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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | | |  |
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|  | | Public Meeting held March 25, 2021 | | |
| Commissioners Present: | |  | | |
| Gladys M. Brown, Chairman  David W. Sweet, Vice Chairman  John F. Coleman, Jr.  Ralph V. Yanora | | | | |
|  | | |  | |
| Hamilton Relay, Inc.  Supplement No. 3 to Tariff TRS PA P.U.C. No. 1 | | | R-2021-3024017 | |
| Pennsylvania Telecommunications Relay Service | | | M-00900239 | |

**ORDER**

**BY THE COMMISSION:**

Before the Commission for consideration and disposition is proposed Supplement No. 3 to the Telecommunications Relay Service (TRS) Tariff PA P.U.C. No. 1, of Hamilton Relay, Inc. (Hamilton). The proposed tariff would increase the price per session minute of use (MOU) that Hamilton charges the TRS Fund for traditional Speech-to-Speech TRS in Pennsylvania.[[1]](#footnote-1) The current specific tariffed rate Hamilton charges in Pennsylvania is proprietary and confidential, as are the specific rates Hamilton and the other TRS provider in the country charge each jurisdiction. Also claimed to be confidential and proprietary across this industry is underlying revenue and expense information.

**Background**

TRS service is mandated under both federal and state law in order to provide those with communications difficulties the ability to communicate equally with others.[[2]](#footnote-2) In Pennsylvania, TRS operations began in September 1990 when the Commission selected AT&T as the Commonwealth’s first TRS provider following the receipt of four bids to a solicited Request for Proposals (RFP). In addition to the RFP process, the Commission has also required the issuance of a Certificate of Public Convenience (CPC) to our TRS provider.

AT&T remained Pennsylvania’s TRS CPC provider until 2014, when it advised the Commission it wished to abandon its CPC. Following the issuance of an RFP in 2014,[[3]](#footnote-3) the Commission received a bid from our current provider, Hamilton. Although requested in the RFP, Hamilton’s bid as provided and accepted did not include cost information.[[4]](#footnote-4) As Hamilton advised at the time “because this process is a competitive bid process and costs are not tracked in this manner, Hamilton is not able to provide direct labor costs, travel and subsistence costs, consultant costs, subcontract costs, costs of materials, general overhead and other direct costs.”[[5]](#footnote-5) One other known provider at the time declined to bid and instead submitted a letter citing a perceived competitive disadvantage were it to bid as Hamilton already held a contract with the Commission for captioned telecommunications relay service, or CTRS.[[6]](#footnote-6)

At public meeting held September 2, 2014, the Commission accepted the 2014 RFP Staff Recommendation of Hamilton as the TRS provider in Pennsylvania. As required by RFP-PUC-2014-2 Part 1, Section I-1, in order to proceed with final negotiations with the Commission, Hamilton filed an application at Docket No. A‑2014‑2447601 for a CPC to provide TRS in Pennsylvania. On December 4, 2014, the Commission approved Hamilton’s application to operate as Pennsylvania’s certificated intrastate TRS provider. The Commission issued a CPC to Hamilton to provide TRS on January 9, 2015.[[7]](#footnote-7)

Under the terms of the 2014 RFP, Hamilton was obliged to provide service for a period of five years from the operational date. Service would automatically renew for additional successive two-year terms unless not less than one year prior to the end of the original or any renewal term, either Hamilton or the Commission gave notice of an intent to terminate, at which point termination would become effective upon approval of a replacement service provider.[[8]](#footnote-8) The initial MOU TRS rate specified in the bid was accepted for a fixed term of three years, after which the provider was allowed to request a rate change in accordance generally with Section 1308 of the Public Utility Code and applicable Commission regulations.[[9]](#footnote-9)

Hamilton is compensated monthly from the TRS Fund based on intrastate billable call minutes multiplied by the Commission-approved tariffed MOU rate and a flat rate monthly fee for outreach services. Hamilton and AT&T successfully transitioned service by the end of 2014 and Hamilton commenced services in 2015.

