

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

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
)	

**CONSUMER GROUPS AND REGISTRY OF INTERPRETERS FOR THE DEAF
COMMENTS ON
PROVIDER COMPENSATION RATES, FUNDING REQUIREMENT, AND CARRIER
CONTRIBUTION FOR THE PERIOD FROM JULY 1, 2015 THROUGH JUNE 30, 2016**

Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), National Association of the Deaf (“NAD”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), Hearing Loss Association of America (“HLAA”), Association of Late Deafened Adults, Inc. (“ALDA”), American Association of the Deaf-Blind (“AADB”), Cerebral Palsy and Deaf Organization (“CPADO”), Deaf Seniors of America (“DSA”), and California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”) (collectively “Consumer Groups”) and Registry of Interpreters for the Deaf (“RID”), submit these comments pursuant to the Public Notice promulgated by the Consumer and Governmental Affairs Bureau on May 20, 2015¹ (“Public Notice”), on the provider compensation rates, funding requirement, and carrier

¹ *Comment Sought on Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, Public Notice, CG Docket Nos. 03-123, 10-51 (rel. May 20, 2015) (“Public Notice”).

contribution factor (“RLSA Proposal”) proposed by Rolka Loube Associates LLC (“Rolka” or the “Administrator”), the Interstate TRS Fund (“Fund”) Administrator, for Telecommunications Relay Services (“TRS”) compensated by the Fund for the period from July 1, 2015 through June 30, 2016.² The Consumer Groups and RID request that the Commission consider refraining from rate adjustments for at least six months in order to allow for response to the recent report on TRS issued by the United States Government Accountability Office (“GAO”).³ Furthermore, the Consumer Groups and RID are not confident with the computational accuracy of the Administrator’s proposal as it relates to the projected costs of Video Relay Service (“VRS”) providers and the projected demand of Internet Protocol Captioned Telephone Service (“IP CTS”) minutes, and are concerned that this computation may hinder service providers from maintaining adequate quality of service to deaf, hard of hearing, deaf-blind, and deaf and mobile-disabled consumers who require alternatives to basic voice telephone services.

I. THE COMMISSION SHOULD TEMPORARILY FREEZE RATES AND DELAY CONSIDERATION OF RLSA’S RECOMMENDATIONS IN ORDER TO GUARANTEE SERVICE QUALITY

In April 2015, the GAO issued a report (“TRS Report”) outlining concerns with and recommendations for the Commission’s management of the TRS program.⁴ The Consumer Groups and RID request that the Commission pause in its consideration of the RLSA proposal in order to address and implement the TRS Report recommendations fully.

² Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123, 10-51 (filed April 24, 2015) (*2015 TRS Rate Filing*); Supplemental Filing CG Docket Nos. 03-123, 10-51 (filed May 1, 2015) (*2015 TRS Rate Filing Supplement*); see also 47 C.F.R. § 64.604(c)(5)(iii)(H) (requiring the Fund administrator to file TRS payment formulas and revenue requirements with the Commission by May 1 of each year, to be effective the following July 1). (*TRS Report*)

³“TRS: FCC Should Strengthen Its Management of Program to Assist Persons with Hearing or Speech Disabilities,” Report to the Honorable Jeff Sessions (April 2015), UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, available at <http://www.gao.gov/products/GAO-15-409>. (*TRS GAO Report*)

⁴ GAO TRS Report, *supra* note 3.

Specifically, GAO noted that the Commission lacks both specific TRS performance goals and specific performance measures crafted around those goals.⁵ This deficiency in turn obstructs objective and accurate determination of whether “TRS is making functionally equivalent telecommunications services.”⁶ GAO recommended that the Commission “consider goals and performance measures related to, but not limited to, service quality or competition among providers” and further noted that the Commission agreed with the recommendations.⁷ Certainly, no proposed rates or methodologies can guarantee sufficient service performance until the Commission first defines what sufficient service performance entails.

The TRS Report asserts that, in light of consumer reliance on VRS and IP CTS, rate methodologies and rates for these essential services should be driven by a set of service quality standards. Thus, before the Administrator or other responsible offices within the Commission can address the adequacy of proposed rate recommendations, the Commission must first determine the level of adequate service quality. Only then can the Commission ensure that a rate methodology and the rate itself support a service quality standard that satisfies consumers’ access needs. The Consumer Groups and RID therefore suggest that the Commission freeze rates while it determines the appropriate service quality level, and then base new costs on that service quality level.

