

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Investi-)
gation Into Continuation of the Ohio) Case No. 96-1139-TP-COI
Telecommunications Relay Service.)

FINDING AND ORDER

The Commission finds:

I. Background:

The Americans with Disabilities Act of 1990 (47 U.S.C. 225) mandated, among other things, the establishment, by July 26, 1993, of an intrastate telecommunication relay service (TRS) for persons with communication disabilities. The TRS enables an individual who is communicatively disabled to communicate with a person who is hearing and/or speech-capable via a text telephone (TT), e.g., telecommunications device for the deaf (TDD), text telephone yoke (TTY), personal computer (PC), telebraile, or any other automated device capable of transmitting and receiving text via ASCII or Baudot transmission protocol. The TRS provides specially trained communications assistants (CAs) who act as intermediaries between persons who are non-disabled and persons who are communicatively disabled.

In January 1991, the Commission initiated a generic docket, Case No. 91-113-TP-COI (91-113), for the purpose of investigating various programs for Ohioans with communication disabilities and to establish an intrastate TRS in Ohio. After reviewing proposals by entities interested in providing the TRS in Ohio submitted in response to the Commission's request for such proposals, and also after receiving input and comments from persons representing the communicatively disabled community, the Commission, by Finding and Order issued in 91-113 on June 11, 1992, chose a vendor for the TRS in Ohio. The contract entered into between the Commission and the chosen vendor will expire at midnight on December 31, 1997.

By entry issued on November 7, 1996, the Commission initiated this docket, Case No. 96-1139-TP-COI (96-1139), for two specific purposes: to establish the process for choosing the vendor who shall be authorized to continue Ohio's intrastate TRS once the Commission's contract with the existing vendor expires and to actually choose such a vendor. In the same entry, the Commission established a TRS Consumers Advisory Group, whose function is to consult and advise the Commission as it endeavors to achieve these two purposes. The TRS Advisory Group is comprised of seven members, each one of whom is very active within, and highly qualified to represent the interests of, the community of Ohioans with communication disabilities. Four members of the group are, themselves, deaf. The three other members were chosen because they are in career positions which enable them to interact with, and address the concerns of, the deaf and hearing-impaired community in a professional capacity.

After receiving input and comments in the 96-1139 docket from persons representing the communicatively disabled community and the telecommunications industry, on February 6, 1997, the Commission issued its request for proposal (RFP) for the purpose of soliciting proposals from entities interested in providing the TRS upon the expiration of the current vendor's contract. A pre-bid conference was held on February 18, 1997 for the purpose of clarifying the requirements contained in the RFP. The RFP allows for questions arising during the pre-bid conference to be answered by way of letter. In closing the pre-bid conference, the presiding attorney examiner identified five issues in need of further clarification. By a letter which was sent to all the pre-bid conference attendees on March 21, 1997, the examiner made the required clarification on each of the five issues.

On April 3, 1997, four entities timely submitted proposals for consideration in response to the RFP. The four bidders are: Ameritech Ohio (Ameritech), AT&T Communications of Ohio (AT&T), Hamilton Horizon Relay Service Company (Hamilton Horizon), and Sprint Communications Company, L.P. (Sprint). Following the submission of these four bid proposals, the TRS Consumers Advisory Group met twice, first on May 2, 1997 and later on June 12, 1997, before making its recommendation to the Commission. On May 2, 1997, presentations concerning the submitted bid proposals, as permitted under the RFP, were made by each of the four bidders before the TRS Consumers Advisory Group and the staff of the Commission.

In its February 6, 1997 entry, the Commission clarified that, subject to certain qualifying criteria, bids would be accepted for consideration, and would be treated as in-state bids, to the extent they would call for predominant use of an in-state relay center(s) in combination with occasional, overflow, and/or scheduled use of out-of-state relay centers. Thus, in total, three categories of bids were permissible under the requirements of the RFP: (1) those proposing predominate use of a single in-state relay center; (2) those proposing predominant use of multiple in-state relay centers; and (3) those proposing use of only out-of-state relay center(s). In reality, bid proposals were submitted in each of the three categories, as follows: Ameritech and Hamilton Horizon each submitted a bid proposal calling for predominate use of multiple (two, actually) in-state relay centers; AT&T submitted one bid proposal calling for predominate use of a single in-state relay center and another bid proposal calling for use of only out-of-state relay center(s); and Sprint submitted a bid proposal calling for predominate use of a single in-state relay center.