**Discussion**

Given the unique pricing and other circumstances that involve the provision of TRS service specifically in Pennsylvania, our acceptance of Hamilton’s 2014 bid, our review of the circumstances and the information that Hamilton provided in support of Supplement No. 3,[[10]](#footnote-10) and the totality of the circumstances surrounding the provision of intrastate TRS generally, we believe the TRS MOU rate increase proposed by Hamilton in its January 29, 2021 filing should be allowed to become effective as filed.

The tariffed MOU rate for traditional TRS has changed only four times since the inception of TRS in Pennsylvania. The first rate change occurred in 1994 in response to a request from AT&T.[[11]](#footnote-11) The second rate change was to reflect the addition of the then-newly federally-mandated Spanish relay services.[[12]](#footnote-12) The third rate change was in response to a rate increase request filed by AT&T.[[13]](#footnote-13) The fourth rate change occurred when Hamilton took over as the intrastate TRS provider in January 2015. The current TRS MOU rate has not changed since Hamilton commenced providing TRS in Pennsylvania and is the same rate that Hamilton proposed as its three-year fixed rate in the Cost Submittal portion of its RFP-PUC-2014-2 bid.

In this filing, as it has consistently maintained since its original bid in 2014,[[14]](#footnote-14) Hamilton claims that its underlying operational costs for the provision of its traditional TRS are not tracked and it is unable to provide the Commission with the direct labor costs, travel and subsistence costs, consultant costs, subcontract costs, costs of materials, general overhead, and other direct costs. In lieu of providing this type of data to support its proposed rate increase, Hamilton has provided other evidence to support its claim that it has experienced an increase in the related costs of providing TRS service.

Hamilton asserts that personnel costs such as salaries, health insurance, and other benefits have risen since it became certificated as Pennsylvania’s intrastate TRS provider in 2015. Lacking direct state categories of information, as alternative support Hamilton cites to growth in the U.S. Bureau of Labor Statistics Employment Cost Index and Consumer Price Index.

There is no doubt that Hamilton provides a valuable TRS service to the hearing- and/or speech‑impaired public and to everyone who communicates with those who need the equivalent telecommunications access that TRS provides within Pennsylvania. There also is no doubt that the provision of actual state-specific operational cost and revenue data from our certificated TRS providers for pricing purposes in Pennsylvania historically has proven to be a difficult process. As previously noted, in response to our 2014 RFP, we received and accepted one bid that lacked the requested cost data. Further, in the *2009 AT&T Rate Case* noted above, we relied, in part, on the availability of comparative national data. From our experience, we have no reason to believe Hamilton is unique in its bases for pricing TRS service. While not optimal under traditional Section 1308 ratemaking standards, the Commission may consider the national wage and inflation data tracked by federal agencies to support Hamilton’s nontraditional filing. This data shows that personnel costs have risen nationwide over the past six years.

Hamilton also cites to the growth from 2015 to 2019 in the average rate for intrastate TRS as calculated by the interstate TRS Fund Administrator using the Multi-state Average Rate Structure (MARS)[[15]](#footnote-15) methodology showing growth in the per-MOU MARS rate for traditional TRS from $2.60 in 2015 to $3.70 in 2019 as justification for its proposed rate increase.[[16]](#footnote-16) Hamilton’s provision of the MARS rates does not offer a true apples-to-apples comparison because, *inter alia,* the MARS methodology uses conversation MOUs to determine the average intrastate TRS rate while Hamilton is compensated in Pennsylvania based on session MOUs.[[17]](#footnote-17) However, there is no question that the national average intrastate TRS rate has increased, and a comparison of its proposed rate to the average intrastate TRS rates using the MARS methodology demonstrates that Hamilton’s proposed rate compares favorably to the MARS range of rates.

Hamilton also provides evidence of the decline in Pennsylvania’s monthly TRS session MOUs, averring that the declining volume of MOU means that its costs must be spread across a decreasing number of minutes per month. In support, Hamilton provides a confidential schedule of its TRS MOUs and related invoices covering the six-year period of time that its initial three-year fixed rate has remained in effect. Hamilton’s schedule evidencing declining TRS MOUs and related invoiced revenues supports its averment that it has experienced a substantial drop in Pennsylvania revenues and MOUs. Further, even with the requested increase, Hamilton projects its average monthly invoice for TRS services to rise only slightly for the year 2021 before falling again for the year 2022.

