

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

Public Meeting held December 20, 2018

Commissioners Present:

Gladys M. Brown, Chairman  
Andrew G. Place, Vice Chairman  
Norman J. Kennard  
David W. Sweet  
John F. Coleman, Jr.

Petition of the 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

Petition of the Pennsylvania Telephone  
Association Requesting the Commission to  
Approve Implementation of Pennsylvania Relay  
Service for Deaf, Hearing, or Speech-Impaired  
Community within the Commonwealth of  
Pennsylvania

Docket No. M-00900239

Recalculation of the Pennsylvania Annual  
Telecommunications Relay Surcharge

Docket No. M-2018-2640814

**OPINION AND ORDER**

**BY THE COMMISSION:**

By this Opinion and Order, the Commission adopts a permanent and ongoing wireless expansion initiative program (WEI) as a funded component of the Pennsylvania Telecommunications Relay Service (TRS) and the Telecommunications Device Distribution Program (TDDP).

## I. Background

On July 8, 2015 the Commission entered its Order (*July 2015 Order*) in the above-referenced proceeding at Docket No. P-2015-2484229.<sup>1</sup> The *July 2015 Order* granted a Petition (Petition) from the Office of Vocational Rehabilitation (OVR), Department of Labor and Industry (L&I) authorizing the funding of a pilot project involving the distribution of wireless equipment to income-eligible persons with disabilities within Pennsylvania.

The *July 2015 Order* approved a WEI Pilot within the legal and policy framework of the existing telecommunications device distribution program that is administered by OVR-L&I and is funded by the Pennsylvania Telecommunications Relay Service Fund (TRS Fund or Fund).<sup>2</sup> As contemplated in the *July 2015 Order*, following completion of the WEI Pilot and its review by the OVR and Commission staff, the Commission takes the next step to make permanent and ongoing the WEI program as set forth below.

The Commission does this by granting OVR's initial budget in its entirety as set out in the OVR Report that was filed with the Commission in June 2018.<sup>3</sup> Such an action relies on the public interest and legal findings we made in the *July 2015 Order*

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<sup>1</sup> *Petition of Department of Labor & Industry Office of Vocational Rehabilitation for a Proposed Pilot for Distribution of Telecommunication Relay Service Wireless Equipment to People with Disabilities in Pennsylvania et al.*, Docket Nos. P-2015-2484229, M-00900239 *et al.*, (Order entered July 8, 2015) (*July 2015 Order*).

<sup>2</sup> The Commission administers the Pa. TRS Fund. *See also* 35 P.S. § 6701.4(c).

<sup>3</sup> *In re: Petition of the 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, Amended Report of Department of Labor and Industry, Office of Vocational Rehabilitation (June 13, 2018) (hereinafter OVR Report).

establishing the WEI Pilot and reflects OVR's experience with the WEI Pilot addressed in the OVR Report.

OVR proposed a three-year budget in which the distributed equipment is proposed to be replaced every three years.<sup>4</sup> OVR proposes a budget of \$199,393 for the first year of the program consisting of \$70,750 for initial start-up costs and another \$129,143 of which \$62,390 is for equipment and \$66,753 is for non-equipment costs. Budget Years 2 and 3 would remain at the \$129,143 with identical allocations of \$62,390 for equipment and \$66,753 for non-equipment costs.

At an anticipated cost of \$547 per wireless device, this translates to providing roughly 114 devices annually. OVR's proposed incremental increase in device distribution is based on programs in Missouri and Colorado, which, when expanding their TRS programs to include wireless communications, encountered increases in device distribution of approximately 30%. Based on those states' experiences, OVR proposes a similar increase for Pennsylvania's TDDP to include wireless devices, although those states have half the population of Pennsylvania.

The Commission accepts this initial OVR budget recommendation at this time for two reasons. First, there is a need to focus on implementation and outreach at the outset. Thereafter, however, OVR should be looking to lower the expense related to administration of the program and increase the proportion of expense associated with the distribution of equipment, effectively lowering the non-equipment costs as a percentage of the overall budget. Second, this is the only budget proposed in support of OVR's Petition. The Commission believes that it is appropriate to require OVR to commit to evaluating the budget with those parameters in mind and submitting the same to the

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<sup>4</sup> OVR Report at 33.

Commission timed to coincide with the Commission's evaluation of a TRS and TDDP budget and the annual TRS surcharge recalculation, typically in May/June of each year.

