

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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OCT 22 11:19:52
COMMUNICATIONS

DATE: OCTOBER 22, 1998
TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)
FROM: DIVISION OF COMMUNICATIONS (KING ^{JK} TUDOR) ^{RNT} ~~TD~~
OFFICE OF GENERAL COUNSEL (MILLER) ^{CM}
RE: DOCKET NO. 960598-TP - REQUEST FOR SUBMISSION OF PROPOSAL FOR PROVISION OF RELAY SERVICE, BEGINNING IN JUNE 1997, FOR THE HEARING AND SPEECH IMPAIRED, AND OTHER IMPLEMENTATION MATTERS IN COMPLIANCE WITH THE FLORIDA TELECOMMUNICATIONS ACCESS SYSTEM ACT OF 1991.

AGENDA: 11/03/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: ANTICIPATE THE NEED FOR SIGN LANGUAGE INTERPRETER AND ASSISTIVE LISTENING DEVICES.

PLACE NEAR THE BEGINNING OF THE AGENDA TO REDUCE INTERPRETER COSTS.

FILE NAME AND LOCATION: S:\PSC\CMU\WP\960598.RCM

CASE BACKGROUND

The Telecommunications Access System Act of 1991 (TASA) became effective May 24, 1991 and is found in Chapter 427, Part II of the Florida Statutes. TASA provides funding for the distribution of specialized telecommunications devices and provision of intrastate relay service. Florida Telecommunications Relay, Inc. (FTRI), a

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non-profit corporation formed by the local exchange telephone companies, was named by the Commission to serve as the TASA administrator. Among its other duties, Section 427.705(1)(a), Florida Statutes, directs the administrator (FTRI) to "purchase, store, distribute and maintain specialized telecommunications devices. . . ."

At the May 5, 1998, TASA Advisory Committee meeting, a motion was made to have the Florida Public Service Commission (FPSC) staff investigate the appropriateness of including an electrolarynx device as part of FTRI's equipment distribution program. An electrolarynx is a portable mechanical device which sends vibrations to the throat and words are formed by manipulation of the tongue and cheeks. An electrolarynx is generally used by individuals who have had their vocal cords removed (laryngectomy). This recommendation addresses whether or not FTRI should distribute an electrolarynx device.

DISCUSSION OF ISSUES

ISSUE 1: Should an electrolarynx device become part of FTRI's equipment distribution program?

RECOMMENDATION: No, an electrolarynx should not be included as part of the equipment currently distributed by FTRI. However, the Commission should recommend to the legislature that electrolarynxes should be added to the list of items that can be distributed by the administrator. (King, Tudor)

ALTERNATIVE RECOMMENDATION: Yes, an electrolarynx should be included as part of the equipment currently distributed by FTRI. FTRI should develop a plan for purchasing and distributing electrolarynxes and submit that plan to the Commission staff by January 31, 1999. (King, Tudor)

STAFF ANALYSIS: At the May 5, 1998, TASA Advisory Committee meeting, Committee Member Mr. Joseph Schad made a presentation regarding the need for an electrolarynx device to be distributed by FTRI. Mr. Schad's presentation was the impetus for a motion asking the FPSC staff to investigate whether or not an electrolarynx device could be included in FTRI's equipment distribution program. Advisory Committee members were asked to submit comments on the issue for staff to consider in its analysis. The Committee's comments were due June 5, 1998. Two Committee members (Mr. Schad and Ms. Slater) and FTRI provided comments. Further, as part of staff's investigation, a data request was sent to the Florida Laryngectomee Association.

Mr. Schad's comments (p. 15) supported FTRI distributing an electrolarynx. Ms. Slater's comments (p. 16) suggested that FTRI only distribute an electrolarynx device to those "who cannot get electrolarynxes (the people, not under Medicare or Medicaid and with no health insurance or whose health insurance refuses the aid)."

According to information provided by the Florida Laryngectomee Association, Medicare and most insurance companies cover 80% of the cost for an electrolarynx (the cost is between \$495.00 and \$675.00); Medicaid also covers the instrument for those qualified

individuals under age 21. Ms. Slater also stated that she believes if FTRI were to supply an electrolarynx to all laryngectomees, Medicare and health insurance providers would encourage laryngectomees to seek the device from FTRI, thus passing the expense over to FTRI. It is estimated that there are approximately 2,000 laryngectomees statewide, and approximately 200 new laryngectomees yearly.

The comments provided by FTRI (pp. 17) oppose the distribution of the electrolarynx. FTRI makes it clear in its comments that it is aware of the value of the electrolarynx and recognizes that the device has benefitted a number of individuals. However, FTRI does not believe that the electrolarynx falls within the statutory definition of "specialized telecommunications devices" as that definition is currently written. FTRI believes that it would exceed its current statutory authority if it were to offer the electrolarynx as a basic telecommunications device.

The following statutory provisions relate to this issue.

F.S.427.702 Findings, purpose, and legislative intent.

(1) The Legislature finds and declares that

. . . .

(e) Persons who do not have a hearing impairment or speech impairment are generally excluded from access to the basic telecommunications system to communicate with persons who have a hearing impairment or speech impairment without the use of specialized telecommunications devices.