II. Motions for Protective Orders:

Three of the four bidders in this case, namely AT&T, Hamilton Horizon, and Sprint, filed under seal those portions of their respective bid proposals which they consider as setting forth information of a confidential and/or proprietary nature. Each of these three companies filed, on April 3, 1997, a motion for protective order seeking to prevent public disclosure of the information which was filed under seal. All three bidders are seeking to protect the confidentiality of their bid prices for providing TRS in Ohio. That is the only portion of Hamilton Horizon's bid proposal for which protected

status is being sought. AT&T, however, is seeking to maintain the confidentiality not only of its submitted bid price for TRS in Ohio, but also the information, filed under seal in this case, which divulges the AT&T rate proposals submitted as part of TRS bids made in Illinois and Mississippi. Finally, Sprint is seeking to protect not only its bid price for Ohio TRS, but also other information which Sprint filed under seal in this case. This other information, according to Sprint, describes "custom features unique to Sprint's TRS proposal" and "latest advancements in technology and video relay trials."

The Commission is willing to maintain and protect the confidentiality which has apparently already been afforded by the states of Illinois and Mississippi to the rate proposals submitted as part of TRS bids made by AT&T in those two states. We do not wish to be responsible for publicly divulging such information for the first time, here, particularly since we view the bid prices which AT&T submitted in states other than in Ohio as having no real relevance to our decision in this case. However, we reach an opposite conclusion as regards all the bid prices for Ohio's TRS which were submitted in this case.

Until now, the point at which the Commission's tentative decision is being announced, there may have been some valid reasons for not publicly disclosing the submitted Ohio TRS bid prices. Now, however, as the Commission announces its tentative decision, any need for keeping the bid prices secret is diminished and, in any event, is outweighed by the need of the public to be able to know whether the Commission's decision was arrived at in a fair manner in an open bidding process. Fundamental fairness dictates a full disclosure of all the bid prices which we have considered in arriving at today's tentative decision in this case.

In our view, Sprint's argument that full disclosure of its entire proposal would somehow "severely jeopardize Sprint's ability to compete in the marketing and provisioning of its telecommunications relay service"¹ is without merit. We find no valid cause to prevent public scrutiny now of all the information which Sprint filed under seal in this case. In sum, we find that AT&T's motion for protective order should be granted to the limited extent necessary to ensure no public disclosure of AT&T rate proposals in TRS bids made in Illinois and Mississippi. Therefore, the docketing division shall keep confidential two pages found within Appendix G of AT&T's bid proposal. The first such page, with printing on both sides, is identified as setting forth "Attachment D-1" and "Attachment D-2" to the "Illinois Contract" set forth in Appendix G of AT&T's bid proposal. The second such page, also with printing on both sides, is identified as setting forth "Section 3, page 14" and Section 3, page 15" to the "Mississippi Contract" set forth in Appendix G of AT&T's bid proposal. As submitted, both pages are further identified as having been rubber stamped at the top with red lettering which reads "unredacted". In accordance with rule 4901-1-24(F), O.A.C., the decision to extend confidential treatment to these two pages shall automatically expire 18 months after the date of this finding and order. If AT&T wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the

¹ See: Sprint's Memorandum In Support of Motion for Protective Order (filed April 3, 1997), at 2.

expiration date. In all other respects however, all three motions for protective order filed by AT&T, Hamilton Horizon, and Sprint are denied in their entirety.

III. Discussion and Conclusion:

Pursuant to the RFP, upon the submission of the proposals by various entities, the TRS Consumer Advisory Group was to review the proposals and identify, in order of preference, its top three recommendations. Subsequent to receipt of the TRS Consumers Advisory Group's recommendation, the Commission's staff reviewed the proposals and submitted its own recommendation to the Commission. As required under the RFP, the staff based its recommendation not only on evaluation of the TRS Consumers Advisory Group's recommendation, but also on which bidder's proposal it judged to be most advantageous to the state of Ohio, considering: price; the interests of persons who are members of the communicatively disabled community in having access to a high quality, technologically advanced telecommunications system; and all other factors identified in the RFP. The Commission has considered all of these same factors, in addition to the recommendations of both the TRS Consumers Advisory Group and the Commission's staff, in reaching its own tentative decision, as set forth in this Finding and Order.

At its meeting held on June 12, 1997, the TRS Consumers Advisory Group discussed and ranked its choices for the vendor to continue the provision of TRS in Ohio under a new contract to commence on January 1, 1998. The TRS Consumer Advisory Group's recommendation, in order of preference, was: (1) Sprint; (2) Ameritech; (3) AT&T (in-state bid proposal); (4) Hamilton Horizon; and (5) AT&T (out-of-state bid proposal). The staff's recommendation to the Commission is to select Sprint as the chosen vendor, subject to those same contingencies which, in fact, are spelled out below by the Commission itself within this Finding and Order.

