

**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)	
)	
Petition for a Notice of Proposed Rulemaking)	RM - _____
To Revise the Interstate TRS Fund)	
Contribution Methodology)	

To: The Commission

PETITION FOR A NOTICE OF PROPOSED RULEMAKING

INTRODUCTION

Pursuant to Section 1.401 of the Commission's rules,¹ IDT Telecom, Inc. and its subsidiaries and affiliates (collectively "IDT"), hereby request that the Commission issue a Notice of Proposed Rulemaking ("NPRM") to review and revise certain policies that: (1) serve as the basis for compensating relay service providers from the Interstate Telecommunications Relay Service ("TRS") Fund; and (2) secure mandatory contributions to the Interstate TRS Fund from telecommunications and interconnected VOIP providers. Specifically, the Commission should review and revise existing policies that allow for the recovery of intrastate Internet-based relay services from the Interstate TRS Fund. The NPRM should address the reasoning

¹ 47 CFR § 1.401.

behind the policies that have allowed for such funding and the goal of the NPRM should be as follows:

1. Implement a cost recovery (and contribution) methodology consistent with 47 USC § 225: such methodology must ensure that costs caused by intrastate Internet-based TRS are recovered from the intrastate jurisdiction; and
2. Remove the exception for VRS set forth in 47 CFR §64.604(c)(5)(ii) as being inconsistent with 47 USC § 225.

Additionally, the NPRM should address whether it is permissible under 47 CFR §64.604(c)(5)(i) to fail to separate all calls properly compensable from the Interstate TRS Fund (*i.e.*, interstate and international) for the purpose of compensation by the corresponding jurisdiction. The goal of the NPRM should be to recover the cost of each jurisdiction's calls from the corresponding jurisdiction, *i.e.*, interstate relay services should be recovered from the interstate jurisdiction and international relay services should be recovered from the international jurisdiction.

BACKGROUND

IDT provides intrastate, interstate and international telecommunications and interconnected VOIP services. IDT files a FCC Form 499-A and its filing contains revenue on Line 514(b) of the FCC Form 499-A. Support for the Interstate TRS Fund is calculated based on revenue reported by telecommunications and interconnected VOIP providers on the FCC Form 499-A Line 514(b).² Line 514(b) contains interstate and international revenue; it does not contain intrastate revenue. Accordingly, IDT contributes to the Interstate TRS Fund based on its interstate and international revenue as reported on Line 514(b) of its FCC Form 499-A.

² Line 514(b) represents the total interstate and international revenue reported on Lines 403 through 417 plus Line 418.4 less Line 511 less uncollectible revenue/bad debt expense associated with TRS contribution base amounts shown on Line 512.

SUMMARY

By this filing, IDT requests that the Commission issue a NPRM. The purpose of the NPRM is to address and, ultimately, revise the policies underlying jurisdictional separations (or lack thereof) for intrastate Internet-based relay services and the contribution methodology used to support such services. Specifically, IDT requests that the NPRM address whether it is lawful to retain the current methodology, which allows providers of intrastate Internet-based relay services to be compensated from the Interstate TRS Fund. And, if the Commission concludes that it is not lawful and/or appropriate for the Interstate TRS Fund to do support intrastate services, IDT requests that the NPRM be used to adopt rules/policies that implement a methodology that removes the costs of intrastate Internet-based relay services from the Interstate TRS Fund and revise the contribution methodology accordingly. Such a revision would ensure that: (1) intrastate Internet-based relay services remain available to users; (2) providers of intrastate Internet-based relay services are properly and lawfully compensated for their services; and (3) that intrastate Internet-based relay services are funded from the intrastate jurisdiction. A second, but no less compelling goal of the NPRM should be to tie recovery of compensable interstate and international relay service calls to the corresponding jurisdiction. Such a policy change will, IDT asserts, ensure that international service providers are not unjustly and unreasonably burdened with funding domestic, interstate relay services.