(2) It is the declared purpose of this part to establish a system whereby the citizens of Florida who are hearing impaired, speech impaired, or dual sensory impaired have access to basic telecommunications services at a cost no greater than that paid by other telecommunications services customers, and whereby the cost of specialized telecommunications equipment necessary to ensure that citizens who are hearing impaired, speech impaired, or

dual sensory impaired have access to basic telecommunications services and the provision of telecommunications relay service is borne by all the telecommunications customers of the state.

(3) It is the intent of the Legislature:

(d) That the telecommunications access system includes the distribution of specialized telecommunications devices necessary for hearing impaired, speech impaired, or dual sensory impaired persons to access basic telecommunications services. (emphasis added)

(g) That the telecommunications access system uses state-of-the-art technology for specialized telecommunications devices and the telecommunications relay service and encourages the incorporation of new developments in technology, to the extent that it has demonstrated benefits consistent with the intent of this act and is in the best interest of the citizens of the state. (emphasis added)

F.S.427.703 Definitions

(11) "Specialized telecommunications device" means a TDD, a volume control handset, a ring signaling device, or any other customer premises telecommunications equipment specifically designed or used to provide basic access to telecommunications services for a hearing impaired, speech impaired, or dual sensory impaired person. (emphasis added)

F.S.427.704 Powers and duties of the commission.

(1) The commission shall establish, implement, promote, and oversee the administration of a statewide telecommunications access system to provide access to telecommunications relay services by persons who are

hearing impaired or speech impaired, or others who communicate with them. The telecommunications access system shall provide for the purchase and distribution of specialized telecommunications devices and the establishment of statewide single provider telecommunications relay service system which operates continuously. To provide telecommunications relay services and distribute specialized telecommunication devices to persons who are hearing impaired or speech impaired, at a reasonable cost the commission shall: (emphasis added)

(a) Investigate, conduct public hearings, and solicit the advice and counsel of the advisory committee established pursuant to s.427.706 to determine the most cost-effective method for providing telecommunications relay service and distributing specialized telecommunications devices. (emphasis added)

F.S.427.705 Administration of the telecommunications access system.

(1) Consistent with the provisions of this act and rules and regulations established by the commission, the administrator shall:

(a) Purchase, store, distribute, and maintain specialized telecommunications devices either directly or through contract with third parties, or a combination thereof.

. . . .

(5) The administrator shall provide for the distribution of specialized telecommunications devices to persons qualified to receive such equipment in accordance with the provisions of this act. The administrator shall establish procedures for the distribution of specialized telecommunications devices and shall solicit the advice and counsel and consider the recommendations of the advisory committee in establishing such procedures. The procedure shall:

(b) Establish characteristics and performance standards for specialized telecommunications devices determined to be necessary, and for the selection of equipment to be purchased for distribution to qualified recipients. The characteristics and standards shall be modified as advances in equipment technology render such standards inapplicable.

Resolution of this issue revolves largely around the definition of "Specialized Telecommunications Device" and specifically how the phrase "specifically designed and used to provide basic access to telecommunications services" is interpreted. There are two aspects to this definition that need to be addressed in order to resolve this issue. First, does the term "specifically" mean "exclusively" (for that purpose) or does it mean that of many possible uses, is telecommunications access one of those uses for which the electrolarynx is designed? Second is whether the adjective "specifically" modifies just the term "designed" or also the term "used".

Starting with the issues of the meaning of the term "specifically", the dictionary definition of "specific" is "something peculiarly adapted to a purpose or use". An electrolarynx is not "specifically designed" for telecommunications purposes. It is for all kinds of verbal communications including face to face communications as well as telephone communications. Thus, since an electrolarynx's design is not specifically for telecommunications access, it does not meet this part of the definition.

The next issue is whether the adjective "specific" applies to the word "used". If it does, then the same argument as applies to "specifically designed for" would likewise apply to "specifically used for", i.e., telecommunications use is not the specific use of an electrolarynx. However, if "specifically" only modifies the term "designed", then the question would be whether an electrolarynx is simply "used to provide basic access to telecommunications" and the answer would be affirmative because an electrolarynx is certainly used to talk on the telephone. We do not know what the legislature intended when it established the definition of "specialized telecommunications device". Certainly

the legislature could have repeated the word "specifically" if it had intended it to apply to the word "used" and eliminated the question. However, grammatically, the modifier can be correctly used once and still apply to both terms "designed" and "used". Staff sees no reason why the legislature would have used the word "specifically" when referencing the term "designed" but then intended that anything that is "used" in any general way for access to telecommunications would also qualify for funding and distribution by the administrator FTRI. If an electrolarynx were considered to be "specialized telecommunications equipment" and thus should be funded by the TASA fund, then a similar argument could be made for funding hearing aids for hearing impaired individuals because hearing aids allow a hearing impaired person to use a telephone. The recommended interpretation of the definition is in keeping with a straight-forward reading of the definition. Staff believes that an electrolarynx does not fall within the definition of a specialized telecommunications device.

