mar. 21, 2002; 68 FR 50977, Aug. 25, 2003; 69 FR 5719, Feb. 6, 2004; 69 FR 53351, Sept. 1, 2004; 69 FR 55985, Sept. 17, 2004; 69 FR 57231, Sept. 24, 2004; 70 FR 51658, Aug. 31, 2005; 70 FR 76215, Dec. 23, 2005]

§64.605 STATE CERTIFICATION.

(a) *State documentation*—(1) *Certified state program.* Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned "TRS State Certification Application." All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification including notification in the Federal Register.

(2) *VRS and IP Relay provider.* Any entity desiring to provide VRS or IP Relay services, independent from any certified state TRS program or any TRS provider otherwise eligible for compensation from the Interstate TRS Fund, and to receive compensation from the Interstate TRS Fund, shall submit documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned "VRS and IP Relay Certification Application." The documentation shall include, in narrative form:

(i) A description of the forms of TRS to be provided (*i.e.*, VRS and/or IP Relay);

(ii) A description of how the provider will meet all non-waived mandatory minimum standards applicable to each form of TRS offered;

(iii) A description of the provider's procedures for ensuring compliance with all applicable TRS rules;

(iv) A description of the provider's complaint procedures;

(v) A narrative describing any areas in which the provider's service will differ from the applicable mandatory minimum standards;

(vi) A narrative establishing that services that differ from the mandatory minimum standards do not violate applicable mandatory minimum standards;

(vii) Demonstration of status as a common carrier; and

(viii) A statement that the provider will file annual compliance reports demonstrating continued compliance with these rules.

(b) (1) *Requirements for state certification.* After review of state documentation, the Commission shall certify, by letter, or order, the state program if the Commission determines that the state certification documentation:

(i) Establishes that the state program meets or exceeds all operational, technical, and functional minimum standards contained in §64.604;

(ii) Establishes that the state program makes available adequate procedures and remedies for enforcing the requirements of the state program, including that it makes available to TRS users informational materials on state and Commission complaint procedures sufficient for users to know the proper procedures for filing complaints; and

(iii) Where a state program exceeds the mandatory minimum standards contained in §64.604, the state establishes that its program in no way conflicts with federal law.

(2) Requirements for VRS and IP Relay Provider FCC Certification. After review of certification documentation, the Commission shall certify, by Public Notice, that the VRS or IP Relay provider is eligible for compensation from the Interstate TRS Fund if the Commission determines that the certification documentation:

(i) Establishes that the provision of VRS and/or IP Relay will meet or exceed all non-waived operational, technical, and functional minimum standards contained in §64.604;

(ii) Establishes that the VRS and/or IP Relay provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section and the mandatory minimum standards contained in §64.604, including that it makes available for TRS users informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints; and

(iii) Where the TRS service differs from the mandatory minimum standards contained in §64.604, the VRS and/or IP Relay provider establishes that its service does not violate applicable mandatory minimum standards.

(c)(1) *State certification period.* State certification shall remain in effect for five years. One year prior to expiration of certification, a state may apply for renewal of its certification by filing documentation as prescribed by paragraphs (a) and (b) of this section.

(2) *VRS and IP Relay Provider FCC certification period.* Certification granted under this section shall remain in effect for five years. A VRS or IP Relay provider may apply for renewal of its certification by filing documentation with the Commission, at least 90 days prior to expiration of certification, containing the information described in paragraph (a)(2) of this section.

(d) *Method of funding.* Except as provided in §64.604, the Commission shall not refuse to certify a state program based solely on the method such state will implement for funding intrastate TRS, but funding mechanisms, if labeled, shall be labeled in a manner that promote national understanding of TRS and do not offend the public.

(e)(1) *Suspension or revocation of state certification.* The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS. The Commission may, on its own motion, require a certified state program to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a state program may not be in compliance with the minimum standards.

(2) *Suspension or revocation of VRS and IP Relay Provider FCC certification.* The Commission may suspend or revoke the certification of a VRS or IP Relay provider if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. The Commission may, on its own motion, require a certified VRS or IP Relay provider to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a certified VRS or IP Relay provider may not be in compliance with the minimum standards.

(f) *Notification of substantive change.* (1) States must notify the Commission of substantive changes in their TRS programs within 60 days of when they occur, and must certify that the state TRS program continues to meet federal minimum standards after implementing the substantive change.

(2) VRS and IP Relay providers certified under this section must notify the Commission of substantive changes in their TRS programs, services, and features within 60 days of when such changes occur, and must certify that the interstate TRS provider continues to meet federal minimum standards after implementing the substantive change.

(g) VRS and IP Relay providers certified under this section shall file with the Commission, on an annual basis, a report providing evidence that they are in compliance with §64.604.

[70 FR 76215, Dec. 23, 2005]

Appendix

No. 2

PA PUC Letter dated

September 20, 2007, regarding

2008-2013 Certification Filing

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

September 20, 2007

M-00900239

MARLENE H DORTCH
OFFICE OF THE SECRETARY
FEDERAL COMMUNICATIONS COMMISSION
445 12TH STREET SW
ROOM TW-B204
WASHINGTON DC 20554

Re: CG Docket No. 03-123; Public Notice DA 07-2761, June 22, 2007

Dear Ms. Dortch:

The Pennsylvania Public Utility Commission (Pa PUC) hereby informs the FCC that it intends to file the Telecommunications Relay Service (TRS) recertification on behalf of the Commonwealth of Pennsylvania after the October 1, 2007, suggested filing date.

The Pa PUC has established a time line that results in filing the TRS recertification by December 1, 2007. The recertification request will include information related to the recent selection of a CTVRS (captioned telephone voice-carry-over relay service) provider for Pennsylvania.

The current TRS certification that the Pa PUC files on behalf of the Commonwealth of Pennsylvania expires July 26, 2008. The FCC PN DA 07-2761 CG Docket No. 03-123, states that States can apply for "renewal" of their TRS certification beginning July 26, 2007. The FCC has indicated further that it would like to have all applications for recertification filed by October 1, 2007. At the recent NASRA (National Association for State Rely Administrators) meeting located in Missoula, Montana, Nicole McGinnis, Deputy Chief, Consumer and Governmental Affairs for the FCC, indicated that the FCC would like states that are not going to file on or before the requested October 1st filing date to so advise the FCC.

If you have any additional questions or require additional information, please contact Eric Jeschke for technical issues at (717) 783-3850 or ejeschke@state.pa.us and Louise Fink Smith for legal issues at (717) 787-8866 or finksmith@state.pa.us.

Sincerely,

James J. McNulty
Secretary

cc: Eric Jeschke FUS
Louise Fink Smith Law
Kathleen Aunkst, Secretary's Bureau
Diane Mason, FCC

Appendix

No. 3

History of the PA State Programs

Appendix

No. 3.1

Overview

A BRIEF SUMMARY OF THE PENNSYLVANIA STATE TRS & CTRS PROGRAMS

In September 1989, the Pennsylvania Telephone Association (PTA) transmitted a White Paper Summary of Findings to the Pennsylvania Public Utility Commission (PA PUC) relative to the provision of telephone relay service (TRS). In it, the PTA recognized the needs of the hard of hearing community and supported the establishment of a statewide relay system. In October 1989, the PA PUC responded to the PTA, agreeing with PTA's suggestion to establish of a relay system. The PA PUC requested that the PTA and submit a definite plan in the form of a Petition to establish a Pennsylvania Relay System.

In February 1990, the PTA presented a Request for Proposal (RFP), which was reviewed and accepted by the PA PUC. Formal offers to provide the contemplated TRS were submitted by four prospective service providers. The offers were reviewed by a Bid Committee. On May 29, 1990, the PA PUC, at Docket No. M-00900239, granted the Petition of the PTA and established the PA TRS. The PA PUC also granted the application of AT&T at Docket No. A-310125 for a Certificate of Public Convenience to provide TRS in Pennsylvania. AT&T continues to be the TRS provider in Pennsylvania.

The May 29, 1990 Order further established a uniform surcharge based upon total access lines as the funding mechanism to recover charges associated with the operation PA TRS. A monthly end-user billing surcharge (TRS surcharge) based on residential and business wireline access lines is collected by Pennsylvania's Local Exchange Carriers (LECs). The TRS surcharge is recalculated at least annually by the PA PUC.

In 1995, the PA TRS was codified by the enactment of 35 P.S. §§ 6701.1 – 6701.4, and the PA Telecommunication Device Distribution Program (TDDP) was created to provide free customer premises equipment to low income TRS users in Pennsylvania. The TDDP is also funded through the TRS Surcharge. The legislation, now known as the *Universal Telecommunications and Print Media Access Act*, was amended to add the Print Media Assess System Program (PMASP) to provide telephone access to print media access systems for persons who are blind. The PMASP is also funded by the TRS Surcharge.

In 2003, the PA PUC began a trial of captions telephone relay service (CTRS). The trial progressed to interim service, and in 2006 a contract provider was selected. The contract was finalized in 2007, and Hamilton began providing regular PA CTRS.

A Fund Administrator receives the TRS Surcharge revenues disburses the fund monies necessary for the operation of the PA TRS, CTRS, TDDP, and PMASP. Currently, the Fund Administrator is Wachovia Bank, N.A. (Formerly First Union) in Philadelphia, PA. AT&T and Hamilton are compensated monthly by the Fund Administrator based on the reported call volume for the preceding month. The TRS Advisory Board provides the PA PUC with input on TRS matters.

The present service provider, AT&T, operates the PA TRS under a certificate of public convenience (CPC) at PUC Docket No. A-310125. The rules and regulations for the operation of the PA TRS are set forth in AT&T PA PUC Tariff No. 13.

Hamilton operates as the contractual provider of captioned telephone relay service in Pennsylvania. The contract period is for 3 years with the option of two 1-year renewal periods.

