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

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

JOINT PROPOSAL OF ALL SIX VRS PROVIDERS FOR IMPROVING FUNCTIONAL EQUIVALENCE AND STABILIZING RATES

In light of the D.C. Circuit's decision vacating the increased speed-of-answer rules and remanding to the Commission to consider the effect that an enhanced speed-of-answer requirement will have on providers costs,[1] all six providers of Video Relay Service ("VRS") have developed a proposal to lower the speed-of-answer requirement while ensuring that rates remain at levels sufficient to support functionally equivalent VRS. Specifically, providers propose to: (1) require providers to meet a faster service-level requirement so that 80 percent of calls must be answered within 45 seconds, measured monthly and (2) keep compensation rates at the current levels in effect during the first half of 2015. The providers also propose a number of reforms designed to enhance the functional equivalence of VRS. Specifically, the providers propose that the Commission (3) conduct a trial during which providers may offer skills-based routing in order to collect data about the cost and feasibility of offering that service; and (4) encourage providers to offer deaf interpreters. In addition, while independent of this proposal, the providers intend to work with the Commission's Disability Advisory Committee ("DAC") to resolve any interoperability issues remaining after the providers' recent joint efforts to ensure complete interoperability. The providers also intend to work through the DAC to study the effects on video interpreters of the rate decreases that have occurred and the value-added services that providers propose to implement, and they support regulatory change to ensure that interpreters do not bear additional burdens. Specifically, the providers urge that the Commission, concurrent with adopting the proposals in this joint proposal, prohibit providers from increasing the provider-specific key performance standards that interpreters must meet.

[1] *Sorenson Communications, Inc. v. FCC*, 765 F.3d 37 (D.C. Cir. 2014).

This proposal consists of a unified package of reform proposals. Various parts of the proposal are mutually interdependent, and in particular, none of the options are feasible without an immediate stabilization of the rate. Rates are scheduled to continue to decrease every six months until 2017, and providers cannot maintain the same level of service, much less adopt new value-added features and improve service levels such as speed-of-answer, offer skills-based routing, and deaf interpreters, if the rate decreases continue. In addition, it is important to note that the Commission had planned to have a "neutral platform" in place in the relatively near future, but canceled the request for proposals (RFP) to develop and operate the platform, apparently because the bids were higher than expected. Providers believe that the Commission intended to revisit the rate reductions slated to occur toward the end of the rate schedule adopted in June 2013 once the neutral platform was in place. The cancellation of the RFP for its development is a reason to maintain rates at their current level in the near term.

I. Speed-of-Answer

For consumers, functional equivalence requires that they be able to place VRS calls instantly, as a hearing user can. At the same time, as consumers have also recognized, speed-of-answer requirements must be realistic and policies must be tailored to ensure adequate funding and protocols exist to improve—not deteriorate—services. In addition, unrealistic speed-of-answer requirements create an unreasonably stressful work environment for interpreters, which increases interpreter turnover, decreases the already limited supply of interpreters who are willing to work in VRS, and lowers the quality of interpreting and consumer experience.

In September 2014, the D.C. Circuit vacated the Commission's recently adopted speed-of-answer requirements and remanded to the FCC with instructions to consider the effect of any new requirement on the cost of providing service and rates. On remand, the Commission should recognize that it is impossible to meet more stringent speed-of-answer requirements if rates are not commensurate with the requirement. Moreover, the Commission must recognize that a daily measurement period and an all-or-nothing penalty can actually be counterproductive because providers are subject to random variation in demand that cannot reasonably be anticipated—which incentives providers to overstaff at unsustainable levels to avoid penalties and to reduce staffing (thereby reducing costs for which they will not be compensated) if it nevertheless becomes apparent that they will miss the speed-of-answer requirement for a day. That is the exact opposite of what should happen—which is that providers should continue to attempt to answer calls within 45 seconds. In light of these concerns, providers propose the following:

- The FCC should require 80 percent of calls to be answered within 45 seconds, measured monthly. Note that this is a service-level requirement—not an "average" speed-of-answer.

Rationale: This proposal lowers the speed-of-answer requirement from the current 120 seconds to 45 seconds, providing a major improvement in mandatory minimum service levels. The use of a monthly period mitigates fluctuations that could result from periods of extended power or Internet outages, weather problems, and erratic demand patterns (spikes). The daily-measurement proposal did not account for these fluctuations and was, as the National Association of the Deaf has explained, "counter-productive."[2] This proposal would also reduce stress on Video Interpreters.

- The sanction for missing the speed-of-answer in a given month should be the percentage of the provider's total VRS billings for the month that corresponds to the percentage by which the provider fell short of 80% within 45 seconds in that month. So if a provider answered 78% of calls within 45 seconds in a month, the provider would lose 2% of its VRS billings for that month.