We do not think that the 1991 legislation was aimed at requiring telecommunications customers to pay for persons to obtain electrolarynxes through TASA. However, we have found no legislative history that addresses this issue. Because we do not know what the legislature intended regarding inclusion of an electrolarynx in the definition of "specialized telecommunications device", we could make a request to the legislature that it include the device specifically in the list of items which the administrator is authorized to distribute. Staff's recommendation is based simply on its understanding of the statute as it exists and not on a disagreement concerning the value of the devices in assisting a person who has had a laryngectomy to be able to use the telephone. Indeed, a person who has had a laryngectomy cannot use the telephone without the device (other than the less efficient way of obtaining a TDD and making calls through an intermediary communications assistant over the relay system).

While an electrolarynx is more expensive (about \$500-\$700) than a TDD (about \$200-\$300), it does allow the user more natural conversation and easier call set-up since a relay Communications Assistant is not involved. However, it is not likely that a person would settle for just using a TDD and only communicate via telephone calls rather than obtain an electrolarynx if the

electrolarynx were not distributed by FTRI. In most cases a person would obtain an electrolarynx anyway for everyday life uses and therefore not need to bother with a TDD since the electrolarynx can be used for multiple purposes. For a person who is unable to hear, the current technology for using the telecommunications system is a TDD. However, for a person who cannot speak because of a laryngectomy, an electrolarynx is the best method for using telecommunications services and there is no specific piece of telecommunications equipment that meets the need. However, an electrolarynx does not appear to fit the definition of "specialized telecommunications devices".

Supporting specific legislation for distribution of the device would make it possible, for a person who has had a laryngectomy to make the best possible use of the telecommunications system and receive support from all other ratepayers to pay for the cost of the electrolarynx. The cost of the equipment and the number of new laryngectomies each year (about 200) would not be cost prohibitive. Assuming a price of \$600 and a distribution of 200 units per year for a total of \$120,000 per year represents an increase of about 0.9% over the 1998-99 budget of \$13.9 million dollars for FTRI. Thus, it is not likely that adding the cost of these units to the program would increase the surcharge from its current \$.11 per month level.

ALTERNATIVE STAFF ANALYSIS: As indicated in the primary staff recommendation, whether or not to include the electrolarynx in the list of items distributed by the administrator should consider the meaning of the term "specialized telecommunications device" since that is what the administrator (FTRI) is authorized to distribute.

Resolution of this issue revolves largely around the definition of "Specialized Telecommunications Device" and specifically how the phrase "specifically designed or used to provide basic access to telecommunications services" is interpreted. We do not know what the legislature meant when it included the phrase: "specifically designed or used to provide basic access to telecommunications services." The phrase includes an awkward term, the meaning of which is unclear. Grammatically, the modifier, "specifically," can be used once and still apply to both the term "designed" and the term "used".

The definition of "Specialized Telecommunications Devices" in Chapter 427.703(11), F.S. can be read in more than one way:

"Specialized telecommunications device" means:

1. a TDD, [or]
2. a volume control handset, [or]
3. a ring signaling device, or
4. (some combination of the three ways below):

I. any other customer premises telecommunications equipment **specifically designed** . . . to provide basic access to telecommunications services for a hearing impaired, speech impaired, or dual sensory impaired person.

or

ii. any other customer premises telecommunications equipment . . . **used** to provide basic access to telecommunications services for a hearing impaired, speech impaired, or dual sensory impaired person.

or

iii. any other customer premises telecommunications equipment **specifically** . . . **used** to provide basic access to telecommunications services for a hearing impaired, speech impaired, or dual sensory impaired person.

It is noteworthy that there is a rule of statutory construction which provides that: "the provisions of statutes enacted in the public interest should be given a liberal construction in favor of the public." *Department of Environmental Protection v. Goldring*, 477 So. 2d 532 (1985).

In this case, Staff believes that the statute in question was enacted "in the public interest." Therefore, Staff believes that a "liberal construction in favor of the public" should be used in construing the definition of "Specialized Telecommunications Device."

An electrolarynx is intended to provide speech for a person who has had a laryngectomy and cannot otherwise speak. That capability certainly includes **using** the telephone system. While there are other purposes for using an electrolarynx (e.g., face-to-face conversation), there is no doubt that one of the specific purposes for an electrolarynx is to **use** the telephone. Thus, it could be viewed to be a purpose of an electrolarynx.

Since the word "specifically" was not expressly repeated by the legislature to modify "used", the legislature could be viewed as having intended for any device that is "used" (as one of its uses) to provide basic access to telecommunications to qualify as a specialized telecommunications device. Staff believes that it is reasonable to conclude that an electrolarynx falls within the definition of the phrase "Specialized Telecommunications Device."

The Commission's interpretation of the above referenced language would clearly fall within the permissible range of statutory interpretations. *Department of Professional Regulation, Board of Medical Examiners v. Durrani*, 455 So.2d 515, 517 (Fla. 1st DCA 1984). "It is well settled that the appellate court will give deference to any interpretation by an agency that falls within the permissible range of statutory interpretations." *Goldcrest Nursing Home v. State, Agency for Health Care Administration*, 662 So.2d 1330, 1333 (Fla. 1st DCA 1985).

"The agency's interpretation of a statute need not be the sole possible interpretation or even the most desirable; it need only be within the range of possible interpretations."

Department of Professional Regulation, Board of Medical Examiners v. Durrani, 455 So.2d at 517.

