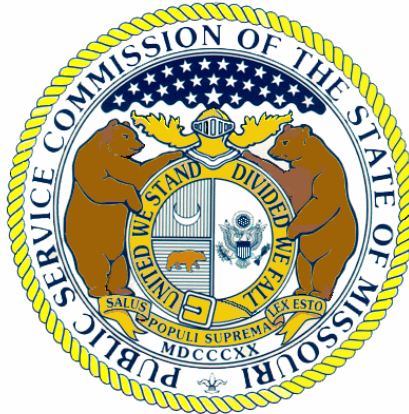


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of a Recommendation Concerning the)
Surcharge for Deaf Relay Service and Equipment) **Case No. TO-2005-0308**
Distribution Program Fund.)

REPORT AND ORDER

Issue Date: June 28, 2005

Effective Date: July 1, 2005

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of a Recommendation Concerning the)
Surcharge for Deaf Relay Service and Equipment) **Case No. TO-2005-0308**
Distribution Program Fund.)

APPEARANCES

William K. Haas, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

Robert J. Gryzmala, Senior Counsel, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, One SBC Center, Room 3516, St. Louis, Missouri 63101, for Southwestern Bell Telephone, L.P., d/b/a SBC Missouri.

Leland B. Curtis, Curtis, Heinz, Garrett & O'Keefe, P.C., 130 South Bemiston, Suite 200, Clayton, Missouri 63105, for Big River Telephone Company, LLC.

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, 220 Madison Street, Suite 650, Post Office Box 2230, Jefferson City, Missouri 65102-2230, for the Office of the Public Counsel and the public.

REGULATORY LAW JUDGE: **Vicky Ruth, Senior Regulatory Law Judge.**

REPORT AND ORDER

Syllabus:

The Commission finds that the Deaf Relay surcharge amount should be raised from \$.10 per month per access line to \$.13 per month per access line. The Commission also finds that the retention amount shall remain at the current level of \$30.00 or one percent, whichever is greater.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History and Background:

The Commission ordered the implementation of the Relay Missouri Program in Case No. TO-90-174. The Relay Missouri Program is a statewide dual-party telephone relay service, created under Section 209.253, RSMo 2000, for the deaf, hearing-impaired and speech-impaired. Dual-party relay services are those services that allow third-party intervention to connect deaf, hearing-impaired, and speech-impaired persons with telecommunications devices for the deaf (TDD) and the telephone system, in order to make available “reasonable access to telephone service to eligible subscribers.”¹

Section 209.255 provides that the Missouri Public Service Commission shall establish a rate recovery mechanism, or surcharge, to recover the costs of implementing and maintaining the programs created by Section 209.253.

The Commission issued an order on February 19, 1991, setting the initial surcharge at \$.06 per month per access line; the surcharge was subsequently raised to

¹ § 209.253.1, RSMo 2000. All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

\$.13 per month per access line.² By Commission order issued March 6, 2001, the surcharge was reduced to \$.09 per month per access line.³ The Commission raised the surcharge to its current level of \$.10 per month per access line by order issued March 27, 2003.⁴

On March 16, 2005, the Staff of the Commission filed its Recommendation and Memorandum in this case, recommending that the Commission raise the monthly surcharge from \$.10 to \$.15 per access line. Staff also recommended that the Commission maintain the current retention amount for local telephone companies. Staff filed a Corrected Recommendation and Memorandum on March 17, 2005, making minor adjustments, and a Supplemental Staff Recommendation on April 26, 2005.

The Commission held an On-the-Record Presentation on April 27, 2005. During the proceeding, several witnesses testified in response to questions from the Commissioners, the Presiding Officer, and other parties. Following the hearing, Staff filed several posthearing exhibits, with the last one, Exhibit ~~13~~ 17, being filed on June ~~6~~ 21, 2005. On its own motion, the Commission admitted Exhibits 14 and 15 into the record.

The Relay Missouri fund balance at the end of February 2005 was approximately \$2,822,000.⁵ This fund balance has been steadily decreasing for several years.⁶ Monthly revenues for the fund have remained relatively flat.⁷ For the period of July 2003 to

² Case No. TO-90-174.

³ Case No. TR-2001-182.

⁴ Case No. TO-2003-0171.

⁵ Exhibit 14.

