

State of Florida



# Public Service Commission

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## -M-E-M-O-R-A-N-D-U-M-

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**DATE:** April 20, 2006

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Competitive Markets & Enforcement (Moses, Casey)  
Office of the General Counsel (Tan, Wiggins)

**RE:** Docket No. 040763-TP – Request for submission of proposals for relay service, beginning in June 2005, for the hearing and speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991.

**AGENDA:** 05/02/06 – Regular Agenda – Proposed Agency Action -Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Edgar

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Anticipate the need for sign language interpreters and assistive listening devices. Place near the beginning of the agenda or at a time certain to reduce interpreter costs.

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\040763.RCM.DOC

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### Case Background

The Florida Relay System (FRS) provides hearing impaired persons access to basic telecommunications services by using a specialized communications assistance operator (CA) that relays information between the hearing impaired person and the other party of the call. The primary function of the FRS is accomplished by the hearing impaired person using a Telecommunications Device for the Deaf (TDD) which has a keyboard and screen. The person using the TDD types a message to the CA who in turn voices the message to the other party. The

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reverse of this process completes messages to the hearing impaired person. This is how the term "relay" originated.

The Telecommunications Access System Act of 1991 (TASA) became effective May 24, 1991 and is authorized under Part II, Chapter 426, Florida Statutes. TASA provides funding for the distribution of specialized telecommunications devices and provision of intrastate relay service through the imposition of a surcharge of up to \$0.25 per landline access line per month. Accounts with over 25 access lines are billed for only 25 lines.

Florida Telecommunications Relay, Inc. (FTRI), a non-profit corporation formed by the local exchange telephone companies (LEC), was named by the Commission to serve as the TASA administrator. On July 1, 1991, the LECs began collecting an initial \$.05 per access line surcharge pursuant to Order No. 24581. Since that time, the surcharge has changed to reflect the budgetary needs and is currently \$0.15.

On June 1, 2005, the Commission executed a new contract with Sprint for the provision of relay services. FTRI has submitted its proposed budget for the fiscal year 2006-2007 and has provided information about a speech generating device (SGD) it has been asked to distribute which assists speech impaired persons.

The Commission is vested with jurisdiction over these matters pursuant to Chapter 427, Florida Statutes.

### Discussion of Issues

**Issue 1:** Should the Commission approve FTRI's proposed budget as outlined in Attachment A for the fiscal year 2006-2007, effective July 1, 2006; modify the Telecommunications Relay Service (TRS) surcharge from \$0.15 to \$0.09; or in the alternative keep the surcharge at the \$0.15 rate and if the surcharge is modified, order the incumbent local exchange companies, competitive local exchange companies, and shared tenant providers to begin billing the \$0.09 surcharge on July 1, 2006?

**Recommendation:** Staff recommends that the Commission approve FTRI's proposed budget as outlined in Attachment A for the fiscal year 2006-2007, effective July 1, 2006 and maintain the current Telecommunications Relay Service surcharge at \$0.15 in order to prepare the Florida TRS fund for assuming IP-Relay and VRS intrastate costs. (Moses, Casey)

**Staff Analysis:** The trend for minutes of use for the FRS has declined and is projected to continue to decline in 2006-2007. The decline in relay usage will create a surplus of approximately \$7,233,968 by the end of the fiscal year. The projected revenue based on the forecasted usage for fiscal year 2006-2007 is \$10,271,032 and the total expenses are forecasted as \$15,819,767.

Captel service, which is a telephone that provides captioning of the incoming call for a hearing impaired person, has had its minutes of use level off the last two months. Staff has been working with Sprint to address some quality issues with the captioning and believes the improvements Sprint is implementing will cause the usage to grow in the next fiscal year. Although the actual expense for Captel fell short of the projected expense, staff believes it is prudent to use the forecasted minutes of use for Captel provided by Sprint for budgetary purposes.