The OVR budget the Commission adopts today is an initially small but important step towards enhancing communications capabilities to low-income Pennsylvanians with disabilities given Pennsylvania's demographics. However, given the potential universe of persons in Pennsylvania that may be eligible to participate in WEI,<sup>5</sup> the Commission will require OVR to review its budget and assess its program annually to evaluate how well it is effectuating its purpose. The Commission will also require that OVR operate the program on a more geographically balanced basis across Pennsylvania as proposed in using the Assistive Technology Resource Centers (ATCRs) or a functional equivalent. OVR shall present its findings and proposals in conjunction with the Commission's annual calculation of the TRS surcharge in May/June of each year.

A wireless equipment distribution program better ensures compliance with Pennsylvania law requiring the Commission to support a TRS program to facilitate communications for persons with disabilities by wire or radio. This is warranted because communications for impaired citizens by wire or radio must be reasonably comparable to the communications by wire or radio available to non-impaired citizens. Under this program, the Commission is supporting a wireless device distribution program in which the qualified consumer must still buy the underlying wireless access service. Like the current TDDP, however, the Commission is approving a budget that provides equipment

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<sup>5</sup> As one example, the Pennsylvania demographic and economic information from the 2016 American Community Survey data of the U.S. Census Bureau shows that for a poverty determination Pennsylvania's population of 12,369,671 citizens, 30.2%, or 3,736,519, are at or below 200% of poverty and 3.7%, or 469,694 from a 12,579,598 non-institutionalized population have hearing difficulties. Applying the 30.2% poverty level figure to the population with hearing difficulties, about 141,847 Pennsylvanians could be eligible to participate in the WEI expanded program.

with adaptations to qualified individuals that is necessary to provide equal access to communications in today's market.

To appreciate this action in context, it is important to summarize the development of TRS in Pennsylvania over the past 28 years. That summary explains why this incremental proposal is the logical extension of the Commission and Commonwealth commitment to TRS in Pennsylvania. The proposal to limit spending to the OVR budget in the initial phase is fiscally responsible because it can be funded from the existing access line surcharge and budget and be adjusted as OVR provides additional information based on its actual experience in Pennsylvania.

### **History of the TRS Fund**

Our *July 2015 Order* addressed the history and implementation of the current TRS program up until that time. As we stated then, the Commission established TRS service in response to a petition by the Pennsylvania Telephone Association (PTA) urging the Commission to create a program because that was consistent with the law and the public interest. The TRS service established by the Commission has been supported by a monthly fee on wireline access lines. This ensures the delivery of adequate and equivalent access to services by end-user consumers with physical impairments under applicable federal law.<sup>6</sup> Thereafter, Act 34 of 1995, 35 P.S. §§ 6701.1-6701.4 (Act 34), codified the operation of relay service and the Commission's oversight of the TRS Fund and surcharge mechanism in Pennsylvania.

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<sup>6</sup> Federal Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101 *et seq.*

Act 34 also established the TDDP, a device distribution program funded by the TRS Fund.<sup>7</sup> TDDP supports the distribution of equipment to facilitate telecommunications although neither the rates or operations for that equipment are regulated by, or subject to, the Commission's jurisdiction. Responsibility for managing the TDDP is vested with OVR. The responsibility for financial oversight and disbursements in support of the TDDP program rests with the Commission pursuant to the submission of annual budgets from OVR.

Act 174 of 2004, 35 P.S. § 6701.3a, moreover, established the Print Media Access System Program (PMASP) that is also funded by the TRS Fund.<sup>8</sup> PMASP is a service that facilitates access to printed media information for consumers although neither the rates nor related services are regulated by, or subject to, the Commission's jurisdiction. The statutory provisions addressing this information service are now referred to as the Universal Telecommunications and Print Media Access Act (UTMPAA).<sup>9</sup> The UTMPAA also requires the Commission to report annually on the TRS Fund, the TDDP, and the PMASP programs supported from the TRS surcharge to the General Assembly. 35 P.S. § 6701.4.

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<sup>7</sup> TDDP provides equipment to enable eligible low-income persons to use telecommunications relay services. The statute was amended by Act 181 of 2002 to be more inclusive of persons with disabilities by expanding the definition of "persons with a disability" to include all disabilities that prevent a person from using standard telecommunications equipment.

<sup>8</sup> PMASP is a newspaper reading service for persons with certain vision and physical disabilities. Administrative responsibility is vested in OVR. The Commission is responsible for the financial oversight and disbursements supporting this newspaper access program under relevant OVR budgetary submissions although the Commission does not regulate rates or delivery of newspapers in Pennsylvania or similar information services.