Thus, given the statutory construction principle of attributing a liberal construction to a statute enacted in the public interest and that an appellate court will give deference to the agency so long as the interpretation is within the range of possible interpretations, Staff believes that an electrolarynx is certainly a device which falls within the definition of a

"Specialized Telecommunications Device" and should be distributed by FTRI.

Also, Staff believes that the device could fit within the overall purpose of TASA. The intent language in the statute says that the telecommunications access system should use state of the art technology for specialized telecommunications devices.

TASA clearly intends to benefit people with speech impairments. An alternative to the electrolarynx (for telecommunications purposes) would be to give the person a TDD and let them use the relay system to make calls. While this would be functional, it would make the person's calling less efficient because a third party (the Communications Assistant) would be involved in the call and relaying takes time as well as the fact that speaking is quicker than typing (as well as more personal). Thus, use of an electrolarynx would be a better way for the person to make the call.

A telephone instrument used to provide basic access to telecommunications services for a person who is hearing impaired does exist and is distributed by FTRI (a hearing amplified phone). However, since a piece of telecommunications device does not exist for a person who is speech impaired, the next closest thing is an electrolarynx. The intent language in the statute says that the telecommunications access system should use state of the art technology for specialized telecommunications devices.

If FTRI is ordered to distribute the electrolarynx, it should investigate how it would obtain these devices and also whether it should pay for the full cost of the devices or pay only the amount over and above the amount not covered by insurance since this device is not just a telecommunications device. Because there are administrative costs associated with checking a person's insurance coverage, FTRI should also address whether the devices should simply be paid for totally by the FTRI budget or whether FTRI should conduct the insurance eligibility as a part of its funding process. FTRI should also consider whether the applicant should obtain the device directly and then submit a bill to FTRI rather than FTRI obtaining the devices and then distributing them. FTRI should also address how it would train people on the use of these

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devices and how it would make people aware of their availability.
FTRI should submit a report to Commission staff on the above by
January 31, 1999.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open until the expiration of the current contract with MCI.

STAFF ANALYSIS: The docket should remain open until the expiration of the current contract with MCI to deal with other TASA issues that may arise during the life of the contract.

JOSEPH C. SCHAD

9545 Trivolo Place
Boca Raton, FL 33434
(561) 467-5722

May 30, 1998

Mr. Richard Tudor, Assistant Director
Division of Communications
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Dear Mr. Tudor,

Following up on my presentation at the Advisory Committee meeting on May 5th we again would like to point out the American With Disabilities Act of 1990 as amended in the Federal Register Vol. 56 No. 148 dated August 1, 1991 "Rules and Regulation" page 36733.

§ 64.606 FURNISHING RELATED CUSTOMER PREMISES EQUIPMENT.

(a) Any communications common carrier may provide, under tariff, customer premises equipment, other than hearing aid compatible telephones as defined in part 68 of this chapter needed by persons with hearing, SPEECH, vision or mobility disabilities. Such equipment may be provided by persons with those disabilities or to associations or institutions who require such equipment regularly to communicate with persons with disabilities. Examples of such equipment include, but are not limited to, ARTIFICIAL LARYNXES, bone conductor receivers and TT's.

FLORIDA TELEPHONE ACCESS SYSTEMS ACT OF 1991.

427-702 FINDINGS, PURPOSE AND LEGISLATIVE INTENT.

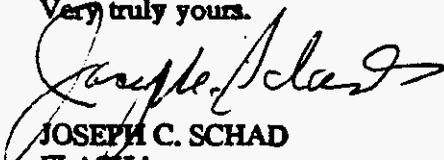
(3) (c) That the telecommunications access systems includes the distribution of telecommunication devices for the deaf [SPEECH IMPAIRED?] that are comparable with the telephone communications relay service system and has the capability of incorporating new technologies as they develop.

427-703 DEFINITIONS.

(11) "Specialized telecommunications device" means a TDD, a volume control handset, a ring signaling device or any other CUSTOMER PREMISES TELECOMMUNICATIONS EQUIPMENT SPECIFICALLY DESIGNED TO PROVIDE BASIC ACCESS to hearing impaired, SPEECH IMPAIRED, or dual sensory impaired person.

All of the above should give the Florida Telecommunication Relays, Inc. the necessary authority to distribute electrolarynxes to all of the laryngectomees (loss of voice because of cancer) mainly those over 21 who are not covered by MEDICAID and those under 65 not covered by MEDICARE.

Very truly yours,



JOSEPH C. SCHAD
FLASHA

Advisory Committee, Florida Public Service Commission

P.O. Box 860235
St. Augustine, FL 32086
May 14, 1998

Mr. Richard Tudor, Assistant Director
Division of Communication
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Dear Mr. Tudor,

The TASA meeting on May 5, 1998 was very fruitful. I felt that we accomplished a lot during the meeting.

One proposal, about which I had mixed feelings even though I approved it, concerns supplying an electrolarynx to all laryngectomees in Florida. As of now, Medicare and some of health insurances provide these devices to those needing them. Only those, not on Medicare (or Medicaid) and without health insurances or whose health insurances reject the aid, are left with no devices.