Traditional relay users are transitioning to other technologies such as IP-Relay<sup>1</sup> and Video Relay Service<sup>2</sup> (VRS) which are more efficient, and presently being paid through the interstate TRS fund. However the Federal Communications Commission (FCC) has stated that this arrangement is only temporary. The FCC believes Title IV and its legislative history make plain that Congress intended that the states be responsible for the cost recovery for intrastate relay services provided under their jurisdiction<sup>3</sup>. Presently, there are no means available to automatically determine the geographic location of IP-Relay and VRS calls, and therefore there

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<sup>1</sup> IP Relay allows people who have difficulty hearing or speaking to communicate through an Internet connection using a computer and the Internet, rather than a TTY and a telephone.

<sup>2</sup> Video Relay Service is a form of Telecommunications Relay Service that enables persons with hearing disabilities who use American Sign Language to communicate with voice telephone users through video equipment, rather than through typed text. Video equipment links the VRS user with a TRS operator so that the VRS user and the operator can see and communicate with each other in signed conversation. Because the conversation between the VRS user and the operator flows much more quickly than with a text-based TRS call, VRS has become a popular form of TRS.

<sup>3</sup> Federal Communications Commission Report and Order, Order on Reconsideration, and Further Notice of Proposed Rule Making in CG Docket No. 03-123, released on June 30, 2004, FCC 04-137.

is no way to determine if a particular IP-Relay and VRS call is interstate or intrastate. The FCC is examining ways to determine whether these calls are interstate or intrastate, and will eventually transfer the cost burden of intrastate IP-Relay and VRS calls to the states. Presently the VRS compensation rate is \$6.644 per minute and the IP-Relay compensation rate is \$1.278 per minute, compared to the traditional TRS compensation rate of \$ 0.75 per minute. The FCC has not formally opined on the time frame when the IP-Relay and VRS costs will shift to the states, but when it does happen, additional funding through statutory changes may have to be pursued because of the statutory cap of \$0.25 per access line for TRS in Florida.

In response to the FCC's Further Notice of Proposed Rule Making in FCC 04-137, the Florida Public Service Commission filed comments to the FCC on October 8, 2004 stating its belief that IP-Relay and VRS calls should continue to be reimbursed through the interstate TRS fund. However, the FCC has stated that payment for IP-Relay and VRS calls from the interstate TRS fund is only a temporary arrangement, and states will eventually be assuming the intrastate costs of these services. In order to determine an estimate of the cost burden which would be shifted to the State of Florida by this reallocation of costs, staff reviewed the interstate TRS fund administrator's database<sup>4</sup> to calculate an estimate of the amount of minutes used for IP-Relay and Video Relay calls in Florida. The database provides only terminating call/minute summaries.

For the month of January 2006, Florida had 338,496 IP-Relay terminating minutes of use, and 147,935 VRS terminating minutes of use. Using the same intrastate/interstate allocation percentages ordered by the FCC for the two-line captioning phone in December 2005<sup>5</sup>, Florida would assume 89% of the costs, while 11% of the costs would be paid by the interstate TRS fund. The current IP-Relay compensation rate is \$1.278, and the current VRS compensation rate is \$6.644 per minute. Using these figures for a rough estimate, the calculations show that Florida would assume approximately \$385,012 in monthly costs for IP-Relay, and \$874,762 in monthly costs for VRS services. The total estimated monthly responsibility of intrastate IP-Relay and Video Relay costs would be \$1,259,774, or \$15,117,288 annually.

The \$15,117,288 additional IP-Relay and VRS costs would essentially double the current proposed budget for Florida TRS to approximately \$31 million and likely exceed the current \$0.25 cap per access line allowed by statute. If this happens, a legislative change may be necessary to either increase the present TRS cap or have all carriers such as wireless charge the surcharge. Another alternative is to have the FCC fund the entire relay program. The timeline for a legislative change may impair the stability of the Florida TRS fund.