<sup>9</sup> See 35 P.S. § 6701.

The Commission subsequently established Captioned Telephone Relay Service (CAP-Tel), a telecommunications service, in Pennsylvania in response to suggestions from our Telecommunications Relay Advisory Board (TRS Board) about consumer need for this service. The Commission did so by contract pursuant to a request for proposals process. Cap-Tel permits consumers to communicate using modern technology that relies, in part, on Internet Protocol (IP). The Commission also issued an advisory letter on July 9, 2014 that authorized funding for the distribution of IP-enabled wireline devices through the TDDP to eligible end-users in response to changing technology.

The quality of service provided by our certificated TRS provider is subject to the Commission's jurisdiction. Hamilton Relay Service, Inc.<sup>10</sup> (Hamilton Relay), the current certificated traditional relay provider, submits the estimated annual traditional relay minutes of use (MOUs) and charges. Hamilton Telecommunications Company<sup>11</sup> (Hamilton Telecommunications), an affiliate of Hamilton Relay, provides Cap-Tel pursuant to a contract with the Commission and submits the estimated annual Cap-Tel MOUs. OVR submits the annual TDDP and PMASP budgets. The TRS Fund covers the TRS Board activities and Fund Administrator costs as well.

The Pennsylvania relay service costs (including the intrastate Cap-Tel) are recovered through the monthly TRS surcharge set by the Commission and currently assessed by the Local Exchange Carriers (LECs) on wireline residence and business customers.<sup>12</sup> The TRS Fund and the monthly surcharge are reviewed by staff and set by

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<sup>10</sup> See *Application of Hamilton Relay*, Docket No. A-2014-2447601 (December 4, 2014).

<sup>11</sup> See RFP-2012-2, Bp8=2304702 (May 24, 2012).

<sup>12</sup> See 52 Pa. Code §§ 63.31-63.37.

the Commission annually, typically to be effective in June of each year.<sup>13</sup> Additionally, the Commission's Bureau of Audits periodically audits the TDDP pursuant to the Memorandum of Understanding executed between L&I and the Commission at Docket No. M-00900239F0004.<sup>14</sup>

The WEI Pilot was part of the Commission's long-standing commitment to support the communications needs of disabled persons in Pennsylvania.<sup>15</sup> The *July 2015 Order* adopting the WEI Pilot program reflected a determination that a wireless device distribution program furthered the statutory mandate to facilitate communications by eligible impaired consumers using wire and radio in the Commonwealth and was in the public interest. The Commission recognized that any program established following the results of the WEI Pilot must also be consistent with that Pennsylvania law and could be supported from the current TRS Fund and surcharge in Pennsylvania.

### **The WEI Pilot**

Among other duties, the OVR is responsible for providing services designed to increase the independence and employability of individuals in Pennsylvania

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<sup>13</sup> Staff shall include the wireless device program in their review and calculation of the surcharge presented for disposition at Public Meeting.

<sup>14</sup> See, e.g., *A Report on the Telecommunications Device Distribution Program and Print Media Access System Program Audits for the Twelve-Month Period Ended June 30, 2015 and June 30, 2012*, Docket No. D-2014-2406981.

<sup>15</sup> On May 24, 1990, the Commission entered an Opinion and Order approving the joint petition of the PTA and AT&T Communications, Inc. for approval to implement a Telecommunications Relay Service for Deaf, Hearing and/or Speech impaired citizens of the Commonwealth of Pennsylvania and to issue AT&T a certificate of public convenience authorizing the delivery of TRS service supported by a surcharge on consumer's telephone bills. The Telecommunication Act of 1996 (TA-96) subsequently clarified that Section 153 encompassed intrastate communications within the authority of the Federal Communications Commission (FCC), effectively authorizing the FCC to certify that Pennsylvania TRS programs comply with federal mandates.

with hearing, visual, speech, or other disabilities. Recent American Community Survey (ACS) data indicate that approximately 3.7 percent of Pennsylvanians have difficulty hearing and, of that number, approximately 30.2% would be eligible for support because they are at or below 200% of the federal poverty level. This translates into 469,694 Pennsylvanians with hearing difficulties and, of those, approximately 141,847 are below the 200% poverty level and are eligible to benefit from this program.