DISCUSSION

In 2000, the Commission issued an Order approving the compensation of all (including intrastate) VRS calls from the Interstate TRS Fund.³ In doing so, the Commission noted:

*During the development of this new relay service, we will permit recovery of costs associated with both intrastate and interstate calls from the interstate TRS Fund.*⁴

The Commission went on to state

The statute permits this action. Section 225(d)(3) states that the Commission's regulations "shall *generally provide* that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction (emphasis added)." We believe the word "generally" gives to the Commission some discretion to fund intrastate service from the interstate jurisdiction. We believe that our action, *intended as an interim arrangement*, is an appropriate exercise of this discretion. First, VRI is necessary to provide many people with disabilities relay service that is functionally equivalent to voice communications. Second, this action is consistent with our statutory mandate to encourage the use of existing technology and not to discourage or impair the development of improved technology in the delivery of relay services. Third, it allows us to assess demand and let market forces determine the technologies of choice for delivery of VRI, while not depriving any consumer who is willing to invest in new technologies the ability to make any call, not just an interstate call. We believe that this *temporary cost recovery scheme* will help to ensure that any consumer who has invested in the necessary video equipment and broadband services will be able to use VRI to call his own doctor locally, as well as make long distance calls that may not be as critical to his well-being.

This funding scheme is a *temporary arrangement*. When VRI develops to the point where it can be required, as we expect it will, *we intend to revert to the traditional cost recovery mechanism*. We will not establish a particular date for that transition. Instead, we will continue to assess the availability of the service and its technological

³ *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, paras. 21-27 (Mar. 6, 2000).

⁴ *Id.* at para 24 (Italics added.)

development and determine at some point in the future when it best can be funded in the traditional manner.⁵

In a subsequent Declaratory Ruling, the FCC noted of VRS [VRI]: “Because the leg of the call between the person with a hearing disability and the CA uses the Internet, and not the PSTN, VRS providers cannot automatically determine the geographic location of that party to the call.”⁶

Subsequent to the previously-cited Order, discussing the breadth of Section 225, the FCC acknowledged a seemingly less expansive view, namely that “[47 U.S.C. 225(d)(3)(B)] provides that the ‘costs caused by’ the provision of *interstate* TRS ‘shall be recovered from all subscribers for every interstate service,’ and the ‘costs caused by’ the provision of *intrastate* TRS ‘shall be recovered from the intrastate jurisdiction.’”⁷

In 2002, the Commission issued a Declaratory Ruling approving the compensation of all (including intrastate) IP Relay calls from the interstate TRS Fund.⁸ In doing so, the Commission noted that “Because there is currently no automatic means for determining whether a call made via IP Relay is intrastate or interstate, we authorize, on an *interim* basis, recovery of all costs of providing IP Relay from the Interstate TRS Fund.”⁹

⁵ Id at paras. 26-27 (internal footnotes omitted)(Italics added except where so noted.)

⁶ *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service*, CG Docket No. 03-123, Declaratory Ruling, FCC 06-182 at para. 5 (January 11, 2007)(“TRS Declaratory Ruling”).

⁷ *In the Matter of Contributions to the Telecommunications Relay Service Fund*, CG Docket No. 11-47, Declaratory Ruling, FCC 11-38 at Para 5 (footnote omitted)(March 3, 2011).

⁸ *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for Clarification of WorldCom, Inc.*, CG Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, FCC 02-121 at para 20 (April 22, 2002).

⁹ Id. at para 1 (Italics added.)

In 2007, the Commission issued a Declaratory Ruling approving the compensation of all (including intrastate) IP CTS calls from the interstate TRS Fund *“until such time as the Commission adopts jurisdictional separation of costs for this service.”*¹⁰

To the best of IDT’s knowledge, relay service providers continue to be compensated from the Interstate TRS Fund for all (including intrastate) calls from each of these services (*“Services that are currently compensated from the TRS Fund include ... both intrastate and interstate video relay service (VRS), Internet Protocol (IP) Relay service, and Internet Protocol Captioned Telephone Service (IP CTS).”*¹¹

As a matter of principal, IDT disagrees that the language of Section 225 allows the Commission to conclude that a relay service that clearly engages in the provision of intrastate service can be funded without any effort to account for the intrastate component of the service. But since this is a position the Commission has taken (with varying levels of conviction), we believe it is appropriate for the Commission and the industry to opine on the lawfulness (and potential limitations) of such an approach. And the appropriate forum for such an analysis is a NPRM.