Appendix

No. 3.2

Order Creating TRS in PA

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held May 24, 1990

Commissioners Present:

Bill Shane, Chairman
William H. Smith, Vice-Chairman
Joseph Rhodes, Jr.
Frank Fischl
David W. Rolka

Re: Petition of the Pennsylvania Telephone Association Requesting the Commission to Approve Implementation of Pennsylvania Relay Service for the Deaf, Hearing and/or Speech Impaired Community within the Commonwealth of Pennsylvania — M-900239

Application of AT&T Communications for a Certificate of Convenience and Necessity to Provide Dual Party Relay Service in the Commonwealth of Pennsylvania — A-310125

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OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Petition of the Pennsylvania Telephone Association ("PTA") filed on April 12, 1990, requesting approval to implement the Pennsylvania Relay Service. Thereafter, there were several related filings, all of which will be addressed herein. Additionally, we will consider, herein, the Application of AT&T Communications of Pennsylvania, Inc. ("AT&T") for a Certificate of Public Convenience and Necessity to provide Dual Party Relay Service, filed on April 24, 1990.

I. Background

On September 15, 1989, the PTA transmitted to this Commission a White Paper Summary of Findings relative to the provisioning of intrastate relay telecommunication service for the deaf, hearing and/or speech impaired population of Pennsylvania. The White Paper, at page 28, stated that "[t]he PTA recognizes the needs of the hearing impaired community and supports establishment of a statewide hearing impaired relay system." The White Paper included the following: (1) a review of the methods by which various intrastate relay systems were initiated in other states and the funding mechanisms; (2) an examination of the service standards which have been incorporated into existing relay systems; (3) an examination of the possible methods to operate the relay system and the location of the relay center; (4) an itemization of the categories of upfront and recurring costs which will likely be encountered; and (5) a discussion of the various methods for funding a relay system. Additionally, the White Paper identified specific courses of action which the PTA would undertake in developing a relay system including the following recommendations: (1) the establishment of an advisory/oversight committee, consisting of representatives

of the Commission, the industry, the deaf and hearing impaired community; and (2) a surcharge on all intrastate telecommunication revenues.

By Secretarial Letter, issued October 23, 1989, we stated that "[t]he Commission has reviewed this paper and essentially agrees with the Association's proposal regarding the establishment of a relay system. More specifically, the Commission requests that the Association proceed with the formulation of a definitive plan and submit it to the Commission in the form of a Petition to Establish a Pennsylvania Relay System, ..." The Secretarial Letter offered guidelines to which the plan should generally conform.

On February 1, 1990, we issued a second Secretarial Letter to provide additional guidance to the PTA. This letter was based on a January 22, 1990 meeting between the Commission's Staff and members of the PTA Task Force for the Pennsylvania Relay System. During the meeting on January 22, 1990, the PTA presented a draft Request for Proposal ("RFP"). We stated in our Secretarial Letter that "[t]he draft Request for Proposal prepared by the PTA Task force has been reviewed. The Commission has no suggested additions, deletions or changes. The draft appears to be adequate for the purpose intended." Additionally, we stated in our Secretarial Letter that "[i]t is this Commission's strong desire that the operational date not be later than September 7, 1990, in accord with the Task Force's time table."

In accordance with the terms of the RFP, a pre-proposal conference was held on February 9, 1990, which was attended by four (4) prospective Relay Service Providers for the purpose of discussing the terms of the proposed RFP. The finalized RFP was released on February 16, 1990, to those interested potential Relay Service Providers who attended the pre-proposal conference.

Formal offers to provide the contemplated Relay Service were submitted by four (4) prospective Service Providers: AT&T Communications Company of Pennsylvania, the Bell Telephone Company of Pennsylvania, RCI Long Distance, Inc. and Sprint Services. The proposals were reviewed by a Bid Committee, which consisted of three (3) members, including one representative from each of the following: the Commission, a Deaf, Hearing and/or Speech Impaired Organization and Coopers and Lybrand, certified public accountants. On March 30, 1990, the Bid Committee submitted an advisory letter to the Commission, which identified AT&T as presenting the "best" bid.

Pursuant to the directives contained in our Secretarial Letter of October 23, 1989, the PTA filed, with this Commission on April 12, 1990, a Petition seeking a Final Order authorizing the operation of a Relay Service and a funding mechanism.

AT&T and The Bell Telephone Company of Pennsylvania ("Bell") filed documents pertaining to this matter. On May 1, 1990, AT&T filed a document entitled "AT&T's Response to the April 12, 1990 Petition of the Pennsylvania Telephone Association." On May 7, 1990, the PTA filed an Answer to AT&T's Response to the Petition of the Pennsylvania Telephone Association, and Bell filed, on May 8, 1990, a Reply to AT&T's Response to the April 12, 1990 Petition. AT&T, on May 14, 1990, filed a Response to the PTA's Response. We will address these various filings as part of our discussion of the merits of the Petition filed by the PTA.

AT&T filed with the Commission, on April 27, 1990, an Application for a Certificate of Public Convenience and Necessity to provide intrastate Relay Service. We will consider this Application, in this Opinion and Order, upon our disposition of the PTA's Petition.

II. Secretarial Letters

There seems to be some confusion as to the scope of our Secretarial Letters. As previously stated, we issued two Secretarial Letters, which were intended to serve as guidelines to the PTA. Our Secretarial Letter, issued October 23, 1989, states, inter alia, that:

> By letter dated September 15, 1989, you forwarded a White Paper pertaining to a Pennsylvania Relay System for the Deaf and Hearing Impaired, which had been approved by the Board of Directors of the Pennsylvania Telephone Association.
>
> The Commission has reviewed this paper and essentially agrees with the Association's proposal regarding the establishment of a relay system. More specifically the Commission requests that the Association proceed with the formulation of a definitive plan and submit it to the Commission in the form of a Petition to Establish a Pennsylvania Relay System, which is generally in conformity with the following guidelines.

The second Secretarial Letter, issued on February 1, 1990, states, inter alia, the following:

> In my letter dated October 23, 1989, I advised you that the Commission generally agreed with the content of the Pennsylvania Telephone Association White Paper pertaining to a Pennsylvania Relay System for the Deaf and Hearing Impaired.
>
> On January 22, 1990, members of the Pennsylvania Telephone Association Task Force for the Pennsylvania Relay System met informally with members of the Commission Staff and requested a supplement to the prior letter and some clarification. The following additional guidance is provided.

AT&T, in its Reply to the PTA's May 7, 1990 pleading, raises the issue of the existence of confusion with regard to our

Secretarial Letters. Specifically, AT&T states, at page 1 of its May 14, 1990 pleading, that:

> The PTA's suggestion that AT&T is proposing "radical" changes to Relay Service and has "misrepresented" its intentions to conform to the RFP (PTA Answer at 3) reflects a basic disagreement between PTA and AT&T over the weight to be given to the Commission's October 23, 1989, and February 1, 1990 secretarial letters. While the PTA perceives these letters as "orders" (PTA Ans. at 2), AT&T believes they constitute the PUC's guidelines for Relay Service, and that the PUC would use the subsequent RFP and PTA "Petition To Establish A Pennsylvania Relay Service" to clarify its position and resolve any outstanding issues.

AT&T asserts that our October 23, 1989 letter explicitly stated that we were establishing guidelines and that the PTA would submit a more definitive plan in its Petition. "AT&T did not read the secretarial letters as 'casting in concrete' the surcharge mechanism and the Fund Administrator." AT&T's Response dated May 14, 1990, p. 1. Further, AT&T viewed the RFP, issued by the PTA, as mandating the technical and operational requirements for the relay service.

Our Secretarial Letters issued on October 23, 1989 and February 1, 1990, were intended to provide guidance. The Letters offered guidelines to the PTA as they proceeded with the formulation of a definitive plan. We required the PTA to submit its definitive plan to this Commission in the form of a Petition to Establish a Pennsylvania Relay System. We contemplated that matters regarding the establishment of the system, including the funding mechanism, the service provider, the Fund Administrator, etc., would be included in the PTA's Petition for our approval. We did not, in our Secretarial Letters, approve the funding mechanism for the relay service system.

III. Petition

As stated previously, the PTA filed a Petition with this Commission to obtain a Final Order authorizing the operation of an Intrastate Relay Service System and the funding mechanism. The Petition describes a method for funding the Relay Service System, suggests a Fund Administrator and describes various other matters in connection with the establishment of a Relay Service System, which we will address herein.

A. Certification of the Relay Service Provider

Section A of the Petition addresses the certification of a Relay Service Provider. The PTA points out that the Public Utility Code requires that the Relay Service Provider either possess or apply for and obtain a Certificate of Public Convenience, which AT&T has filed for under an Application at Docket No. A-310125, and which will be considered in this Opinion and Order.

As previously stated, the Bid Committee submitted an advisory letter to the Commission identifying AT&T as presenting the "best" bid for the Relay Service System. The PTA's Petition indicates that the Commission is not bound to accept the recommendation of the Bid Committee. Based upon our review of the process, we find the recommendation of the Bid Committee to be reasonable. Accordingly, we accept the Bid Committee's recommendation that AT&T serve as the Relay Service Provider contingent upon AT&T receiving a Certificate of Public Convenience and Necessity from this Commission.

The PTA, in its Petition, states that the Applicant will provide a tariff setting forth the rates for and the conditions of service as required in the RFP. Section A of the Petition further states, relative to the charges for the provision of the Relay Service, that:

> The charges for the provision of Relay Service are to be those same charges which the Applicant set forth in its proposal and which are to be and which must be published in its tariff. If the Relay Service Provider prospectively desires to change its charges to a level different from the original RFP response, then a change may be obtained only after the expiration of three (3) years of service and, then, only pursuant to this Commission's approval of a filing demonstrating the need for such an increase. RFP at 16.

Petition, p. 5.

AT&T, in its Response to the PTA Petition, opposes the filing of its rates for the Relay Service in published tariffs. Specifically, AT&T states that it "...would suffer competitive harm if required to file its DPRS [Dual Party Relay Service] prices in publicly available tariffs." AT&T's Response, p. 4. AT&T alleges that if it is required to publish its prices, AT&T relay service competitors will gain valuable knowledge into AT&T's pricing strategy, which, AT&T views as possibly giving its competitors an undue advantage over them.

