

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Harrisburg, Pennsylvania 17105-3265**

**Pennsylvania Public Utility  
Commission**

v.

**AT&T Communications of  
Pennsylvania**

**Public Meeting: April 22, 2010**  
**2130384-FUS**

**Docket Nos. R-2009-2130384**  
**M-00900239**

**Pennsylvania Telecommunications  
Relay Service**

**JOINT MOTION OF**  
**CHAIRMAN JAMES H. CAWLEY AND VICE CHAIRMAN TYRONE J. CHRISTY**

Before us for disposition is the proposed Supplement No. 3 to the Telecommunications Relay Service Tariff, Pa. P.U.C. No. 24, of AT&T Communications of Pennsylvania, LLC (AT&T or Company). The proposed tariff supplement that was originally filed on September 10, 2009 with the Commission will increase the rate per session minute of use (MOU) that AT&T charges the Telecommunications Relay Service (TRS) Fund for Traditional Speech-to-Speech and Spanish Relay services, and for related intrastate calls within Pennsylvania. AT&T has not requested an increase to its TRS base rate for a very long time. However, the proposed increase is 28.08% over the existing base rate per MOU for traditional intrastate TRS voice calls.<sup>1</sup> Our Joint Motion provides a reasonable disposition of the pending AT&T tariff filing and proposed TRS rate increase. In addition, this Joint Motion provides certain guidance that can be utilized in future evaluations of AT&T TRS rate matters by the Commission and its Staff.

**A. Background**

Unlike other states, AT&T is a certificated and exclusive provider of traditional speech-to-speech TRS within Pennsylvania. Following a bidding process evaluation, the Commission approved AT&T's Application for the provision of intrastate Relay Service at Docket Nos. M-00900239 and A-00310125 through an Order entered on May 29, 1990. Through a subsequent Order entered on July 9, 1990 at the same Docket Nos. the Commission approved AT&T's initial tariff and relevant rates for the provision of intrastate TRS. The Commission engaged in its first in-depth evaluation of an AT&T proposed intrastate TRS rate increase during the 1993-1994 time period.<sup>2</sup> This evaluation was largely based on AT&T prospective data regarding both operational costs and TRS traffic volumes.<sup>3</sup> The Commission's Bureau of Audits

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<sup>1</sup> Both the existing and the proposed AT&T base TRS rate are proprietary and not subject to public disclosure.

<sup>2</sup> *Pennsylvania Public Utility Commission v. AT&T Communications of Pa., Inc.*, Docket No. R-00943024, Order entered May 4, 1994, at 2 (1994 TRS Rate Order).

<sup>3</sup> *Id.* at 3-4.

Staff has also conducted periodic audit examinations of AT&T's TRS operations in Pennsylvania.<sup>4</sup>

AT&T's original tariff submission with its proposed TRS rate increase largely relied on the availability of comparative national TRS rates in order to justify the reasonableness of its rate increase proposal. AT&T also asserted in its September 10, 2010 tariff filing the following:

Labor costs are a primary cost of providing TRS service. AT&T is proud that its provision of TRS has created well paying union-represented jobs for Pennsylvania citizens. AT&T's TRS representatives have enjoyed annual wage increases averaging 3% per year. Since 1997, the wage rate per employee has increased by 38%.<sup>[5]</sup> Wage rates are expected to increase annually and a new union contract with increases is in the process of being ratified. At the same time, as a result of alternative technologies for communicating, such as text messaging, e-mail and instant messaging, TRS [call traffic] volumes have steadily decreased leading to lower revenues for AT&T, which means that AT&T's overhead costs, building expenses, power and equipment, must be recovered from a smaller base of minutes.

It is important to note that this price increase will nominally increase Pennsylvania's overall costs for relay services. While the price per minute is increasing, volumes are decreasing as a result of the continued decline in traditional relay minutes as users migrate to newer types of services such as Captioned VCO, Internet Relay and Video Relay.

AT&T, September 10, 2010 Tariff filing at 3.

Also, AT&T's traditional speech-to-speech TRS service is subjected to both wireline and wireless intermodal technology service alternatives and offerings. At the same time, there are those end-user consumers who depend on the reliable provision of AT&T's traditional TRS service on a more exclusive basis. Thus, the determination of a just and reasonable rate for AT&T's traditional TRS service cannot be solely based on simple nationwide rate comparisons of similar offerings. Rather, the underlying operational costs for the provision of AT&T's traditional TRS must play the central role in such a determination and AT&T bears the associated and necessary burden of proof under conventional rate making principles. *See generally* 66 Pa. C.S. §§ 315(a) and 1301.

