~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

March 4, 2014

**H. 4731**

Introduced by Reps. Sandifer and Forrester

S. Printed 3/4/14--H.

Read the first time February 20, 2014.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 58‑9‑2515 SO AS TO CLARIFY THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION OVER CERTAIN PROVIDERS WITH RESPECT TO TELEPHONE SERVICE FOR HEARING AND SPEECH IMPAIRED PEOPLE; BY ADDING SECTION 58‑9‑2535 SO AS TO PROVIDE FOR THE MANNER OF ASSESSMENT AND COLLECTION OF DUAL PARTY RELAY CHARGES BY LOCAL EXCHANGE PROVIDERS, COMMERCIAL MOBILE RADIO SERVICE PROVIDERS, PREPAID WIRELESS SERVICE PROVIDERS, AND VOICE OVER INTERNET PROTOCOL SERVICE PROVIDERS, AMONG OTHER THINGS; TO AMEND SECTION 58‑9‑2510, AS AMENDED, RELATING TO DEFINITIONS CONCERNING TELEPHONE SERVICE FOR HEARING AND SPEECH IMPAIRED PEOPLE, SO AS TO REVISE THESE DEFINITIONS; TO AMEND SECTION 58‑9‑2530, AS AMENDED, RELATING TO THE OPERATING FUND FOR A SYSTEM OF DUAL PARTY RELAY DEVICES AND RELATED TELECOMMUNICATIONS DEVICES, SO AS TO IMPOSE CERTAIN RELATED SURCHARGES ON LOCAL EXCHANGE PROVIDERS, COMMERCIAL MOBILE RADIO SERVICE PROVIDERS, VOICE OVER INTERNET PROTOCOL SERVICE PROVIDERS, AND PREPAID WIRELESS SERVICE SALES, AND TO PROVIDE FOR THE REMITTANCE OF THESE FUNDS TO THE DEPARTMENT OF REVENUE FOR TRANSFER TO THE OPERATING FUND; AND TO REPEAL SECTION 58‑9‑2540 RELATING TO AN ADVISORY COMMITTEE TO MONITOR STATEWIDE TELECOMMUNICATIONS RELAY ACCESS SERVICE.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 21, Chapter 9, Title 58 of the 1976 Code is amended by adding:

“Section 58‑9‑2515. Nothing in this article expands, diminishes, or otherwise affects any existing jurisdiction of the commission over any local exchange provider, prepaid wireless provider, CMRS provider, or VoIP provider; or any services provided by any such provider.”

SECTION 2. Article 21, Chapter 9, Title 58 of the 1976 Code is amended by adding:

“Section 58‑9‑2535. (A) A local exchange provider must collect the dual party relay charge established in Section 58‑9‑2530(A) on each local exchange access facility. For bills rendered on or after the effective date of this act, for any individual local exchange access facility that is capable of simultaneously carrying multiple voice and data transmissions, a subscriber must be billed a number of dual party relay charges equal to:

(1) the number of outward voice transmission paths activated on such a facility in cases where the number of activated outward voice transmission paths can be modified by the subscriber only with the assistance of the service supplier; or

(2) five, where the number of activated outward voice transmission paths can be modified by the subscriber without the assistance of the service supplier. The total number of dual party relay charges is subject to a maximum of fifty such charges per account.

(a) A billed subscriber must be liable for any dual party relay charge imposed under this subsection until it has been paid to the local exchange provider. A local exchange provider has no obligation to take any legal action to enforce the collection of the dual party relay charges for which a subscriber is billed.

(b) Local exchange providers that collect dual party relay charges are entitled to retain two percent of the gross dual party relay charges remitted to the Office of Regulatory Staff as an administrative fee. Within forty‑five days of the end of the month during which such charges were collected, each local exchange provider shall file with the Office of Regulatory Staff, a return showing the total amount of dual party relay charges collected for the month and, at the same time, shall remit to the Office of Regulatory Staff the charges collected for that month less the administrative fee.