As part of those responsibilities to multiple communities, OVR is also in charge of administering the TRS TDDP.<sup>16</sup> In its Petition, OVR requested approval to use the TRS Fund support to conduct a two-year, two-phase TDDP Pilot that would distribute wireless devices to eligible participants to obtain more data on public interest and benefit attributable to a wireless equipment program.<sup>17</sup> The OVR averred that expanding the TRS to include modern technology would increase communications options using both standard wireline as well as specialized wireless features and applications.<sup>18</sup> A wireless device distribution program would also allow participants to receive emergency notifications in real time. In short, they asserted that a wireless distribution program would provide equivalent communications capabilities through more modern technology and that a pilot project might potentially be useful as a way of examining how to establish a permanent program on a statewide basis consistent with Pennsylvania law.<sup>19</sup>

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<sup>16</sup> 35 P.S. § 6701.3a.

<sup>17</sup> Qualified participants in the pilot program had to be a disabled resident of the Commonwealth who was not younger than six, should have had telephone service, was able to learn how to use a telecommunications device, and had an income not more than 200% of the federal poverty level (FGPI). These requirements were consistent with other requirements imposed under Pennsylvania law. 35 P.S. § 6701.3.

<sup>18</sup> At the time, wireless equipment distribution programs were already underway in 11 states. This has grown to 17 states since then. The OVR Report relies, in part, on experiences in two of those states.

<sup>19</sup> 35 P.S. § 6701.2 authorizes a program to distribute equipment that operates by wire or radio (wireless) and provide eligible persons the ability to communicate by wire or radio as discussed in more detail below.

The Commission published the Petition in the *Pennsylvania Bulletin* for comment. Comments in favor of the pilot were filed by the Office of Consumer Advocate (OCA), the Honorable Representative Edward C. Gainey, 24<sup>th</sup> Legislative District, L&I's Advisory Council for the Deaf and Hard of Hearing (L&I Advisory Council), the Commission's TRS Advisory Board, L&I's Office of the Deaf and Hard of Hearing (ODHH), and the Hearing Loss Association of Pennsylvania (HLAA-PAA). No comments opposed the legality or overall purpose and substance of the pilot.

### **The July 2015 Order**

The *July 2015 Order* established the WEI Pilot implemented through Temple University as Administrator of the TDDP on behalf of OVR under Commission oversight. The WEI Pilot was a two-year pilot project designed to test the availability and use of wireless devices by a limited number of eligible Pennsylvanians with disabilities for a limited timeframe in which wireless devices would be supported from and distributed to eligible end-users through the existing TDDP.<sup>20</sup>

The WEI Pilot, *inter alia*, provided for:

- Recruitment and selection of 60 eligible participants over the two-year, two-phase project;
- Distribution of selected wireless/mobile devices equipped with appropriate applications and software;
- Outreach, training, surveys, and personal interview evaluation activities;

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<sup>20</sup> See generally 35 P.S. § 6701.3.

- Remote system software updating for the distributed wireless devices by an equipment administrator; and
- Monitoring, measurement, and evaluation of the use of these devices and their use.

OVR sought, and the *July 2015 Order* approved, funding from the TRS Fund for the relevant costs of the WEI Pilot. This included the costs of the wireless device equipment distribution and the costs for managing the overall TDDP WEI Pilot through its two-year duration. The estimated costs of the pilot were approximately \$85,000 for the first year of the WEI Pilot<sup>21</sup> in which Phase I would seek to enroll 30 eligible<sup>22</sup> individuals. The *July 2015 Order* established Phase II based on the results of Phase I which also would seek to enroll 30 eligible individuals based on slightly different selection criteria. Temple University held mandatory meetings to explain the pilot and provide training to assist pilot participants. Temple University also conducted case studies and “longitudinal” surveys to assess the needs and trends that surfaced during the TDDP Pilot.

As with the current distribution program, participants were responsible for some costs. Like the TDDY program, the WEI Pilot still required the participant to pay for the cost of the underlying wireless connectivity service(s) to enable the wireless devices to function.<sup>23</sup> Participants were also responsible for any travel expenses

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<sup>21</sup> The budget table in the WEI Proposal disclosed a projected outlay requirement of \$83,233.38 for “Grant Year 1” or Phase I of the TDDP Pilot.

<sup>22</sup> The criteria for eligibility in the TDDP pilot are those that are statutorily mandated at 35 P.S. § 6701.3.

<sup>23</sup> The WEI Proposal explicitly states “Individuals [TDDP Pilot participants] will need to describe how they will access wi-fi service (in their home or in the community e.g., public library) and understand that the program will not pay for such wireless access services.” OVR Petition, WEI Proposal at 8.

associated with program orientation and training in Darby and Philadelphia, Pennsylvania. This latter requirement negatively impacted OVR's ability to fulfill the full proposed enrollment.