In the RFP, the Commission stated that it would be issuing an order selecting the chosen vendor for the TRS during the upcoming new contract period. In accordance with the RFP, this order would include, either implicitly or explicitly, the requirements of the RFP and any amendments thereto, the vendor's offer submitted in response to the RFP, and any additional terms and conditions deemed by the Commission to be in the public interest. The Commission stated that it may, at any time, by written order make changes within the general scope of the performance requirements for the TRS. Furthermore, the Commission reserved the right to negotiate with the successful vendor or make other additions, deletions, or changes to the order, provided that no such addition, deletion, or change would, in the sole discretion of the Commission, unduly affect the evaluation criteria set forth in the RFP. Accordingly, this order, any future Commission order regarding the TRS, and any future negotiated addition, deletion, or change between the Commission and the vendor constitutes the agreement between the vendor and the Commission.

The Commission has carefully considered all of the necessary and relevant factors in arriving at its tentative determination here. In evaluating the proposals, the Com-

mission found that each of the proposals have good aspects, but also certain other aspects which require additional clarification. We believe this could be achieved through a process of final negotiation between the Commission and a vendor tentatively chosen by the Commission.

Taking into consideration the TRS Consumer Advisory Group's and the Commission staff's recommendations, the interests of the state of Ohio and the communicatively disabled community, and all other factors, and, upon review and evaluation of all the proposals timely submitted in response to the RFP, the Commission finds that Sprint should now be tentatively chosen, subject to certain contingencies which are described in this Finding and Order, to become the next TRS vendor in Ohio. The selection of Sprint will become final and no longer contingent only if and when the Commission, based upon an agreement as yet still to be worked out between the Commission and Sprint, issues a subsequent order indicating its final acceptance of Sprint's bid to become the next Ohio TRS vendor. In the meantime, the staff shall be directed to attempt to achieve an agreement with Sprint which, by making necessary clarifications to Sprint's bid proposal and/or the RFP, would enable the Commission to issue an order indicating its final acceptance of Sprint's bid to become the next Ohio TRS vendor. The staff shall obtain the advice and assistance of the TRS Consumers Advisory Group in this endeavor. Nevertheless, because the Commission's selection of Sprint as the next Ohio TRS vendor remains, at this juncture, only a tentative one, Ameritech, AT&T, and Hamilton Horizon shall be directed to keep their bid proposals open and available for further consideration and possible acceptance by the Commission in this case, in the event that the Commission and Sprint find themselves unable to finalize an agreement which, in the Commission's sole discretion, would enable it to issue an order indicating its final acceptance of Sprint's proposal.

The standard of review which the Commission has applied in reaching its tentative selection of Sprint has been to identify what it considers to be the "lowest and best" bid proposal, taking into consideration the recommendations of the TRS Advisory Group and of its staff, as well as all factors identified in the RFP. There are a number of reasons why the Commission has chosen Sprint even though its bid price was only second lowest among the five proposals under consideration in this case. For one thing we note that Sprint's bid price, though not the lowest, is nonetheless competitive. It is approximately ten cents per minute below the per minute price which prevails today under the State of Ohio's existing arrangement with the current Ohio TRS vendor, Ameritech. Interestingly, Ameritech's bid price for continuing the Ohio Relay Service, highest among the five before us in this case, is nearly eight cents per minute higher than its own currently prevailing per minute price for providing Ohio TRS.

The Commission observes that the TRS Consumers Advisory Group showed a pronounced preference for Sprint's bid proposal over that of Hamilton Horizon, the only bidder with a lower bid price. Some of the reasons which were provided by the group in explaining this preference included: (1) Sprint's greater degree of experience in providing TRS in other states of comparable size to Ohio (to date, Hamilton Horizon's experience has been limited to states with significantly smaller TRS call volumes than

those which now prevail in Ohio); (2) Sprint's superior reputation as a national leader in the field of technological innovation in the provision of relay service; (3) Sprint's bid proposal appears to include a broader range of enhanced features than does Hamilton Horizon's bid proposal; and (4) group members were most favorably impressed by Sprint's overall presentation and, in particular, by its demonstrated commitment to hiring persons with communication disabilities at all levels, including in top management positions.

In making its recommendation, the staff has concurred with the observations noted above, as regards the advisory group's expressed preference for Sprint's proposal. It should also be noted that Sprint's existing TRS service in other states received only the most positive remarks when the staff checked on the references provided by the four companies who submitted bids.

