BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C. 20554

In the Matter of:	)	
	)	
Contributions to the Telecommunications	)	CG Docket No. 11-47
Relay Services Fund	)	

Comments of the
Michigan Public Service Commission

Introduction

On March 3, 2011, the Federal Communications Commission (FCC) issued a Notice of Proposed Rulemaking (NPRM) in the above-mentioned docket regarding contributions to the Telecommunications Relay Services Fund. With this NPRM, the FCC initiated a proceeding to adopt rules to implement Section 103(b) of the "Twenty-First Century Communications and Video Accessibility Act of 2010" (CVAA). Section 103(b) of the CVAA amends Title VII of the Communications Act of 1934, as amended, by adding a new Section 715, which requires interconnected and non-interconnected VoIP service providers to participate in and contribute to the Telecommunications Relay Services Fund (TRS Fund) within one year after the enactment of the CVAA. VoIP service providers must contribute to and participate in the TRS fund in a manner which is consistent with and comparable to the obligations of other contributors.

The Michigan Public Service Commission (MPSC) commends the FCC's efforts to update the rules allowing accessibility to advanced communications to consumers with disabilities. The MPSC offers the following comments on specific questions and concepts discussed in the NPRM. The MPSC may, in the future, address additional questions and topics from the NPRM in the reply comment period. The MPSC looks forward to reviewing the comments of the other parties in this proceeding and will continue to participate by filing reply comments to the extent that they add to the discussion of how to best update the rules allowing accessibility to advanced communications to consumers with disabilities.

<u>Michigan's Telecommunications Relay Service</u>

Michigan has a long history of regulatory policy designed to make telecommunications services available to hearing and speech impaired persons.

In May 1988, the MPSC issued an order and notice of hearing[1] establishing a contested case to gather information concerning the telecommunications needs of hearing and speech impaired persons and to evaluate the need for regulatory or other actions to ensure reasonable access to the telecommunications network for hearing and speech impaired persons. The MPSC issued an opinion and order in this case in early 1990, requiring Michigan telephone companies to establish, within 18 months, a single, statewide relay system that would permit hearing and speech impaired persons reasonable access to the state's switched telecommunications network.[2] The MPSC ordered Michigan Bell Telephone Company (Michigan Bell)[3] to take the lead in instituting the relay system and provided mechanisms to fund its operation. The order also created a three-member advisory board to assist in planning and operating the Michigan Relay Center (MRC) managed by Michigan Bell.

Funding for GTE's[4] and Michigan Bell's portions of the relay system was authorized in two separate MPSC orders.[5] The other local exchange carriers (LECs) were instructed to review

[1] An inquiry, on the Commission's own motion, into the establishment and operation of a statewide telecommunications relay system for persons who are hearing and/or speech impaired, MPSC Case No. U-9117, Order and Notice of Hearing, May 26, 1988.
[2] In the matter of the application of Michigan Bell Telephone Company for authority to implement a trial plan for modified regulation, MPSC Case No. U-9117, Opinion and Order, March 13, 1990.
[3] Michigan Bell is now doing business as AT&T Michigan.
[4] Bell Atlantic merged with GTE on June 30, 2000 and changed its name to Verizon Communications. On July 1, 2010, Frontier Communications Corporation acquired Verizon's local telephone operations in Michigan.
[5] Michigan Bell's funding was addressed in MPSC Case No. U-8987. In the matter of the application of Michigan Bell Telephone Company for authority to implement a trial plan for modified regulation, Opinion and Order, March 13, 1990. GTE's funding was addressed in MPSC Case No. U-9385, In the matter of the application of GTE North

the expenses and revenues associated with the implementation and operation of the relay system in their formal annual earnings reviews. The Michigan Telecommunications Act (MTA), PA 179 of 1991, became effective January 1, 1992. Section 315 of the MTA addressed services for the hearing impaired. Specifically, Section 315 of the MTA 1) stated that the MPSC shall require each provider of basic local exchange service to provide a text telecommunications device (TTD) at cost to individuals certified as hearing or speech impaired, 2) permitted each provider of basic local exchange service to determine whether to provide a relay service on its own, jointly with other basic local exchange providers, or by contract with other telecommunications providers, 3) stipulated that the MPSC must appoint a three-person advisory board to assist in administering this section, 4) stated calls placed through the relay system must be billed as if they had not been placed through the relay center and coin-telephone calls going through the system must be collect, credit card or bill-to-third party, 5) allowed providers to offer discounts on toll calls where a TTD was used and 6) directed the MPSC to establish a rate for each subscriber line to allow providers to recover costs incurred by the relay system.