What may happen if the FTRI was to supply electrolarynx to all laryngectomees in Florida? Medicare (Medicaid) and health insurances would encourage those people to seek the devices from FTRI, thus passing the expenses over to FTRI. That ruling would also encourage health insurances to reject such devices to their clients.

The main purpose of FTRI is to aid consumers, who can not make phone calls without special devices and relay services. With electrolarynx, the laryngectomees would have no use for TDDs or Relay Service.

Yet, we should not ignore those laryngectomees, who can not get electrolarynx (the people, not under Medicare or Medicaid and with no health insurance or whose health insurances refuse the aid). One possible way is to provide such devices to this group only.

I hope we will have a chance to discuss this proposal in depth at the next TASA meeting. Thank you for lyour attention.

Sincerely,



Rita L. Slater
FAD Respresentative

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June 5, 1998

HAND DELIVERY

Mr. Richard Tudor, Assistant Director
Division of Communications
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Dear Mr. Tudor:

During the TASA Advisory Committee meeting May 5th, there was a discussion concerning including the electrolarynx as part of the distribution program. A motion was adopted to recommend that the Staff of the Commission study the appropriateness of distributing the electrolarynx and interested persons were afforded the opportunity to submit comments on the issue if they so chose. The purpose of this letter is to relay to you the comments of Florida Telecommunications Relay, Inc. ("FTRI").

As the administrator of the relay program, FTRI is responsible for interpreting and implementing the provisions of Chapter 427, Florida Statutes, as it relates to the Telecommunications Access System with respect to equipment distributing. Section 427.705(1)(a) directs the administrator to "purchase, store, distribute and maintain specialized telecommunications devices either directly or through contract with third parties or a combination thereof." Section 427.703(11) defines "special telecommunications devices" to mean a "TDD, a volume control handset, a ring signaling device or any other customer premises telecommunications equipment specifically designed or used to provide basic access to communications services for hearing impaired, speech impaired, or dual sensory impaired person." There is no mention of an electrolarynx nor am I aware of a definition of customer premise equipment that would include the electrolarynx. Based on that charge and that definition, it has been our interpretation since the inception of TASA that an electrolarynx is not a specialized telecommunications device within the meaning of Chapter 427 and accordingly, FTRI has not offered the electrolarynx as part of the distribution program.

Mr. Richard Tudor

June 5, 1998

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Since the issue of including the electrolarynx first came up several years ago, it has been suggested that inclusion of the electrolarynx would be appropriate because other states do it or because the ADA or some other regulation requires it. Although I have not investigated whether other states offer the electrolarynx, this would not be dispositive of the issue without an analysis of the corresponding legislation. Each state has their own program and Florida is one of the few with an equipment distribution program. As the administrator for the Florida Relay System, FTRI is confined to distribution of equipment and activities as described in the enabling legislation, without regard to what other states may or may not be doing. We have also been unable to find any requirement in the ADA or similar legislation that requires the distribution of the electrolarynx. There has been reference to 47.C.F.R. 64.606 as requiring the distribution of electrolarynx as part of the distribution. However, section 64.606 is a rule of the Federal Communications Commission ("FCC") applicable to common carriers and allows common carriers to provide, under tariff, customer premise equipment as may be needed by persons with hearing, speech, vision or mobility disabilities. (A copy of section 64.606 and related subsections is attached for your review.) FTRI is not a communications common carrier subject to regulation by the FCC and thus is not subject to the FCC rules. Further, section 64.606 appears to contain language which is permissive rather than mandatory, but it certainly is not applicable to the administrator or the state distribution program. Despite requests for references, we have not been provided with any reference to a law or rule which requires that we include the electrolarynx as part of the equipment distribution program.

Notwithstanding our opinion with respect to the distribution of the electrolarynx, FTRI is aware that there is a segment of our population who are speech impaired and eligible for other equipment distributed by FTRI. Our outreach efforts include the speech impaired and some of the equipment which we currently distribute, such as the TDD, can be used by speech impaired individuals for basic access. Additionally, earlier this year staff of FTRI communicated with a vendor with respect to the development of a larynx phone. The vendor reported that the technology exists and the product could be provided and in fact developed a prototype at our request. The vendor has suspended further development and production of the larynx phone absent a specific commitment from FTRI. We continue to be interested in pursuing options such as this, but unless there is some demonstration of need and use of the devices, we are reluctant to accept full responsibility for the development costs.

Mr. Richard Tudor

June 5, 1998

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I trust that the foregoing is of use to you and summarizes the position that we have taken over the years. We are certainly aware of the value of the electrolarynx and recognize that the electrolarynx has benefitted a number of individuals. Unfortunately, we do not believe that the electrolarynx falls within the definition of a specialized telecommunications device as that definition is currently written. Absent some legislative action we believe that we would be exceeding our authority if we were to offer the electrolarynx as a basic telecommunications device.

Thank you for your attention. If you have any questions, please do not hesitate to call me.

Sincerely,

A handwritten signature in cursive script that reads "Norman H. Horton, Jr." The signature is written in black ink and is positioned to the right of the typed name.

Norman H. Horton, Jr.

NHH/amb
Attachment

Service," Docket 6787, 11 FCC 1033 (1947); 12 FCC 1006 (November 26, 1947); 12 FCC 1008 (May 20, 1948).