In conducting such an analysis, IDT believes the Commission should examine its previously-stated explanations for how Section 225 can be read to authorize funding intrastate relay services. For example, if an Internet-based relay service is not “required,” may providers

¹⁰ TRS Declaratory Ruling at para. 1 (Italics added.)

¹¹ “Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate” filed by Rolka Loube Saltzer Associates LLC in *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51 at page 5 (May 1, 2014).

be reimbursed for intrastate minutes from the Interstate TRS Fund indefinitely? If an intrastate Internet-based relay service does not have an “automatic means” of determining jurisdiction, may providers of such services be reimbursed from the Interstate TRS Fund indefinitely?

IDT does not believe that if an intrastate Internet-based relay service is not “required,” or if there is no “automatic means” of determining jurisdiction the Commission can use the Interstate TRS Fund to compensate providers of intrastate services, particularly when the Commission makes no effort to account for intrastate calls and remove their compensation from the Interstate TRS Fund. (Indeed, IDT is not even certain what an “automatic means” is and whether, given the data relay service providers must submit to the TRS Fund Administrator ensure compensation, there is *not*, in fact, an “automatic means” to determine jurisdiction.) And while the Commission and/or members of the industry may disagree with IDT’s position, we believe it is prudent and necessary that a NPRM ask questions about when, if ever, it is permissible that existing (and new) relay services be allowed to be fully funded through interstate and international revenues when the service is clearly (even if to an unknown degree) intrastate.

Moreover, given the Commission’s extension of the term “interim”¹² (in support of recovery for intrastate VRS) for a decade or more, we believe it is appropriate for the Commission to raise the issue in the NPRM of how long (if ever) a new relay service should be allowed to be funded on an “interim” basis through interstate revenues when the service is clearly (even if to an unknown degree), intrastate.

¹² Webster’s Online Dictionary defines “interim” as “used or accepted for a limited time: not permanent.” See, <http://www.merriam-webster.com/dictionary/interim> (last viewed October 8, 2014.)

In the budget for the current Interstate TRS Fund year, Internet-based relay services represent hundreds of millions of dollars. Additionally, there are millions of dollars of non-service-related components within the TRS Fund budget that are directly and indirectly tied to the provision of Internet-based relay services. These components include, but are not limited to, the Interstate TRS Fund budgetary reserve. Absent data (which, to the best of IDT's knowledge, is not publicly available), it is unclear what percentage of this several hundred-million dollars is apportioned to the compensation of intrastate Internet-based relay services. But upon information and belief, IDT asserts that a jurisdictional analysis of Internet-based relay services will reveal that a large portion of the compensation for these services is intrastate in nature. Thus, it would appear likely that the outcome of such an analysis could have a significant impact on the contributions made to the Interstate TRS Fund – particularly by carriers whose revenue is primarily interstate and international.

IDT contends that the FCC is compelled to address the aforementioned deficiency (the funding of intrastate Internet-based relay services from interstate services) immediately: failure to do so will compel IDT and other like-minded carriers (those whose revenue is based largely (if not exclusively) on the provision of interstate and international services) to seek redress in the courts. Such redress will include, and not be limited to, a stay of payments due for the remainder of the funding year and subsequent years until the deficiency is eliminated.

In order to address the present interpretation of the FCC's mandate regarding Section 225 and its corresponding rules and implement a methodology that ensures that interstate and international revenue funds only interstate and international Internet-based relay services, the

Commission must determine what portion of the Interstate TRS Fund budget (for usage and a corresponding portion of non-usage administrative costs) applies to intrastate Internet-based relay services and it must eliminate that amount from the Fund's budget. In accordance with Section 225, the intrastate portion must be recovered from the intrastate jurisdiction.

IDT believes that the providers of Internet-based relay services are in the best position of providing data regarding the jurisdictional nature of the services provided and that the providers should be directed to provide studies regarding the jurisdiction of their compensated Internet-based relay service minutes.¹³ In the event the providers are unwilling or unable to provide jurisdictional information, the Commission may find it appropriate to allow providers of Internet-based relay services to be compensated based on a proxy. The Commission has used proxies to establish contributions to the Universal Service Fund for interconnected VOIP and wireless revenue. The NPRM could examine whether proxies are necessary and, if so, how they should be determined. Additionally, a NPRM could examine whether it is appropriate to set proxies at a rate designed to encourage relay providers to submit data for compensation.