Finally, Hamilton avers that if approved, this proposed price increase will remain fixed through December 15, 2022.[[18]](#footnote-18) Hamilton’s proposal to maintain this fixed rate for two years effectively provides the Commission the benefit of having eight years of TRS service from Hamilton with one six-year fixed rate and a subsequent two-year fixed rate despite alternative price change opportunities having been provided in the 2014 RFP. Moreover, this equivalent of a two-year rate stay out under traditional ratemaking standards affords a level of predictability and stability to its provision of TRS service within the Commonwealth, adding further support to the filing and a benefit that the Commission regularly accepts as valuable consideration in approving rate changes by certificated public utilities under traditional ratemaking principles.

**Conclusion**

For the reasons discussed herein, we believe that Hamilton’s unopposed Supplement No. 3 to Tariff TRS PA P.U.C. No. 1 should be accepted as filed. Investigation and analysis of this proposed tariff supplement and the supporting data and information indicates that the proposed tariff supplement does not appear to be unlawful, unjust, unreasonable, or contrary to public interest. As such, the proposed tariff supplement should be permitted to become effective on the proposed April 1, 2021, effective date. However, this does not constitute a determination that this tariff supplement is just, lawful, and reasonable; rather, this is a determination that suspension or further investigation does not appear to be warranted at this time; **THEREFORE,**

**IT IS ORDERED:**

1. That Hamilton Relay, Inc.’s Supplement No. 3 to Tariff TRS PA P.U.C. No. 1, which was originally filed on January 29, 2021, for the purpose of increasing the rate for the provision of traditional Speech-to-Speech Relay services in Pennsylvania, is permitted to become effective as filed on April 1, 2021.
2. That a copy of this order be served upon Hamilton Relay, Inc., the Office of the Consumer Advocate, the Office of Small Business Advocate, the Bureau of Investigation and Enforcement, and the Chairman and Vice-Chairman of the Pennsylvania Telecommunications Relay Service Advisory Board.
3. That this case be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: March 25, 2021