In 1992, the MPSC determined that Michigan's relay program met or exceeded the requirements of the American Disabilities Act.[6] Michigan Bell was directed to take the lead in applying for FCC certification. The order also directed the MRC Advisory Board to submit its first report to the MPSC by December 31, 1992, advised the local exchange companies to continue providing relay services as ordered in the March 13, 1990 order in Case No. U-9117, and required the local exchange companies to file annual reports to reconcile the funding with the expenses of the relay system by June 1, 1992.

Incorporated for authority to revise its schedule of rates and charges, Order Approving Settlement Agreement, March 13, 1990.

[6] In the matter of establishing compliance and rate requirements for the hearing- and speech-impaired under the Michigan Telecommunications Act, Case No. U-10086, Opinion and Order, May 6, 1992.

In late 1992, the MPSC approved the establishment of a discounted TTD distribution program as required by the MTA. [7] This order instructed local exchange carriers to provide at cost a full-featured TTD meeting minimum feature requirements, a two-year warranty, and a two-year payment plan with no interest. The order also encouraged each LEC to have an alternative TTD available at the lowest reasonable cost under the same payment plan to individuals who could not afford the full-featured model. Since November 1992, the MPSC has ordered several upgrades to the system to keep pace with advances in technology for the hearing impaired. In November 1996, upon the Advisory Board's suggestion, the MPSC ordered the basic local exchange companies to consider selling more technologically advanced TTDs at cost.[8] In June 2005, the MPSC adopted the Board's proposal to upgrade the TRS system to include Captioned Telephone (CapTel) Service.[9] The CapTel technology allows hearing impaired persons to receive caption displays while simultaneously allowing for auditory reception to the extent possible for those with a hearing disability.

When the MTA was revised in December 2005, the MRC Advisory Board was expanded to nine people. The Advisory Board was instructed to conduct a study and report to the governor and the legislative committees with oversight of telecommunications issues on the ability for deaf, hard of hearing and speech impaired customers to access telecommunication service. The Advisory Board report was to include activities by the commission to ensure reasonable access,

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[7] In the matter, on the Commission's own motion, to require local exchange carriers to implement a program to distribute text-telecommunications devices for the deaf, in compliance with the Michigan Telecommunications Act, MPSC Case No. U-10210, Order Adopting the Recommendations of the Michigan Relay Center Advisory Board, November 6, 1992.

[8] In the matter, on the Commission's own motion, to require local exchange carriers to implement a program to distribute teletypewriters for the deaf, hard-of-hearing, and speech-impaired, in compliance with the Michigan Telecommunications Act, MPSC Case No. U-10210, Order Adopting the Recommendations of the Michigan Relay Center Advisory Board, November 26, 1996.

[9] In the matter of the application of Michigan Relay Center Advisory Board to allow the current telecommunications relay system provider in Michigan to offer Captioned Telephone Service, MPSC Case U-14458, Opinion and Order, June 30, 2005.

impediments to access, identification of activities in other states to improve access, and recommendations for legislation. The Advisory Board submitted the report to the governor and legislative committees on December 28, 2007.[10] As instructed by law, the Advisory Board continued to meet every three months and report to the MPSC annually. Per the Governor's Executive Order No. 2009-50, the Michigan Relay Center Advisory Board was abolished on December 28, 2009.

The MRC is still in operation today and is available 24 hours per day, seven days per week. The program is funded by all of Michigan's incumbent local exchange carriers and most of its competitive local exchange carriers. The system provides toll free access, and both intrastate and interstate calls are billed the same as calls that don't use the relay system. The system handles calls to 700 and 800 numbers but not to 900 or 976 numbers. Coin-telephone calls processed through the system are cash, collect, credit card or bill-to third party. Any changes at the federal level to enhance and update the rules to accommodate new technologies will provide guidance for and complement state programs.

Discussion

The MPSC agrees with the FCC's proposal to amend the TRS rules at Section 64.601(a)(10) to remove the actual text of the definition, and instead codify the following language provided in the CVAA: "The term 'interconnected VoIP service' has the meaning given such term under section 9.3 of title 47, Code of Federal Regulations, as such section may be amended from time to time." This change is in compliance with Section 101 of the CVAA.

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[10] Michigan Telecommunications Relay Center Advisory Board, Report to the Legislature, January 2008. http://www.michigan.gov/documents/mpsc/mrc08_220030_7.pdf.

The MPSC agrees that the definition of “non-interconnected VoIP service” should be added to the TRS rules at Section 64.601(a). The term should be added to the definitions for reference.

The MPSC agrees that non-interconnected VoIP service providers covered under Section 715 should be required to use FCC Form 499-A to report their revenues. Title VII, Section 715, of the Communications Act of 1934, as amended, directs the non-interconnected VoIP providers to participate and contribute to the TRS Fund in a manner which is consistent with and comparable to the obligations of other contributors. The local exchange carriers and interconnected VoIP providers that participate in the TRS Fund use FCC Form 499-A to report their revenues. For consistency, all providers required to participate in the TRS Fund should complete and submit the same forms.