(c) Dual party relay charges imposed under this subsection must be added to the billing by the local exchange provider to its subscriber and may be stated separately.

(B) A CMRS provider must collect the dual party relay charge established in Section 58‑9‑2530(A) for each CMRS connection for which there is a mobile identification number containing an area code assigned to South Carolina by the North American Numbering Plan Administrator; however, trunks or service lines used to supply service to CMRS providers must not be subject to a dual party relay charge. Prepaid wireless telecommunications service is subject to subsection (D) and not to this subsection.

(1) A billed subscriber must be liable for any dual party relay charge imposed under this subsection until it has been paid to the CMRS provider. A CMRS provider has no obligation to take any legal action to enforce the collection of the dual party relay charges for which a subscriber is billed.

(2) CMRS providers that collect dual party relay charges are entitled to retain two percent of the gross dual party relay charges remitted to the department as an administrative fee. On or before the twentieth day of the second month succeeding each monthly collection of the dual party relay charges, every CMRS provider shall file with the department a return under oath, in a form prescribed by the department, showing the total amount of charges collected for the month and, at the same time, shall remit to the department the fees collected for that month. The department shall transfer all charges remitted to it to the operating fund.

(3) Dual party relay charges imposed under this subsection must be added to the billing by the CMRS provider to its subscriber and may be stated separately.

(C) A VoIP provider must collect the dual party relay charge established in Section 58‑9‑2530(A) on each VoIP service line. This dual party relay charge must be sourced at the service address in the case of fixed VoIP service, or in the same manner as CMRS is sourced pursuant to the Mobile Telecommunications Sourcing Act, Public Law 106‑252, codified at 4 U.S.C. Sections 116 through 126.

(1) A billed subscriber must be liable for any dual party relay charge imposed under this subsection until it has been paid to the VoIP provider. A VoIP provider has no obligation to take any legal action to enforce the collection of the dual party relay charges for which a subscriber is billed. For bills rendered on or after the effective date of this act, for any VoIP service line that is capable of simultaneously carrying multiple voice and data transmissions, a VoIP subscriber must be billed a number of dual party relay charges equal to:

(a) the number of outward voice transmission paths activated on such a VoIP service line in cases where the number of activated outward voice transmission paths can be modified by the subscriber only with the assistance of the VoIP provider; or

(b) five, where the number of activated outward voice transmission paths can be modified by the subscriber without the assistance of the VoIP provider. The total number of dual party relay charges is subject to a maximum of fifty such charges per account.

(2) VoIP providers that collect dual party relay charges are entitled to retain two percent of the gross dual party relay charges remitted to the department as an administrative fee. Within forty‑five days of the end of the month during which such charges were collected, each VoIP provider shall file with the department a return under oath, in a form prescribed by the department, showing the total amount of dual party relay charges collected for the month and, at the same time, shall remit to the department the charges collected for that month less the administrative fee. The department shall transfer all charges remitted to it to the operating fund.

(3) Dual party relay charges imposed under this subsection must be added to the billing by the VoIP provider to its subscriber and may be stated separately.

(D) A prepaid wireless seller must collect the dual party relay charge established in Section 58‑9‑2530(A) from a prepaid wireless consumer with respect to each prepaid wireless retail transaction occurring in this State. The amount of the dual party relay charge either must be separately stated on an invoice, receipt, or other similar document that is provided to the prepaid wireless consumer by the prepaid wireless seller; or otherwise disclosed to the prepaid wireless consumer.

(1) For the purposes of this subsection, a prepaid wireless retail transaction must be sourced as provided in Section 12‑36‑910(B)(5)(b).

(2) The dual party relay charge is the liability of the prepaid wireless consumer and not the prepaid wireless seller or of any prepaid wireless provider. However, the prepaid wireless seller is liable to remit to the department all dual party relay charges that the prepaid wireless seller collects from prepaid wireless consumers as provided in this subsection.

