

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	
)	
Structure and Practices of the Video Relay)	CG Docket No. 10-51
Service Program)	

**Petition for Reconsideration of the Report and Order and Order, FCC 17-86,
On Behalf of the
Interstate Telecommunications Relay Service Advisory Council**

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4423 North Front Street
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September 21, 2017

Table of Contents

I. Introduction.....	1
II. Standard for Reconsideration.....	3
III. Additional Compensation May Be Warranted Subject To Certain Conditions In Order To Initiate The Pilot Of Skills Based Routing Of VRS Calls And To Gather Actual Experience And Data.	4
IV. The Timing Of The Enrollment Notification Deadline, The Commencement Of The Eight Month Trial Period And The Parameters For Collecting Cost Based Data For The Trial Need To Be Modified Upon Grant Of This Reconsideration Petition.	8
V. Conclusion	9

I. Introduction

Rolka Loube Associates LLC, as the appointed Interstate Telecommunications Relay Services (TRS) Fund Administrator, submits this Petition for Reconsideration on behalf of the Interstate TRS Advisory Council,¹ concerning the Federal Communications Commission's (FCC or Commission) Report and Order and Order released July 6, 2017 at FCC 17-86.² A summary of the Report and Order and Order and final rules was published in the Federal Register on August 22, 2017.³ Pursuant 47 C.F.R. Sections 1.429 and 1.4(b)(1), this Petition for Reconsideration is submitted within the thirty (30) day deadline following date of publication of the *VRS Compensation Rates Order* in the Federal Register.

This Petition seeks reconsideration of the commencement date and rates for the trial period of skills-based routing of calls pertaining to legal, medical, and technical computer support. This trial was first announced in the March 23, 2017 Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, and Order at FCC 17-26 (March 23, 2017 VRS Order). The Commission announced that there would be a voluntary eight-month trial that built upon a proposal submitted in 2015 by various VRS providers to offer these services. The providers were required to notify the FCC of their intention to participate in the trial by June 1, 2017.

¹ Pursuant to 47 C.F.R. Section 64.604(H), the FCC prescribes that the Interstate TRS Administrator shall convene a 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.

² *Structure and Practices of the Video Relay Service Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order, FCC 17-86, (rel. July 6, 2017) (*VRS Compensation Rates Order*).

³ FCC, *Structure and Practices of the Video Relay Services Program*, 82 FR 39673 (Aug. 22, 2017) (*VRS Final Rules Summary*).

Notably, the March 23, 2017 VRS Order did not fix specific rates for compensation for these services or any other VRS services for the upcoming year. The compensation rates for the upcoming year – including the skills based trial – were subject to notice and comment in the NPRM portion of the March 23, 2017 VRS Order. Nonetheless, the Commission did indicate that compensation for these skills based routed services would be the same as for any other VRS services. Even though the skills based routing of services for legal, medical and computer technical support were expected to be provided by specialist Communications Assistants, which the providers stated would be more expensive than generalist Communications Assistants, the FCC determined there was no specific evidentiary basis upon which to set a higher compensation rate for the skills based routed services.

While the final rates for the upcoming fiscal year were still under review by the FCC, the June 1, 2017 deadline for enrolling in the voluntary trial occurred. None of the TRS providers indicated their willingness to enroll in the trial, presumably because they did not yet know what the compensation rate would be for these services.

After receiving comments on the proposed rates, the Commission announced the compensation rates in the *VRS Compensation Rates Order* that pertained to the skills based routing of calls trial as well as to the compensation of all other calls.

During its recent meeting, the Interstate TRS Advisory Council discussed the status of the pilot of the skilled based routing of VRS calls, and adopted the following motion on September 16, 2017:

The Interstate TRS Council encourages the Commission to revisit the issue of compensation or other incentives for the three trials proposed in the VRS Order. In light of the fact that no providers have stepped forward to implement the trials, we recommend the eight-month trial period be extended to a later date and that compensation be offered at the 'Emergent Tier' rate to the participating providers.

The Interstate TRS Advisory Council (Council) is deeply concerned that the standard compensation rates for skills-based routing of calls are insufficient to cover the VRS providers' costs, and consequently, none of the providers were willing to voluntarily enroll in the pilot, particularly because the deadline for notifying the Commission was prior to the setting of the applicable compensation rates. The sequence of events did not lend themselves to an orderly process for activating the trial and the Council is concerned that the trial will never launch in the absence of further Commission action to clarify that the providers will be able to receive a compensable rate in exchange for undertaking the offering of these more sophisticated services to meet the needs of the TRS client population.

