

**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

Telecommunications Relay Services and
Speech-to-Speech Services for Individuals
with Hearing and Speech Disabilities

CG Docket No. 03-123

**SORENSEN COMMUNICATIONS, INC., AND CAPTIONCALL, LLC'S
OPPOSITION TO IDT TELECOM, INC.'S APPLICATION FOR REVIEW**

John T. Nakahata
Christopher J. Wright
Mark D. Davis
Stephen W. Miller
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street, N.W., Eighth Floor
Washington, D.C. 20036
T: (202) 730-1300
jnakahata@hwglaw.com

*Counsel to Sorenson Communications,
Inc., and CaptionCall, LLC*

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TABLE OF CONTENTS

Introduction and Summary	1
Procedural Background.....	2
I. The Bureau Properly Dismissed IDT’s Request to Reconsider a Rule Adopted by the Full Commission.....	3
II. The Commission Should Not Jurisdictionalize Internet-Based TRS Traffic.....	5
A. The Commission Has Reasonably Exercised Its Authority to Classify International Service as a Type of Interstate Service for the Purposes TRS.	6
B. 47 U.S.C. § 225(d)(3) Confers Discretion on the Commission to Fund All iTRS from the Interstate TRS Fund.	8
1. The Commission Has Discretion to Fund Intrastate Calls from the Interstate Fund.	9
2. The Commission Has Jurisdiction over Intrastate Internet-Based TRS under a Standard Section 2(b) Analysis.	12
Conclusion	17
Certificate of Service	

INTRODUCTION AND SUMMARY

In its application for review,¹ IDT asks the Commission to overrule the Consumer and Governmental Affairs Bureau's annual TRS Rate Order,² which set Telecommunications Relay Service ("TRS") rates for the 2015-2016 fund year, established the annual budget for the interstate TRS Fund, and established the contribution factor for the upcoming year. IDT's sole complaint is that the Bureau followed rulings issued by the full Commission. Those rulings—two of which are codified in the Code of Federal Regulations—require providers of international telecommunications service to contribute to the interstate TRS Fund,³ and they permit the costs of Internet-based TRS ("iTRS") services to be recovered from the interstate TRS Fund.⁴ In

¹ IDT Telecom, Inc.'s Application for Review, CG Docket nos. 03-123 and 10-51 (filed Jul. 27, 2015) ("Application for Review").

² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, DA 15-774, 30 FCC Rcd. 7063 (Consumer and Governmental Affairs Bureau 2015) ("Order").

³ 47 C.F.R. §64.604(c)(5)(iii)(A) ("Contributions shall be made by all carriers who provide interstate services, including, but not limited to, . . . international . . . services.").

⁴ *Id.* § 64.604(c)(5)(ii) ("Costs caused by the provision of interstate and intrastate VRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism."); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, FCC 00-56, 15 FCC Rcd. 5140, 5153-54 ¶¶ 24-27 (2000) ("2000 R&O and FNPRM") (permitting recovery of VRS costs from the Fund); *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for Clarification of WorldCom, Inc.*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, FCC 02-121, 17 FCC Rcd. 7779, 7786 ¶¶ 20-21 (2002) ("2002 Declaratory Ruling") (same for IP Relay); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 04-137, 19 FCC Rcd. 12,475, 12,490 ¶¶ 23-24, 12495-96 ¶¶ 34-37 (2004) ("2004 Report and Order") (VRS and IP Relay); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service*, Declaratory Ruling, FCC 06-182, 22 FCC Rcd. 379, 390 ¶ 25 (2007) ("2007 Declaratory Ruling") (IP CTS).

IDT's view the Bureau should have reviewed the validity of those rules and should have issued a Notice of Proposed Rulemaking to change the rules.

IDT's arguments are meritless. As a threshold matter, IDT's request to upend the established funding mechanism for IP-based TRS services was far outside the scope of this Bureau-level proceeding, the purpose of which was to *apply* the rate methodology established by the full Commission—not to reconsider that methodology. If IDT wants to change the contribution rules at this juncture, it should file a Petition for Rulemaking.⁵ In any event, the Bureau lacked authority to grant IDT the relief it sought. The Bureau had no authority to change the contribution methodology rules, nor did it have authority to initiate a Notice of Proposed Rulemaking to change the rules, which can be issued only by the full Commission.

IDT's argument is also wrong on the merits. As explained below, the Communications Act gives the Commission wide discretion over the funding of the TRS program, and the Commission has reasonably exercised that discretion. For both these procedural and substantive reasons, IDT's application must be denied.