### **Surcharge Options:**

Staff has reviewed FTRI's budget request and believes it is reasonable. Staff believes there are two options as far as the amount of the surcharge for the next fiscal year. One option is for the Commission to approve FTRI's proposed budget as outlined in Attachment A for the fiscal year 2006-2007, effective July 1, 2006, modify the surcharge from \$0.15 to \$0.09, and

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<sup>4</sup> National Exchange Carrier Association, Inc., [http://www.neca.org/source/NECA\\_Resources\\_4438.asp](http://www.neca.org/source/NECA_Resources_4438.asp).

<sup>5</sup> CG Docket No. 03-123, In the Matter of Telecommunications Relay Services and Speech-to Speech Services for Individuals with Hearing and Speech Disabilities, DA 05-3138, Released December 2, 2005.

order the incumbent local exchange companies, competitive local exchange companies, and shared tenant providers to begin billing the modified surcharge beginning July 1, 2006. This would reflect currently estimated expenses for fiscal year 2006-2007. If the option to reduce the surcharge is adopted, the difference between FTRI's proposed budget and the revenue received from the reduced surcharge would be drawn from the surplus account.

Another option is for the Commission to approve FTRI's budget request and maintain the current \$0.15 surcharge to prepare the Florida TRS fund for assuming IP-Relay and VRS intrastate costs. This would allow additional time for the transition to Florida assuming the intrastate costs of IP-Relay and VRS, and also allow time to address any legislative changes which would have to be made.

**Conclusion:**

Staff recommends that the Commission approve FTRI's proposed budget as outlined in Attachment A for the fiscal year 2006-2007, effective July 1, 2006 and maintain the current Telecommunications Relay Service surcharge at \$0.15 in order to prepare the Florida TRS fund for assuming IP-Relay and VRS intrastate costs.

**Issue 2:** Does the speech generating device as described in Attachment B meet the definition of "specialized telecommunications device" under Section 427.703(11), Florida Statutes?

**Recommendation:** No. (Tan)

**Staff Analysis:** Speech generating devices (SGD) are speech aids that allow individuals with severe speech impairment and limited physical movement to communicate verbally. The FTRI Board has asked the Commission to determine whether SGDs meet the requirement of a "specialized telecommunication device" under Chapter 427, Florida Statutes. (A copy of FTRI's request is attached as attachment B.) Staff agrees with the FTRI Board's conclusion that an SGD does not meet this definition.

Section 427.703(11), Florida Statutes states:

"Specialized telecommunications device" means a TDD, a volume control handset, a ring signaling device or any other customer premises telecommunications equipment specifically designed or used to provide basic access to telecommunications services for a hearing impaired, speech impaired, or dual sensory impaired person."

This issue rests on the definition of a “specialized telecommunication device” and whether a SGD is specifically designed or used to provide basic access to telecommunications services. In addressing the definition, staff believes it is important to analyze how “specifically” modifies the terms “designed” and “used”.

The definition of the adjective “specific” is “intended to, applying for or acting on a particular thing.” An SGD is not “specifically designed” for telecommunications purposes but rather as an augmented communicator system that acts as a voice synthesizer. A voice synthesizer is used to allow an otherwise unable individual the ability to verbally communicate. Therefore, it is used for all forms of verbal communications, not just a specific function such as access to a telecommunications system.

An SGD is also not “specifically used” for the provision of basic telecommunication services access. There are devices that are designed solely to provide basic access to telecommunication services by serving as an interface between a SGD and telecommunication services, such as the Jupiter GEWA currently offered by FTRI. These devices are specifically designed and used as telecommunication equipment by allowing the SGD user to hang up, pick up and dial numbers when the device is plugged into a standard telephone landline. It appears that in the majority of situations, an individual would be able to obtain a SGD through Medicare or a private insurance program for the purposes of everyday living. The SGD-user can apply for the devices currently being offered by FTRI that allow the SGD to access the telecommunication system.

Given the presence of devices that fit the definition of a device specifically designed or used to provide basic access to telecommunication devices, such as the Jupiter GEWA currently offered by the FTRI, staff believes that a SGD does not fall within the definition of a specialized telecommunications device. Staff recommends that a speech generating device (SGD) does not meet the requirement of specialized telecommunication device under 427.703(11), Florida Statutes.