In reaching its own decision as regards which of the five bid proposals it would identify as lowest and best, the Commission finds it appropriate to show a considerable degree of deference to the recommendations of both the TRS Consumers Advisory Group and of its staff. It was primarily before these two groups that bid presentations were made by the various bidders on May 2, 1997. Thus, they are certainly in the best position to have formed judgments based on an assessment of those presentations. Certainly, the whole reason for creating a TRS Consumers Advisory Group in the first place was to ensure that the advice of those with the closest understanding of the needs of Ohio's communicatively disabled community would not go unheeded. The reality is simply this: in fulfilling its obligations to exercise its own judgment and to make its own preliminary and tentative decision in this case, the Commission does not feel compelled by the circumstances presented to reach a different result than that which has been recommended by both the TRS Consumers Advisory Group and the Commission's staff.

In arriving at our tentative decision that Sprint should be the vendor for TRS in Ohio, the Commission is cognizant of the advantages to the State of Ohio which will result if the relay service operations are to be based in Ohio. As permitted under the RFP, Sprint has proposed to provide TRS primarily, but not exclusively, from within the State of Ohio. Sprint has specifically proposed that, in order to ensure the best service possible in regards to speed of answer, network blockage, and use of state of the art technology, approximately 80 percent of the projected monthly call volume will be processed by Sprint in a relay center to be located in Ohio. Approximately 20 percent of the projected monthly volume will normally be routed to Sprint's eight other relay centers located outside of Ohio. According to Sprint, this plan ensures that users of Ohio relay service will receive the highest quality of service during periods of high volume traffic, severe weather conditions, and the like. Sprint has indicated that the Ohio TRS relay center will operate 7 days a week, 24 hours a day and that approximately 80 percent of traffic will be handled in that center at start up (which Sprint identifies as 26 weeks from execution of a contract with the State of Ohio). Before making its final decision to accept Sprint as the next Ohio TRS vendor, the Commission directs staff to

work with Sprint to determine whether a higher percentage of TRS traffic could be routed through the Ohio relay center.

As noted above, the Commission has highly regarded the recommendation and preference of vendor provided by the TRS Consumer Advisory Group. As required in the RFP, Sprint must be responsive to the TRS Consumer Advisory Group's input concerning personnel training, outreach, and customer service, and shall provide written responses to the TRS Consumer Advisory Group's inquiries and comments. Furthermore, all promotional and educational materials for the public must be reviewed by the Commission and the TRS Consumer Advisory Group prior to release. The Commission emphasizes that Sprint is expected to work closely with the Commission and its staff, the TRS Consumer Advisory Group, and the communicatively disabled community.

As regards the above-mentioned agreement yet to be finalized between Sprint and the Commission, we wish to identify, here, certain concerns and/or expectations which the Commission, its staff, and/or the TRS Consumers Advisory Group would like to explore further with Sprint before the Commission would be willing to make final its acceptance of Sprint's bid proposal. Among these are the following:

- (1) Sprint must confirm the location for the single, in-state, Ohio relay center encompassed by its proposal. In doing so, we would urge Sprint to consider and will take into account Sprint's consideration of locating its center in those Ohio cities where a trained TRS workforce already exists.
- (2) Sprint must further clarify the manner in which it will attain compliance with the funding requirements established in Sections 4905.79 and 5727.44, Revised Code. Sprint is directed to work with the staff to ensure the award is structured in such a way as to be in compliance with these statutes.
- (3) The Commission expects Sprint to establish, and thereafter, throughout the period of the contract, to seek advice from and otherwise consult with, an Ohio-based TRS consumer advisory group (separate from the one formed by the Commission in this case). The Commission expects Sprint, in forming such a group, to extend a membership invitation to all current members of the Ohio Relay Consumer Committee which performs a similar advisory function to the current Ohio TRS vendor, Ameritech.
- (4) The Commission, its staff, and the TRS Consumers Advisory Group share an interest in further exploring and confirming the level of Sprint's commitment to, and its specific plans for,

- (a) ensuring the adequacy of its CAs' training and performance (including typing speed) on an ongoing basis throughout the entire contract period;
 - (b) ensuring the adequacy of its outreach efforts on an ongoing basis throughout the entire contract period;
 - (c) employing qualified persons who are communicatively disabled in both management and relay support positions;
 - (d) ensuring that Sprint will, upon establishing a customer profile and/or processing a long distance call by a customer who has, for whatever reason, not already established a customer profile, inform the customer of his or her right to choose which long distance carrier will handle the call; and
 - (e) ensuring that the same CA who handles a TRS call at its inception should be required to proceed with the call to the point of its completion, except where extraordinary circumstances (which do not include the CA's routinely-scheduled work breaks) dictate otherwise.
- (5) Although the Commission understands that occasional, anomalous circumstances may present reasons for directing Ohio TRS traffic to out-of-state relay centers, the Commission would like to see much less than the 20 percent of all Ohio TRS traffic normally handled at out-of-state relay centers. We direct the staff to work with Sprint to see whether, and if so how and when, this objective can be accomplished.