ORDER ENTERED: March 30, 2021

1. Hamilton maintains that its Pennsylvania TRS rate is proprietary. The proposed rate increase would constitute a 25.838% increase in the price per MOU for TRS operations. [↑](#footnote-ref-1)
2. *See* 47 U.S.C. § 225; 35 P.S. § 6701.4. Section 225 imposes on telecommunications common carriers engaged, *inter alia*, in intrastate communications by wire or radio, the obligation to provide relay service. The relay service may be provided, *inter alia*, directly or through state regulation of intrastate common carriers. Section 6701.4 is the 1994 Commonwealth codification of the 1990 Commission implementation of the federal mandate. While relay service is an obligation of all communications carriers, the TRS that Hamilton provides is nevertheless pursuant to Title 35 and subject to Commission review of its rates. [↑](#footnote-ref-2)
3. RFP-PUC-2014-2 at Docket No. M 2014-2399871 (2014 RFP). [↑](#footnote-ref-3)
4. The Commission’s 2014 RFP directed bidders to calculate a TRS rate based on the costs of providing TRS, specifically stating as follows: “The overall annual cost for the provision of TRS must be provided. Potential vendors should also focus on providing ‘Total dollar’ cost for the broad categories delineated in the spreadsheet attached as Appendix C as well as anticipated TRS MOU demand levels over the anticipated term (original term plus any extension, see I 23). The potential vendors should then arrive at a final cost rate on a session minute of use basis. Attached Appendix C largely reflects broad cost categories and corresponding examples that have largely been observed in the provision of TRS.” RFP-PUC-2014-2, Section II-8. [↑](#footnote-ref-4)
5. Hamilton Proposal to Provide Telecommunications Relay Service in Pennsylvania, August 5, 2014, Cost Submittal. [↑](#footnote-ref-5)
6. Bureau of Administration Recommendation of the RFP-PUC-2014-2 Evaluation Committee (2014 RFP Staff Recommendation) memo at 2. Hamilton’s affiliate, Hamilton Telephone Company, was selected as the contractual provider for intrastate CTRS, a specific subset of TRS known as captioned telephone voice carry-over relay service, in Pennsylvania pursuant to the Commission’s RFP 2012-2, effective July 1, 2012, at BP8 2663353 in association with Docket No. A-311335. Hamilton Telephone is contracted with the Commission to provide CTRS through 2024. [↑](#footnote-ref-6)
7. *Application of Hamilton Relay, Inc. for Approval to Offer, Render, Furnish, or Supply Telecommunication Relay Services for the Deaf, Hard of Hearing, and Speech Impaired Individuals to the Public Throughout the Commonwealth of Pennsylvania*, Docket No. A-2014-2447601 (Order entered December 4, 2014). [↑](#footnote-ref-7)
8. *See* 2014 RFP, Section I-23, TERM OF SERVICE. [↑](#footnote-ref-8)
9. *See* 2014 RFP Section IV-8. RATE. [↑](#footnote-ref-9)
10. Commission Staff issued data requests on February 12, 2021, to which Hamilton responded on March 1, 2021. Additional data requests were tendered on March 11, 2021. In response to staff issued data requests, while providing additional information, Hamilton claimed it was unable to provide much of the information sought by the data requests. No complaints were filed against the proposed supplement. [↑](#footnote-ref-10)
11. *See* *Pennsylvania Public Utility Commission v. AT&T Communications of Pa., Inc.*, Docket No. R‑00943024 (Order entered May 4, 1994) (*1994 AT&T Rate Case*). In conjunction with the *1994 AT&T Rate Case*, Commission Staff and AT&T worked through a protracted discovery process. Ultimately, an alternate rate was approved. [↑](#footnote-ref-11)
12. *See* *Pennsylvania Public Utility Commission v. AT&T Communications of Pa., Inc.*, Docket No. R-00005966 (Order entered January 11, 2001). [↑](#footnote-ref-12)
13. *See* *Pennsylvania Public Utility Commission v. AT&T Communications of Pa., LLC*, Docket No. R-2009-2130384 (Order entered April 23, 2010) (*2009 AT&T Rate Case*). [↑](#footnote-ref-13)
14. In 2017, Hamilton sought an increase to the TRS MOU rate from the Commission. On December 21, 2017, Hamilton submitted Supplement No. 2 to its Tariff TRS PA P.U.C. No. 1 proposing an increase to the TRS MOU rate. The proposed effective date of Supplement No. 2 was February 21, 2018. By order entered February 8, 2018, at Docket No. R‑2017-2639884, the Commission suspended Supplement No. 2 for seven months and launched an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. Following staff’s submission of data requests to Hamilton requesting, *inter alia,* total company cost data, Pennsylvania-specific cost data, jurisdictional allocation methodologies, and staffing levels, Hamilton again contended that “[a]s Hamilton previously stated in its 2014 RFP cost submittal, much of the information that the Commission requested through Staff Data Request Set No. 1 is not available as the costs are not tracked in this manner. In particular, Hamilton is not able to provide direct labor costs, travel and subsistence costs, consultant costs, subcontract costs, costs of materials, general overhead, and other direct costs because Hamilton does not track costs on a per state basis.” On March 23, 2018, Hamilton withdrew the filing. Hamilton posed further communications in November 2018 to staff to increase its TRS MOU, again without state-specific cost information, but that filing appears not to have been formally filed. [↑](#footnote-ref-14)
15. Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51 (filed May 5, 2016, and April 30, 2020). [↑](#footnote-ref-15)
16. Hamilton Relay, Inc. response to Bureau of Technical Utility Services Data Request Set I, No. 4. [↑](#footnote-ref-16)
17. Conversation minutes are measured by conversation time between the calling and called party. Conversation minutes do not include time for call set-up, ringing, waiting for the called party to answer, or call wrap-up, and do not encompass calls that reach a busy signal or are not answered. Session minutes include all the time the Communications Assistant (CA) spends on a call to the relay center, *i.e.,* from the time the call is connected to the CA, regardless of whether the called party answers the call. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8379, 8385, at para. 9 n.41 (July 20, 2006). [↑](#footnote-ref-17)
18. Hamilton Relay, Inc. Supplement No. 3 to Tariff TRS PA P.U.C. No. 1, Docket No. R-2021-3024017, Overview and Exhibits A-C; Hamilton responses to staff data requests. [↑](#footnote-ref-18)