**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held May 17, 2018

Commissioners Present:

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman

Norman J. Kennard, Joint Statement, dissenting

David W. Sweet

John F. Coleman, Jr., Joint Statement, dissenting

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| Recalculation of the PennsylvaniaTelecommunications Relay Service Surcharge | M-2018-2640814 M-00900239 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the annual recalculation of the Pennsylvania Telecommunications Relay Service (TRS or Relay)[[1]](#footnote-1) and surcharge funding mechanism (TRS surcharge) as it will apply to residential and business wireline access lines for the period July 1, 2018 through June 30, 2019. This recalculation is made in accordance with our May 29, 1990 Order at Docket No. M-00900239 (*May 1990 Order*)and subsequent Commission Orders and legislation. For the reasons stated herein, the monthly residential and business access line surcharge will be retained at the current $0.08 per line per month level.

**Background**

The surcharge at issue supports Pennsylvania’s TRS program under the Universal Telecommunications and Print Media Access Act (UTPMAA).[[2]](#footnote-2) TRS provides telephone transmission services that allow for qualified persons who are hearing or visually impaired, and who require appropriate technology in order to access telecommunications services, to communicate by wire or radio in a functionally equivalent manner as do non-disabled persons. The Commission is charged with designing and implementing a TRS program that also satisfies the requirements of the Americans with Disabilities Act of 1990 and Section 225 of the federal Telecommunications Act of 1996, 47 U.S.C. § 225 (*TA96*).

In *TA96,* Congress addressed common carrier obligations to provide service to hearing or speech impaired individuals in compliance with federal mandates governing interstate and intrastate telecommunications and state certification that such programs comply with federal mandates.[[3]](#footnote-3)

In addition to providing equipment at no charge to qualified individuals that enable them to engage in telecommunications access on a functionally equivalent basis as non-impaired individuals, the TRS program provides public education so that consumers are more familiar with, and can use, TRS to access the Public Switched Network (PSN), a network that provides telecommunications and broadband access, and other telecommunications services.

Currently the TRS surcharge funds three individual programs: (1) Relay (TTY style, Speech-to-Speech, Spanish Relay, and Captioned Telephone Relay Service (CTRS)); (2) TDDP; and (3) the Wireless Expansion Initiative (WEI) – a two-year pilot program. Additionally, the surcharge funds the PMASP, the TRS Advisory Board activities,[[4]](#footnote-4) and the Pennsylvania TRS Fund (Fund) administration costs. Administration of the TDDP program is tasked to the Executive Director of the Office of Vocational Rehabilitation (OVR) of the Department of Labor and Industry (L&I).

By statute, the Commission is charged with annually calculating the TRS program surcharge based on an annual budget. *See* Act 34, *as amended,* and Act 174, *supra*, 35 P.S. § 6701.4(c). The surcharge in its present form is assessed at the rate of $0.08 per wireline residential and business access line per month. This is, generally, $0.96 per year for a typical residential customer.

The annual TRS surcharge recalculation is dependent on data from several sources. Local Exchange Carriers (LECs)[[5]](#footnote-5) submit annual wireline access line counts pursuant to 52 Pa. Code § 63.37. The intrastate relay services provider, Hamilton Relay, Inc.,[[6]](#footnote-6) submitted the estimated minutes of use and charges for July 1, 2018, through June 30, 2019. Hamilton Telephone Company d/b/a Hamilton Telecommunications submitted the estimated minutes-of-use report for TRS and captioned telephone relay service or CTRS. OVR submitted the 2018-2019 TDDP budget and the 2018-2019 PMASP budget. U.S. Bank,[[7]](#footnote-7) the Fund Administrator, additionally provided a statement of the financial status of the Fund.[[8]](#footnote-8)

**Discussion**

**Surcharge for 2018 – 2019**

On review of the data submitted, combined residential and business wireline access lines reported by LECs for 2017 and adjusted for Centrex lines are estimated to be 4,550,000. In our Opinion and Order establishing the TRS Surcharge for 2017-2018, we determined to retain the applicable surcharge at $0.08 on consideration of two potentially impactful expense liabilities which remained unresolved at that time. *See Recalculation of the Pennsylvania Telecommunications Relay Service Surcharge*, Docket Nos. M-2017-2582552; M‑00900239 (Order entered June 27, 2017) (*2017-2018 TRS Surcharge Order*).