(d) That the characteristics of the warning tone shall be the same as those specified in the Orders of this Commission adopted by it in "Use of Recording Devices in Connection With Telephone Service," Docket 6787; 11 F.C.C. 1033 (1947); 12 F.C.C. 1006 (November 26, 1947); 12 F.C.C. 1008 (May 20, 1948);

(e) That no recording device shall be used unless it can be physically connected to and disconnected from the telephone line or switched on and off.

(Secs. 2, 3, 4, 5, 301, 303, 307, 308, 309, 315, 317; 48 Stat., as amended, 1064, 1065, 1066, 1068, 1081, 1082, 1083, 1084, 1085, 1086; 47 U.S.C. 152, 153, 154, 155, 301, 303, 307, 308, 309, 315, 317)

[32 FR 11275, Aug. 3, 1967, as amended at 48 FR 29480, June 2, 1983; 52 FR 3654, Feb. 5, 1987]

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

Source: 58 FR 36731, Aug. 1, 1993, unless otherwise noted.

§ 64.601 Definitions.

As used in this subpart, the following definitions apply:

(1) *American Sign Language (ASL)*. A visual language based on hand shape, position, movement, and orientation of the hands in relation to each other and the body.

(2) *ASCII*. An acronym for American Standard Code for Information Interexchange which employs an eight bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher.

(3) *Baudot*. A seven bit code, only five of which are information bits. Baudot is used by some text telephones to communicate with each other at a 45.5 baud rate.

(4) *Common carrier or carrier*. Any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended (the Act), and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Act.

(5) *Communications assistant (CA)*. A person who transcribes conversation from text to voice and from voice to text between two end users of TRS. CA supersedes the term "TDD operator."

(6) *Hearing carry over (HCO)*. A reduced form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation.

(7) *Telecommunications relay services (TRS)*. Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not use such a device. TRS supersedes the terms "dual party relay system," "message relay services," and "TDD Relay."

(8) *Text telephone (TT)*. A machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. TT supersedes the term "TDD" or "telecommunications device for the deaf."

(9) *Voice carry over (VCO)*. A reduced form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. The CA does not voice the conversation.

§ 64.602 Jurisdiction.

Any violation of this subpart by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of the Act by a common carrier engaged in interstate communication.

§ 64.603 Provision of services.

Each common carrier providing telephone voice transmission services shall

provide, not later than July 26, 1993, in compliance with the regulations prescribed herein, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with these regulations:

(a) With respect to intrastate telecommunications relay services in any state that does not have a certified program under § 64.606 and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with § 64.604; or

(b) With respect to intrastate telecommunications relay services in any state that has a certified program under § 64.606 for such state, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under § 64.606 for such state.

§ 64.604 Mandatory minimum standards.

(a) *Operational standards*—(1) *Communications assistant (CA)*. TRS providers are responsible for requiring that CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities; and that CAs have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette.

(2) *Confidentiality and conversation content*. Except as authorized by section 706 of the Communications Act, 47 U.S.C. § 606, CAs are prohibited from disclosing the content of any relayed conversation regardless of content and from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all con-

versation verbatim unless the relay user specifically requests summarization.

(3) *Types of calls*. Consistent with the obligations of common carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services. TRS shall be capable of handling any type of call normally provided by common carriers and the burden of proving the infeasibility of handling any type of call will be placed on the carriers. Providers of TRS are permitted to decline to complete a call because credit authorization is denied. CAs shall handle emergency calls in the same manner as they handle any other TRS calls.

(b) *Technical standards*—(1) *ASCII and Baudot*. TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.

(2) *Speed of answer*. TRS shall include adequate staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network. TRS shall, except during network failure, answer 85% of all calls within 10 seconds and no more than 30 seconds shall elapse between receipt of dialing information and the dialing of the requested number.

(3) *Equal access to interexchange carriers*. TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to voice users.

(4) *TRS facilities*. TRS shall operate every day, 24 hours a day. TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use. TRS shall transmit conversations between TT and voice callers in real time. Adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting

to reach a party through the voice telephone network.

(5) *Technology.* No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to person with disabilities. VCO and HCO technology are required to be standard features of TRS.

(c) *Functional standards—(1) Enforcement.* Subject to § 64.603, the Commission shall resolve any complaint alleging a violation of this section within 180 days after the complaint is filed.

(2) *Public access to information.* Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TT numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of TRS.

(3) *Rates.* TRS users shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from the point of origination to the point of termination.

(4) *Jurisdictional separation of costs—(i) General.* Where appropriate, costs of providing TRS shall be separated in accordance with the jurisdictional separation procedures and standards set forth in the Commission's regulations adopted pursuant to section 410 of the Communications Act of 1934, as amended.

(ii) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under section 64.603, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section.

(iii) *Telecommunications Relay Service Fund.* Effective July 26, 1993, an Interstate Cost Recovery Plan, herein-

after referred to as the TRS Fund, shall be administered by an entity selected by the Commission (administrator). The initial administrator, for an interim period, will be the National Exchange Carrier Association, Inc.

