

State of Florida



Public Service Commission

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

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

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

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 \$.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-Relay¹ and Video Relay Service² (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 jurisdiction³. Presently, there are no means available to automatically determine the geographic location of IP-Relay and VRS calls, and therefore there

¹ 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.

² 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.

³ 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 database⁴ 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 2005⁵, 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

⁴ National Exchange Carrier Association, Inc., http://www.neca.org/source/NECA_Resources_4438.asp.

⁵ 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.