PROCEDURAL BACKGROUND

In the Public Notice initiating this proceeding, the Bureau sought comment on a number of specific issues related to the funding of the TRS program. Among other specific things, the Bureau sought comment on whether the Administrator had properly applied “the MARS methodology” that is used to calculate IP CTS rates⁶ and whether the Administrator had properly applied the price-cap formula established by the Commission for IP Relay. The Bureau did not,

⁵ Notably, this is also not a matter that could be addressed through grant of a waiver.

⁶ *Rolka Loube Associates LLC Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2015-16 Fund Year*, Public Notice, DA 15-612, 30 FCC Rcd. 4892, 4893 (Consumer and Governmental Affairs Bureau 2015).

however, seek comment on the rate-setting methodology itself or on how the costs of TRS are allocated among contributors to the interstate TRS Fund.

Though the Public Notice was limited to very specific issues within the Bureau's delegated authority, IDT filed comments addressing issues far outside the scope of the proceeding. IDT had little to say about the issues raised by the Public Notice—only about two pages of its comments addressed the TRS Fund Administrator's calculations.⁷ In the rest of its 31-page comments, IDT urged the Bureau to reconsider prior Commission-level rulings regarding compensability of various iTRS services from the interstate TRS Fund and to issue a petition for rulemaking to change those rules. The Bureau had previously made clear that these issues are beyond the scope of this proceeding; as IDT admits, the Bureau dismissed the similar arguments last year in this same docket, noting that a petition for rulemaking was “beyond the scope of the instant proceeding.”⁸

In its order, the Bureau dismissed IDT's requests as beyond its authority. The Bureau noted that “[t]he determinations of which IDT complains were made by the Commission, and there is no basis for the Bureau to depart in this Order from such prior Commission decisions.”⁹

I. THE BUREAU PROPERLY DISMISSED IDT'S REQUEST TO RECONSIDER A RULE ADOPTED BY THE FULL COMMISSION.

The Bureau's decision was plainly correct and may be affirmed on procedural grounds alone. The Public Notice did not seek comment on the issues IDT sought to raise: whether

⁷ See Comments of IDT Telecom, Inc. at 4-5, CG Docket Nos. 03-123, 10-51 (filed June 4, 2015).

⁸ *Id.* at 19-20 (citing *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, DA 14-946, 29 FCC Rcd. 8044, 8054 n.70 (Consumer and Governmental Affairs Bureau 2014)).

⁹ *Order*, 30 FCC Rcd. at 7068 ¶ 15.

international carriers should be required to contribute to the interstate TRS Fund and whether IP-based relay services should be funded through the interstate TRS Fund. These issues were far afield of the issues raised in the Public Notice, and the Bureau had no duty to address them.

And there was a good reason that the Bureau did not include these issues in its Public Notice: all of them were beyond its authority to resolve. Both of IDT's issues had been resolved by the full Commission in rulemaking proceedings and a series of declaratory rulings—rulings that the Bureau had no authority to overturn. The Commission resolved the issue of whether providers of international service should contribute to the interstate Fund in 1996—in a rule that is codified in the Code of Federal Regulations.¹⁰ Similarly, the full Commission has determined through rulemakings that all VRS and IP Relay calls should be compensated from the interstate TRS Fund,¹¹ and it has also clarified that the same is true of IP CTS.¹² Once again, reversing these decisions was beyond the Bureau's authority. Apparently recognizing that these decisions could be changed only through the informal rulemaking process, "IDT urged the Bureau to issue . . . a Notice of Proposed Rulemaking" to change the rules.¹³ But the Bureau had no authority to initiate the rulemaking process; this is a power reserved to the full Commission.¹⁴

¹⁰ 47 C.F.R. §64.604(c)(5)(iii)(A) ("Contributions shall be made by all carriers who provide interstate services, including, but not limited to, . . . international . . . services.").

¹¹ 47 C.F.R. § 64.604(c)(5)(ii); *2000 R&O and FNPRM*, 15 FCC Rcd. at 5153-5154 ¶¶ 24-27 (permitting recovery of VRS costs from the Fund); *2004 Report and Order*, 19 FCC Rcd. 12,490 ¶¶ 23-24, 12,496-97 ¶¶ 34-37 (VRS and IP Relay); *see also 2002 Declaratory Ruling*, 17 FCC Rcd. at 7786 ¶¶ 20-21 (same for IP Relay).

¹² *2007 Declaratory Ruling*, 27 FCC Rcd. at 390 ¶ 25.

¹³ Application for Review at 6.

¹⁴ 47 C.F.R. § 0.361(a) (noting that the "[n]otices of proposed rulemaking and . . . final orders in such proceedings" must be "referred to the Commission en banc for disposition"); 47 C.F.R. § 1.411 ("Rulemaking proceedings are commenced by the Commission . . .").

