

**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 Distribution Program )  
Fund. )

Case No. TO-2005-0308

**STAFF'S POST-HEARING EXHIBITS AND BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission states:

1. On April 27, 2005, the Commission conducted an on-the-record presentation to provide the Commission with an opportunity to ask questions regarding the Staff's recommendation for a \$.15 surcharge for the Deaf Relay Service and Equipment Distribution Program. During that presentation, the Commission directed the Staff to provide additional information.

2. Presiding Officer Ruth asked whether current language accurately describes the current process for a local exchange company (LEC) to retain its costs of collecting the surcharge from the surcharge amount it collects. (Tr. 102-103).

The Report and Order in Case No. TO-2003-0171, *In the Matter of a Recommendation Concerning the Surcharge for Deaf Relay Service and Equipment Distribution Program Fund*, states:

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.

The Staff believes that this language accurately describes the current process. Presiding Officer Ruth specifically questioned the use of the phrase "whichever is greater" and found it to be

confusing. In this line of questioning Presiding Officer Ruth expressed the concern the wording describing the retention process is not as clear as it should be. (Tr. 97-102). Staff is unable to develop clarifying language; however perhaps the following explanation will be beneficial. The phrase “whichever is greater” helps ensure a company collecting more Relay Missouri revenue than another carrier does not receive less compensation for billing and collecting the Relay Missouri surcharge. For example a carrier collecting \$29 in Relay Missouri revenue is allowed to retain the \$29 as reimbursement for billing and collecting services. In contrast a carrier collecting \$2,000 in Relay Missouri revenue would only be able to retain \$20 for billing and collection services if only the 1% factor is applied. The phrase “whichever is greater” allows the carrier collecting \$2,000 to retain \$30 rather than \$20. In this respect the phrase “whichever is greater” ensures carriers collecting \$30 or more in Relay Missouri revenue receive greater compensation for billing and collection service than carriers collecting less than \$30 in Relay Missouri revenue. Stated differently the phrase “whichever is greater” is important for carriers collecting \$31 to \$2,999 in Relay Missouri revenue because without it these carriers would retain less than \$30 for billing and collection services, based on an application of a 1% retention factor.

3. Commissioner Gaw asked Staff to address the LEC retaining a minimum flat fee when the statute refers to a percentage. (Tr. 103).

Section 209.257 RSMo states, “The local exchange company shall deduct and retain a percentage of the total surcharge amount collected each month to recover the billing, collecting, remitting and administrative costs attributed to the deaf relay service and equipment distribution program fund surcharge.”

The Commission first addressed the retention percentage in Case No. TO-90-174, *In the matter of a rule to implement enhanced telephone service for the deaf and hearing impaired*, 30

Mo. P.S.C. (N.S.) 477. Based upon a Staff recommendation, the Commission established a monthly local exchange carrier retention percentage at one and one-half percent (1.5%) of the surcharge collected with a minimum retention of twenty-five dollars (\$25.00) per LEC. The Staff's recommendation is Attachment A to the Commission's Order. On the subject of retention, the Staff explained:

*RETENTION:*

The development of the LECs retention percentage became an extremely difficult task. Much of the information received in response to the Staff Data Request was deemed by the Staff as unreliable and made it difficult to determine an exact average or amount since the cost figures varied greatly and did not seem to be affected by company size or the amount of surcharge that would be billed or collected.

The Staff advised the LECs that it was considering a suggested retention of one and one-half percent (1.5%) of the surcharge collected with a LEC retention minimum of twenty-five dollars (\$25.00) per month. The retention minimum amount was developed after looking at what each company would retain if only a percentage was used. The use of a percentage only figure shows that most companies would retain under ten dollars (\$10.00) per month and the Staff recognized there is some expense to the company which would probably exceed \$10.00. The twenty-five dollar (\$25.00) amount was determined from plotting the Staff Data Request information for monthly cost and finding this figure was representative of the information provided.

Id. at 479.

4. Commissioner Gaw asked the Staff to prepare scenarios with a \$.13 surcharge. (Tr. 115).

Those scenarios are attached as Exhibit 3A. The spreadsheets represent the impact of a \$.13 surcharge with the surcharge being implemented in August or October 2005. Due to the voluminous nature of the filing, the graphs represent the impact of a \$.13 surcharge assuming the surcharge is implemented in August 2005.