The Council's recommendation is also grounded in its discussion with the Interstate TRS administrator during the Council's September 2017 meetings. There, the Interstate TRS administrator reported that based on the actual financial results of the fund administration for July of 2017, there were fewer minutes reported and processed for reimbursement than were projected, and the Administrator believes that the Council's recommendation to set the rate of compensation for skills-based routing of calls at the Tier I emergent rate of \$5.29 per conversation minute can be implemented without causing an adverse financial impact on the TRS fund level or creating upward financial pressure on the fund size.

II. Standard for Reconsideration

Pursuant to Section 1.429 of the Commission's rules, any interested party may petition for reconsideration of a final action in a rulemaking proceeding.⁴ A petition for reconsideration must state with particularity the respects in which the petitioner believes the action taken should

⁴ 47 CFR § 1.429(a)

be changed.⁵ A Petition may be supported by important arguments that were previously raised but which the Commission may not have fully considered.⁶ Reconsideration is appropriate where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to respond.⁷

As will be explained in detail herein, there are two important factual developments that have occurred since the FCC's issuance of the *VRS Compensation Rates Order*. First, despite offering a pilot period for skill based routing of VRS calls, no provider has opted to participate. Second, based on the July 2017 operation of the TRS fund, the actual monthly demand was sufficiently below the projected level for the month that the cumulative impact on the fund's cash requirements is not expected to require a modification of the authorized contribution factor should the Commission accept the Council's recommendations set forth in this Petition for Reconsideration.

III. Additional Compensation May Be Warranted Subject To Certain Conditions In Order To Initiate The Pilot Of Skills Based Routing Of VRS Calls And To Gather Actual Experience And Data.

When the FCC announced a voluntary trial of skills-based routing of VRS calls pertaining to legal, medical, and technical computer support in March, they noted that the proposal was first raised in the *2015 VRS NPRM* and that four of the then existing VRS providers

⁵ 47 CFR § 1.429(c)

⁶ See, e.g., In re Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, *Order on Reconsideration*, MB Docket No. 13-236, FCC 17-40 (Rel. April 21, 2017) at ¶17.

⁷ *Id.* at N. 56 citing *Petition for Reconsideration by Acadiana Cellular General Partnership*, *Order on Reconsideration*, 20 FCC Rcd 8660, 8663, para. 8 (2006); *Universal Serv. Contribution Methodology Fed.-State Joint Bd. on Universal Serv. Glob. Conference Partners, A+ Conference Ltd., Free Conferencing Corp., & the Conference Grp.*, 27 FCC Rcd 898, 901 (2012), *rev. dismissed in part and denied in part*, *Conference Grp., LLC v. FCC*, 720 F.3d 957, 958 (D.C. Cir. 2013) ("Reconsideration of a Commission's decision may be appropriate when the petitioner demonstrates that the original order contains a material error or omission, or raises additional facts that were not known or did not exist until after the petitioner's last opportunity to present such matters. If a petition simply repeats arguments that were previously considered and rejected in the proceeding, the Commission may deny them for the reasons already provided.").

had supported a trial of skills-based routing.⁸ The pilot was intended to expand the quality of service to meet the needs of VRS clients. Given the previous expression of interest in this area by the providers, it may have been reasonable to assume that the providers would voluntarily enroll in the pilot. The Commission also stated that the eight month trial period was expected to be sufficient to gather data on the costs and benefits of skills-based routing, and to enable the Commission to develop informed rules and policies governing this feature if it is later authorized on a permanent basis.

Despite the providers being requested to notify the FCC of their intention to participate in the trial by June 1, 2017, not one provider indicated their willingness to participate in the trial. This unfortunate situation likely was due to the FCC's unwillingness to allow providers to receive any additional compensation for these services. Due to the providers' inability to forecast and document their potential increased costs, the FCC found that the agency was unable to assess whether their compensation is justifiable in relation to the potential benefits of this feature.⁹

Compounding this uncertainty of cost reimbursement was the fact that the VRS compensation rates for the upcoming fiscal year – the same time period that the skills-based routing trial would occur – had not yet been finalized. This step occurred with the issuance of the *VRS Compensation Rates Order* in July.

The Council believes that it may be appropriate and necessary to provide some additional compensation to the providers for skills-based routing of calls during the trial period in order to launch the trial and to gather the necessary cost data. This is a classic “chicken and egg”

⁸ *Structure and Practices of the Video Relay Service Program, Further Notice of Proposed Rulemaking*, 30 FCC Rcd 12973, 12986-97, paras. 29-66 (2015) (2015 VRS FNPRM); VRS Order at ¶4.

⁹ VRS Order at ¶9.

dilemma. It is uncontroverted that the specialized training of Communications Assistants for legal, medical and computer technical support will cause the providers to incur additional costs but the level of those costs is not yet known with certainty. Without providing any indication that the additional costs will be compensated, the TRS providers are unwilling to engage in the pilot. The Council understands this concern and at the same time understands the FCC's concern that these additional costs must be quantified and evaluated as reasonable before the costs may be authorized to be reimbursed.