The PTA, in its Response, recognizes the need to protect pricing data. The PTA points out that the RFP does not require the publication of its rates for the relay service, and that the RFP recognizes the need for the confidentiality of data. The PTA suggests that the rates for the Relay Service need only be made available to the Commission and the Fund Administrator. The PTA believes that the limitation of the disclosure of AT&T's rates to the Commission and the Fund Administrator will serve AT&T's objective of preventing its competitors from obtaining an undue advantage. The PTA contends that the Fund Administrator needs AT&T's rates for the Relay Service in order to confirm AT&T's invoices.

While we find that the RFP released by the PTA on February 16, 1990, recognizes the need for confidentiality of

data as set forth in Section 1.I, we do not find, based on our review of the RFP, that it does not require the Relay Service Provider to publish its rates. Specifically, Section III.D requires the Relay Service Provider to include, in its Application to the Commission, the following: "[r]ates charged shall be set forth as in the service provider's RFP response." RFP, 16. Additionally, the RFP requires that the tariff set forth the rates.

We do agree, however, with the PTA's Response that there is a need to protect pricing data in this highly competitive arena. We recognize the potential competitive harm that AT&T could possibly suffer, because of the competitive circumstances, if it were required to disclose its rates for the Relay Service System in a publicly available tariff. The disclosure of AT&T's actual rates could possibly provide insight to AT&T's competitors in the telecommunications arena to its pricing strategy. We are not inclined, however, to give AT&T carte blanche with regard to this matter. Accordingly, AT&T is required to file its rates with the Commission, and we will treat it as proprietary infor-mation. These rates may be filed to be effective on one day's notice. Additionally, AT&T is required to disclose its rates to the Fund Administrator, who in turn will retain such information in a confidential manner. However, AT&T is required to file a tariff or tariff supplement containing the methodology utilized by the Company in designing its rates. The methodology will not be handled as propriety information.

We believe the disclosure of AT&T's rates exclusively to the Commission and the Fund Administrator, on a confidential basis, will serve AT&T's objective of preventing its competitors from gaining valuable insights into its pricing strategy, which could give the competitors an undue competitive advantage.

AT&T's charges for the provision of Relay Service are to be the same charges which it set forth in its proposal. If

AT&T prospectively desires to change its charges, then a change may be obtained only after the expiration of three (3) years of service pursuant to our approval of a filing demonstrating the need for such an increase. The standards of service are those set forth in the final RFP.

B. Selection of a Fund Administrator

Section B of the Petition addresses the selection of a Fund Administrator. The PTA points out that this position is one of a fiduciary and custodian whose responsibilities are principally: the receipt of surcharge revenues and virtual call revenues; and the disbursement of fund monies to the Relay Service Provider. With respect to the undisbursed funds, PTA states that the Administrator is under a duty to maintain a reasonable return thereon. The PTA Task Force recommended the appointment of Hamilton Bank as the Relay Service Fund Administrator.

The PTA states, in its Petition, that the Relay Service Provider will be compensated on a monthly basis by the Fund Administrator based on the call volume for the preceding month, that is reported to the Fund Administrator, and the rate schedule set forth in its tariff with the Commission. The PTA requires the Relay Service Provider to report the usage figures and submit a statement to the Fund Administrator by the 15th of each succeeding month. The Administrator will in turn pay the Relay Service Provider within 15 days thereafter. The PTA notes that for the first six (6) months of operation, the Relay Service Provider will be compensated based upon actual usage or 200,000 minutes per month, whichever is greater, and we agree.

AT&T, in its Response to the PTA's Petition, rejects the recommendation that a Fund Adminstrator is needed to act in a fiduciary capacity and as a custodian. AT&T proposes that it be permitted to enter into funding contracts with each Local Exchange Carrier (LEC) or a single funding contract with the PTA

for application to all LECs. AT&T asserts that this approach would be easier to implement and would eliminate the need and expense for a Fund Administrator.

Under AT&T's approach, the LECs or the PTA would contract with AT&T for the funding of the Relay Service System. The LECs would collect the surcharge that is required to pay AT&T's operation cost and, each month, remit the money directly to AT&T. AT&T believes that this arrangement results in the Fund Administrator being an unnecessary "middleman". This arrangement, AT&T asserts, eliminates the problems associated with appointing, compensating and supervising a Fund Administrator.

We do not see the same problems that AT&T asserts are associated with having a Fund Administrator. We view the Fund Administrator as a neutral third party who is responsible for paying the invoices of the Service Provider, receiving the dollars generated by the surcharge, investing, temporarily, any undisbursed monies and reporting to this Commission the status of the fund. We agree with the PTA's Response that "[i]n a fit of exaggeration, AT&T claims that the Fund Administrator poses 'vexing problems involved with appointing, compensating and supervising a fund administrator.'" PTA Response, p. 5.

We find no problems with the appointment of a Fund Administrator. The PTA has recommended, for our approval, the Hamilton Bank, which is an established, regional bank that is willing to act in the capacity as a Fund Administrator, and we approve PTA's recommendation.

There are no problems with the proposed compensation to the Fund Administrator. The PTA has established, with the Fund Administrator, a schedule of compensation which is set forth in Exhibit A to Appendix 6 of the PTA's Petition. The compensation is based upon the average daily fair market value of assets in the Relay Service Fund and can be taken by the Fund Administrator

monthly. The schedule of fees as set forth by the PTA is as follows:

Annual Fee	Average Daily Assets
$5.00/$1,000	first $0 - $ 1,000,000
$4,00/$1,000	next $ 1,000,000
$3.00/$1,000	next $ 3,000,000
$2.00/$1,000	next $ 5,000,000
$1.25/$1,000	excess above $10,000,000

PTA Petition, Exhibit A to Appendix 6

We find the compensation schedule to be reasonable, and we do not see the aforementioned Fund Administrator's fees as having an appreciable impact upon the level of the surcharge or the Relay Service Fund. As the PTA stated, on page 5 of its Response, "[t]he benefits associated with the custodial protection of the surcharge generated dollars and not simply paying the money directly over to AT&T easily exceeds this de minimus level of impact", and we agree. As the PTA suggested, the income to the Relay Service Fund created by the low risk investments of the Fund Administrator will undoubtly reduce the surcharge level in future years.

We find AT&T's perceived problem with supervising the Fund Administrator to be without merit. We view the role of the Fund Administrator to be a vital component of the Relay Service System. Although we see no need to supervise the daily operations of the Fund Administrator, we certainly will monitor the relationship between the Service Provider and the Fund Administrator. The Hamilton Bank, as the Fund Administrator, is required, pursuant to the Pennsylvania Relay Service Fund Administrator Agreement, to maintain records and books of account relating to the Relay Service Fund in which, at a minimum, will

be recorded: receipt of monies from LECs for the surcharge and virtual call revenues that are received; disbursements to the Service Provider, including a statement of call volume as reported by the Service Provider and a copy of the Service Provider's invoice; disbursements, receipts and income relating to investments of Relay Service Fund proceeds; disbursements to the Fund Administrator for fees due the Fund Administrator hereunder; and any other relevant matters.

Additionally, the Hamilton Bank is required, under the Agreement, to provide this Commission with a statement of the records, as specified above, for the preceding month and within fifteen days of the end of such month. We will receive an annual statement of the status of the Relay Service Fund, including a statement for each month of the preceding twelve (12) month period.

AT&T, in its Response, asserts that the Fund Administrator Agreement, as set forth at Appendix A of the PTA Petition, must be substantially revised if we decide to approve PTA's concept of a Fund Administrator, which we do approve. AT&T enumerated several perceived deficiencies in the Agreement as follows:

1. The Contract does not specify what happens if there is a shortage of funds to pay the Relay Service Provider;

2. It does not specify any penalties if the Fund Administrator is negligent in performing its duties;

3. It is unclear on the actions to be taken if there is a dispute over the Relay Service Provider's invoice; and

4. The contract does not seem to require the Fund Administrator to adhere to an appropriate degree of care in administering the fund.

AT&T Response, p. 7.

As to AT&T's first point, the Fund Administration Agreement clearly specifies that: "the Fund Administrator shall have no duty at any time to use any of its own funds to pay any Service Provider invoice." Petition at App. 6, Paragraph 1.6. This provision is consistent with the Fund Administrator's position as the custodian of dollars received by it. The Fund Administrator is not a source of funds for Relay Service. The PTA Task Force believes that by use of the historical revenue data for the Local Exchange and Interexchange Carriers (Petition at 12) and establishing a call volume of 200,000 minutes per month initially (Petition at 14) a positive cash flow for the fund is assured.

The Fund Administration Agreement clearly states that: "In the event that, the Fund Administrator believes that insufficient monies are being or will be received to meet the obligations of the Relay Service Fund, then the Fund Administrator shall promptly so notify the Commission, explaining the basis for such belief." As pointed out in the Petition, this Commission has the authority to adjust the surcharge prior to the annual July 1 recalculation date, if a significant imbalance in cash flow is brought to our attention by either the Fund Administrator or the Relay Service Provider. Also, the Fund Administrator must provide monthly and annual reports regarding the status of the Fund to this Commission.

Moreover, it should be noted that AT&T's proposal to require the Local Exchange Carriers to directly remit surcharge revenues to AT&T does nothing whatsoever to resolve a shortage of funds in a manner any different than that proposed in the Petition.

AT&T's second point is meritless. The Fund Administrator's role is clearly described as one of "custodian". Petition at App. 6, Paragraph 1.1. This term has a specific legal meaning which requires "the protection and preservation of

the thing in custody" and means "a keeping, a guardianship, the state of being held under guard". Black's Law Dictionary (1968) at 461.

The duties and responsibilities of the Fund Administrator are clearly delineated in the Fund Administration Agreement. For example, the Fund Administrator is expressly limited to the types of investment (low risk) which may be made and the requirement is imposed that it maintain sufficient cash on hand to pay the Service Provider's invoices in a timely manner. Id., Paragraph 1.5. If the Fund Administrator is negligent in performing its duties, as raised by AT&T, or if it breaches the Agreement or otherwise acts in a manner which is tortious, then damages for any losses suffered will lie in an action before a court of law.

AT&T's third assertion that the contract is unclear in the event of a dispute over a Service Provider invoice does have some merit. The Agreement at page 5 states that:

> The Fund Administrator shall have no obligation to contest or make inquiry regarding the invoice tendered by a Service Provider, so long as such invoice appears regular on its face and contains no readily apparent arithmetic errors. The Fund Administrator shall consult with the Relay Service Provider and the Commission to make any appropriate adjustments which are necessary.