 First, there was the WEI pilot. When our TRS program commenced, communications assistance was provided over traditional telecommunications equipment – wireline service through wireline equipment available at fixed locations. In 2015, however, spurred by declining adoption of traditional TRS wireline assistive devices and consumers’ increased reliance on wireless technology, the OVR petitioned this Commission to engage in a pilot wireless program consistent with Pennsylvania law.[[9]](#footnote-9)

 In that program, we undertook to evaluate the feasibility and efficacy of fulfilling our mandate to provide qualified individuals communications assistance in using modern technology. We recognized that wireless and internet-based communications were becoming increasingly essential to consumers, including people with disabilities, and that assistive programs should keep pace. In doing so, we joined commissions in California, Texas, Maryland, Minnesota, Missouri, Colorado, Kansas, Kentucky, New Mexico, and Wyoming on the forefront of moving telecommunications relay assistance into the 21st century.

As noted in the *2017-2018 TRS Surcharge Order*:

[T]he WEI is a two-year pilot program. This program was initiated by an order of this Commission in *Petition of Department of Labor & Industry Office of Vocational Rehabilitation for a Proposed Pilot for Distribution of Telecommunications Relay Service Wireless Equipment to People with Disabilities in Pennsylvania, et al.*, Docket No. P-2015-2484229, *et al.* (Order entered July 8, 2015) (*July 2015 Order*), and pursuant to the UTPMAA. Because the UTPMAA includes communications service by wire or radio, we authorized this pilot to acknowledge the evolving landscape of telecommunications services from exclusively traditional landline based wireline facilities to multiple technology-based communications services, including but not limited to wireless and Voice over Internet Protocol services, and to test our need to further our obligations under federal and state law to provide services to the disabled under an increasingly changing technological construct.

Under the pilot WEI, we authorized the conduct and funding of a project designed to test the availability and use of wireless devices by a limited number of eligible Pennsylvanians with disabilities for a limited period.

\* \* \*

Further, under the WEI pilot, we built in reporting requirements meant to assess the program.

\* \* \*

The estimated and actual access lines assessed to support this TRS program, including the WEI pilot, have declined markedly from 2011 through 2016, from approximately 6.1 million as of December 31, 2011, to approximately 4.7 million 5 years later. Further, the current WEI is funded exclusively by wireline assessments with no contribution from the wireless providers who provide service to WEI consumers, an issue we recognized in authorizing the pilot but for which we then deferred, and continue to defer, action through at least the full conduct of the pilot.

*2017-2018 TRS Surcharge Order* at 4-5 (note omitted).

Upon completion and the evaluation of the WEI pilot, our staff is to make a recommendation consistent with our July 8, 2015 Order approving the pilot program.[[10]](#footnote-10) The evaluation of this pilot remains, at best, in a state of flux. And we still lack the benefit of our staff recommendation, without which we are hindered in our ability to analyze and determine the direction this program should take.

A concern raised by the WEI program is its reliance on TRS contributions from wireline customers to support a wireless expansion. This concern is valid, and we would benefit from our Staff’s analysis of the ability to expand the contribution base of the Fund beyond the customers of wireline telecommunications services in Pennsylvania. The objectives of this program, however, are vital to ensuring that modern communications services remain available in a non-discriminatory fashion to all qualified individuals. This is particularly important as communications networks evolve technologically, rendering some traditional devices incompatible with modern networks. Further, we observe that no utility-based system of providing customer-support is perfect. All systems require that we reasonably consider the public interest and balance the interests of those who support the program against those who stand to benefit from it.