The *July 2015 Order* and OVR Report demonstrate universal support regarding the merits of the WEI Pilot and the desire for statewide access to wireless technologies, communications, and devices by eligible persons with disabilities. The Commission recognized that federal authority over TRS mandates availability within a state and that federal certification of such programs requires corresponding compliance with federal requirements. These requirements include a prohibition on actions that discourage or impair the technology providing TRS.

The Commission agreed with the comments that public benefits accruing to eligible participants under the proposed WEI Pilot promoted the public interest and satisfied Pennsylvania's obligation under federal and state law to provide adequate and equivalent access to communications access for Pennsylvanians with disabilities. The Commission recognized that it possessed the necessary administrative flexibility to deal with these matters and to seek timely and appropriate legislative changes if and when such changes become necessary.

The Commission concluded that the TRS program serves the public interest and that such action was consistent with Section 225(d)(2), 47 U.S.C. § 225(d)(2), of federal law and ensured compliance with the certification requirements under Section 225(f), 47 U.S.C. § 225(f). After commending L&I, OVR, and Temple University in their efforts to refine policies for increased TRS access to wireline and wireless telecommunications services under Pennsylvania and federal law, the Commission noted that an advisory letter had been issued on July 9, 2014 which also authorized the funding of IP-enabled wireline devices to eligible end-users.

The Commission also concluded that a WEI Pilot fit within the definitions of TRS services by radio and wire under Pennsylvania law and that the scope of the WEI Pilot was consistent with the applicable statutory parameters of the UTPMAA as well as federal law.

Based on those determinations and conclusions, the *July 2015 Order* authorized TRS funding for the WEI Pilot for actual costs up to \$85,000 for Phase I and up to \$90,000 for Phase II. The *July 2015 Order* added the caveat that if there were cost overruns OVR could petition for additional TRS funding, curtail the scope of the pilot program to stay within the approved funding or find alternate funding. The Commission recognized certain concerns with the future funding for the TRS Program but declined to address future funding of a TDDP wireless device program on a permanent statewide basis from the TRS Fund but agreed to address that in collaboration with OVR and Temple University.

The *July 2015 Order* also established a subaccount within the TRS Fund for the WEI Pilot given that neither of these sums impaired the solvency of the TRS Fund on a one-time basis. The TDDP portion of the TRS Fund had an appropriate monetary reserve that was sufficient to absorb the projected implementation cost of the proposed wireless pilot.<sup>24</sup>

Moreover, consistent with the Commission's statutory oversight of the TRS Fund and the public interest in this program, and to ensure compliance with federal law, the *July 2015 Order* required monthly billing detailing the costs incurred. OVR was required to submit detailed monthly bills for costs incurred for the TDDP Pilot to Commission staff in a manner that followed the current TDDP bill payment procedures.

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<sup>24</sup> 2014 Annual Report pursuant to the UTPMAA to the General Assembly, dated October 1, 2014, [http://www.puc.pa.gov/Telecom/pdf/TDD\\_Program\\_Legis\\_Rpt2014.pdf](http://www.puc.pa.gov/Telecom/pdf/TDD_Program_Legis_Rpt2014.pdf).

Commission staff would submit TDDP Pilot bills for payment in the same manner in which TDDP bills are currently paid. The TDDP Pilot expenses were subject to the Memorandum of Understanding between L&I and the Commission. The Commission required submission of the OVR Report on the Pilot Program from OVR and further instructed staff to submit a report following submission of the OVR Report.

### **Subsequent Developments**

On June 13, 2018, following completion of the WEI Pilot established by the *July 2015 Order*, OVR filed an amended response and recommendations in an OVR Report. The OVR Report provided detailed amended information requested by the Commission on monetary support, the practices in other states, and on the feasibility of creating a permanent wireless equipment distribution program based on the recently completed WEI Pilot.<sup>25</sup> The OVR Report outlined the public interest in a wireless distribution program relying, in part, on the benefits and experiences documented by the pilot participants. OVR recommends making the program permanent.<sup>26</sup>

The Commission staff identified several options: (1) provide standard wireless equipment without special adaptations or training through the TDD Program; (2) provide the adaptations for standard wireless equipment and provide specialized wireless equipment and training through the TDD Program; or (3) decline to provide wireless equipment through the TDD Program and maintain the TDD Program as it was prior to the pilot.