The PTA states, in Response to AT&T's assertion, that "the Fund Administrator is merely a conduit for collection and disbursement of Relay Service funds and is not the proper party to challenge the invoices submitted by the Service Provider. As further set forth in the Agreement: The Fund Administrator shall consult with the Relay Service Provider and the Commission to make any appropriate adjustments which are necessary." PTA's Response, p. 11.

Although the Agreement includes the language that "[t]he Fund Administrator shall consult with the Relay Service Provider and the Commission to make any appropriate adjustments which are necessary," we believe additional language is needed to clarify which party is the ultimate enforcer. Accordingly, we order the PTA to revise Section 2.3 of the Agreement to include a statement that the Commission has final approval with regard to any adjustments resulting from a dispute pertaining to AT&T's invoices.

AT&T's fourth objection is the failure of the Agreement to impose "an appropriate degree of care" upon the Fund Administrator. AT&T Response at 7. As discussed above, the Fund Administrator's defined, legal capacity is one of a "custodian". The limitations upon the type of investments and its obligation to disburse funds are regulated by the Agreement; however, we are in agreement with AT&T that the Relay Service Fund Administrator Agreement fails to impose an appropriate degree of care.

The Fund Administrator is obliged to exercise the care which an ordinarily prudent and diligent bank would exercise under the same circumstances. Accordingly, we shall order the PTA to revise the Agreement to include a provision as to the appropriate degree of care.

With regard to AT&T's assertion that the Agreement, set forth in the PTA's Petition at Appendix 6, is "entirely inappropriate", the PTA contends that this assertion is groundless and is contrived as a means of supporting AT&T's position that the surcharge revenues should be remitted directly to AT&T, and we agree. A scheme where the Service Provider directly receives all surcharge revenues raises more questions and problems. We view the role of a neutral third party as the custodian of the funds essential to this process. The Fund Administrator serves as checks and balances in the process.

C. Derivation of Fund Revenues

In order to make a determination of the best mechanism for funding the Relay Service System, we shall start with an examination of PTA's White Paper as follows:

> ...The compensation/funding issue involves compensation to the party that will be responsible for reimbursing the vendor for providing the service. In New York, Alabama, and California the Local Exchange Carriers (LECs) were required to pay for the provision and operation of their states' relay centers. The LECs in New York were allowed to increase their monthly access line rates by $.12 in order to recover the additional costs incurred. In Alabama a surcharge on each business and residence local exchange line of $.20 was allowed. In California, the LECs were allowed to levy a surcharge of .5% on all revenues including toll access to cover the costs of the system.
>
> There is virtually a limitless array of recovery mechanisms that could be employed to recover the costs of providing a relay center in the Commonwealth.

White Paper, p. 22.

Our review of the various pleadings, in this case, has indicated that the best funding mechanism is a statewide surcharge. There is no dispute that a statewide surcharge is in fact the most appropriate funding system for the Pennsylvania Relay Service System. The problem arises as to the the calculation of the surcharge and to whom it will be applied.

At the conclusion of its White Paper, the PTA states:

> PTA supports a surcharge on intrastate telecommunication revenues as the most equitable and effective method to recover relay system costs. This funding option was selected because it best addresses the following significant issues.

- Given the nature of the hearing impaired relay service, it is appropriate to recover costs from the broadest base possible (i.e., All intrastate telecommunications service provider's revenues).

- It is appropriate to provide funding for all costs incurred (i.e., start-up, ongoing, administration, etc.)

- Telecommunication service providers that require PUC approval to adjust rates should be allowed to do so within the context of a stand alone filing before the Commission. It allows for a pure flow through process whereby no telecommunications service provider would incur a financial benefit or detriment as a result of implementing a state-wide hearing impaired relay system.

Statewide Surcharge: This methodology would determine the cost of the center on a statewide basis and recover the costs over some statewide basis such as access lines, toll revenues or total revenues. This mechanism may require some reporting guidelines, but would also allow for variations in the cost of the system and tracking of recovery in a relatively easy manner. This method is the most efficient way to establish a pure flow through mechanism to ensure revenue and expense are evenly matched. It would also provide a simple true-up mechanism to address future expense increases. (p. 24).

A surcharge provides for an automatic annual true-up mechanism which can accurately match revenues collected with expenses incurred associated with the system. This true-up mechanism is important in order to address the anticipated increases in expense associated with the system's growth.

White Paper, pp. 30-31.

The advantages of a statewide surcharge are that such a surcharge would facilitate the response to changing revenue requirements, and it provides an easy mechanism to track the revenue recovery. Also, there would be a simple true-up mechanism to address future expense changes.

In the introductory segment of Section I of PTA's RFP, it is stated that:

> The operation of a statewide relay system will be funded by an end user surcharge applied by each LEC and IXC to their individual customer bills. This funding mechanism and objectives for a Pennsylvania Relay System were set forth by the Commission's Secretarial Letter dated October 23, 1989 and its supplement dated February 1, 1990. (Appendix C)

RFP, p. 3.

In our Secretarial letter issued on October 23, 1989, we stated as follows:

> The Commission has reviewed this paper and essentially agrees with the Association's proposal regarding the establishment of a relay system. More specifically the Commission requests that the Association proceed with the formulation of a definitive plan and submit it to the Commission in the form of a Petition to Establish a Pennsylvania Relay System, which is generally in conformity with the following guidelines.
>
> 1. There shall be a uniform surcharge as a funding vehicle for the operation of a statewide Telephone Device for the Deaf ("TDD") relay center, to be applied by each local Exchange Carrier and Interexchange Carrier to all intrastate telephone revenues, excepting toll access charges.
>
> 2. The surcharge will be determined by dividing estimated annual expenses by the estimated applicable statewide revenues, both local and toll, recurring and nonrecurring.
>
> 3. The surcharge will be established without consideration of other revenue and expense items for any company.

AT&T, in its Response to the PTA's Petition, states that:

> The surcharge for DPRS should apply to LEC access lines, rather than to all Pennsylvania telecommunications revenues.
>
> Although the PTA's Petition describes a funding mechanism that would impose a surcharge on all intrastate end-user telecommunications revenues* (Petition at 17-19), including interexchange carrier revenues, the Commission should, instead, establish a surcharge applied to LEC subscriber lines, which will greatly simplify the administration of the surcharge.
>
> This proposal is an integral part of AT&T's proposal to enter funding contracts with the individual LECs (or the PTA). Under this arrangement, AT&T's costs (i.e., the "price") would be divided by the total number of Pennsylvania subscriber lines. Then AT&T would enter a contract with each LEC (or PTA on behalf of the LECs) to recover the surcharge amount times the number of subscriber lines in service for each LEC. The calculation of the surcharge could be easily performed by the Commission, or by the PTA.
>
> In contrast to this simple approach, the Commission would create an administrative nightmare by attempting to impose a surcharge on IXC revenues. The number and identity of IXCs varies from month-to-month with carriers coming into, and exiting, Pennsylvania on a regular basis. Mergers, acquisitions and consolidations are regular events in the interexchange industry. These constant changes are likely to cause recurring errors and

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* If the Commission rejects AT&T's recommendation that the surcharge be applied to local exchange service, then the Commission should exclude toll coin calls from any surcharge, since it would be impossible to collect. The PTA makes the same argument in its Petition regarding local coin calls.

inequities. Neither the Commission nor AT&T should shoulder the burden or expense of monitoring a current list of IXCs, tracking them down, assuring that they bill the surcharge*, assuring that they pay AT&T, and maintaining the associated records.

There are, on the other hand, no such difficulties in identifying and tracking local exchange company subscriber lines. The LECs are stable -- their identity is known, their numbers seldom change, and their billing is easily supervised. Applying the surcharge to LEC subscriber lines will minimize the expense and administrative burden of the DPRS plan.

It is also fair to apply the surcharge to local exchange service, since virtually all the traffic handled by the relay center is local calling, and since all telephone users have local service. AT&T's experience is that only about 5% of calls through the relay center is interLATA traffic, the primary traffic handled by the IXCs.

Virtually all other jurisdictions with DPRS exclude IXCs from funding. In New York, the funding burden is included in the local exchange companies' revenue requirement. In Alabama and Illinois, the surcharge which funds relay service is included as part of the local exchange rate. Several other states fund relay service through a monthly surcharge on local exchange lines: Arizona, Colorado, Connecticut, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, South Dakota, Utah and Washington.

AT&T's Response, pp. 4-6.

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* Under the PTA's proposed surcharge arrangement, AT&T's costs to arrange surcharge billing with its various billing agents (i.e., the LECs) may exceed the surcharge revenues AT&T would collect from its customers.

BELL'S REPLY TO AT&T'S RESPONSE

Bell takes issue with the funding mechanism proposed in the PTA's Petition.

Bell states that:

> The proposed revenue-based surcharge is inequitable because it would require customers to pay different surcharges based upon the amount of telephone services they purchase, which may vary from one month to the next depending on individual usage patterns. Moreover, since rates for telephone services vary across the state, customers with identical telephone services and identical usage patterns would pay different surcharges if they are served by different local exchange companies. Customers would also pay different surcharges depending on which carrier completes their toll calls. A customer who places long distance calls though a reseller would not pay dual relay surcharges on those calls while another customer who places the same calls through an certificated interexchange carrier would pay surcharges on them.
>
> A surcharge based on access lines rather than intrastate revenues would eliminate these inequities. Each single line residence customer would pay the same surcharge amount each month regardless of his or her telephone services or usage patterns that month.

> Similarly, each business customer with the same number of telephone stations would pay the same surcharge.[1]
>
> Moreover, an access line-based surcharge would permit local exchange carriers to set different rates for residence and business lines. This would enable them to protect low income residence customers from paying a disproportionate share of the cost of Pennsylvania's dual relay system.
>
> ---
>
> [1] In order for business customers with PBX and Centrex systems to pay equivalent surcharge amounts, the Commission should authorize application of trunk equivalency ratios. These ratios will insure that a business customer with a 100 station Centrex system pays the same surcharge amount as a business customer with a 100 station PBX system.