5. Commissioner Gaw asked the Staff to prepare scenarios based on historical expenditures by the equipment distribution program. (Tr. 115-116).

Those scenarios are attached as Exhibit 3B. The spreadsheets represent the impact of the surcharge with the surcharge being implemented in August or October 2005. Due to the voluminous nature of the filing, the graphs represent the impact of the surcharge assuming the surcharge is implemented in August 2005.

6. Commissioner Gaw asked the Staff to prepare scenarios based on a distribution of 10 CapTel telephones per month. (Tr. 116).

Those scenarios are attached as Exhibit 3C.

7. Commissioner Gaw asked when the current contract expires. (Tr. 134-135).

Exhibit 4 includes selected pages from the contract between the State of Missouri and Sprint. Amendment No. 2 recites the contract period of 07/01/03 through 6/30/06. Section 2.1.1 of the Request For Proposal (RFP) provides that the original contract period shall be three years and further provides that the Division of Purchasing and Materials Management has the option to renew the contract for three additional two-year periods.

8. Commissioner Gaw asked what is paid out of this fund. (Tr. 135)

Section 209.255.1 RSMo directs the Commission to establish a rate recovery mechanism to recover the costs of implementing and maintaining the programs provided for in Section 209.253. Section 209.253 directs the Commission to provide for a statewide deaf relay system and it directs the Missouri Assistive Technology Advisory Council to provide a statewide telecommunications equipment distribution program for eligible subscribers who are unable to use traditional telecommunications equipment due to disability.

Sprint's response to RFP lists video relay and internet relay among its portfolio of services, but Missouri is not purchasing those services.

Staff member Cecil discussed the expenses paid from the Deaf Relay Service and Equipment Distribution Program Fund for the deaf relay system (traditional relay service and CapTel service) and for the equipment distribution program, plus a third expense for Central Services Cost Allocations, in the Staff's Memorandum filed on April 26, 2005, and in his testimony (Tr. 42). No other expenses are paid from the fund.

9. Commissioner Gaw asked the Staff to address the constitutional restriction on 1-year contracts with the State. (Tr. 138).

Sections 16.2 of the Terms And Conditions of the RFP provides:

The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

10. Presiding Officer Ruth asked the Staff to address whether the Commission can limit CapTel distribution. (Tr. 141).

CapTel phones are not being provided by the Commission under its contract with Sprint. The phones are purchased under a separate equipment contract and are distributed by the Missouri Assistive Technology Advisory Council. Section 209.253.9 RSMo imposes on the Missouri Assistive Technology Advisory Council the duty to adopt procedures to limit eligibility based on financial means, existing access to adaptive telecommunications equipment, prior usage of the equipment distribution program, and other factors deemed appropriate by the program administrator. This statute further provides that the scope of the program shall be limited to reasonable access to basic telecommunications as defined by the program administrator, subject

to appropriations. As previously noted, Section 209.255.1 imposes on the Commission the duty to establish a rate recovery mechanism to recover the costs of implementing and maintaining the equipment distribution program. Since the scope of the equipment distribution program, which includes distribution of CapTel phones, is to be defined by the program administrator, subject to appropriations, the decision on the number of CapTel phones to be distributed by the State of Missouri belongs to the program administrator and to the Legislature.

In a letter, attached as Exhibit 5, the program administrator expresses her concern with capping the distribution of CapTel phones, but then states if the Commission indeed wants to influence captioned telephone usage minutes through end unit distribution, she would suggest a one year moratorium on distribution. This would allow time for the Commission to gather a longer period of usage data and would allow them to do follow-up training with those currently in possession of CapTel phones.

Sprint is the relay contractor for twenty states and the federal government, in addition to Missouri. According to Sprint, 1 of those states has a monthly distribution limit of 0 CapTel phones, 1 state has a limit of 5 phones, 4 states have a limit of 10 phones, 1 state has a limit of 12 phones, 1 state has a limit of 20 phones, 3 states have a limit of 25 phones, 1 state has a limit of 33 phones, 4 states and the federal government have a limit of 50 phones, 3 states have a limit of 100 phones, and 1 state has a limit of 200 phones.

Respectfully submitted,

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 4<sup>th</sup> day of May 2005.

/s/ William K. Haas