**Issue 3:** Should this docket be closed?

**Recommendation:** No, this docket should remain open for the duration of the contract with Sprint. (Moses, Casey, Tan)

**Staff Analysis:** No, this docket should remain open for the duration of the contract with Sprint.

FLORIDA TELECOMMUNICATIONS RELAY, INC.  
FISCAL YEAR 2006-2007 BUDGET

	2005-2006 APPROVED BUDGET	2005-2006 ESTIMATED REV & EXPEND	2006-2007 PROPOSED BUDGET	VARIANCE 2005-2006 BDGT 2006-2007 BDGT
<b>OPERATING REVENUE</b>				
1 Surcharges	17,073,358	17,359,833	10,207,582	(6,865,776)
2 Interest Income	41,407	83,226	63,450	22,043
3 Service/Other	0	0	0	0
<b>TOTAL OPERATING REV</b>	<b>17,114,765</b>	<b>17,443,059</b>	<b>10,271,032</b>	<b>(6,843,733)</b>
<b>OTHER REVENUE/FUNDS</b>				
4 Surplus Account	3,458,395	3,581,389	7,233,068	3,775,573
<b>TOTAL REVENUE</b>	<b>20,573,160</b>	<b>21,024,448</b>	<b>17,505,000</b>	<b>(3,068,160)</b>
<b>OPERATING EXPENSES</b>				
<b>CATEGORY I - RELAY SERVICES</b>				
5 DPR Provider	9,357,596	7,508,418	9,197,349	(160,247)
<b>SUBTOTAL-CATEGORY I</b>	<b>9,357,596</b>	<b>7,508,418</b>	<b>9,197,349</b>	<b>(160,247)</b>
<b>CATEGORY II - EQUIPMENT &amp; REPAIRS</b>				
6 TDD Equipment	189,600	147,000	173,400	(16,200)
7 Large Print TDD's	8,520	8,520	5,680	(2,840)
8 VCO/HCO - TDD	36,000	36,000	36,000	0
9 VCO Telephone	20,798	19,441	20,939	141
10 Dual Sensory Equipment	13,000	9,592	9,592	(3,408)
11 CapTel Phone Equipment	433,200	433,200	433,200	0
12 VCP Hearing Impaired	3,709,476	1,981,727	2,038,362	(1,671,114)
13 VCP Speech Impaired	11,972	14,839	16,067	4,095
14 TelITalk Speech Aid	72,000	30,000	60,000	(12,000)
15 Jupiter Speaker phone	12,250	0	15,330	3,080
16 In-Line Amplifier	4,320	3,200	2,640	(1,680)
17 ARS Signaling Equip	189,309	178,618	183,675	(5,634)
18 VRS Signaling Equip	66,834	63,216	65,565	(1,269)
19 TRS Signaling Equip	560	0	560	0
20 Telecomm Equip Repair	55,809	42,108	36,072	(19,737)
<b>SUBTOTAL-CATEGORY II</b>	<b>4,823,648</b>	<b>2,967,461</b>	<b>3,097,082</b>	<b>(1,726,566)</b>
<b>CATEGORY III - EQUIPMENT DISTRIBUTION &amp; TRAINING</b>				
21 Freight-Telecomm Equip	33,573	31,608	41,621	8,048
22 Regional Distr Centers	2,045,739	1,362,437	1,426,195	(619,544)
23 Workshop Expense	94,188	57,211	35,332	(58,856)
24 Training Expense	0	0	0	0
<b>SUBTOTAL-CATEGORY III</b>	<b>2,173,500</b>	<b>1,451,256</b>	<b>1,503,148</b>	<b>(670,352)</b>