Bell's Response, pp. 1-2.

The PTA states, in its Reply to AT&T's Response, as follows:

> As set forth in the Commission's Secretarial Letter of October 23, 1989: "There shall be a uniform surcharge...to be applied by each local [sic] Exchange Carrier and Interexchange Carrier to all intrastate telephone revenues, excepting toll access charges." Id. at 1, Paragraph 1. Moreover, continues the Letter:
>
> > The surcharge shall be determined by dividing estimated annual expenses by the estimated applicable statewide revenues, both local and toll, both recurring and nonrecurring.
>
> [Id. at 1, Paragraph 2.]
>
> Thus, at the beginning of this process, the Commission ordered that a uniform surcharge to be applied by both Local Exchange and

Interexchange Carriers on the basis of revenues received. The benefits are obvious. The effect is to keep the individual customer's impact minimized by spreading the cost of Relay Service over the greatest base possible.**

It is obvious that, in this regard, AT&T's comments are raised, not as the provider of Relay Service, but as an Interexchange Carrier, which would be required, as all other certificated carriers in the Commonwealth, to collect the surcharge. However, it would seem that, if the Local Exchange Carriers are willing to undertake to collect the surcharge, then also should the Interexchange Carriers, pursuant to the Commission's Secretarial Letter.

It is the sheerest hyperbole for AT&T to state in its broad, conclusory fashion that collection of the surcharge upon Interexchange Carriers would create "an administrative nightmare." AT&T Response at 5. The collection of the surcharge on Interexchange Carrier revenues is limited to certificated carriers. The effect is no different nor is the exercise any more difficult than the collection of the Commission's annual assessment upon the intrastate revenues of the certificated Interexchange Carriers. Under the assessment process, Interexchange Carriers (and all regulated utilities) are required to report annual revenues (Calendar Year) to the Commission and to pay the Commission's assessment as a percentage of those revenues. The development of the annual Relay Service surcharge on the basis of Calendar year revenue is exactly the same.

While AT&T claims that "virtually all" of the jurisdictions which have implemented Relay Service exclude Interexchange Carriers from the funding mechanism, it can only enumerate fifteen (15) of them. Therefore, of the twenty-four (24) states that have implemented Relay Service, nine (9) states must include

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**The PTA accepts AT&T's recommendation that toll coin calls should be excluded from the operation of the surcharge for the same reasons as the PTA proposes to exclude local coin calls. See, Petition at 18.

> both Local Exchange and Interexchange Carriers in the funding process. California, as a prominent, trend setting jurisdiction, has ordered Interexchange Carriers to participate in its Relay Service surcharge.
>
> As noted by AT&T, its proposal to exclude Interexchange Carriers from the surcharge process in an "integral part" of AT&T's proposal to eliminate the Fund Administrator. AT&T Response at 5. For the reasons set forth above, the concept of a Fund Administrator should be maintained and, therefore, this "integral part" should also fail.

PTA's Response, pp. 6-8.

We shall preface our discussion of this issue by stating that the two proposed funding mechanisms have been utilized in other jurisdictions and either one could be utilized here. What we need to determine is which funding mechanism is more manageable and practical, and which mechanism provides for a steadier flow of funds to recover the cost of operations.

It is true that, upon first reading, the PTA's proposed funding mechanism, which utilizes total billed revenues, appears to reach practically all Commonwealth telecommunications customers. However, is the total billed revenue approach, although spread across the largest base, distributed equitably among all customers? There is a difference between Local Exchange rates in the Commonwealth ranging from $3.60 to $17.35 per month. Under the PTA's proposal, some telecommunication customers will pay 5 times as much as other customers with identical services. Under an access line procedure, each customer will pay the identical flat rate, per access line, each month. The system can be designed to establish a ratio between residential and business customers, such as 2:1 or 3:1. Each customer, in the respective categories, would pay the same flat fee, per month, based on each access line. The flat rate, based upon a per access line charge, would provide a <u>steady</u> and relatively <u>constant</u> flow of monies to the Relay Service Fund on a

monthly basis. The total billed revenue approach would have the tendency to fluctuate monthly based on customer usage.

There are arguments against the access line system primarily because of the weighting of Centrex customers and Private Branch Exchange (PBX) customers. However, our analysis reveals that this problem can be easily resolved by use of a conversion table (see attachment A).

The other problems associated with the PTA proposal are that (1) the Local Exchange Companies can only identify approximately 95% of their intrastate revenues, as was evidenced by the recent filings to effect a zeroing of the State Tax Adjustment Surcharge;* (2)there would be an inequity if end-users use different interexchange carriers (IXC) because all have different rates; (3) when the end-users use a third party billing through AT&T's major credit card or the major credit cards proposed by MCI and Sprint, billing considerations could potentially cause bottleneck in the monthly revenue stream and therefore would be risky; and (4) if an end-user uses a Reseller for his long distance business, since we do not regulate Resellers, those revenue streams would be lost to the surcharge system and would obviously give a competitive advantage to the Reseller of long distance services.

Based upon our review of the two methodologies, we are of the opinion, and so find, that a surcharge based upon total access lines is preferrable, in that it will virtually guarantee a steady flow of monies, on a monthly basis, to recover, at a minimum, the operational cost for the Relay System with little or no fluctuation in revenue streams. Accordingly, we conclude that the access line procedure is the most appropriate funding mechanism.

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*See, 52 Pa. Code §§69.53-69.56.

The Surcharge will be calculated using the following formula:

$$\frac{\text{TDD Annual Operating Cost}}{\text{Total Access Lines}} \times 1/12 = \text{surcharge/access line/mo}$$

Utilizing information from the Directory of the Pennsylvania Telephone Association, we estimate that the number of access lines in Pennsylvania is approximately 6,350,589. Substituting the value into the proposed surcharge formula yields the following:

$$\frac{10{,}000{,}000}{6{,}350{,}589} \text{ access line} \times 1/12 = \$0.13 \text{ per access line per month}$$

For reasons discussed infra, we further conclude, however, that it would be more equitable to apply different surcharge ratios to residence and business access lines. If the difference is to be a factor of two (i.e. business surcharge = 2 x residence surcharge) and there are:

	Access Lines	
Business	1,751,618	27.6%
Residence	4,598,971	72.4%
Total	6,350,589	100.0%

the monthly surcharges would be:

	Rate Per A.L	% of Total TDD $
Business	$0.20	43%
Residence	$0.10	57%

Additionally, we shall allow the recovery of the following costs for purposes of the surcharge formula:

Cost of the Provider Relay System
Cost of the Fund Administrator
Cost of the PTA Task Force

The surcharge formula will be calculated on an annual basis by the Commission, unless we determine, after review of the operation of the system, that the surcharge should be revised more frequently. The numerator of the formula shall include the Relay Service Provider's Charges based upon its rates and the forecasted minutes of use for the prospective surcharge period, plus the Fund Administrator's charges, less any undisbursed Fund monies remaining from the prior year above that are considered necessary to maintain a reasonable operating reserve off-setted by virtual call revenues. During the first year, the numerator shall also include the reasonable out-of-pocket expenses incurred by the PTA in developing the Relay Service and the reasonable non-recurring start-up costs of the Relay Service Provider. The virtual call revenues received by LECs and IXCs shall be remitted to the Fund Administrator and credited against the numerator of the surcharge formula in the following year. The denominator will be the total number of access lines. The Service Provider and the Fund Administrator and, initially in the first year, the PTA task force will submit their actual costs to the Public Utility Commission staff for the calculation of the formula to be provided to the Local Exchange Companies.

Although we have demonstrated an estimation relative to the surcharge formula for access line utilization, we shall order AT&T and the PTA to provide actual costs to be utilized in the formula. Although we have considered two options for the formula, that being an overall assessment to all access lines, both residential and business, or a ratio basis which would establish separate rates for residential and business access lines, we believe that a ratio of 2:1 or approximately $.10/per access line/per month for residential, and $.20/per access line/per month for business customers is appropriate. This option would provide more flexibility if the Relay Service System costs experience a short fall. We shall order the Pennsylvania Telephone Association to file a Surcharge Tariff for its member

companies (in which they concur) demonstrating the actual formula utilized and the derived per access line charge for residential and business customers. We anticipate that the surcharge ratio will change when the parties provide their actual costs. The aforementioned PTA Relay Service Surcharge Tariff is to be filed with the Commission within 30 days of the entry of this Order.

Our reasons for believing that there is more flexibility in the ratio basis is that one can raise the residential rate by as much as 2¢ per access line and the residential rate would still fall below the average 13¢ per access line, if we were to use an identical surcharge for both residence and business customers.

The following annual schedule of events in the determination of the surcharge will be observed by this Commission.

> April 30. The LECs will provide the Commission with the total number of access lines adjusted for Centrex lines through the use of Attachment A, Line to Trunk Equivalency Table.
>
> May 1. The Relay Service Provider will supply a statement to the Commission of estimated minutes of Relay Service use and associated annual charges for the period July 1 of that year through June 30 of the succeeding year to the Commission, for the purpose of establishing the numerator of the surcharge calculation.
>
> May 1. The Fund Administrator shall provide a statement to the Commission of the financial status of the fund and its estimated charges for the prospective period.
>
> June 1. The Commission shall complete and notify the Local Exchange Carriers of the new surcharge rate to be applied for the prospective 12 month period commencing July 1 of that year, for which new surcharge tariffs will be filed.

July 1. The new surcharge rate shall become effective for the ensuing 12 month period.

For the first year, the LECs shall provide the Commission with the total number of access lines adjusted for Centrex lines through the use of Attachment A, Line to Trunk Equivalency Table, within ten (10) days from the entered date of this Opinion and Order.

The PTA proposes, based on the recommendation of the Task Force, that the revenues received from the end-users utilizing the Relay Service System (i.e. virtual call revenues) be contributed to the Relay Service Fund in order to keep the surcharge low. The PTA suggests that all virtual call[1/] revenues received by LECs or IXCs should be remitted to the Fund Administrator and, according to the surcharge calculation methodology, credited to the Relay Service Fund.