  Rationale: This proposal is designed to avoid the harsh "all-or-nothing" penalty that would deny compensation for a whole month even with small misses in the percentage of calls answered in 45 seconds or less. This approach ensures that a provider has an incentive to keep providing service with a speed-of-answer of 45 seconds or less even if it will "miss" the benchmark when measured across the entire month-long measurement period. With this structure, a provider that substantially pared back operations would be hurting itself. This avoids the potential problem of cascading shutdowns, which could overstress other providers and reduce overall VRS capacity. The proposal is simple and implementable, based on existing data the TRS Administrator already collects.

- In calculating speed-of-answer, the FCC should exempt calls for specific extraordinary events beyond a provider's control—including denial-of-service attacks, Internet outages not under the VRS provider's control, periods of declared national or state emergencies covering more than 10% of a provider's interpreting capacity, or delays caused by the TRS-User Registration Database TRS-URD of more than 1 second. A provider would notify the TRS administrator at the time it submitted its MOUs as to whether any such conditions existed and the range of calls that should be excluded from the SOA.

  Rationale: This takes into account "Acts of God" and extraordinary events beyond a VRS provider's control around which a provider cannot reasonably be expected to plan.

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[2] National Association of the Deaf, Position Statement on Functionally Equivalent Telecommunications for Deaf and Hard of Hearing People, *at* http://nad.org/position-statement-functionally-equivalent-telecommunications-deaf-and-hard-hearing-people.

- The FCC should permit providers to petition for a waiver for a given month in other extraordinary circumstances. Rolka Loube would review a petition for waiver and recommend, within 30 days, whether the Commission should grant or deny the waiver. The Commission would act on Rolka Loube's recommendation within 30 days. This will ensure that petitions are resolved within 60 days of filing. The only amount that would be withheld pending adjudication of the waiver would be the difference between the percentage of calls actually answered in 45 seconds or less, and 80%.

  Rationale: Providers should not be penalized for unavoidable outages beyond their control. Although this should be rare, it is important that payment determinations be made promptly.

- To enable providers to achieve further functional equivalence, the FCC should, in the future, consider adopting an incentive-based system in which providers who meet stricter speed-of-answer thresholds receive additional compensation in order to meet the increased costs of providing faster service.

  Rationale: Providers cannot meet stricter speed-of-answer standards without additional compensation.

II. Skills-Based Routing

Certain types of VRS calls—for example, legal, medical, and technical-support calls—involve discussions of highly specialized topics that may not be familiar to the typical generalist VRS interpreter. In those situations, callers can greatly benefit from an interpreter with specialized knowledge of the relevant field. The FCC, however, has prohibited skills-based routing because of fears that it could incentivize users to substitute VRS for in-person interpreting and because of questions about how it would be implemented. The National Association of the Deaf recently called on the FCC to permit skills-based routing, and VRS providers believe that they can offer a workable solution that does not lead to the fraudulent use of VRS for in-person interpreting. Accordingly, the providers propose that the Commission should conduct a trial of skills-based routing. Beginning four months following the issuance of an order stabilizing rates (as described in Part IV below), the Commission should permit providers to offer skills-based routing. Over the next eight months, providers would collect data regarding the cost and feasibility offering this service, and the Commission would have the opportunity to gain experience enabling it better to determine what, if any, additional rules are necessary to ensure that skills-based routing is available but is not abused. At the end of the trial period, providers would present data and invite the consumer groups and RID to present their views on the service. Accordingly:

- Beginning 4 months from the issuance of an order stabilizing rates, the FCC should conduct an 8-month trial of skills-based routing. During this period, providers would be permitted, but not required, to offer skills-based routing.

  Rationale: Doing so will allow providers and the Commission to collect data about the cost and feasibility of offering this service. It would also give the Commission the opportunity to gain experience with this service and determine what rules, if any, are necessary to ensure that the service is not abused. In order to prevent misuse, providers commit to monitor, as they already do, for fraud and abuse—and particularly to discontinue calls in which it is apparent that both the caller and called parties are in the same room.

- The FCC should permit providers to offer skills-based routing on a competitive basis and not limit the subset of specialization that providers can offer during the trial period.

  Rationale: Permitting a limited number of skills during the trial period would prevent consumers, interpreters, and providers from gaining insights thus limiting data collection, identifying the best practices of skills-based routing. At the end of the trial period, the Commission can consider whether to limit skills-based routing to specific areas or allow to skills-based routing on a competitive basis.

- The FCC should exclude skills-based-routed calls from calculation of speed-of-answer compliance. However, providers should still collect and report speed-of-answer data for these calls.