## **B. Analysis of AT&T's Proposed TRS Rate Increase Request**

The discovery and the actual delivery of the necessary operational cost data that can provide adequate evidentiary support for AT&T's proposed TRS rate increase request has been an arduous process. The Commission entered an Order on December 3, 2009 directing AT&T to comply with certain data discovery requests. The December 3, 2009 Order also suspended the

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<sup>4</sup> *See generally* Pa. PUC, Bureau of Audits, *AT&T Communications of Pennsylvania, LLC: A Report on the Underlying Costs of the Pennsylvania Telecommunications Relay Service for the Fiscal Years Ended June 30, 2004 and June 30, 2005*, Docket No. D-040SPA050, Issued February 15, 2007 (Proprietary).

<sup>5</sup> This figure represents an annual compound growth rate of approximately 2.51% for the 1997-2009 period.

effective date of AT&T's proposed rate increase. AT&T has also voluntarily suspended the effective date of its proposed TRS rate increase a number of times.<sup>6</sup>

In its original data request responses AT&T did not provide adequate operational cost data to support its TRS rate increase. For example, AT&T stated that its new TRS rate proposal was "not based exclusively on the Relay expense submitted," that "[t]here are other costs of providing Relay service that are not captured in the direct costs of the NRT [National Relay Team] and Relay Staff as provided," and that such costs "include building costs (rent) and IT [information technology]/Engineering costs, which (post merger) ["old" AT&T – SBC Communications Inc. merger] are not available to our [AT&T's] organization."<sup>7</sup> In light of this, AT&T has made an effort to provide additional operational cost figures in response to existing Staff data requests with its supplemental responses on April 19, 2010. These figures cover the 2009-2011 time horizon and reflect the costs of various activities that support AT&T's TRS center operations. The related support activities and costs include such items as engineering (internal telecommunications switches), corporate support (manpower scheduling, product management, financial-payroll, TRS Advisory Board participation), land and building rentals and building operations, and data operations. The associated total cost figures have received jurisdictional allocations and are not part of the already accounted and directly attributable Pennsylvania intrastate AT&T TRS Call Center and service operations. The total of the directly attributable costs and the indirect support costs account for approximately 84.28% of AT&T's proposed new base rate for its TRS service, and would represent a 7.94% increase over the currently existing base TRS rate that is currently in effect.

AT&T acknowledges that it cannot properly account for the attribution of two and rather significant cost categories to its Pennsylvania intrastate TRS operations. These categories include: (1) AT&T's own intrastate carrier access expense for the origination and termination of TRS calls; and, (2) AT&T's own internal network costs for the transport and switching of its intrastate TRS traffic. There is no doubt that AT&T accrues intrastate carrier access expense for the traditional TRS voice traffic that it handles. Similarly, AT&T's own internal network costs — whether of an economic or accounting nature — are not zero. For example, depending on the availability of calling assistants (CAs) at AT&T's TRS Center in New Castle, Pennsylvania, an intrastate TRS call may be routed to the AT&T TRS Center in Augusta, Georgia, and then redirected back into Pennsylvania. The transport of such a call between these two AT&T TRS Centers — most likely over special access circuits — is not cost-free to AT&T's TRS operations. In our 1994 TRS Rate Order our analysis had examined the then existing pricing for AT&T's "800" and "Megacom" services as a proxy for these internal AT&T network costs.<sup>8</sup> However, no comparable analysis has been presented or performed in the instant proceeding. In addition,

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<sup>6</sup> The latest tariff supplement was filed on April 13, 2010 postponing the effective date of the proposed TRS rate increase to April 26, 2010.

<sup>7</sup> AT&T Response to Staff Data Request No. 17[2], received on or about March 5, 2010.

<sup>8</sup> 1994 TRS Rate Order at 4.

although AT&T has indicated its commitment to additional TRS-related outreach activities, it has not fully accounted for the related additional costs.<sup>9</sup>

There is no doubt that AT&T provides a valuable TRS service to the hearing and/or speech-impaired public within Pennsylvania. AT&T nationally operates three TRS call centers. The New Castle, Pennsylvania TRS Call Center employs approximately 170 management and non-management employees that provide TRS services not only to Pennsylvanians but also to residents of other states. AT&T has already exceeded its original and formal time commitment of maintaining this TRS Call Center in Pennsylvania that it made during its merger proceeding with SBC Communications, Inc. into the “new” and present AT&T.<sup>10</sup> Naturally, although we need to act with less than desirably adequate information, the potential non-compensation of AT&T for clearly identifiable cost categories is not sustainable and may have adverse results for the continuous operation of AT&T’s TRS Call Center in New Castle, Pennsylvania.