To balance these concerns in a fiscally responsible manner and also to meet the needs of TRS clients, the Council urges the Commission to allow all providers to be compensated at the emergent rate of \$5.29 per conversation minute during the trial, subject to the providers' submission of actual cost data during the trial period. Further, the providers must provide a design plan to ensure that the minutes for skills based routing are segregated from their regular conversation minutes and therefore will be the only minutes eligible for the higher compensation rate of \$5.29 per conversation minute.

Using the Emergent price of \$5.29 per conversation minute for the skilled based routing of calls trial can be incorporated into the existing VRS Compensation Rate Plan for the present fiscal year, which covers the same time period as the anticipated trial of skilled based routing of calls without requiring an adjustment to the TRS contribution factor.

There were five certified VRS service providers at the time of the Commission Order regarding a skills based routing pilot program. Two of the providers offer services at a monthly projected level which qualifies them as "Emergent" service providers and thus will be reimbursed at the "Emergent" per minute rate of \$5.29 if they choose to participate in the pilot.

The provision of skills based routing by the two service providers already operating at the “Emergent” rate will have no financial impact on the TRS Fund.

One of the providers offers service at a projected monthly level which qualifies them for reimbursement at the Tier I level. The difference between the “Emergent” rate and the Tier I rate is \$0.47 per minute. Based on the projected level of service by this provider for the eight-month period November 2017 through June 2018 the additional funding required per 1% of demand provided via skills based interpreters would increase the fund requirements by approximately \$25,555.

One of the other providers offers service at a projected monthly level which qualifies them for reimbursement at the Tier II level. The difference between the Tier II rate and the “Emergent” rate is \$1.32 per minute. Based on the projected level of service by this provider for the eight-month period November 2017 through June 2018 the additional funding required per 1% of demand provided via skills based interpreters would increase the fund requirements by approximately \$127,535.

One of the providers offers service at a projected monthly level which qualifies them for reimbursement at the Tier III level. The difference between the Tier III rate and the “Emergent” rate is \$2.08 per minute. Based on the projected level of service by this provider for the eight-month period November 2017 through June 2018 the additional funding required per 1% of demand provided via skills based interpreters would increase the fund requirements by approximately \$1,435,522.

The diversion of one percent (1%) of each provider's demand to skills-based services, would amount to approximately 871,000 minutes of service during an eight-month pilot period. The financial impact on the Interstate TRS fund would be approximately \$1,558,613. This level of demand is readily within the margin of error associated with the VRS demand projections of the providers. For example, the reported demand for the month of July 2017 was approximately 770,000 minutes below the projected level for the month. Implementation of this recommendation does not require any financial adjustment to the authorized contribution factor for the July 2017 through June 2018 period.

Both of these considerations raised in this Petition were not available for the Commission to take into account when setting the compensation rate for the calls that would be handled as part of the pilot for skills based routing of calls. First, it was not known at that time that no existing TRS provider would volunteer to participate in the trial. Second, it was not known at that time that the actual number of conversation minutes submitted for reimbursement would be approximately 770,000 minutes lower than the projected amounts, thereby providing the source of funds already included in the contribution rate calculation to cover the additional cost of compensating the calls placed with skills based routing at the Emergent rate of \$5.29 per conversation minute.

IV. The Timing Of The Enrollment Notification Deadline, The Commencement Of The Eight Month Trial Period And The Parameters For Collecting Cost Based Data For The Trial Need To Be Modified Upon Grant Of This Reconsideration Petition.

The Council is hopeful that the FCC will agree with the merits of this Petition for Reconsideration. In that event, the Council recommends that the Commission establish new abbreviated deadlines for the providers to notify the Commission of their intention to participate in the trial, and to commence the trial as quickly as possible. The FCC should direct the TRS

Administrator to develop procedures to review the cost data submitted by the participating providers regarding the costs of skills-based routing of calls for legal, medical and computer technical support and to provide a report of this information to the Commission for future consideration. Further, the FCC should direct the TRS Administrator to include in its monthly reports to the FCC the levels of participation in the trials by skill and by participating service provider, to ensure that the trials do not materially adversely impact the Fund. In the event that the trial is extended into the next fund year, the Administrator can identify these costs in the calculation of the annual projected contribution rate that is required to be submitted in the spring of 2018.

V. Conclusion

On behalf of the Interstate TRS Advisory Council, this Petition for Reconsideration is respectfully submitted and the Commission is requested to issue an Order adopting the recommendations set forth herein and granting reconsideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Rolka", is written over a horizontal line.

David W. Rolka, President

Rolka Loube LLC

Interstate TRS Fund Administrator

Submitted on behalf of the Interstate TRS Advisory Council

September 21, 2017