As reported in the WEI program administrator’s evaluation, most participants expressed positive life changes from participating in the WEI – from feeling happier, safer, and more independent to “com[ing] alive again after all the discrimination [ ] experienced [from the] handicap.” This Commission has done far more, and at an equal if not far greater expense, to open our energy markets to competition and educate and assist those who wish to participate. *See, e.g.,* [www.PAPowerSwitch.com](http://www.papowerswitch.com/). In fulfilling our statutory mandate to ensure nondiscriminatory telecommunications capability for our most vulnerable population, we must discharge our duties in a manner that is not only financially-responsible but also technologically-effective.

Second, in our *2017-2018 TRS Surcharge Order* we addressed the notice of a proposed rulemaking pending before the Federal Communications Commission (FCC) involving Internet Protocol Captioned Telephone Service, or IP-related relay service. This service is currently considered jurisdictionally interstate, but it also has an intrastate component. In this proceeding, which remains open, the FCC is contemplating shifting certain federal IP-CTS program costs to the states. *See In re Misuse of Internet Protocol (IP) Captioned Telephone Service, et al.*, CG Docket No. 13-24 *et al.*, (FCC Rel. August 26, 2013), Report and Order and Further Notice of Proposed Rulemaking. As long as this matter is pending, Pennsylvania remains under substantial risk of the potential for a jurisdictional cost shift from the federal to the state level because of the observable growth in IP-related relay service.

Additionally, we take official notice that in the intervening year since the *2017-2018 TRS Surcharge Order*, Hamilton, our TRS provider filed, and then withdrew, a proposed rate increase for its intrastate TRS.[[11]](#footnote-11) This filing provides reason to believe that the provider may seek – as of yet – an undefined increase this year.

A mathematical assumption — that all other expense elements will remain the same — fails to sufficiently address all other concerns. The same uncertainties that governed our decision to retain the $0.08 surcharge level in our *2017-2018 TRS Surcharge Order* still exist today and have not been explained away or otherwise sufficiently addressed. Accordingly, we shall retain the current $0.08 per access line per month TRS surcharge. Retention of the current surcharge pending further resolution of these uncertainties ensures that the program has the resources to support whatever decisions are made on the WEI pilot, to respond to what could be significant cost increases to the program if the FCC ultimately allocates to the states certain costs currently borne by the federal TRS program, and to support a TRS rate increase if proposed by the provider and approved by this Commission.

Based on the foregoing, and on consideration of the number of access lines, projected program costs (Relay, CTRS, TDDP, and PMASP), anticipated Pennsylvania TRS Advisory Board expenses, TRS Fund administration costs, and the financial status of the TRS Fund, the 2018-2019, the TRS surcharge rate for residential and business access lines will be retained at the current rate of $0.08 per month. All TRS surcharge revenues shall continue to be remitted to the Fund Administrator.[[12]](#footnote-12) The monthly surcharge allocation for each fund account will not change.[[13]](#footnote-13)

**Operations for 2018 – 2019**

We shall continue our active oversight of the operations of the Pennsylvania Telecommunications Relay Service. Further, in accordance with 35 P.S. §§ 6701.3a & 4, we shall continue to collaborate with OVR and its TDDP administrator[[14]](#footnote-14) to ensure adequate funding for distribution of TDDP equipment to qualified Pennsylvanians. Further, we shall continue to assist OVR in its mission to ensure adequate funding for PMASP*.*

**Audits**

The Bureau of Audits (Audits) released its most recent TRS Audit Report on June 14, 2017, at Docket No. D-2016-2556222, for the twelve-month periods ended February 29, 2016, February 28, 2015, February 28, 2014, and February 28, 2013. Audits is in process of beginning an audit of the TDDP and the PMASP for the twelve-month periods ended June 30, 2016, June 30, 2015, and June 30, 2014 at Docket No. D‑2018-3001207.