FLORIDA TELECOMMUNICATIONS RELAY, INC.  
FISCAL YEAR 2006-2007 BUDGET

	2005-2006 APPROVED BUDGET	2005-2006 ESTIMATED REV & EXPEND	2006-2007 PROPOSED BUDGET	VARIANCE 2005-2006 BDGT 2006-2007 BDGT
<b>CATEGORY IV - OUTREACH</b>				
25 Outreach Expense	731,568	688,179	627,544	(104,024)
<b>SUBTOTAL-CATEGORY IV</b>	<b>731,568</b>	<b>688,179</b>	<b>627,544</b>	<b>(104,024)</b>
<b>CATEGORY V - GENERAL &amp; ADMINISTRATIVE</b>				
26 Advertising	3,600	0	3,000	(600)
27 Accounting/Auditing	14,961	14,875	17,121	2,160
28 Legal	72,000	72,880	72,000	0
29 Computer Consultation	39,578	16,908	28,990	(10,588)
30 Bank Charges	1,051	1,476	1,520	469
31 Dues & Subscriptions	3,256	2,031	2,156	(1,100)
32 Office Furniture Purchase	1,738	1,824	5,588	3,850
32A Less: Capitalized Portion	0	0	0	0
33 Office Equipment Purchase	21,870	8,894	10,970	(10,900)
33A Less: Capitalized Portion	0	0	0	0
34 Depreciation	0	0	0	0
35 Office Equipment Lease	4,175	3,595	4,213	38
36 Insurance-Health/Life/Dsblty	235,964	194,877	250,866	14,902
37 Insurance-Other	6,074	5,700	6,313	239
38 Office Expense	23,848	23,843	26,654	2,806
39 Postage	28,372	16,989	22,736	(5,636)
40 Printing	3,321	4,053	4,057	736
41 Rent	83,616	84,276	88,104	4,488
42 Utilities	9,504	11,247	11,577	2,073
43 Retirement	67,177	64,391	74,952	7,775
44 Employee Compensation	495,406	486,724	552,743	57,337
45 Temporary Employment	81,496	84,715	86,674	5,178
46 Taxes - Payroll	37,899	36,510	42,285	4,386
47 Taxes - Unemplmt Comp	7,182	4,572	5,266	(1,916)
48 Taxes - Licenses	61	61	61	0
49 Telephone	19,859	20,867	26,490	6,631
50 Travel & Business	34,325	25,285	28,950	(4,375)
51 Equipment Maint.	7,215	1,558	8,156	941
52 Employee Training/Dev	6,360	3,787	7,760	1,400
53 Meeting Expense	3,420	3,228	4,342	922
54 Miscellaneous Expense	200	0	100	(100)
<b>SUBTOTAL-CATEGORY V</b>	<b>1,313,528</b>	<b>1,175,166</b>	<b>1,394,644</b>	<b>81,116</b>
<b>TOTAL EXPENSES</b>	<b>18,399,840</b>	<b>13,790,480</b>	<b>15,819,767</b>	<b>(2,580,073)</b>
<b>REVENUE LESS EXPENSES</b>	<b>2,173,320</b>	<b>7,233,968</b>	<b>1,685,233</b>	<b>(488,087)</b>





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DIVISION OF  
COMPETITIVE SERVICES

April 5, 2006

Mr. Rick Moses  
Division of Competitive Markets and Enforcement  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

2006 APR -5 PM 2:50  
DIVISION OF  
COMPETITIVE SERVICES

Dear Mr. Moses:

By separate letter, Mr. James Forstall has forwarded to you the Florida Telecommunications Relay, Inc. ("FTRI") budget for FY 2006-2007 which has been approved by the FTRI Board of Directors. The Board believes this to be a reasonable budget, addressing the charges for the relay system found in Chapter 427 and we encourage your favorable review. I did want to bring to your attention that FTRI had received a request to include Speech Generating Devices ("SGDs") in the equipment distribution program but, after review, the Board has concluded that SGDs are not specialized telecommunications devices as defined in Chapter 427, Florida Statutes, thus this budget does not include SGDs.