We have no objection to virtual call revenues received by the LECs and IXCs being contributed to the Relay Service Fund. Accordingly, we shall order that such revenues collected by the LECs and IXCs be placed in the Relay Service Fund.

Any cash balances in the Relay Service Fund which we perceive to be excessive relative to that which is necessary to maintain a positive cash flow will be adjusted via the annual true-up process. Further, we may adjust the surcharge prior to July 1 of any given year if a significant imbalance in the cash flow is brought to our attention by the Fund Administrator or the Relay Service Provider.

1/ Virtual call is an arrangement whereby the Relay Service customer is billed as if the call were completed by direct dial basis (i.e. point to point) and not through the Relay Service Center.

The LECs shall begin billing the Relay Service surcharge to end-users with billing cycles starting on August 1, 1990. For the first eleven (11) months of the Relay Service in Pennsylvania, the surcharge will be based upon the assumption that 100,000 calls (700,000 minutes of use) per month will be placed through the Relay Service Center for that eleven (11) month period. While the surcharge will be initially established based upon 100,000 calls (700,000 minutes of use) per month, the Fund Administrator will only disburse monies to the Relay Service Provider based upon the actual call volume experienced during the preceding month, with the exception of the first six (6) months, when compensation is based on the larger of actual call volume or 200,000 minutes per month.

The PTA is requesting that in the event the funding of any other public interest service offering, including Emergency 911, via a surcharge is ordered by the General Assembly or the Commission, the LEC may revise the Relay Service surcharge to be consistent with the funding mechanism employed for such subsequent public interest service.

While on first reading the PTA's request seems to be reasonable, we would be remiss if we did not require the LECs or the PTA on behalf of the LECs, to file a Petition with the Commission requesting a revision to the Relay Service surcharge mechanism in order to be consistent with the particular public interest service funding mechanism. We believe that to grant, at this time, the request based upon an occurrence which may take place, at some undetermined future date, and without the benefit of the particular public interest or its funding mechanism, would be a gross neglect of our statutory duty and responsibilities. Thus, we will deny the PTA's request at this time.

D. Complaints and Inquiries

Section D of the PTA's Petition provides for the exemption of LECs from Chapter 63, "Telephone Service," and Chapter 64, "Standards and Billing Practices For Residential Telephone Service" for purposes of customer inquiries, complaints and disputes regarding the billing for or the quality of the Relay Service System. The PTA contends that the Relay Service Provider is solely responsible for the creation and maintenance of all billing data. Thus, the PTA asserts that inquiries, complaints and/or disputes regarding the billing for the Relay Service should be made directly to the Relay Service Provider and not the LEC. Additionally, the PTA contends that customer queries and complaints regarding matters involving the quality of service (i.e. blockage rates, average speed of answer, holding time, accuracy of message relay, numbers of calls per contact, disconnection and related service quality performance) must be handled by the Service Provider and not the LECs.

AT&T, in its Response to the Petition, objects to having the responsibility of handling billing inquiries. Specifically, AT&T states that:

> Contrary to the PTA's suggestion (Petition at 20), inquiries or complaints about bills for DPRS calls should be directed to the carrier for which the call is billed, using existing procedures. For example, if a deaf caller makes a local call, it will be billed by the local exchange carrier which will have that customer's billing records to refer to in answering the inquiry. AT&T will not have that customer's bill or his billing records for local calls, and so would be unable to handle the inquiry. Also, contrary to the PTA's implication, the confidentiality of the call will not be breached if the carrier handles the inquiry, as billing inquiries implicitly carry the caller's permission to discuss the existence of the call and are a recognized exception to call confidentiality.

AT&T's Response, p. 8.

In Response to AT&T's objection to handling billing inquiries, the PTA states in its May 7, 1990 filing that:

> As clearly set forth in the RFP, in AT&T's Proposal and by any common sense understanding of Relay Service, the Relay Service Provider will be the entity that generates the original documentation regarding a call. The RFP stipulates that:
>
> > [T]he Service Provider shall be responsible for the identification of those calls [all calls over the relay network] and obtaining the proper call information for billing purposes as addressed in Section II, Subsection C.-- System Standards, Paragraph 7 (and 8).
>
> Petition, App. 3 (RFP), Section II.B. Sections II.C.7 and 8 refer to the technical data which "the relay center shall create for each relay assisted call" which is forwarded to the appropriate Local Exchange or Interexchange Carrier for billing. AT&T has agreed to conform to these requirements in its Application by explicit restatement of these requirements in its tariff at Original Sheet 6. Application at Exh. E.
>
> Thus, it is an out and out untruth for AT&T to assert that, as Service Provider, it will not be in possession of the customer's billing data and, thus, "unable to handle the inquiry." AT&T Response at 8. AT&T, as a Service Provider, is the original source of that information and the proper entity to research the records to determine the accuracy of the call data.

PTA's Response, p. 13.

We agree with the PTA that inquiries, complaints and disputes regarding billing for the Relay Service should be made directly to the Relay Service Provider rather than the LEC. The Relay Service Provider generates the original documentation regarding a call and is responsible for the creation and maintenance of all billing data. The RFP stipulates that:

> ...the service provider shall be responsible for the identification of those calls [all

> calls over the relay network] and obtaining the proper call information for billing purposes...
>
> * * *
>
> 7) The relay center shall create for each relay-assisted call an Extended Message Record (EMR) as described in Bellcore Practice BR 010-200-010, CRIS Exchange Message Record or an Extended Message Interface (EMI) record as described in Bellcore Publication SRISD 000320. The record shall contain, at a minimum, the following information:
>
> a) Telephone number or credit card number to be billed - NPA-Prefix-Line Number
> b) Terminating Telephone Number - NPA-Prefix-Line Number
> c) Originating Telephone Number - NPA-Prefix-Line Number(A)
> d) Date
> e) Start Time
> f) End Time
> g) Call Type
> h) Preferred Interexchange Carrier (PIC) for interLATA calls
>
> 8) The service provider shall forward the EMR/EMI for each call to the appropriate intrastate telecommunications provider (i.e. LEC, IXC, etc.) or the location designated by such LEC, IXC, etc., within fourteen days of the date such service was supplied.

RFP, pp. 7-8.

AT&T has agreed to conform to the aforementioned requirements in its Application by explicit restatement of these requirements in its tariff at Original Sheet 6. We find that since AT&T is the original source of billing information then it stands to reason that it would be the most appropriate entity to research the records to determine the accuracy of the call data. AT&T did not object to PTA's recommendation that the Relay Service Provider be responsible for customer queries and complaints pertaining to the quality of service. Accordingly, we find that customer inquiries and complaints pertaining to billing and quality of service of

the Relay Service System shall be directed to and handled by the Relay Service Provider and as such, AT&T shall be subject to our Chapter 63 and Chapter 64 regulations for purposes of the Relay Service System. Additionally, we shall exclude from the dispute and formal/informal complaint process of Chapter 64 the Relay Service Surcharge. Thus, although consumers can file Complaints with regard to the Relay Service Surcharge, we will not count the Complaint against the LECs or the Relay Service Provider.

We are concerned with the appearance of the Relay Service customer's bill -- that is, whether or not all calls through the Relay Service System will appear on one page of the customer's bill or perhaps denoted by an asterisk. Accordingly, we shall direct the PTA and AT&T to meet for the purposes of submitting, for our approval, a proposal regarding the design of the bill, which clearly and specifically identifies <u>these calls</u>. Such proposal shall be submitted within twenty (20) days of the date of entry of this Opinion and Order.

E. <u>Relay Service Advisory Board</u>

The PTA, based on its Task Force recommendation, suggests that we establish a Relay Service Advisory Board for the purpose of reviewing the success of the Relay Service System in Pennsylvania and identifying additional improvements which should be implemented.

We believe, given the introduction of the new service, that an advisory board, comprised of representatives of the Service Provider, the Pennsylvania Telephone Association, the Commission, the Office for the Deaf and Hearing Impaired and the hearing and speech impaired community should be established. With respect to the hearing and speech impaired community, the initial representatives to the board should be individuals nominated by the Pennsylvania Society for the Advancement of the Deaf, the Self Help for the Hard for Hearing of Pennsylvania and

the Pennsylvania Alliance for Citizens who are Deaf Blind. The advisory board will function as a user group providing guidance in such areas as operator training, problem solving and future enhancements. We shall designate the specific individuals to participate on the Board at a future Public Meeting.

IV. AT&T Application

As previously stated, AT&T filed an Application for a Certificate of Public Convenience and Necessity to provide Dual Party Relay Service in Pennsylvania. The service proposed to be provided is the relaying of telephone conversations between the deaf, hearing impaired or speech impaired persons and persons capable of hearing and speech. AT&T states that the relay service will be provided by Communication assistants at a specially equipped location known as a relay center. Specifically, AT&T states that:

> The relay center will employ trained Communications Assistants to read deaf or speech impaired parties' messages transmitted by teletypewriter and to relay those messages by voice to the hearing party. The Communications Assistants will send the unimpaired party's response to the deaf party by teletypewriter.

AT&T Application, p. 3.

The traditional standards applied by this Commission, and approved by the Commonwealth Court, for the issuance of a Certificate of Public Convenience, under the provisions of 66 Pa. C.S. §1103, have been: (1) a public need for the proposed service; (2) the inadequacy of existing service; and (3) financial and technical fitness to perform the service.[2/] We note

---

[2/] Samuel J. Lansberry v. Pa. P.U.C., 66 Pa. Commonwealth Ct. 381, 444 A.2d 832 (1982); Mobilfone of Northeastern Pa., Inc. v. Pa. P.U.C., 40 Pa. Commonwealth Ct. 181, 397 A.2d 35 (1979).

that the requirement that an Applicant establish the inadequacy of existing service is not a statutory requirement,[3] and with regard to motor carriers[4] and radio common carriers[5]. The inadequacy criterion has been eliminated.

With regard to intrastate, interLATA telephone companies, we adopted a relaxed entry policy, as delineated in Re Implementation of Intrastate Access Charges, 58 Pa. P.U.C. 239 (1983), as follows:

> We have concluded that the proper criteria to be applied in determining whether an application for a certificate of public convenience to provide competitive telecommunications service is:
>
> 1. Whether the applicant possesses the technical and financial capability to provide [the] service proposed; and,
>
> 2. Whether there is a "public need" for the proposed service.