(A) *Contributions.* Every carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of its relative share of gross interstate revenues as described herein. Contributions shall be made by all carriers who provide interstate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

(B) *Contribution computations.* Contributors' contribution to the TRS fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to total interstate revenues. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years contributions. Each subject carrier must contribute at least \$100 per year. Service providers whose annual contributions total less than \$1,200 must pay the entire contribution at the beginning of the contribution period. Service providers whose contributions total \$1,200 or more may divide their contributions into equal monthly payments. Contributions shall be calculated and filed in accordance with a "TRS Fund Worksheet," which shall be published in the Federal Register. The worksheet sets forth information that must be provided by the contributor.

the formula for computing the contribution, the manner of payment, and due dates for payments. The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of Section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions.

(C) Data collection from TRS Providers. TRS providers shall provide the administrator with true and adequate data necessary to determine TRS fund revenue requirements and payments. TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment in general accordance with Part 32 of the Communications Act, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements. The administrator and the Commission shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments.

(D) The TRS Fund will be subject to a yearly audit performed by an independent certified accounting firm or the Commission, or both.

(E) Payments to TRS Providers. TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. The administrator shall file schedules of payment formulas with the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval. Such formulas shall be based on total monthly interstate TRS minutes of use. TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed interstate TRS calls placed through the TRS center beginning after call set-up and con-

cluding after the last message call unit. In addition to the data required under paragraph (c)(4)(iii)(C) of this section, all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments. The administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604, and after disbursements to the administrator for reasonable expenses incurred by it in connection with TRS Fund administration. TRS providers receiving payments shall file a form prescribed by the administrator. The administrator shall fashion a form that is consistent with Parts 32 and 36 procedures reasonably tailored to meet the needs of TRS providers. The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the fund administrator. The fund administrator shall have authority to audit TRS providers reporting data to the administrator.

(F) TRS providers eligible for receiving payments from the TRS Fund are:

- (1) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to § 64.606; or
- (2) TRS facilities owned by or operated under contract with a common carrier providing interstate services operated pursuant to § 64.604; or
- (3) Interstate common carriers offering TRS pursuant to § 64.604.

(G) Any eligible TRS provider as defined in paragraph (c)(4)(iii)(F) of this section shall notify the administrator of its intent to participate in the TRS Fund thirty (30) days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS, and failure to file may exclude the TRS provider from eligibility for the year.

(H) Administrator reporting, monitoring, and filing requirements. The administrator shall perform all filing and reporting functions required under paragraphs (c)(4)(iii) (A) through (J), of this section. Beginning in 1994, TRS payment formulas and revenue requirements shall be filed with the Commission on October 1 of each year, to be effective for a one-year period beginning the following January 1. The administrator shall report annually to the Commission an itemization of monthly administrative costs which shall consist of all expenses, receipts, and payments associated with the administration of TRS Fund. The administrator is required to keep the TRS Fund separate from all other funds administered by the administrator, shall file a cost allocation manual (CAM), and shall provide the Commission full access to all data collected pursuant to the administration of the TRS Fund. The administrator shall establish a non-paid, voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers, which will meet at reasonable intervals (at least semi-annually (in order to monitor TRS cost recovery matters. Each group shall select its own representative to the committee. The administrator's annual report shall include a discussion of advisory committee deliberations.

(I) Information filed with the administrator. The administrator shall keep all data obtained from contributors and TRS providers confidential, shall not use such data except for purposes of administering the TRS Fund, and shall not disclose such data in company-specific form unless directed to do so by the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers.

(J) The administrator's performance and this plan shall be reviewed by the Commission after two years.

(K) All parties providing services or contributions or receiving payments under this section are subject to the enforcement provisions specified in the Communications Act, the Americans

with Disabilities Act, and the Commission's rules.

(5) *Complaints*—(i) *Referral of complaint*. If a complaint to the Commission alleges a violation of this subpart with respect to intrastate TRS within a state and certification of the program of such state under § 64.605 is in effect, the Commission shall refer such complaint to such state expeditiously.

(ii) *Jurisdiction of Commission*. After referring a complaint to a state under paragraph (c)(5)(i) of this section, or if a complaint is filed directly with a state, the Commission shall exercise jurisdiction over such complaint only if:

(A) Final action under such state program has not been taken within:

(1) 180 days after the complaint is filed with such state; or

(2) A shorter period as prescribed by the regulations of such state; or

(B) The Commission determines that such state program is no longer qualified for certification under § 64.605.

(iii) *Complaint procedures*—(A) *Content*. A complaint shall be in writing, addressed to the Federal Communications Commission, Common Carrier Bureau, TRS Complaints, Washington, DC 20554, or addressed to the appropriate state office, and shall contain:

(1) The name and address of the complainant.

(2) The name and address of the defendant against whom the complaint is made.

(3) A complete statement of the facts, including supporting data, where available, showing that such defendant did or omitted to do anything in contravention of this subpart, and

(4) The relief sought.

(B) *Amended complaints*. An amended complaint setting forth transactions, occurrences or events which have happened since the filing of the original complaint and which relate to the original cause of action may be filed with the Commission.

(C) *Number of copies*. An original and two copies of all pleadings shall be filed.