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<sup>25</sup> *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 (July 8, 2015); *OVR Additional Information on Wireless TDDP Program* (June 13, 2018).

<sup>26</sup> OVR Report at 33.

Option 2 was thought to more closely mirror the existing TDD Program by providing adaptations and specialized equipment needed to make telecommunications capabilities accessible although the program does not provide the underlying service or basic equipment available off the shelf. It was further noted that when the adaptation or accommodation is intrinsic to the device, such as an IP-enabled captioning telephone that works with IP-enabled circuits and services — with a regular captioning telephone capable of working only with traditional wireline connections — then the IP-enabled captioning telephone equipment is provided.<sup>27</sup>

## II. Disposition

The Commission hereby creates a permanent and ongoing wireless distribution program in Pennsylvania supported from the current TRS fund. The *July 2015 Order* concluded that the pilot wireless equipment distribution program was within the existing TDDP program and was fully consistent with applicable Pennsylvania and federal statutes, effectively obviating concerns with Commission jurisdiction. It is worth reiterating, again, that Pennsylvania’s Universal Telecommunications and Print Media Access Act that also governs the operation and funding of TDDP, includes the following definitions:

**“Telecommunication device.”** Equipment necessary for a person with a disability to engage in communication by wire *or radio* with another person with a disability or with a hearing individual.

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<sup>27</sup> Report of staff at 14.

**“Telecommunications relay service.”** Telephone transmission services that provide the ability for a person with a disability to engage in communication by wire *or radio* with a hearing individual in a manner that is functionally equivalent to the ability of a person who does not have a disability to communicate using voice communication services by wire *or radio*. The term includes services that enable two-way communication between an individual who uses a telecommunication device or other nonvoice terminal device and an individual who does not use such a device.

35 P.S. § 6701.2 (emphasis added).

We concluded in the *July 2015 Order*, and reiterate today, that the availability of wireless devices under the TDDP mechanism for eligible persons with disabilities meets the statutory standard for communication by “radio” or “wire” under our statute. This is because mobile wireless devices for end-user consumers operate on the basis of available radio frequencies that are managed by commercial wireless service providers.<sup>28</sup>

These provisions and our precedent clearly establish the Commission’s legal authority to support a permanent and ongoing wireless device distribution program under Pennsylvania and federal law.

The Commission recognizes the challenge of supporting wireless and wireline device distribution programs solely by surcharging wire access lines with no accompanying support from wireless services even though Pennsylvania law requires the

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<sup>28</sup> See also *July 2015 Order* at 12-13.

Commission to facilitate communications by wire and radio. However, the resolution of whether wireless service providers can be required to fund a wireless device program under this existing statutory language should not preclude action today. The Commission has a separate legal mandate to facilitate communications by wire or radio irrespective of funding sources. The Commission has authority to support a wireless device program, particularly given the clear public interest and support for such a program determined in the *July 2015 Order* and the results from the WEI Pilot, the OVR Report, and staff review.

Today's action simply effectuates a state-mandated communications assistance program, including equipment, through wire or radio to a very discrete class of beneficiaries – low-income, deaf, hearing, speech impaired, or some combination thereof, to citizens of Pennsylvania. The WEI Pilot we adopted in the *July 2015 Order* simply updates the ways of meeting that mandate to recipients of the program given the statute, changing consumer needs, and technology. Our *July 2015 Order* recognized that a permanent device program might be necessary and appropriate although we deferred action on that issue until we had completed the WEI Pilot and further considered the experience from that pilot.

Although a permanent wireless distribution program is legal and clearly consistent with the public interest, the Commission's implementation of that mandate must be prudent. The initial budget for a permanent program requested by OVR stays well within the funding parameters of the existing monthly \$0.08 per access line surcharge and avoids imposing unacceptable or unsustainable burdens on the existing Fund or those consumers who support that Fund. For these reasons, we believe that approving OVR's initial budget proposal in the OVR Report is appropriate. While that

budget may change if the need demonstrated by OVR changes, the initial OVR budget approval supports a permanent program within the existing surcharge.<sup>29</sup>

The Commission agrees with the OVR Report that support for a suite of wireless equipment and adaptations is necessary, given the intertwined nature of wireless equipment and the adaptations needed to use that equipment. The OVR Report properly addresses the change in consumer expectations, technology, and the proliferation of devices in the market for non-impaired citizens.