⁶ *Id.*

⁷ *Id.*

February 2005, while a surcharge of \$.10 was in effect, the surcharge average monthly revenue was approximately \$331,800.⁸ Monthly fund distributions for such things as traditional relay, CapTel, Telecommunications Equipment Distribution Program (TEDP), and the Central Services Cost Allocation Program during the same period averaged approximately \$418,000.⁹ Staff predicts that based on these trends, at the current surcharge of \$.10, the fund will have a deficit balance in April 2006.¹⁰

Minutes of usage for traditional relay are declining.¹¹ For example, in July 2000, the minutes of usage were approximately 374,000; in January 2005, the minutes of usage were approximately 283,000.¹² The current rate for traditional relay service in Missouri is \$.94 per minute.¹³

CapTel usage, however, has been increasing.¹⁴ CapTel is a third-party relay system that uses a special captioned telephone.¹⁵ The CapTel trial ended in August 2004, and CapTel became a permanent offering in September 2004.¹⁶ CapTel expenditures from October 2004 through January 2005 averaged approximately \$41,300 per month, with the January CapTel expenditure at nearly \$52,000.¹⁷ The average CapTel usage from October

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Exhibit 14, and Transcript, p. 30, lines 22-25.

¹² Exhibit 14.

¹³ Exhibits 14 and 15, and Transcript, p. 112, Line 25 – p. 113, line 2.

¹⁴ *Id.*

¹⁵ Transcript, p. 36.

¹⁶ Exhibit 14.

¹⁷ *Id.*

to December 2004 was approximately 152 minutes per phone.¹⁸ The usage in January 2005, however, averaged 167 minutes.¹⁹ Staff noted that the average CapTel usage has significantly exceeded the prior forecasts, where an average usage of 100 minutes per phone was projected.²⁰ Moreover, it had previously been projected that the distribution of CapTel phones would be around 11 per month; instead, the distribution has been around 20 phones per month.²¹ As of December 31, 2004, there were 191 CapTel phones in circulation.²² By the time of the On-the-Record Presentation, in April 2005, this number had risen to 253 CapTel phones.²³ Sprint Communications Company, L.P., provides CapTel services and is reimbursed at the rate of \$1.45 per minute.²⁴

Issues:

1. At what amount should the Commission set the Relay Missouri Program surcharge?

The current surcharge is set at \$.10 per month per access line. Staff recommends that the Commission raise the surcharge to \$.15 per month per access line. Public Counsel argues that the surcharge should be raised to no more than \$.12 or \$.13 per month per access line. SBC Missouri and Big River Telephone did not take a position on this issue.

¹⁸ Exhibit 14, and Transcript, p. 21, lines 10-17.

¹⁹ Transcript, p. 21, lines 18-19.

²⁰ Exhibit 14, and Transcript, p. 39, line 13 – p. 40, line 9.

²¹ Transcript, p. 39, lines 16-25.

²² Exhibit 14.

²³ Transcript, p. 39, lines 23-24.

²⁴ Exhibits 14 and 15, and Transcript, p. 112, line 18 – p. 113, line 2, and Exhibit 4.

Public Counsel did not provide any evidence as to why the surcharge should be raised to no more than \$.12 or \$.13 per month per access line. Staff provided testimony and numerous exhibits that show the effect of various surcharges and average CapTel usage on the fund balance. Staff provided similar exhibits demonstrating the effect on the fund balance of various surcharges and a moratorium or other limitation on CapTel distribution. Staff, however, also indicates that it does not believe that the Commission has the legal authority to limit, or place a moratorium on, the distribution of CapTel phones.

The Commission is reluctant to raise the surcharge by 50 percent - from \$.10 to \$.15 per month per access line - at this time. Nonetheless, the Commission acknowledges that monthly revenues (averaging \$331,800) are lagging behind monthly distributions (averaging \$418,000).²⁵ Thus, the Relay Missouri fund balance will continue to decline, even to the point of having a negative balance. In order to assure that adequate funds are available for the Relay Missouri program, the Commission finds that it is necessary to raise the surcharge. Thus, the question becomes one of how much should the surcharge be raised. In making this decision, the Commission must balance its statutory obligation to assure that adequate funds are available against the need to be fiscally responsible and not raise the surcharge any more than is necessary.

Exhibit 9, Table 1, indicates that if the Commission implements a surcharge increase to \$.13 per month per access line (effective September 2005), and assuming an average of 153 minutes for CapTel usage and an average distribution of CapTel phones of 20 per month, the fund would have a balance of approximately \$193,773 in September 2006. Although this projected fund balance is less than the Commission would like, the

²⁵ Exhibit 14.

Commission desires to keep the surcharge as low as possible. Therefore, the Commission finds that a surcharge increase to \$.13 per month per access line is reasonable and necessary. The Commission encourages the Missouri Assistive Technology Advisory Council to increase its efforts to educate subscribers regarding the costs associated with both CapTel and Traditional Relay services.