  Rationale: The number of interpreters with special skills is necessarily smaller than the entire number of interpreters, which means that it may take longer to connect a call requiring a special skill to an interpreter with that skill. Including skills-based routing in the speed-of-answer calculation could discourage VRS providers from offering skills-based routing because that could cause them not to meet the speed-of-answer requirement. Users for whom call-processing speed is particularly important can opt to place calls through the general queue after being made aware of the anticipated wait to reach a specialized interpreter.

- The FCC should treat Spanish-language interpreting as a form of skills-based routing that is not subject to the general speed-of-answer rule.

  Rationale: Spanish-language interpreting is a specialized skill for which there is a limited number of interpreters. Including Spanish-language calls in the standard speed-

of-answer calculations disincentivizes the provision of Spanish-language service. This would also create a uniform way to address all non-English/ASL interpreting on a prospective basis.

- The "sequential call rule" should be waived for successive calls not requiring the interpreter with the specialized skill. In the event that the VRS user desires to place additional calls that a generalist interpreter call can handle (*e.g.*, ordering pizza) those sequential calls should be placed at the top of the queue for assignment to the next generalist interpreter.

  Rationale: The resources for specialized interpreters will be scarce. Allowing these interpreters to immediately move onto calls that require their specialized skill without requiring them to take sequential calls that do not require their specialized skill will minimize the wait for other skill-based-routing requests. Further this policy will mitigate the risk to specialized interpreter health and wellbeing by not demanding more productivity out of them than a generalist interpreter.

III. Deaf Interpreters

As the National Association of the Deaf recently recognized, "For certain individuals, the provision of a video interpreter in a video relay call is not sufficient for effective communications." These individuals—including some who have limited English or ASL proficiency, some children, and some consumers with cognitive disabilities—require the assistance of a deaf interpreter in addition to a hearing Video Interpreter in order to communicate in a functionally equivalent manner. The availability of deaf interpreters will help alleviate stress on the general interpreter pool by allowing the generalist interpreter to rely on the specialized interpretation for the deaf interpreter rather than having to interpret the rudimentary sign language. Accordingly:

- The Commission should encourage but not require providers to offer the assistance of qualified deaf interpreters.

- The Commission should allow deaf interpreters to be added to the video session remotely from another VRS interpreting center to more efficiently facilitate calls.

  Rationale: Because the supply of deaf interpreters is extremely limited, it is important to allow deaf interpreters to remotely serve various call centers without requiring each call center to physically have the deaf interpreters present.

- The Commission should treat deaf interpreters as a form of skills-based routing, exempting calls requiring a deaf interpreter from the speed-of-answer calculations.

  Rationale: If a consumer or the Video Interpreter believes a deaf interpreter is necessary, the caller would be given an estimate of the expected wait time for a deaf interpreter and would have the option of waiting or proceeding without such an interpreter. Further this policy will mitigate the risk to deaf interpreter health and wellbeing by not demanding more productivity out of them than a generalist interpreter.

IV. Rates

As the D.C. Circuit recognized in September 2014, providers cannot simultaneously meet more stringent service standards in an environment where rates are continuously decreasing. Providers nevertheless believe that they can achieve the proposals in this document if the FCC does not implement the additional rate cuts scheduled by the June 2013 order. Accordingly:

- The FCC should maintain rates at their current levels—*i.e.*, the Commission should not implement the rate cuts scheduled to take effect on July 1, 2015, and every six months thereafter through January 1, 2017.

  Rationale: A stable rate environment is necessary to support investments in service innovation and improvements. *See Telecommunications for the Deaf, Inc., et al.*, Consumer Groups' TRS Policy Statement at 7 (Objective 1.1) (Apr. 12, 2011).[3] In order to achieve functional equivalence, investments are warranted in specialized hardware, software and interoperability with non-VRS video conferencing technology, should those services open up to exchanging video calls with VRS endpoints. Also, the FCC does not appear to be on track to implement a permanent rate methodology ahead of the end of the rate reduction schedule, which was contemplated at the time the rate reduction schedule was adopted. And the FCC discontinued compensation for provider outreach but has not yet implemented the outreach program contemplated by the June 2013 VRS Reform Order. This has resulted in an absence of innovation in iTRS access technology and an absence of appropriate outreach. *Cf. id.* (Goal 2). In addition, as previously noted, the Commission recently cancelled the request for proposals to develop and operate a neutral platform. For these reasons, the Commission should stabilize rates until it implements a permanent rate methodology in the ongoing rulemaking proceeding and in light of the improvements in service included in this proposal.

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[3] Attached to Letter from Tamar E. Finn to Marlene H. Dortch, CG Docket Nos. 03-123, 10-51 (filed Apr. 12, 2011) ("Consumer Groups' TRS Policy Statement").

Respectfully Submitted,

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