Last summer FTRI received an application for an SGD. FTRI responded and advised the applicant that an SGD was not offered by FTRI and was not considered to be specialized telecommunications equipment under Chapter 427, Florida Statutes. Thereafter, Mr. Forstall was approached at a conference by a representative who was advocating inclusion of SGDs in the program to set up a meeting. A meeting was held in Tallahassee in December, 2005 which was attended by me, Mr. Forstall and our counsel. The initial contact with Mr. Forstall was by Mr. Lewis Golinker, an attorney with Assistive Technology Law Center in Ithaca, NY. The presentation in December was made by Mr. Garth Corbett, an attorney from Texas affiliated with the Center. The meeting was also attended by Mr. Rick Archer a representative from DynaVox, one of the vendors of SGDs. A copy of the presentation is attached to this correspondence.

SGDs are speech aids that provide individuals with severe speech impairment the ability to meet their functional speaking needs. They are voice synthesizers and are also referred to as augmentative and alternative communication ("AAC") systems. The devices make it possible for individuals with severe speech impairment and limited physical movement to communicate. Although FTRI does not distribute SGDs, we do distribute Jupiter GEWA Phones which enable SGDs to connect to the telecommunications network. Without this device, the SGD by itself would not provide access.

Mr. Rick Moses  
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For individuals who meet seven specific criteria as determined by ASHA certified speech-language pathologists, funding for an SGD is available through Medicare and some private insurance plans. However, there are some individuals who may not qualify for one of the existing funding programs or there may be instances where funding is not available or denied. It is estimated that approximately 90% of the annual demand for SGDs will be met by some funding program which leaves 10% of those needing SGDs without a funding program. The advocates for SGDs assert that they are specialized telecommunications devices as defined by Section 427.703(11), Florida Statutes, and thus FTRI should distribute these devices to those individuals who do not qualify for funding through some other program. It was also suggested that FTRI fund the unfunded portion of the equipment for those who could not qualify for full funding.

There is no question that SGDs offer immeasurable benefits to those that need them. They enable individuals to communicate when it would be impossible or very difficult to do so without assistance. Despite their value, the initial question which we considered is whether they are a "specialized telecommunications device" as defined in Florida statutes and which we are authorized to distribute. Specifically, Section 427.703(11) reads:

"Specialized telecommunications device" means a TDD, a volume control handset, a ring signaling device, or any other customer premises telecommunications equipment specifically designed or used to provide basic access to telecommunications services for a hearing impaired, speech impaired, or dual sensory impaired person.

It is questionable whether SGDs would meet this definition. They would not be considered customer premises telecommunications equipment nor are they ". . . specifically designed or used to provide basic access to telecommunications services . . ." It is true that an SGD enables one to communicate but their primary function is not to provide basic access to telecommunications services. As noted above, FTRI does now distribute to eligible citizens the equipment designed to enable SGDs to access the telecommunications network.

This request is not unlike the one several years ago involving the electrolarynx. For several years, representatives of the Florida Laryngectomee Association urged FTRI to distribute electrolarynxes and ultimately a formal request was made to the PSC. Of some interest is that, like SGDs, the electrolarynx is also covered by Medicare and insurance and there was at least one representative that believed that if FTRI began to distribute the device, Medicare and insurance companies would urge qualified individuals to seek them from FTRI and have the expense be covered by FTRI. In that case, FTRI took a position similar to here, i.e., the device is not specifically designed to provide basic access. The Commission agreed with that position and issued an order denying inclusion of the electrolarynx.

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Those advocating for distribution of the SGD have cited to other states that distribute them and offered several arguments and interpretations of Chapter 427. While some states do distribute SGDs — or make them available through their program — their statutory language is not necessarily the same as Florida's and that is what guides FTRI. The Board concluded that SGDs do not meet the definition of specialized telecommunications device and thus we do not have the authority to purchase and distribute them nor do we have the authority in any event to fund their purchase.

Should you require additional information, please do not hesitate to call Mr. Forstall or me.

Sincerely,

A handwritten signature in cursive script that reads "Stan Greer".

Stan Greer  
President, Board of Directors  
Florida Telecommunications Relay, Inc.