The Commission's staff is directed to, working with the advice and assistance of the TRS Advisory Group, endeavor to achieve an agreement with Sprint which, by making necessary clarifications to Sprint's bid proposal and/or the RFP, would enable the Commission to issue an order indicating its final acceptance of Sprint's bid to become the next Ohio TRS vendor. Sprint shall be directed to file a letter in this docket, by August 7, 1997, delineating all of the issues discussed and the resolutions, if any, reached in this endeavor. Taking into consideration the resolutions reached between Sprint and its staff, the Commission will then either issue an order which concludes that negotiations have been successful and, therefore, the Commission's selection of Sprint as the chosen vendor shall no longer be considered tentative, or, if the Commission finds that

the negotiations were unsuccessful, the Commission will take whatever action is necessary and appropriate to ensure the continued provision of TRS in Ohio.

It is important to note, especially in light of the Commission's tentative decision to select a new TRS vendor for the contract period which begins on January 1, 1998, that the vendor under the existing contract, Ameritech, shall be required to continue providing, during the remaining term of its contract, service of at least the same high quality as it has heretofore been providing under the current contract. In addition, we will direct that Ameritech and Sprint should begin to meet, upon contract execution, to discuss the steps which each would need to take in order to ensure a smooth transition from one TRS vendor to another at midnight on December 31, 1997. A report of their progress in this regard should be filed with the Commission in this case by no later than two weeks from the date of the issuance of any forthcoming order by which the Commission would indicate final acceptance of Sprint's bid to become the next Ohio TRS vendor.

ORDER:

It is, therefore,

ORDERED, That, in accordance with the above findings AT&T's motion for protective order should be granted to the limited extent necessary to ensure no public disclosure of AT&T rate proposals in TRS bids made in Illinois and Mississippi. In all other respects, however, all three motions for protective order filed by AT&T, Hamilton Horizon, and Sprint are denied in their entirety. It is, further,

ORDERED, That, in accordance with Rule 4901-1-24, O.A.C., the docketing division of the Commission maintain, under seal, for 18 months from the date of this Finding and Order, the specific portions of AT&T's bid proposal which contain bid prices for Mississippi and Illinois as set forth herein. It is, further,

ORDERED, That, in accordance with the above findings, Sprint is the Commission's tentative choice, subject to certain contingencies which are described in this order, to become the next TRS vendor in Ohio. It is, further,

ORDERED, That the selection of Sprint will become final and no longer contingent only if and when the Commission, based upon an agreement as yet still to be worked out between the Commission and Sprint, issues a subsequent order indicating its final acceptance of Sprint's bid to become the next Ohio TRS vendor, It is, further,

ORDERED, That, in accordance with the above findings, the Commission's staff shall, working with the advice and assistance of the TRS Consumers Advisory Group, endeavor to achieve an agreement with Sprint which, by making necessary clarifications to Sprint's bid proposal and/or the RFP, would enable the Commission to issue an order indicating its final acceptance of Sprint's bid to become the next Ohio TRS vendor. It is, further,

ORDERED, That, Sprint shall file a letter in this docket, by August 7, 1997, delineating all of the issues discussed and the resolutions, if any, reached by the Commission's staff and Sprint in such endeavor. It is, further,

ORDERED, That, because the Commission's selection of Sprint as the next Ohio TRS vendor remains, at this juncture, only a tentative one, Ameritech, AT&T, and Hamilton Horizon shall, until directed otherwise by the Commission, keep their bid proposals open and available for further consideration and possible acceptance by the Commission in this case, in the event that the Commission and Sprint find themselves unable to finalize an agreement which would allow for formal and final Commission acceptance of Sprint's proposal. It is, further,

ORDERED, That, in accordance with the above findings, Ameritech and Sprint shall begin meeting to discuss the steps necessary to ensure a smooth transition from one TRS vendor to another and report their progress in this regard by no later than two weeks from the date of the issuance of any forthcoming order by which the Commission would indicate final acceptance of Sprint's bid to become the next Ohio TRS vendor.

ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any order, charge, rule, or regulation. It is, further,

ORDERED, That copies of this Finding and Order be served upon Ameritech, AT&T, Hamilton Horizon, Sprint, their respective counsel, all members of the TRS Consumer Advisory Group, and upon all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Ronda Hartman Fergus

David W. Johnson

Judith A. Jones

DEF:geb