(D) *Service*—(1) Except where a complaint is referred to a state pursuant to § 64.604(c)(5)(i), or where a complaint is filed directly with a state, the Commission will serve on the named party a

copy of any complaint or amended complaint filed with it, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy or answer the complaint in writing within the time specified in said notice of complaint.

(2) All subsequent pleadings and briefs shall be served by the filing party on all other parties to the proceeding in accordance with the requirements of §1.47 of this chapter. Proof of such service shall also be made in accordance with the requirements of said section.

(E) *Answers to complaints and amended complaints.* Any party upon whom a copy of a complaint or amended complaint is served under this subpart shall serve an answer within the time specified by the Commission in its notice of complaint. The answer shall advise the parties and the Commission fully and completely of the nature of the defense and shall respond specifically to all material allegations of the complaint. In cases involving allegations of harm, the answer shall indicate what action has been taken or is proposed to be taken to stop the occurrence of such harm. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Matters alleged as affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve an answer within the time and in the manner prescribed may be deemed in default.

(F) *Replies to answers or amended answers.* Within 10 days after service of an answer or an amended answer, a complainant may file and serve a reply which shall be responsive to matters contained in such answer or amended answer and shall not contain new matter. Failure to reply will not be deemed an admission of any allegation contained in such answer or amended answer.

(G) *Defective pleadings.* Any pleading filed in a complaint proceeding that is not in substantial conformity with the requirements of the applicable rules in this subpart may be dismissed.

[56 FR 39731, Aug. 1, 1991, as amended at 56 FR 12176, Mar. 3, 1991; 56 FR 39973, July 28, 1991]

§ 64.605 State certification.

(a) *State documentation.* Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Common Carrier Bureau, TRS Certification Program, Washington, DC 20554, and captioned "TRS State Certification Application." All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification including notification in the FEDERAL REGISTER.

(b) *Requirements for certification.* After review of state documentation, the Commission shall certify, by letter, or order, the state program if the Commission determines that the state certification documentation:

(1) Establishes that the state program meets or exceeds all operational, technical, and functional minimum standards contained in §64.604;

(2) Establishes that the state program makes available adequate procedures and remedies for enforcing the requirements of the state program; and

(3) Where a state program exceeds the mandatory minimum standards contained in §64.604, the state establishes that its program in no way conflicts with federal law.

(c) *Certification period.* State certification shall remain in effect for five years. One year prior to expiration of certification, a state may apply for renewal of its certification by filing documentation as prescribed by paragraphs (a) and (b) of this section.

(d) *Method of funding.* Except as provided in §64.604, the Commission shall not refuse to certify a state program based solely on the method such state will implement for funding intrastate TRS, but funding mechanisms, if labeled, shall be labeled in a manner that promote national understanding of TRS and do not offend the public.

(e) *Suspension or revocation of certification.* The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS.

§ 64.606 Furnishing related customer premises equipment.

(a) Any communications common carrier may provide, under tariff, customer premises equipment (other than hearing aid compatible telephones as defined in part 68 of this chapter, needed by persons with hearing, speech, vision or mobility disabilities. Such equipment may be provided to persons with those disabilities or to associations or institutions who require such equipment regularly to communicate with persons with disabilities. Examples of such equipment include, but are not limited to, artificial larynxes, bone conductor receivers and TTs.

(b) Any carrier which provides telecommunications devices for persons with hearing and/or speech disabilities, whether or not pursuant to tariff, shall respond to any inquiry concerning:

- (1) The availability (including general price levels) of TTs using ASCII, Baudot, or both formats; and
- (2) The compatibility of any TT with other such devices and computers.

§ 64.607 Provision of hearing aid compatible telephones by exchange carriers.

In the absence of alternative suppliers in an exchange area, an exchange carrier must provide a hearing aid compatible telephone, as defined in part 68 of this chapter, and provide related installation and maintenance services for such telephones on a detariffed basis to any customer with a hearing disability who requests such equipment or services.

§ 64.608 Enforcement of related customer premises equipment rules.

Enforcement of §§ 64.606 and 64.607 is delegated to those state public utility or public service commissions which

adopt those sections and provide for their enforcement. Subpart G—Furnishing of Enhanced Services and Customer-Premises Equipment by Communications Common Carriers

Subpart G—Furnishing of Enhanced Services and Customer-Premises Equipment by Communications Common Carriers

§ 64.702 Furnishing of enhanced services and customer-premises equipment.

(a) For the purpose of this subpart, the term *enhanced service* shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

(b) Communications common carriers subject, in whole or in part, to the Communications Act may directly provide enhanced services and customer-premises equipment; provided, however, that the Commission may prohibit any such common carrier from engaging directly or indirectly in furnishing enhanced services or customer-premises equipment to others except as provided for in paragraph (c) of this section, or as otherwise authorized by the Commission.

(c) A communications common carrier prohibited by the Commission pursuant to paragraph (b) of this section from engaging in the furnishing of enhanced services or customer-premises equipment may, subject to other provisions of law, have a controlling or lesser interest in, or be under common control with, a separate corporate entity that furnishes enhanced services or customer-premises equipment to others provided the following conditions are met:

- (1) Each such separate corporation shall obtain all transmission facilities necessary for the provision of enhanced services pursuant to tariff, and may