All the parties agreed that if the Commission orders an increase in the surcharge, local telephone companies should be given adequate time to implement that increase. Suggestions as to what constitutes an adequate period of time ranged from 45 days to 60 or 90 days. The Commission finds that 60 days notice is adequate and will therefore order that the surcharge increase be effective on September 1, 2005.

2. The Retention Amount

Currently, local telephone companies are allowed to retain \$30.00 or one percent of the amount collected from the Relay Missouri surcharge, whichever is greater. If a carrier collects a monthly surcharge amount under \$30.00, the carrier will retain the amount under \$30.00 as its full payment for recovery of the billing. Should the Commission continue this retention amount?

Section 209.257, RSMo 2000, allows the Commission to set a percentage that a telephone company may retain from the Deaf Relay Service and Equipment Distribution Fund surcharge collected to defray the administrative costs. In Case No. TO-90-174, the Commission set the amount of retention at one percent or \$30.00, whichever is greater. In Case No. TO-2003-0171, the Commission clarified that if a carrier collects a monthly surcharge amount under \$30.00, the company will retain the amount under \$30.00 as its full payment for recovery of the billing, collecting, remitting and administrative costs attributed to its collection of the surcharge for that month. That is, if the carrier collects a surcharge amount of less than \$30.00, the company may retain that amount, but may not attempt to recover the difference from the fund. Staff recommends that the Commission

keep the retention amount at the current level. No other party offered a position on this issue.

The Commission finds that it is just and reasonable to keep the retention amount at the current level of \$30.00 or one percent, whichever is greater. The Commission will again clarify that if the carrier collects a monthly surcharge amount under \$30.00, the carrier may retain the amount under \$30.00 as its full payment for recovery of the billing, collecting, remitting and administrative costs attributed to its collection of the surcharge for that month.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Section 209.253, RSMo 2000, requires the Commission to provide a statewide dual-party relay system, using third-party intervention to connect deaf, hearing-impaired, and speech-impaired persons and offices of organizations representing the deaf, hearing-impaired, and speech-impaired, with telecommunication devices for the deaf and the telephone system, making available reasonable access to telephone service to eligible subscribers.

Section 209.255 provides that the Commission shall establish a rate recovery mechanism to recover the costs of implementing and maintaining the programs provided for in Section 209.253.

Section 209.257 directs the Commission to determine the appropriate percentage of the surcharge to be deducted and retained by the local exchange telephone company to allow the company to recover the billing, collecting, remitting, and administrative costs attributed to the surcharge. Section 209.259.3 provides that concurrent with the

review of the surcharge, the Commission shall review the percentage deducted and retained, under Section 209.257, by the local exchange telephone company and if necessary, order adjustments to the percentage to assure a just and reasonable compensation to the local exchange telephone company. The Commission previously determined that local telephone companies are allowed to retain \$30.00 or one percent of the amount collected from the Relay Missouri surcharge, whichever is greater. The Commission finds that this retention level remains just and reasonable. However, the Commission will again clarify that if the amount of the surcharge collected is less than \$30.00, the company may retain that amount, but may not attempt to recover the difference from the fund.

Section 209.258 establishes a deaf relay service fund for the purpose of paying the expenditures incurred in the operation of the statewide dual-party relay service and equipment distribution program.

Section 209.259 requires the Commission to review the Deaf Relay Service and Equipment Distribution Program Fund surcharge no less frequently than every two years, but no more frequently than annually. The statute also requires the Commission to order changes in the amount of the surcharge as necessary to assure available funds for the provision of the programs established in Section 209.253. As noted previously, the Commission finds that in order to assure available funds for the programs, the surcharge shall be raised from \$.10 to \$.13 per month per access line, effective September 1, 2005.

IT IS THEREFORE ORDERED:

1. That the Relay Missouri surcharge shall be raised to \$.13 per month per access line, effective September 1, 2005.

2. That local exchange companies shall notify their customers of the increase by a notice included with or printed on each customer's bill.

3. That except as provided in the next sentence, the local exchange telephone company is to retain one percent or \$30.00, whichever is greater, of the surcharge amount collected each month. If the carrier collects a monthly surcharge amount under \$30.00, the carrier will retain the amount under \$30.00 as its full payment for recovery of the billing, collecting, remitting, and administrative costs attributed to its collection of the surcharge for that month.

4. That the Staff shall continue to monitor the Deaf Relay Service and Equipment Distribution Program Fund and shall submit quarterly reports to the Commission regarding the state of the fund. The first report shall be submitted no later than October 1, 2005.

5. That this Report and Order shall become effective on July 1, 2005.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Gaw, Clayton, and
Appling, CC., concur;
Murray, C., concurs, with separate
concurring opinion attached;
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 28th day of June, 2005.