

CHAPTER 388  
FORMERLY  
SENATE BILL NO. 248

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO PUBLIC UTILITIES AND THE PROVISION OF TELECOMMUNICATIONS SERVICE FOR PERSONS WHO HAVE DEAFNESS, HEARING LOSS OR SPEECH DISABILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §220, Chapter 2, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underling as follows:

~~§ 220. Telephone service for hearing and speech impaired persons.~~

~~(a) The Commission shall, after hearing, by order in writing, establish rules and regulations to require a public utility providing local exchange telephone service to provide a statewide dual party relay service that will allow hearing and speech impaired persons who use a telecommunications device for the deaf to communicate by telephone through attendants or equipment at a service answering facility with persons having normal hearing and speech.~~

~~(b) The public utility required to provide dual party relay service may enter into contractual arrangements with 1 or more other persons or entities requiring such other persons or entities to perform all or any part of the service.~~

~~(c) Costs incurred by the public utility in connection with the provision of dual party relay service shall not exceed those reasonably necessary to provide adequate service to the persons subscribing to the service. The Commission shall determine the manner in which the public utility providing this service may recover any costs associated with the implementation and operation of a dual party relay system.~~

~~(d) Service enhancements or ancillary services or supporting features which are not necessary for the delivery of basic dual relay service communications features do not fall within the scope of this section.~~

§220. Telecommunications service for persons who have deafness, hearing loss or speech disabilities for wireline communications service and devices.

(a) All telephone corporations or any corporation supplying wireline communications service within this State shall participate in a program to provide telecommunications service for analog communication devices and a telecommunications relay service for persons who have deafness, hearing loss or speech disabilities.

(b) Telephone corporations or corporations supplying wireline telephone service within this State shall impose a surcharge as set forth in this section to recover the cost of providing said service through a separately identified charge on subscribers' bills as further outlined in Section 220(e) below. The surcharge shall be subject to adjustment annually with notification to providers required at least 90 days in advance of the effective date of such adjustment. The monies recovered shall be deposited in a special fund created by the State for the purpose designated as the Telecommunications Service for persons who have deafness, hearing loss or speech disabilities.

(c) (1) The Delaware Office of the Deaf and Hard of Hearing of the Department of Labor is hereby directed to administer the program to provide access to public telecommunications service by residents of Delaware who have deafness, hearing loss or speech disabilities using devices for analog communications. The Office shall develop, accept, process, and approve applications for such service. This program shall be graduated so that not more than 10 new users are approved per month on a first come, first served basis.

(2) The Department of Technology and Information is hereby directed to provide a statewide telecommunications relay service that will allow persons who have deafness, hearing loss or speech disabilities to communicate by telephone through attendants or equipment at a service answering facility with persons having normal hearing and speech. The Department may enter into contractual agreements with one or more other persons or entities requiring such other persons or entities to perform all or any part of the service. The cost of providing the telecommunications relay service shall be paid out of the Fund.

(3) The Office of the Deaf and Hard of Hearing is authorized to promulgate procedures, regulations, rules, and criteria necessary to implement and administer this statewide program.

(d) In order for a person to be eligible for the program, the person shall be certified as having deafness, hearing loss, or a speech disability by a licensed physician, audiologist, or by any other method recognized by the Office of the Deaf and Hard of Hearing. Persons applying for the program must supply their own analog communication device.

(e) The Fund shall be funded by means of a monthly surcharge of up to \$0.04 per month billed by providers to subscribers of communications services in this State as follows:

(1) Residential telephone service. – The surcharge shall be billed by each provider providing such service to all Delaware residential subscribers per residence exchange access line or per Basic Rate Interface (“BRI”) ISDN arrangement, where the residence exchange access service is provided via a BRI ISDN arrangement. The surcharge shall not be applied to residence exchange access lines provided to Lifeline subscribers.

(2) Business telephone service. – The surcharge shall be billed by each provider providing such service to all Delaware business subscribers per business exchange access line and trunk or per BRI ISDN arrangement where the business exchange access service is provided via a BRI ISDN arrangement. Each Centrex access line shall be charged the equivalent of 1/9 of the surcharge; provided, however, that where a Centrex customer has fewer than 9 lines, the maximum monthly charge for those lines will be the surcharge imposed on each business exchange access line or trunk divided by the customer’s Centrex lines. Each Primary Rate Interface ISDN system shall be charged a rate equal to 5 times the surcharge. The surcharge shall not be applied to lines provided under wholesale arrangements.

(3) Wireless service. – The surcharge shall be billed by each wireless provider on all wireless service customers for each wireless telephone number for which they are billed by such provider.

(4) Nontraditional communication services. – The surcharge shall be billed by each provider of nontraditional communications service to subscribers based on an exchange access line equivalent that provides capacity to simultaneous access to 911 service where such provider is required to or opts to provide 911 service.

(f) The surcharge amounts shall be deposited into the Fund, along with any other state funds the General Assembly may from time to time appropriate.

(g) The provider shall bill the surcharge to the person purchasing the service but shall collect it on behalf of the State. The surcharges collected by a provider shall not be subject to taxes or charges levied by the State or any political subdivision thereof, nor shall they be considered revenue of the provider for any purpose.

(h) The surcharge shall not apply to wholesale services.

(i) All surcharges imposed by this section shall be collected by providers from subscribers to communications service with each invoice for service and shall be paid by providers on a monthly basis to the Department of Finance no later than the 15<sup>th</sup> day of the month following its collection and shall be deposited into the fund on a monthly basis.

(j) Each provider collecting such surcharges shall be entitled to recover the actual incremental costs of billing, collecting and remitting such surcharges, as well as the costs of compliance with any memorandum of understanding as described in this section, that will be taken monthly as a credit against the total amount to be remitted to the Department of Finance. This cost is defined as the incremental expense incurred by the provider that is in addition to the normal expense of billing and collecting the charges for the provision of the provider’s normal telephone service. Where monies collected by the provider are equal to or less than the total charge for the telephone service provided to subscribers or customers by that provider, not including the surcharge, all monies collected will be applied to the charges for the actual telephone service provided. As an alternative to recovery of the actual incremental costs described above, providers collecting the surcharge may elect to receive a collection allowance of 1% of the total amount collected from subscribers taken monthly as a credit against the total amount to be remitted to the Department of Finance.

(k) Each provider collecting such surcharges shall not be responsible for uncollectable surcharges. The State may also enter into a memorandum of understanding with each provider which shall include, but need not be limited to, the terms related to the collection and distribution of funds pursuant to this section and provide for reporting to the State the names and addresses of subscribers that fail to pay the surcharge. However, nothing in this

section shall be construed to prevent the State from taking appropriate action to collect such surcharges designated by a provider as uncollectable.

(l) Each provider collecting such surcharge is fulfilling a governmental function and in so doing, is immune from suit for damages of any kind and is not liable for refunds except to the extent that the provider has failed to collect or remit surcharges to the Fund in accordance with the requirements of this section.

(m) Money in the Fund may only be used to fund the costs of providing the services specified in subsection (a) above, telecommunications relay service costs specified in subsection (c)(2) and administrative costs as specified in subsection (j).

(n) The Fund is created as a non-appropriated special fund. Balances in the Fund on June 30 of each year shall carry forward and shall not revert to the General Fund.

(o) This Bill shall become effective January 1, 2013.

Approved August 03, 2012