### C. CONCLUSION

We believe that partially granting AT&T’s request for an increase in its base TRS rate is well founded in view of the operational cost data and the information that has been presented. The approved base TRS rate should be set at 92.452830% of the AT&T requested base rate, and at a level of 18.414693% higher than the existing and currently effective base TRS rate.<sup>11</sup> The remaining proposed rates for higher TRS calling volumes should be similarly adjusted. In view of the available cost support data and other information presented we believe that this result meets the statutorily prescribed and lawful standard of a just and reasonable rate. In addition, we believe that this result will provide the appropriate compensation level that will encourage AT&T to maintain its TRS Call Center operations in New Castle, Pennsylvania.

However, on a going forward basis, AT&T must undertake affirmative steps to cure the present inadequacies in its cost-support data that relates to its Pennsylvania intrastate TRS operations. For the time being we are not going to impose any arbitrary deadlines or any reporting filing requirements. The cost-support data deficiencies that have been noted in the context of this TRS rate increase request and related tariff submission can and should be cured in a cooperative but timely fashion with the Commission’s Staff from our Bureau of Audits and within the framework of the periodic Commission audits of AT&T’s TRS operations in Pennsylvania. Simply put, mergers and acquisitions of telecommunications firms with regulated operations do not and cannot result in the disappearance of accounting and economic cost support data for regulated services that are subject to more traditional cost-based ratemaking.

In a similar vein, any potential changes in AT&T’s access expenses associated with its intrastate TRS service should inure to the benefit of the Pennsylvania TRS Fund. Thus, AT&T

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<sup>9</sup> AT&T Responses to Staff Data Requests BFUS-DR-18, BFUS-DR-19, BFUS-DR-21, dated October 23, 2009.

<sup>10</sup> *Joint Application of SBC Communications, Inc., and AT&T Corp. Together with its Certificated Pennsylvania Subsidiaries for Approval of Merger*, Docket Nos. A-311163F0006, A-310213F0008, A-310258F0005, Order entered on October 6, 2005 at 3, 29, 55. AT&T had committed “to providing TRS service in Pennsylvania until the beginning of 2007.”

<sup>11</sup> New base TRS rate = existing and effective base TRS rate x 1.18414693.

should undertake the affirmative obligation to report to the Commission and seek adjustment to its intrastate TRS base rate to the extent that the derivation of that rate may be positively influenced by any potential operational cost reductions.

THEREFORE, we move that:

1. AT&T Communications of Pennsylvania, LLC Supplement No. 3 to Telecommunications Relay Service Tariff Pa. P.U.C. No. 24 which was originally filed on September 10, 2009 for the purpose of increasing rates for the provision of traditional Speech-to-Speech and Spanish Relay services in Pennsylvania, and is currently scheduled to become effective on April 26, 2010, is suspended for a period not to exceed six (6) months, or until October 20, 2010, in accordance with 66 Pa. C.S. § 1308.
2. The Company shall file, or cause to be filed, the appropriate tariff suspension supplement.
3. The Company be given the alternative to file, or cause to be filed, within ten (10) days after the entry of an Order in this proceeding, a revised tariff supplement which cancels and supersedes Supplement No. 3, and which incorporates a base TRS rate equal to 92.452830% of the base rate requested in Supplement No. 3, and where this alternative base TRS rate is 18.414693% higher than the existing and currently effective base TRS rate. The same revised tariff supplement shall include appropriately adjusted rates associated with the two higher calling volume categories.
4. If the Company files, or causes to be filed, a revised tariff supplement in accordance with Moving Paragraph No. 3, then:
  - a. The revised tariff supplement will be allowed to become effective upon at least one (1) day's notice; and
  - b. The suspension will be terminated and the case will be marked closed.
5. If the Company does not file, or cause to be filed, a revised tariff supplement within ten (10) days after the date of entry of an Order in this proceeding in accordance with Moving Paragraph No. 3 above, then the matter will be referred to the Office of Administrative Law Judge for a determination of the lawfulness, justness and reasonableness of the rates contained in the Company's proposed Supplement No. 3, the conduct of the appropriate hearings as necessary, and the issuance of a Recommended Decision.
6. The Company shall timely and affirmatively cooperate with the Commission's Bureau of Audits Staff in correcting the cost support data deficiencies that have been identified in the context of this proceeding during the periodic audits of AT&T's intrastate TRS operations in Pennsylvania.
7. The Company shall undertake the affirmative obligation to timely report to the Commission and seek adjustment to its intrastate TRS base rate to the extent that the derivation

of that rate may be positively influenced by any potential reductions in intrastate operational costs.

8. The Bureau of Fixed Utility Services with the assistance of the Law Bureau timely prepare the appropriate Order consistent with this Motion.

9. A copy of the entered Order in this proceeding should be served upon AT&T Communications, the Office of the Consumer Advocate, the Office of Small Business Advocate, and the Pennsylvania Telecommunications Relay Service Advisory Board.

  
James H. Cawley  
Chairman

  
Tyrone J. Christy  
Vice Chairman

DATED: April 22, 2010