

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 1.1, 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 information. 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 Administrator 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:

<u>Annual Fee</u>	<u>Average Daily Assets</u>
\$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 undoubtedly 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 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

* 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.

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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.

* 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.