II. RLSA’S COMPUTATION OF VRS PROVIDER REPORTED AND PROJECTED COSTS UNDERSTATES SUCH COSTS

In Table 2 of the RLSA Proposal, the Administrator presents projected VRS compensation rates for FY 2015-2016 and 2016-2017 in three reconfigured tiers with the expectation that the proposed rate reduction plan “will permit service providers to continue

⁵ *Id.* at Introduction.

⁶ *Id.*

⁷ *Id.* at 36.

offering VRS in accordance with the mandatory minimum standards for high quality services.”⁸ This expectation is, however, in part dependent on projected VRS provider costs that, as presented in the RLSA Proposal, appear to omit several integral categories of costs.

A. An Accurate Cost Calculation is Necessary Prior to Implementation of a Reduced Rate Plan

Accurate cost projection in a determination of reimbursement rates is critical to ensuring that consumers who are deaf, hard of hearing, deaf-blind, or deaf and mobile-disabled have a functional equivalent to voice telephone services. VRS Providers are dependent on reimbursement rates that cover the entirety of their legitimate costs; without such, providers will be financially incapable of maintaining an adequate quality of service and, at worst, may cease providing VRS altogether.

Moreover, errors in cost calculation cannot be easily remedied once a plan is implemented. For example, the Antideficiency Act (“the ADA”), which prevents authorization of expenditures or obligations exceeding an amount available in appropriations or funds,⁹ can act as a statutory bar to increasing rates should a crisis occur mid-year. As a result, enacting the proposed RLSA reimbursement rates may inevitably impair and harm consumers who remain dependent on VRS.

B. The Administrator Appears to Exclude Cost Categories that Should be Considered in Calculating Projected Costs

It is important to note that the Consumer Groups and RID do not have access either to actual VRS provider costs or to the analysis or audit reports the FCC compiles for VRS providers. The Consumer Groups and RID assert, however, that VRS is an invaluable and

⁸ 2015 TRS Rate Filing at 21-22; Table 2.

⁹ Antideficiency Act, amended 1982, Pub. L. No. 97-258, 96 Stat. 923.

necessary service for consumers who are deaf, hard of hearing, deaf-blind, and blind and mobile-disabled, and rates should be market driven.

The Administrator delineates nine categories of historical VRS service provider reported costs to support projected costs.¹⁰ These include: facility costs; interpreter expenses; non-interpreter relay center expenses such as supervisory management; indirect expenses such as finance, human resources, executive compensation, and legal expenses; depreciation expenses from facilities and equipment; marketing expenses; costs associated with notifying consumers of service availability; capital investments; and “other” expenses.¹¹ While the Administrator does not identify what expenses fall into the “other” category, Table 3 projects this category to constitute less than 0.04% of total costs in 2015 and approximately 0.05% of total costs in 2016.¹² It can therefore be assumed that costs not included in the “other” category in Table 3 have a negligible impact on total cost. As shown below, the Administrator appears to have omitted several categories of costs that are both necessary in breadth and substantial in impact.

C. The Administrator Appears to Exclude Research and Development Costs in Calculating Projected Costs

One example of an excluded cost category is the cost of research and development, which remains an inherent and essential cost for any technologically-based company. Telecommunications companies are compelled to conduct research and development, not only as a means of remaining competitive in an ever-evolving market, but also to facilitate improved service to their customers. As shown in Table 1 below, Verizon Communications, a mainstream provider, spends an enormous amount on research and development. Between 2011 and 2015,

¹⁰ 2015 TRS Rate Filing at 23; Table 3; Appendix L.

¹¹ *Id.* at 22-23.

¹² *Id.* at 23. Table 3 projects \$0.0011 and \$0.0015 in “other” expenses of a total \$2.9210 and \$2.9309 in 2015 and 2016, respectively.

Verizon spent an average of 16.5% of its total operating costs on Research and Development – over \$16 billion dollars annually.¹³

Table 1. Verizon Communications Operating Costs¹⁴

Fiscal Year	R&D Costs (millions-USD)	Total Operating Costs (millions-USD)
2011	16,496	97,995
2012	16,460	102,686
2013	16,606	88,582
2014	16,533	107,480

Omitting the significant cost of research and development from reimbursement rate plans creates a substantial risk that VRS providers may not be capable of continued financial investment in maintaining VRS service to the deaf and hard of hearing at a level that is functionally equivalent to what is provided for hearing consumers– including access to brand name services. In order to maintain parity, VRS providers must continue to perform research and development.