**Service of Paper Copies**

In the past, our practice has been to serve the annual TRS surcharge recalculation order on every LEC in the Commonwealth in addition to each Relay service provider, the Office of Vocational Rehabilitation, the Office of Consumer Advocate, the Office of Small Business Advocate, the Pennsylvania Telephone Association, and the Fund Administrator. Consistent with the TRS surcharge recalculation order entered May 23, 2013, at Docket No. M‑2013‑2341301, we now serve paper copies of the annual TRS surcharge recalculation order only when there is a change in the TRS surcharge rate or other provision in the order requiring that the LECs file a tariff supplement or take other action. As this order does not change the set surcharge rate or require any other tariff changes in response to this order, paper copies will not be served. Additionally, we will continue to publish the recalculation orders in the *Pennsylvania Bulletin* and on the Commission’s website.

**Conclusion**

The Commission has completed the annual recalculation of the TRS surcharge rate. The TRS surcharge rate for residential and business access lines to be applied beginning July 1, 2018, through June 30, 2019, will be retained at $0.08 per month. We also note that paper copies of this order will not be served on the LECs as there is no change in the set surcharge rate and no new requirements on the LECs requiring tariff changes in response to this Order; **THEREFORE**,

 **IT IS ORDERED:**

1. That for the period of July 1, 2018, through June 30, 2019, the TRS surcharge rate for residential and business access lines shall be retained at the current rate of $0.08 per month, unless the Commission takes further action to revise the TRS surcharge rate prior to June 30, 2019.

2. That all local exchange carriers are directed to use the attached blank remittance form to remit the monthly TRS surcharge collections to the Fund Administrator. The blank remittance form shall be posted to the Commission’s website. All local exchange carriers are required to collect and remit the TRS surcharge revenue with the completed remittance form monthly by the 20th of each month.

3. That the Law Bureau, with the assistance as necessary of the Bureau of Technical Utility Services, prepare an analysis of the ability to expand the contribution base that supports Telecommunications Relay Services.

 4. That a copy of this Order be published in the *Pennsylvania Bulletin.*

5. That a copy of this Order be posted to the Commission’s website.

  **BY THE COMMISSION**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: May 17, 2018

ORDER ENTERED: June 13, 2018

**A P P E N D I X**

**REMITTANCE FORM FOR MONTHLY TRS SURCHARGE COLLECTIONS**

Effective July 1, 2018 through June 30, 2019 M-2018-2640814

All local exchange carriers are required to collect and remit the TRS surcharge revenue monthly, by the 20th of each month using the following format for the monthly remittance:

***Pennsylvania TRS Surcharge***

For the Month Ending

 Number of **Residential** access lines

 X $0.08 per line

 Allocated:

TRS Relay 85.0 percent

 TDDP 10.0 percent

 PMASP 5.0 percent

Number of **Business** access lines

 X $0.08 per line

 Allocated:

TRS Relay 85.0 percent

 TDDP 10.0 percent

 PMASP 5.0 percent

 Total Remittance

Make check payable to: **Pennsylvania TRS Fund**

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| **Mail Report and payment to**: | ***Wire Instructions:*** |
| U.S. Bank Institutional Trust & CustodyAttn: Dina Buccieri 50 S. 16th Street, Suite 2000 Philadelphia, PA 19102  | **BANK** U.S. Bank N.A **ADDRESS** 60 Livingston Avenue, St Paul MN 55107-2292**ABA** 091 000 022**BNF** ITC Depository South & East**ACCOUNT** 173 103 781 832**OBI** PA Relay**ATTN**: Dina Buccieri |

**Remittance for**:

Company Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Utility Code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Voice Phone Number: (\_\_\_\_)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FAX: (\_\_\_\_)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E-mail address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Authorized Signature: Date:*

Please direct any questions regarding the TRS Surcharge remittance to Mr. Eric Jeschke at (717) 783‑3850 or ejeschke@pa.gov.