The fact that different adaptations are already provided in Cap-Tel wireline distributed equipment today supports a similar approach for wireless devices. Consumers will receive the device with the needed adaptations to operate it, but they must buy the underlying wireless access service. Given the lower-incomes required for participation in the TDDP, it is worth reiterating our support for the FCC's Lifeline Program because it provides \$9.25 in monthly support so that low-income consumers can buy voice or broadband Internet access service.

This action is not without precedent. Our *July 2015 Order* formally authorized the funding of the WEI pilot project in the following:

In our evaluation of the proposal for a TDDP Pilot to explore accessible wireless options, we are guided by the UTPMAA, which vests administrative oversight of TDDP operations in OVR. *See* 35 P.S. § 6701.3. We are also guided by federal law governing TRS [telecommunications

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<sup>29</sup> If future developments indicate otherwise, OVR can address those developments in conjunction with submission of their annual budget for TRS-supported operations. While supplemental budgets in the interim may be appropriate, it is better to submit any adjustments in the OVR budget to coincide with our review and approval of a TRS program budget and the surcharge ancillary to supporting that budget.

relay service], particularly the prohibition contained in Section 225(d)(2) of the federal Communications Act of 1934 as amended, 47 U.S.C. § 225(d)(2), against discouraging or impairing the development of new technology.

*July 2015 Order* at 5. Our *July 2015 Order* found that the WEI pilot project was fully “within the applicable statutory parameters of the UTPMAA” and that it was also “entirely consistent with applicable federal law.” *July 2015 Order* at 13.

The OVR Report has been formally endorsed by the Commission’s TRS Advisory Board during its formal May 9, 2018 meeting.<sup>30</sup> OVR’s recommendation contains projected costs that assume a 30% increase in equipment distribution related costs based on prior experience in Colorado and Missouri or a total of 402 wireline and wireless devices. The OVR Report estimate relies on states who implemented a wireless equipment distribution program that are far smaller than Pennsylvania. OVR’s estimate for a total of 402 devices of which at least 114 will be for new wireless devices is a good start given that the device cost has dropped to a projected average figure of \$547 compared to the pilot-program cost of \$1,273 per device although both are higher than the average wireline device cost of \$135.<sup>31</sup>

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<sup>30</sup> A Kay Tyberg, Chair of the TRS Advisory Board stated the following in her July 5, 2018 letter communication to the Commission: “After due consideration of the findings and recommendations in the report [OVR Report], the Board advises the Public Utility Commission of its desire that the TDDP be expanded statewide to include wireless telecommunications devices – only; (NOT voice or data services) for Pennsylvanians with disabilities who meet all other TDDP eligibility criteria.”

<sup>31</sup> The significant cost difference was attributed to the wireless devices in a permanent program compared to the pilot program and traditional devices arises because wireless devices, particularly devices with support/service plans, cost 90% more than traditional landline equipment. As indicated in the table below, Pennsylvania's TDDP program averages \$135 per participant in equipment cost. The wireless initiative averaged \$1,273 per participant in equipment costs. By providing equipment without service/support packages, OVR’s expects to reduce this average equipment cost to \$547 per recipient. *See OVR Report* at 34.

The OVR Report also provides data supporting the need to support additional administrative costs, demonstration equipment, and an Assistive Technology Lending Library at regional ATRCs. The projected equipment distribution totals \$70,750 in one-time start-up costs and \$129,143 in yearly program-related expenses for a total of \$199,893 for the first year of operation. This estimate contains an annual \$13,000 cost for Education Outreach and focuses on information sessions, online access, and a modestly staffed customer service operation.

The eligibility requirements are identical to those for the existing TRS Program. They require Pennsylvania residency, 200% or less of the federal poverty guideline, access to Wi-Fi or a wireless service with a data plan (purchased by the consumer), and the ability to learn how to use the equipment. There are no direct public awareness and outreach costs to inform the public about this program although there are Education Outreach costs that will apparently focus on the eligible population. OVR anticipates replacing the equipment distributed on a 3-year cycle.

While the Commission can consider several options to move this program forward, for the reasons stated, the Commission concludes that the option to create a permanent program using the very modest incremental need projected in the OVR Report is best. This option relies on OVR's research and data. While this does not reflect specific and more recent ACS census data for Pennsylvania's population, a modest program is preferable at the outset unless and until OVR provides more robust reporting and budgetary analyses.

The Commission also believes that OVR's budget must extend to a broader geographic reach in Pennsylvania. We agree with the OVR Report that the program must support funding ATRCs or their regional equivalent. This ensures that eligible citizens in those areas have access to information and training as easily as those residing in urban

areas. Unlike the WEI Pilot, where the funding and distribution was operated from Darby and Philadelphia, the ATRCs operate throughout Pennsylvania and their input and expertise will be critical to ensuring a Commonwealth-wide program.