D. The Administrator Appears to Exclude the Cost of Borrowed Funds in Calculating Projected Costs

The Administrator also appears to exclude the cost of borrowed funds in calculating projected VRS costs. As the FCC has long recognized, any business that requires capital necessarily has an associated cost of capital. While the Administrator does include capital costs

¹³ Verizon Communications, Inc. Financial Data, GOOGLE FINANCE, available at <https://www.google.com/finance?q=NYSE:VZ&fstype=ii> (last accessed June 1, 2015).

¹⁴ *Id.*

in the category of “Return on Investment,” this fails to encapsulate all costs of capital. This is because capital can be provided by both equity investors and lenders, and is typically done as a combination of the two. Furthermore, because borrowed funds present a lower risk to lenders, they typically cost less than equity. The Commission has therefore historically considered the cost of debt as well as the cost of equity in establishing its rate methodologies, particularly for local exchange carriers.¹⁵ There should be no exception when it comes to calculating VRS rates.

III. THE ADMINISTRATOR’S PROPOSAL MAY UNDERESTIMATE IP CTS MINUTES

The Administrator’s proposal apparently undersizes funds for IP CTS. The same concerns necessitating accurate fund allocation for VRS – for example the adverse impact of the ADA on consumers – apply to IP CTS, an equally vital service for IP CTS consumers. Because funds are sized based on projected demand for IP CTS minutes, an underestimation of demand results in inadequate funds and therefore the risk that IP CTS providers will be financially precluded from providing IP CTS to consumers in need.

Here, the Administrator’s Proposal sets forth rates based on what appears to be the demand for 2014-2015: 164,590,646 IP CTS minutes.¹⁶ Yet we believe this number to be a gross underestimation. Even if service demand for the upcoming year stabilized at the March 2015 level – resulting in an annual projection of 180 million minutes – there would still be an approximate funding shortfall of 16 million minutes.¹⁷ Moreover, it is highly unlikely that demand will stabilize, on the contrary, IP CTS demand in the first eight months of the current

¹⁵ 47 CFR 65.300 (governing calculations of the components and weights of the cost of capital: “The calculations shall determine, where applicable, a composite cost of debt, a composite cost of preferred stock, and a composite financial structure for all local exchange carriers with annual revenues equal to or above the indexed revenue threshold as defined in § 32.9000.”)

¹⁶ 2015 TRS Filing at 35; Exhibit 2.

¹⁷ *Id.* at 26-27.

program alone has already exceeded the projected total by total by 17%.¹⁸ As noted in the RLSA Proposal itself, the IP CTS industry projects 202,651,451 IP CTS minutes from July of 2015 to June of 2016 – which the Administrator notes to be a “reasonably valid” forecast.¹⁹

A graphic depicting IP CTS demand per month in the RLSA proposal indicates that a strong upwards trend will continue.²⁰ Even this graphic may be conservative in its estimation. An analysis by Telecom RERC showed that the linear model does not model growth well, and growth may actually be more rapid than predicted by a linear model.²¹ No matter how the growth curve is analyzed, IP CTS demand will very likely significantly exceed the projections on which RLSA’s proposed rates are based.

IV. CONCLUSION

The Consumer Groups and RID concur with GAO’s findings in the TRS report that determination of a service standard is essential to ensuring an adequate quality of service for the deaf, hard of hearing, deaf-blind, and deaf and mobile-disabled. Any proposed rate plan and rate methodology should be assessed in view of whether it satisfies a requisite service standard for consumers with access needs. Accordingly, the Consumer Groups and RID request that the Commission delay consideration of the RLSA proposal for at least six months to address GAO’s concerns in order to establish such a standard.

The Consumer Groups and RID further request that the Commission take notice of apparent computational inaccuracies in the RLSA proposal; specifically, the underestimation of projected VRS costs and IP CTS demand. Undersizing funds for these critical services may

¹⁸ *Id.* at 27.

¹⁹ *Id.* at Exhibit 1-4; 27.

²⁰ *Id.*

²¹ *Comments on the Rehabilitation Engineering Research Center on Telecommunications Access*, CG Docket Nos. 03-123, 13-24 (filed Feb. 26, 2013).

prevent providers from maintaining an adequate level of service – or, worse, from providing them at all – to consumers who otherwise have no functional equivalent to voice telephone services for the hearing.

Respectfully submitted,

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