(3) A prepaid wireless seller is entitled to retain three percent of the gross dual party relay charges remitted to the department as an administrative fee. A prepaid wireless seller must remit the remainder of the dual party relay charges collected to the department on a monthly, quarterly, or annual basis. The department shall transfer all charges remitted to it to the operating fund.

(4) The audit and appeal procedures applicable pursuant to Chapter 36, Title 12 shall apply to the dual party relay charge.

(5) The department shall establish procedures by which a prepaid wireless seller may document that a sale is not a prepaid wireless retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions pursuant to Section 12‑36‑950.

(E) If a billed subscriber purchases a service that is both a CMRS service and a VoIP service, and there is a single active mobile telephone number or successor dialing protocol associated with the service, then only the CMRS dual party relay charges that are subject to subsection (B) shall apply to the service. Similarly, if an exchange access facility is also a VoIP service line, then only the dual party relay charges that are subject to subsection (A) shall apply to the service.

(F) For services for which a bill is rendered prior to the effective date of this act, no subscriber or consumer is liable to any person or entity for a different dual party relay charge than the consumer or subscriber has been billed, and no local exchange provider, CMRS provider, VoIP provider, prepaid wireless provider, or prepaid wireless seller is liable to any person or entity for billing, collecting, or remitting a different dual party relay charge than is required by this article, or both.

(G) Neither the State, any political subdivision of the State, nor an intergovernmental agency may require any service provider to impose, collect, or remit a tax, fee, surcharge, or other charge for dual party relay funding purposes other than the dual party relay charges set forth in this article.”

SECTION 3. Section 58‑9‑2510 of the 1976 Code, as last amended by Act 318 of 2006, is further amended to read:

“Section 58‑9‑2510. As used in this article:

(1) ‘CMRS connection’ means each mobile number assigned to a CMRS customer.

(2) ‘Commercial Mobile Radio Service’ (CMRS) means commercial mobile radio service under Sections 3(27) and 332(d), Federal Telecommunications Act of 1996, 47 U.S.C. Section 151, et seq., Federal Communications Commission Rules, and the Omnibus Budget Reconciliation Act of 1993. The term includes any wireless two‑way communication device, including radio‑telephone communications used in cellular telephone service, personal communication service, or the functional and/or competitive equivalent of a radio‑telephone communications line used in cellular telephone service, a personal communication service, or a network radio access line. The term does not include services that do not provide access to 911 service, a communication channel suitable only for data transmission, a wireless roaming service or other nonlocal radio access line service, or a private telecommunications system.

(~~1~~3) ‘Commission’ means the Public Service Commission.

(~~2~~4) ‘Deaf person’ means an individual who is unable to hear and understand oral communication, with or without the assistance of amplification devices.

(5) ‘Department’ means the Department of Revenue.

(~~3~~6) ‘Dual party relay system’ or ‘DPR’ means a procedure in which a deaf, hearing, or speech impaired TDD user can communicate with an intermediary party, who then orally relays the first party’s message or request to a third party, or a procedure in which a party who is not deaf or hearing or speech impaired can communicate with an intermediary party who then relays the message or request to a TDD user.

(~~3.5~~7) ‘Dual sensory impaired person’ means an individual who is deaf/blind or has both a permanent hearing impairment and a permanent visual impairment.

(8) ‘Exchange access facility’ means the access from a particular telephone subscriber’s premises to the telephone system of a service supplier. Exchange access facilities include service supplier provided access lines, PBX trunks, and Centrex network access registers, all as defined by the South Carolina Public Service Commission. Exchange access facilities do not include service supplier owned and operated telephone pay station lines, or wide area telecommunications service (wats), foreign exchange (fx), or incoming lines.

(~~4~~9) ‘Hard of hearing person’ means an individual who has suffered a permanent hearing loss which is severe enough to necessitate the use of amplification devices to hear oral communication.

(~~5~~10) ‘Hearing impaired person’ means a person who is deaf or hard of hearing.

(11) ‘Local exchange provider’ means a local exchange telephone company operating in this State.