With regard to burden of proof, we note the language of Section 1103 (66 Pa. C.S. §1103). In pertinent part, it provides that:

> A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. (Emphasis added).

3/ Morgan Drive Away v. Pa. P.U.C., 16 Pa. Commonwealth Ct. 293, 328 A.2d 194 (1974)

4/ See, Transportation Regulatory Policy, M-82031, 12 Pa.B. 4282 (December 18, 1982).

5/ See, 52 Pa. Code §69.85.

Stated in another manner, an Applicant's burden is to demonstrate, to our satisfaction, that the granting of a Certificate will serve, and be in, the public interest.

A. Technical and Financial Fitness

AT&T states, in its Application that:

> AT&T provides interexchange telecommunications service throughout the Commonwealth. The Commission is familiar with AT&T's financial, technical and operational ability to provide telecommunication service. To avoid an unduly burdensome filing, herein, AT&T respectively refers to its various reports and other information on file with the Commission for the contents of those reports and the other information.

AT&T Application, p. 1.

In cases involving motor carrier applications where the Applicant already possesses a certificate of public convenience issued by this Commission and is seeking to expand its certificate authority, we have held that the Applicant is presumed to be technically and financially fit. Re V.I.P. Travel Service, Inc., 56 Pa. P.U.C. 625 (1982).

AT&T currently possesses the authority in Pennsylvania to supply interexchange communications services to the public. Consequently, there is a presumption that the Applicant is fit.

Currently, AT&T operates three statewide relay centers. Its California Relay Service opened on January 1, 1987, and the New York Relay Center opened on January 1, 1989. AT&T's newest center, the Alabama Relay Center, opened on February 27, 1989, and it will soon open its fourth center in Illinois on June 1, 1990.

Based upon our review of the Applicant's jurisdictional operations and the financial data on file, we are of the opinion, and so find, that the Applicant is technically and financially fit to provide the proposed service.

B. Public Need

AT&T states that the public interest will be served because the "...deaf, hearing impaired and speech impaired people will be able to communicate with unimpaired people over the telephone lines. Such improved communications will open up better access to job opportunities for the impaired, and an expanded customer base for business. Social interaction for the impaired will be improved and isolation minimized." (Application, p. 3)

There is no question, in our minds, of the need in this Commonwealth for a Relay Service System. Such a system will ensure that individuals with hearing and/or speech impairments who use non-voice terminal devices can communicate with persons of "normal" hearing or speech on a 24 hour basis. A statewide Relay Service System will benefit all people of Pennsylvania. "Users of the relay service will experience new found freedom, privacy, independence and a desire to succeed." (White Paper, pp. 5-6). Not only will the deaf, hearing and/or speech impaired population in Pennsylvania be able to communicate with hearing individuals and vice-versa, but an entire group of people who had previously been largely inaccessible to business in Pennsylvania can become potential business customers. Accordingly, while finding that there is a need for a relay service system and that AT&T possesses the requisite financial and technical fitness, we shall grant AT&T's Application; THEREFORE,

IT IS ORDERED:

1. That the Petition filed by the Pennsylvania Telephone Association on April 12, 1990, be, and hereby is, approved to the extent consistent with the body of this Opinion and Order.

2. That the terms and conditions of the Request For Proposal Issued by the Pennsylvania Telephone Association Task Force on February 16, 1990, and as set forth in the Pennsylvania Telephone Association Petition at Appendix 3, be, and hereby is, approved and incorporated into this Opinion and Order to the extent consistent with the body of this Opinion and Order.

3. That the Hamilton Bank will serve as the Relay Service Fund Administrator.

4. That the PTA shall revise the Fund Administrator Agreement consistent with this Opinion and Order and submit the revised Agreement to the Commission within ten (10) days of the date of entry of this Opinion and Order.

5. That the Relay Service Provider shall be compensated on a monthly basis by the Fund Administrator on the basis of call volumes reported and the tariffed rate schedules of the Relay Service Provider. During the first six (6) months of operation, the monthly compensation shall be no less than 200,000 minutes of use per month.

6. That a Relay Service Fund be, and hereby is, established that is derived from a monthly end-user billing surcharge, based on access lines, collected by Pennsylvania's Local Exchange Carrier and revenues received from Local Exchange and Interexchange Carriers through virtual call billing from originating Relay Service customers. The amounts shall be remitted on a monthly basis to the Fund Administrator. The Local Exchange Carriers will record the surcharge revenue as a liability.

7. That the surcharge shall be designed to recover from the end-user the total cost of the Relay Service System to be recovered less virtual call revenues divided by the Local Exchange Carriers total access lines. The Local Exchange Carriers shall provide, for Commission approval, the total number of access lines adjusted for Centrex Lines through the use of Attachment A, Line to Trunk Equivalency Table, within ten (10) days from the entered date of this Opinion and Order. The access line count shall be based upon December 31, 1989 data.

8. That the Service Provider's charges associated with forecasted minutes-of-use and the Fund Administrator's charges, based on the fee schedule outlined in the Fund Administrator Agreement, shall be recovered by the Fund.

9. That the initial surcharge period shall include the reimbursement by the Fund of reasonable out-of-pocket expenses incurred by the Pennsylvania Telephone Association and reasonable, non-recurring start-up costs of the Relay Service Provider. The Pennsylvania Telephone Association and the Service Provider shall file documentary evidence of the costs for which they are seeking reimbursement within ten (10) days of the date of entry of this Opinion and Order. The cost shall be as of the date of the submittal of the documentary evidence to the Commission.

10. That this Commission shall annually calculate the surcharge according to the following schedule:

a) April 30. The LECs will provide, for Commission approval, the total number of access lines adjusted for Centrex lines through the use of Attachment A, Line to Trunk Equivalency Table.

b) May 1. The Relay Service Provider will supply to the Commission a statement of the estimated minutes of Relay Service

use and the annual charges for the ensuing twelve (12) month period July 1 through June 30.

c) May 1. The Fund Administrator shall provide to the Commission a Statement of the financial status of the Fund.

d) June 1. The Commission shall notify the Local Exchange Carriers of the new surcharge rate to be applied for the prospective period.

e) July 1. The new surcharge rate will become effective for the ensuing twelve (12) month period with conforming tariffs to be filed upon one day's notice in the format set forth in the PTA Petition at Appendix 8.

The Commission may revise the surcharge more frequently than annually at its discretion.

11. That the surcharge shall commence to be collected with billing cycles starting on August 1, 1990 and operating through June 30, 1991 based upon the assumption that 100,000 calls and 700,000 minutes-of-use per month will be placed through the Relay Service Center.

12. That end-users utilizing the Relay Service shall be billed for calls according to the Commission approved tariffs for such calls as if they were made on a point-to-point basis. For interLATA calls, the end-users shall select a Commission certificated Interexchange Carrier for billing purposes. The physical routing of the traffic is a matter within the discretion of the Relay Service Provider.

13. That the Relay Service Provider is responsible for the billing of all calls placed through the Relay System, although it may not directly bill the end-user for such calls, in which event it shall provide each Local Exchange and Interexchange Carrier with the necessary billing information for local and intraLATA toll (LEC) and interLATA toll (IXC). The Inter-

exchange Carrier, absent a billing and collection agreement, shall be responsible for billing its interLATA Relay System traffic.

14. That for purposes of Relay Service, the Local Exchange Carriers are not subject to the provisions of Chapter 63 and 64 of the Pennsylvania Code. Complaints made against the quality, scope, conditions, billing of Relay Service or otherwise, including the Relay Service surcharge, shall not be considered as a dispute or complaint against the Local Exchange or Carrier for purposes of these Chapters.

15. That the Relay Service Provider is subject to the provisions of Chapter 63 and 64 of the Pennsylvania Code, except Complaints regarding the Relay Service Surcharge shall not be considered a Complaint against the Service Provider.

16. That the PTA and AT&T shall meet to determine the design of the Relay Service customer's bills and submit a proposal for our approval within twenty (20) days of the date of entry of this Opinion and Order.

17. That a Relay Service Advisory Board, be and hereby is, established with a representative from the following: the service Provider, the Pennsylvania Telephone Association, the Commission, the Office for the Deaf and Hearing Impaired and the hearing and speech impaired community should be established. With respect to the hearing and speech impaired community, the initial representatives to the board should be individuals nominated by the Pennsylvania Society for the Advancement of the Deaf, the Self Help for the Hard for Hearing of Pennsylvania and the Pennsylvania Alliance for Citizens who are Deaf Blind.

18. That the Application of AT&T Communications of Pennsylvania for a Certificate of Convenience and Necessity to Provide Dual Party Relay Service in the Commonwealth, be, and hereby is, approved.

19. That, within (10) days after the date of entry of this Opinion and Order, AT&T Communications of Pennsylvania shall file a revised tariff or tariff supplement which cancels and supersedes the tariff revision filed on April 24, 1990, consistent with the body of this Opinion and Order.

20. That if the AT&T Communications of Pennsylvania elects to file the tariff revisions referenced above, the rates for the Relay Service must be filed with this Commission and shall become effective upon one (1) days notice. The rates must be provided to the Fund Administrator.