In short, this proceeding was not the proper place for IDT to seek massive changes to the TRS funding rules. If IDT wishes to advocate for such changes, it is free to do so in a Petition for Rulemaking addressed to the full Commission. The Bureau, however, had no obligation to hear such arguments in this proceeding, and it properly rejected IDT's demands to overrule the full Commission.

II. THE COMMISSION SHOULD NOT JURISDICTIONALIZE INTERNET-BASED TRS TRAFFIC.

Title IV of the ADA mandates that the Commission “shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.”¹⁵ This is the fundamental starting point for any discussion on how the Commission ensures the availability of interstate *and* intrastate TRS.

IDT would have the Commission curtail its obligation to ensure the availability of TRS to deaf and hard-of-hearing consumers. When it passed Title IV of the ADA, Congress sought to remedy a state-by-state system that had failed to meet the needs of deaf and hard-of-hearing consumers.¹⁶ Thus, Congress envisioned, and required the FCC to implement, a nationwide system of TRS providers. Title IV expressly requires the creation of a “seamless interstate *and* intrastate relay system . . . that will allow a communications-impaired caller to communicate with anyone who has a telephone, anywhere in the country.”¹⁷ And the ADA obligates the Commission to ensure the availability of relay services. The Commission has permissibly chosen to carry out this mandate by including international revenues in the Fund's contribution

¹⁵ 47 U.S.C. § 225(b)(1).

¹⁶ H.R. Rep. No. 101-485(IV) at 27-28 (1990).

¹⁷ *Id.* at 28 (emphasis added).

base and permitting recovery of costs associated with both intrastate and interstate iTRS calls from Fund. Despite IDT's arguments to the contrary, it would be impractical and harmful to fund iTRS any other way.

Against this statutory background, IDT's specific arguments fail. IDT first argues that the Commission is improperly requiring providers of international telecommunications service to pay into the interstate TRS Fund.¹⁸ But the Commission has reasonably construed the statute to permit it to treat international telecommunications as a type of interstate telecommunications, and IDT provides no good reason to depart from that conclusion. IDT also argues that the Commission cannot continue to fund intrastate iTRS from the Fund.¹⁹ But the Commission has wide discretion on how to fund TRS both pursuant to 47 U.S.C. § 225 and under the standard jurisdictional analysis under Section 2(b) of the Communications Act.

A. The Commission Has Reasonably Exercised Its Authority to Classify International Service as a Type of Interstate Service for the Purposes TRS.

IDT first challenges the Commission's decision to treat international traffic as a type of interstate service for the purposes of Title IV of the ADA. IDT notes that the ADA refers to "interstate and intrastate telecommunications relay services" but never explicitly refers to "international" TRS. In its view, the statute therefore prohibits the Commission from establishing "international" TRS and requiring the providers of international telecommunications services to contribute to the interstate TRS Fund.

This is nonsense. Title IV of the ADA provides that deaf and hard-of-hearing Americans are to have access to telecommunications service that is "functionally equivalent" to the services

¹⁸ Application for Review at 7.

¹⁹ *Id.*

available to hearing Americans.²⁰ Because these services plainly include both domestic and international calls, the statute makes no distinction between such services; indeed, it contains no reference to either word. Instead, the statute divides the world into two categories based upon the traditional separation of legal authority that existed when the statute was passed: the “intrastate” world, which had traditionally been subject to state jurisdiction, and the “interstate” world, which was under the FCC’s jurisdiction. In an effort to promote widespread availability of TRS, the statute assigns the FCC the duty to ensure availability of the entire range of services—both “interstate and intrastate telecommunications relay services.”²¹

Consistent with this statutory framework, the FCC has reasonably construed the ADA’s references to “interstate” TRS to include both domestic *and* international calls, both of which were traditionally under the FCC’s jurisdiction.²² This construction is plainly reasonable, and the Commission has substantial leeway under *Chevron* to adopt this construction.²³ Indeed, a contrary interpretation would undermine the ADA’s intent to provide deaf Americans with functionally equivalent service by denying them the ability to communicate with anyone outside the United States. This is plainly not what Congress intended.

²⁰ See 47 U.S.C. § 225(a)(3) (defining TRS as service that provides “the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio”).

²¹ 47 U.S.C. §225(b)(1).

²² 47 C.F.R. § 64.604(c)(5)(iii)(A); *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Third Report & Order, FCC 93-357, 8 F.C.C. Rcd. 5300, 5302 (1993) (“Accordingly, we direct that for purposes of funding interstate TRS, interstate services includes . . . international [services] . . . provided by common carriers.”).

²³ See, e.g., *Nat’l Ass’n of Broadcasters v. FCC*, 789 F.3d 165, 179-80 (D.C. Cir. 2015).