(~~6~~12) ‘Operating fund’ means the Dual Party Relay Service Operating Fund which is a specific fund to be created by the commission and established, invested, managed, and maintained for the exclusive purpose of implementing the provisions of this chapter according to commission regulations.

(13) ‘Prepaid wireless consumer’ means a person or entity that purchases prepaid wireless telecommunications service in a prepaid wireless retail transaction.

(14) ‘Prepaid wireless provider’ means a person or entity that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

(15) ‘Prepaid wireless retail transaction’ means the purchase of prepaid wireless telecommunications service from a prepaid wireless seller for any purpose other than resale.

(16) Prepaid wireless seller’ means a person or entity that sells prepaid wireless telecommunications service to another person or entity for any purpose other than resale.

(17) ‘Prepaid wireless telecommunications service’ means any commercial mobile radio service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in units or dollars which decline with use in a known amount.

~~(7)~~ ~~‘Regulatory staff’ means the executive director or the executive director and the employees of the Office of Regulatory Staff.~~

(~~8~~18) ‘Speech impaired person’ means an individual who has suffered a loss of oral communication ability which prohibits normal use of a standard telephone handset.

(19) ‘Subscriber’ means any person, company, corporation, business, association, or party not exempt from county or municipal taxes or utility franchise assessments who is provided telephone (local exchange access facility) service or CMRS service or VoIP service.

(~~9~~20) ‘Telecommunications device’ or ‘telecommunications device for the deaf, hearing, or speech impaired’ or ‘TDD’ or ‘TTY’ means a keyboard mechanism attached to or in place of a standard telephone by some coupling device used to transmit or receive signals through telephone lines.

(21) ‘Voice over Internet Protocol (VoIP) service’ means interconnected VoIP service as that term is defined in 47 C.F.R. Section 9.3 as may be amended.

(22) ‘Voice over Internet Protocol (VoIP) provider’ means a person or entity that provides VoIP service.

(23) ‘Voice over Internet Protocol (VoIP) subscriber’ means a person or entity that purchases VoIP service from a VoIP provider. (24) ‘Voice over Internet Protocol (VoIP) service line’ means a VoIP service that offers an active telephone number or successor dialing protocol assigned by a VoIP service provider to a customer that has outbound calling capability.”

SECTION 4. Section 58‑9‑2530(A) of the 1976 Code, as last amended by Act 318 of 2006, is further amended to read:

“(A) The commission may require ~~all local exchange telephone companies~~ each local exchange provider, CMRS provider, and VoIP provider operating in this State to impose a monthly dual party relay charge not to exceed ~~twenty‑five~~ ten cents ~~on all residential and business local exchange access facilities~~, and each prepaid wireless seller to impose a dual party relay charge of the same amount on each wireless retail transaction, as necessary to fund the establishment and operation of a dual party relay system and a distribution system of TTY’s and other related telecommunications devices in this State. The amount of the dual party relay charge must be determined by the commission based upon the amount of funding necessary to accomplish the purposes of this article and provide dual party telephone relay services on a continuous basis, and the amount of the charge must be uniform among all local exchange providers, CMRS providers, VoIP providers, and prepaid wireless sellers. ~~If assessed, the local exchange companies shall collect the charge from their customers and transfer the~~ All dual party relay charge monies collected and remitted to the department in accordance with Section 58‑9‑2535 must be transferred to the operating fund, which must be administered by the Office of Regulatory Staff. The dual party relay charge collected and remitted ~~by the local exchange companies~~ in accordance with this article is not subject to any tax, fee, or assessment, nor may it be considered revenue of ~~the~~ a local exchange ~~companies~~ provider, CMRS provider, VoIP provider, prepaid wireless provider, or prepaid wireless seller. The commission may provide for the funding of the dual party relay system through contributions from other sources. The fund must be established, invested, and managed for the exclusive purpose of implementing the provisions of this article according to regulations promulgated by the commission.”

SECTION 5. Section 58‑9‑2540 of the 1976 Code is repealed.

SECTION 6. This act takes effect January 1, 2015.

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