The MPSC supports the addition of non-interconnected VoIP service providers as entities required to contribute to the TRS Fund. It is clear that the law intended to require non-interconnected VoIP service providers to contribute to the TRS Fund.

The MPSC believes that revenues should be defined as interstate end-user revenues only. Redefining “revenues” to include revenues from advertisers, donors and other revenue sources could have an unforeseen impact on the amount other contributors would be required to pay and adds an unnecessary level of complexity to the process. In the case of bundled services, the revenues associated with VoIP service could be calculated as a prorated share of the total bundled services offered to the consumer.

The MPSC supports changing the $25 minimum contribution requirement so that it applies to all telecommunications carriers, not only telecommunications carriers that have end-user revenues. Non-interconnected VoIP carriers that have no end user revenues would be required to pay the minimum $25 contribution. Maintaining the $25 minimum contribution requirement for telecommunications carriers that have end user revenues only could result in reduced revenues for the TRS Fund and inconsistent treatment among the carriers.

The MPSC does not oppose the term changes proposed in paragraph 24 (i.e., replace the terms “carrier,” “carriers,” and “service providers” in Section 64.604(c)(5)(iii)(B) with the term “contributor(s),” and use “revenues subject to contributions” in Section 64.604(c)(5)(iii)(B) in lieu of “interstate end-user telecommunications revenues” and “interstate end-user revenues of such services” in Section 64.604(c)(5)(iii)(B)). The new terms more accurately describe the TRS Fund participants and revenues.

In the MPSC’s view, the term “participate in” includes 1) an obligation for contributors to pay into the TRS Fund when required, 2) a requirement for contributors to complete and submit FCC Form 499-A annually, 3) a requirement that is in line with the congressional mandate to ensure that the obligations of VoIP service providers are “consistent with and comparable to the obligations of other contributors to such Fund” and 4) a requirement that each contributor’s system provides its hearing impaired customers access to relay services and TTDs at cost supported by the TRS Fund.

The MPSC agrees that all non-interconnected VoIP service providers should be required to register with the Commission and designate a District of Columbia agent for service of process using the FCC Form 499-A. The MPSC believes this will facilitate the FCC’s enforcement of TRS Fund contribution obligations and is in line with the congressional mandate for consistent and comparable obligations.

The MPSC supports TRS rule changes to reflect the addition of non-interconnected VoIP service contributors to the TRS Fund. The rules should be adapted to reflect requirements regarding TRS Fund registration for non-interconnected VoIP service providers. The rules should include providers of non-interconnected VoIP services among those required to designate a District of Columbia agent for service of process using the FCC Form 499-A in accordance with its instructions.

In keeping with the CVAA's requirement that VoIP service providers contribute to and participate in the TRS Fund in a manner which is consistent with and comparable to the obligations of other contributors, the MPSC believes that the FCC should apply the interim safe harbor used for interconnected VoIP services to non-interconnected VoIP services.[11] The interim safe harbor estimates the percentage of interconnected VoIP service revenues attributable to interstate calls to be 64.9 percent.

As with interconnected VoIP service providers, some non-interconnected VoIP service providers may have difficulty complying with the end-user revenue reporting requirement because they do not have the ability to identify whether calls are interstate. It follows, that non-interconnected VoIP providers should be able to use the interim safe harbor that was established for interconnected VoIP services. For purposes of TRS Fund contribution calculations, non-interconnected VoIP service providers, like the interconnected VoIP service providers, should be allowed to report their interstate end-user revenues on the FCC Form 499-A by using actual revenues, using a traffic study, or using the interim safe harbor percentage.

In order to meet the one-year statutory deadline specified in Section 715, the MPSC supports the FCC's proposals to 1) require all non-interconnected VoIP service providers to register and designate a District of Columbia agent for service of process by September 30, 2011, using the FCC Form 499-A in accordance with its instructions, 2) require all non-interconnected VoIP service providers to complete and submit the FCC Form 499-A by April 1, 2012, to report interstate end-user revenues for such services for the period from October 1 through December

[11] See *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7544-47, ¶¶ 50-62 (discussing revenue reporting issues and requirements to interconnected VoIP providers' USF contribution obligation).

31, 2011 and 3) begin assessing non-interconnected VoIP service providers for TRS contributions based on revenues reported for the October-December 2011 period for the 2012-2013 TRS Fund year (July 1, 2012 through June 30, 2013).

Conclusion

The MPSC appreciates the opportunity to participate in the discussion of the contributions to the Telecommunications Relay Services Fund and commends the FCC for its diligent efforts to comply with the statute. The MPSC recommends the changes to the TRS rules as discussed in these comments. Such changes will help to ensure the availability of TRS to hearing and speech impaired persons.

Respectfully submitted,

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