Our decision to approve the OVR budget for the initial three years recognizes two facts. First, in approving this program on a permanent basis, the Commission is acting between the annual recalculations of the TRS surcharge that occurs in June of each year. Second, any budgetary change may be reflected in these annual recalculations. Any resource need arising in the future can be addressed by filings timed to coincide with the Commission's annual establishment of a TRS budget and the surcharge recalculation that occurs in time for the establishment of a surcharge in June. Any need arising under the approved OVR budget that occurs under the existing surcharge before the next surcharge recalculation can be met by using any surplus that has arisen this year and then from any accumulated surplus. The use of any accumulated surplus must be tempered by possible FCC regulatory developments, including the allocation of federal TRS program costs to Pennsylvania, and a prudent reserve.

At a minimum, however, the OVR budget for continuation and expansion of the WEI approved today will be used for future funding with the opportunity to consider additional requests, along with supporting information, as the need arises; **THEREFORE,**

**IT IS ORDERED:**

1. That the Commission hereby adopts a permanent and ongoing wireless equipment distribution program as a funded component of the Pennsylvania Telecommunications Relay Service and the Telecommunications Device Distribution Programs;

2. That the Department of Labor & Industry Office of Vocational Rehabilitation has the funding authority to implement the wireless equipment distribution program on the initial and subsequent 3-year cycles presented in the Office of Vocational and Rehabilitation Report of the Wireless Expansion Initiative Pilot dating from entry of this Opinion and Order in the current funding year and thereafter timed as part of the Commission's annual TRS surcharge recalculation, unless interim adjustments are presented and adopted;

3. That the funding for the initial 3-year cycle of this permanent and ongoing wireless equipment distribution program as proposed in the OVR Report is approved as filed unless adjusted by the Commission in consultation with the Office of Vocational Rehabilitation;

4. That the funding total for the wireless equipment distribution program in the initial 3-year cycle is approved at \$458,179 unless adjusted by the Commission in consultation with the Office of Vocational Rehabilitation;

5. That the annual budget for a wireless equipment distribution program in any subsequent year that is proposed will be considered as part of the Commission's annual TRS surcharge recalculation;

6. That the Office of Vocational Rehabilitation projected one-time start-up non-equipment costs of \$70,750 for the initial year of the 3-year cycle is approved as proposed in the OVR Report unless adjusted by the Commission in consultation with the Office of Vocational Rehabilitation;

7. That the Office of Vocational Rehabilitation projected anticipated costs of \$129,143 for the initial year of the 3-year cycle is approved as proposed in the OVR Report unless adjusted by the Commission in consultation with the Office of Vocational Rehabilitation;

8. That the Office of Vocational Rehabilitation projected anticipated cost of \$129,143 for Year 2 and Year 3 of the initial 3-year cycle is approved as proposed in the OVR Report unless adjusted by the Commission in consultation with the Office of Vocational Rehabilitation;

9. That the funding and the actions hereby authorized for the distribution of wireless equipment to eligible persons with disabilities does not preclude or otherwise prohibit the simultaneous availability or distribution of wireline devices to the same persons under the Telecommunications Device Distribution Program;

10. That the Commission's Telecommunications Relay Service Advisory Board and the Office of Special Assistants, in consultation as necessary with the Bureaus of Technical Utility Services and Law, continue to monitor and report to the Commission on the operation and surcharge funding for Pennsylvania's Telecommunications Relay Service and Telecommunications Device Distribution Programs under state and federal law, including this ongoing and permanent wireless equipment distribution program;

11. That the Office of Vocational Rehabilitation prepare an annual evaluation of the budget for Commission consideration with the goal of increasing within the overall budget the proportion of the TRS budget related to the distribution of wireless devices and decreasing the proportion related to administration;

12. That the Office of Vocational Rehabilitation prepare an annual evaluation of the budget for Commission consideration with the goal of increasing the geographic reach of the wireless device distribution;

13. That this Opinion and Order be served upon the Secretary of the Department of Labor and Industry, the Office of Vocational Rehabilitation, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Commission's Telecommunications Relay Service Advisory Board; and

14. That a copy of this Opinion and Order be published in the *Pennsylvania Bulletin* and posted on the Commission's website.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: December 20, 2018

ORDER ENTERED: February 27, 2019