The NPRM should address the date upon which (subject to a finding that the present apportionment of intrastate Internet-based relay services to the intrastate jurisdiction is impermissible) changes to the Interstate TRS Fund calculation methodology would be implemented. The Commission should consider retroactive application to the current funding year or ensure that, at the latest, the changes are implemented in the coming funding year. IDT is aware of the impact intrastate relay service funding and it is not IDT's goal to harm users of

¹³ Indeed, the call data requirements set forth in 47 CFR § 64.604(c)(ii)(D)(2)(i)-(x) would seem to indicate relay service providers can determine the jurisdiction of all compensated calls, regardless of whether the service is provided over the Internet.

intrastate Internet-based relay services or limit the compensation rightfully owed to the providers of intrastate Internet-based relay services. However, unless the FCC concludes that its present policies are consistent with the mandate under Section 255 (and such a finding would most assuredly subject the Commission to legal challenge), the Commission would be compelled to move quickly. Indeed, quickly releasing a NPRM and subsequently adopting rules or policy changes to address the existing methodological infirmities are prudent and necessary.

IDT also recommends that, as part of the NPRM released by the FCC to address the previously-described intrastate Internet-based relay service issue, the FCC should address another inadequacy in the Interstate TRS Fund calculation methodology. These deficiencies have been previously presented to the Commission¹⁴ and the issues presented and arguments made in the Ad Hoc Application are incorporated herein.

Upon information and belief, it is the position of IDT that *all* relay services compensated from the Interstate TRS Fund are fundamentally domestic services, yet the Commission relies to a grossly disproportionate degree (relative to international relay service usage) on supporting the interstate relay services from the international jurisdiction. IDT recommends that, included within the NPRM and as part of its data collection from Internet-based relay service providers, the FCC should seek a broader set of data from *all* compensated relay services providers to determine the number of international compensated minutes (and corresponding compensation) for each service. If, as IDT believes will be demonstrated, the data indicates that

¹⁴ Application for Review by the Ad Hoc Coalition of International Telecommunications Companies, In the Matter of Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123; Structure and Practices of the Video Relay Service System, CG Docket No. 10-21 (July 30, 2014)(“Ad Hoc Application”)

international revenue supports a portion of the Interstate TRS Fund that is disproportionate to the costs incurred by the provision of international relay services, the Commission should address whether it is unjust and unreasonable and/or impermissible under 47 CFR §64.604(c)(5)(i) to have international providers supporting relay services which are fundamentally domestic.

If the Commission were to find this to be the case, or whether the Commission simply concluded that as a matter of policy international revenue should not be used to fund domestic relay services, the NPRM should address whether the Commission should institute a bifurcated funding methodology. Pursuant to this methodology, contributors' revenue would be subject to two different TRS Fund contribution factors: (1) a TRS contribution factor based on contributors' applicable interstate revenue, which would support the costs incurred providing (and administering the provision of) interstate relay services; and (2) a TRS contribution factor based on contributors' applicable international revenue, which would support the costs incurred providing (and administering the provision of) international relay services. The cost of relay services and administrative expenses that, for whatever reason, cannot be apportioned by known jurisdiction would be proportionately apportioned based on known jurisdictional data.

CONCLUSION

The Commission's efforts to make new and innovative relay services available are admirable. But in doing so, the Commission has lost sight of its statutory obligation: to ensure that "costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction."¹⁵ The Commission's efforts to make new and innovative relay services available need not be constrained by its statutory mandate. These efforts simply need to be implemented in a way that adheres to rules that have, in past efforts to fast-track implementation, been set aside and then set further aside as time has passed. But as the cost of funding Internet-relay services has increased, it is neither just nor reasonable nor permissible for the interstate and international jurisdictions to bear the burden of funding the intrastate jurisdiction. For these reasons, IDT respectfully requests that the Commission release a NPRM to address and resolve the issues raised in this Petition.

Respectfully submitted,

IDT Telecom, Inc.

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¹⁵ 47 USC 225(d)(3)(B).