BY THE COMMISSION,

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: May 24, 1990

ORDER ENTERED: May 29, 1990

ATTACHMENT A

Line/Trunk Equivilency Table

Number of Centrex Main Station Lines	Equivalent Lines
1	1
2	2
3	3
4 to 6	4
7 to 10	5
11 to 15	6
16 to 21	7
22 to 28	8
29 to 36	9
37 to 45	10
46 to 54	11
55 to 64	12
65 to 75	13
75 to 86	14
87 to 98	15
99 to 111	16
112 to 125	17
126 to 139	18
140 to 155	19
156 to 171	20
172 to 189	21
190 to 207	22
208 to 225	23
226 to 243	24
244 to 262	25
263 to 281	26
282 to 300	27
each additional 18 main station lines	1

Appendix

No. 3.3

Statutory Codification of PA TRS

(& TDDP and PMASP)

LEXSTAT 35 P.S. 6701.2

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

THIS DOCUMENT IS CURRENT THROUGH ACT 41 OF THE 2007 LEGISLATIVE SESSION
*** AUGUST 29, 2007 ANNOTATION SERVICE ***

PENNSYLVANIA STATUTES
TITLE 35. HEALTH AND SAFETY
CHAPTER 35A. UNIVERSAL TELECOMMUNICATIONS AND PRINT MEDIA ACCESS ACT

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1 of 1 DOCUMENT

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

THIS DOCUMENT IS CURRENT THROUGH ACT 41 OF THE 2007 LEGISLATIVE SESSION
*** AUGUST 29, 2007 ANNOTATION SERVICE ***

PENNSYLVANIA STATUTES
TITLE 35. HEALTH AND SAFETY
CHAPTER 35A. UNIVERSAL TELECOMMUNICATIONS AND PRINT MEDIA ACCESS ACT

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35 P.S. § 6701.1 (2007)

§ 6701.1. Short title

This act shall be known and may be cited as the Universal Telecommunications and Print Media Access Act.

HISTORY: Act 1995-34 (H.B. 961), § 1, approved July 6, 1995, eff. immediately; Act 2004-174 (S.B. 79), § 1, approved Nov. 29, 2004, eff. in 60 days.

35 P.S. § 6701.2 (2007)

§ 6701.2. Definitions

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"CENTER FOR INDEPENDENT LIVING." A consumer-controlled, community-based, cross-disability, nonresidential private, nonprofit agency that is designed and operated within a local community by people with disabilities and provides an array of independent living services, as defined by the Rehabilitation Act of 1973 (Public Law 93-112, *29 U.S.C. § 701* et seq.).

"COMMISSION." The Pennsylvania Public Utility Commission.

"DEPARTMENT." The Department of Labor and Industry of the Commonwealth.

"PERSONS WHO ARE BLIND." Any person who is legally blind or any person who is eligible to receive services from the National Library Service for the Blind and Physically Handicapped.

"PERSONS WITH A DISABILITY" or "PEOPLE WITH DISABILITIES." A person certified by a licensed physician, audiologist, speech pathologist or a qualified State agency:

(1) As being deaf, deaf-blind, hard of hearing, having a hearing loss or being speech impaired.

(2) As having a disability and who requires technology to independently access telecommunications services.

"PRINT MEDIA ACCESS SYSTEM." Any nationwide or Statewide telephone access service that provides access to national and local newspapers to persons who are blind.

"PRINT MEDIA ACCESS SYSTEM PROGRAM." The Print Media Access System Program established under section 3.1.

"TELECOMMUNICATION DEVICE." Equipment necessary for a person with a disability to engage in communication by wire or radio with another person with a disability or with a hearing individual.

"TELECOMMUNICATION DEVICE DISTRIBUTION PROGRAM." The Telecommunication Device Distribution Program established under section 3.

"TELECOMMUNICATION RELAY SERVICE." Telephone transmission services that provide the ability for a person with a disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of a person who does not have a disability to communicate using voice communication services by wire or radio. The term includes services that enable two-way communication between an individual who uses a telecommunication device or other nonvoice terminal device and an individual who does not use such a device.

HISTORY: Act 1995-34 (H.B. 961), § 2, approved July 6, 1995, eff. immediately; Act 2002-181 (H.B. 2424), § 1, approved Dec. 9, 2002, eff. in 60 days.; Act 2004-174 (S.B. 79), § 2, approved Nov. 29, 2004, eff. in 60 days.

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

THIS DOCUMENT IS CURRENT THROUGH ACT 41 OF THE 2007 LEGISLATIVE SESSION
*** AUGUST 29, 2007 ANNOTATION SERVICE ***

PENNSYLVANIA STATUTES
TITLE 35. HEALTH AND SAFETY
CHAPTER 35A. UNIVERSAL TELECOMMUNICATIONS AND PRINT MEDIA ACCESS ACT

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35 P.S. § 6701.3 (2007)

§ 6701.3. Establishment of Telecommunication Device Distribution Program

(a) ESTABLISHMENT.-- The Telecommunication Device Distribution Program is hereby established. It shall be a program whereby telecommunication devices for people with disabilities are distributed at no charge to the distributee.

(b) ADMINISTRATION.-- The executive director of the Office of Vocational Rehabilitation of the department, in cooperation with other State agencies which serve people with disabilities, shall oversee implementation of the Telecommunication Device Distribution Program. To this end, the executive director may do any of the following:

(1) Establish criteria of eligibility in accordance with subsection (c) and adopt regulations and forms consistent with the act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law.

(2) Facilitate coordination of funds required for the distribution system with selected centers for independent living or selected not-for-profit agencies having experience in serving persons with hearing or speech disabilities.

(3) Determine, in cooperation with other State agencies, the funds required for the distribution system and provide information to the commission as required under section 4.

(c) TO QUALIFY AS DISTRIBUTEE.-- Each recipient of a telecommunication device shall meet the following criteria:

(1) Be a resident of this Commonwealth.

(2) Qualify as a person with a disability.

(3) Have telephone service, possess the ability to learn how to use a telecommunication device.

(4) Be six years of age or older.

(5) Have a gross income of less than 200% of the Federal poverty level as determined in accordance with the Link Up America guidelines.

HISTORY: Act 1995-34 (H.B. 961), § 3, approved July 6, 1995, eff. immediately; Act 2004-174 (S.B. 79), § 3, approved Nov. 29, 2004, eff. in 60 days.

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PENNSYLVANIA STATUTES
TITLE 35. HEALTH AND SAFETY
CHAPTER 35A. UNIVERSAL TELECOMMUNICATIONS AND PRINT MEDIA ACCESS ACT

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35 P.S. § 6701.3a (2007)

§ 6701.3a. Establishment of a Print Media Access System Program

(a) ESTABLISHMENT.-- The Print Media Access System Program is hereby established. It shall be a program whereby telephone access to print media access systems for persons who are blind is provided to the user.

(b) ADMINISTRATION.-- The executive director of the Office of Vocational Rehabilitation of the department, in cooperation with other State agencies which serve people with disabilities, shall oversee implementation of the Print Media Access System Program. To this end, the executive director may do any of the following:

(1) Establish criteria of eligibility and adopt regulations and forms consistent with the act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law.

(2) Facilitate the enrollment and training of Print Media Access System Program user.

(3) Coordinate with newspapers to facilitate the inclusion of additional newspapers and the maintenance of existing newspapers.

(4) Determine, in cooperation with other State agencies, the funds required for the maintenance of the Print Media Access System Program and provide information.

(5) Identify and seek grant funding for the use of the Print Media Access System Program.

(6) Determine what fees, if any, should be charged for the use of the Print Media Access System Program.

(7) Establish criteria for selection and/or change of the Print Media Access System Program service provider.

HISTORY: Act 2004-174 (S.B. 79), § 4, approved Nov. 29, 2004, eff. in 60 days.

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PENNSYLVANIA STATUTES
TITLE 35. HEALTH AND SAFETY
CHAPTER 35A. UNIVERSAL TELECOMMUNICATIONS AND PRINT MEDIA ACCESS ACT

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35 P.S. § 6701.4 (2007)

§ 6701.4. Establishment of dual party relay service

(a) TELECOMMUNICATION RELAY SERVICES.-- The commission shall design and implement a telecommunication relay service program for the Commonwealth that is consistent with and meets or exceeds the requirements of the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327).

(b) CERTIFICATION.-- The commission is authorized to seek on behalf of this Commonwealth certification of the telecommunication relay service program from the Federal Communications Commission.

(c) ADDITIONAL USE OF SURCHARGE.-- The Telecommunication Device Distribution Program shall be funded and the Print Media Access System Program may be funded by the Telecommunication Relay Service Program surcharge, as calculated by the commission on an annual basis under the methodology established by the commission in order entered May 29, 1990, and July 9, 1990, at Docket Number M-00900239, and as subsequently modified by the

commission. The executive director of the Office of Vocational Rehabilitation in the department shall provide the commission with an annual budget and supporting information for the purchase of telecommunication devices for the Telecommunication Device Distribution Program. The executive director of the Office of Vocational Rehabilitation of the department shall provide the commission with an annual budget and supporting information for the Print Media Access System Program. A portion of the surcharge may be used to fund the Print Media Access System Program. The surcharge shall not be used to fund administrative costs of the Telecommunication Relay Service Program, Telecommunication Device Distribution Program or the Print Media Access System Program.

(d) LIMITS ON EXPENDITURES.-- Expenditures for the Telecommunication Device Distribution Program shall not exceed collections from the Telecommunication Relay Service Program surcharge allocated for the Telecommunication Device Distribution Program. Any expenditures authorized for the Print Media Access System Program shall not exceed collections from the Telecommunication Relay Service Program surcharge allocated for the Print Media Access System Program and any grant funding received for the use of the Print Media Access System Program.

(e) ANNUAL REPORT.-- The commission shall prepare and submit an annual report to the General Assembly on the Telecommunication Device Distribution Program and on the Print Media Access System Program.

(1) The report shall include the fiscal status of the Telecommunication Device Distribution Program and of the Print Media Access System Program, a statement of the surcharge level established under subsection (c) and the revenues produced by the surcharge for allocation to the Telecommunication Device Distribution Program and to the Print Media Access System Program, an account of Telecommunication Device Distribution Program and the Print Media Access System Program expenses and the fund balance.

(2) The executive director of the Office of Vocational Rehabilitation in the department shall provide the commission with information on the Telecommunication Device Distribution Program, including the purchase and distribution of telecommunication devices, for inclusion in the annual report to the General Assembly.

(2.1) The executive director of the Office of Vocational Rehabilitation of the department shall provide the commission with information on the Print Media Access System Program, including the annual budget and administration of the Print Media Access System Program, for inclusion in the annual report to the General Assembly.

(3) If the commission determines any of the information is proprietary, the information shall be filed under seal and made available under the terms of an appropriate protective agreement of the type used in cases before the commission.

HISTORY: Act 1995-34 (H.B. 961), § 4, approved July 6, 1995, eff. immediately; Act 2004-174 (S.B. 79), § 5, approved Nov. 29, 2004, eff. in 60 days.