1. Additional information on TRS may be found at <http://www.puc.pa.gov/utility_industry/telecommunications/telecommunications_relay_service.aspx>. [↑](#footnote-ref-1)
2. *See* Act 34 of 1995, 35 P.S. §§ 6701.1 – 6701.4 (the statutory provisions were amended by Act 181 of 2002 to be more inclusive of persons with disabilities), establishing the Telecommunication Device Distribution Program (TDDP) to be funded by the TRS surcharge and which codified the Pennsylvania Relay service and use of the TRS surcharge funding mechanism; and Act 174 of 2004 (Act 174), 35 P.S. § 6701.3a, which established the Print Media Access System Program (PMASP). PMASP is a reading service for persons with certain vision-related physical disabilities. The law is now called the “Universal Telecommunications and Print Media Access Act.” [↑](#footnote-ref-2)
3. 47 U.S.C. §§ 225(b)(2) and (f). [↑](#footnote-ref-3)
4. The Pennsylvania TRS Advisory Board was established pursuant to Commission Order entered May 29, 1990. The TRS Advisory Board’s By-Laws and quarterly meeting schedule can be found at: <http://www.puc.pa.gov/utility_industry/telecommunications/telecommunications_relay_service/trs_advisory_board_.aspx> [↑](#footnote-ref-4)
5. LECs include both incumbent and competitive local exchange carriers. [↑](#footnote-ref-5)
6. Hamilton Relay, Inc. (Hamilton) holds the TRS Certificate of Public Convenience to provide TRS throughout the Commonwealth of Pennsylvania. The Commission approved Hamilton’s filed Application by Order entered December 4, 2014, at Docket No. A-2014-2447601. [↑](#footnote-ref-6)
7. As a result of mergers, acquisitions, and name changes, Fund administration has been handled by Hamilton Bank (1990), CoreStates Bank N.A. (1995), First Union National Bank (1999), Wachovia Bank, N.A. (2002), and U.S. Bank Institutional Trust & Custody (2006). [↑](#footnote-ref-7)
8. Separate accounts are maintained for the portions of the surcharge allocated to Relay, TDDP, and PMASP. TRS Advisory Board expenses, CTRS, and outreach activities are funded from the Relay account; TRS Fund administration costs are drawn from each respective account. [↑](#footnote-ref-8)
9. *Petition of Department of Labor & Industry Office of Vocational Rehabilitation for a Proposed Pilot for Distribution of Telecommunications Relay Service Wireless Equipment to People with Disabilities in Pennsylvania,* Docket No. P-2015-2484229 (Order entered July 8, 2015) (*WEI Pilot Order*); 35 P.S. §§ 6701.1 – 6701.4. [↑](#footnote-ref-9)
10. *WEI Pilot Order*, Ordering Paragraph 8 at 16-17. [↑](#footnote-ref-10)
11. *See generally Hamilton Relay, Inc. Supplement No. 2 to Tariff TRS PA P.U.C. No. 1 et al.*, Docket Nos. R-2017-2639884, M-00900239 (Order entered February 9, 2018). [↑](#footnote-ref-11)
12. U.S. Bank Institutional Trust & Custody, Attn: Dina Buccieri, 50 S. 16th Street, Suite 2000, Philadelphia, PA 19102. Remittances are payable to the “PA Relay Service Fund” and designated for Relay. Bank wire instructions can be found on the remittance form. [↑](#footnote-ref-12)
13. The TRS surcharge appears as a single line item on customers’ bills but actually has three components (Relay, TDDP, and PMASP). [↑](#footnote-ref-13)
14. As of January 1, 2007, the TDD program is administered by Pennsylvania’s Initiative on Assistive Technology, Institute on Disabilities, Temple University. [↑](#footnote-ref-14)