IDT provides no reason to believe that Congress intended to deny deaf Americans access to international telecommunications. Its sole argument against the Commission’s reasonable interpretation is that it is precluded by the definitions section of 47 U.S.C. § 153, which distinguishes between “interstate communication” and “foreign communication.” But this definitions section, which was originally part of the Communications Act of 1934 rather than the ADA, does not define “interstate TRS” or “intrastate TRS.” And the statute makes clear that even the definition of “interstate communication” applies “unless context otherwise requires.”²⁴ Here, context plainly dictates otherwise. Congress made clear that it was mandating that deaf and hard-of-hearing Americans would have full access to “functionally equivalent” telecommunications services—not a subset of the services available to hearing Americans. The Commission has reasonably construed interstate TRS to include international services.

B. 47 U.S.C. § 225(d)(3) Confers Discretion on the Commission to Fund All iTRS from the Interstate TRS Fund.

IDT also argues that the Commission has impermissibly chosen to fund intrastate iTRS calls from the interstate TRS Fund, claiming that this decision violates the “jurisdictional separation of costs” language of Section 225(d)(3). This argument is also incorrect. As explained below, the ADA gives the Commission discretion over how to fund TRS services, and the Commission has appropriately exercised that jurisdiction. Moreover, even if the statute did not provide that discretion, the Commission may still classify all iTRS calls as “interstate” using its traditional end-to-end jurisdictional analysis.

²⁴ 47 U.S.C. § 153.

1. The Commission Has Discretion to Fund Intrastate Calls from the Interstate Fund.

The ADA does not specifically require the creation of a TRS Fund, and it contains no provisions specifically addressing which entities should pay into or receive money from the Fund. Under these circumstances the Commission has wide discretion so long as it does not violate the statutory scheme. IDT nevertheless argues that by permitting all iTRS calls to be funded from the interstate TRS Fund, the Commission is violating the “jurisdictional separation of costs” language of Section 225(d)(3). This is incorrect.

The language cited by IDT says nothing about whether iTRS calls may be reimbursed from the Fund. The statute requires the FCC to “prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.”²⁵ The jurisdictional separation of costs was a method of allocating costs between intrastate and interstate jurisdictions for the purposes of cost-of-service ratemaking. When the ADA was passed, Congress reasonably assumed that TRS might be provided directly by monopoly telephone providers, who would recover their costs in cost-of-service ratemaking proceedings. These “jurisdictional separation of costs” provisions were designed to guide ratemakers in allocating a carrier’s TRS costs in a ratemaking proceeding. These provisions say nothing about which carriers should contribute to the TRS Fund or how contributions should be assessed—a question that the statute simply does not address.

Moreover, even if the jurisdictional separation of costs were relevant to the analysis, the statute gives the Commission discretion to depart from a strict jurisdictional separation. As IDT recognizes, 47 U.S.C. § 225(d)(3) states that the Commission’s regulations “shall *generally* provide that costs caused by interstate telecommunications relay services shall be recovered from

²⁵ 47 U.S.C. § 225(d)(3).

all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.”²⁶ Thus, jurisdictional separation is not an inexorable command. By using the term “generally,” the statute does not mandate that costs always be segregated—rather, it expressly gives the Commission flexibility to modify this general cost structure where the Commission’s other mandates might so require.

The Commission did exactly this in 2000 when it decided to “permit recovery of costs associated with both intrastate and interstate [VRS] calls from the interstate TRS Fund.”²⁷ The Commission made this decision for several reasons, primary among them that VRS “is necessary to provide many people with disabilities relay service that is functionally equivalent to voice communications.”²⁸ In 2007 the Commission reached a similar decision with regard to IP CTS. Regarding IP CTS, it reasoned that “this arrangement will be an incentive for multiple providers to offer this service on a nationwide basis, generating competition that will enhance consumer choice, service quality, and available features.”²⁹ Thus the Commission has exercised its statutory discretion to fund all iTRS³⁰ from the interstate TRS Fund in order to carry out its mandate to ensure functionally equivalent TRS is available to all deaf and hard-of-hearing Americans.

IDT unfairly criticizes the Commission for not revisiting these decisions,³¹ as the Commission’s decision to compensate all iTRS from the TRS Fund continues to be warranted.

²⁶ 47 U.S.C. § 225(d)(3) (emphasis added).

²⁷ *2000 R&O and FNPRM*, 15 FCC Rcd. at 5153 ¶ 24.

²⁸ *Id.* ¶ 26.

²⁹ *2007 Declaratory Ruling*, 22 FCC Rcd. 390 at ¶ 25.

³⁰ The Commission ruled similarly with regard to IP Relay service. *2002 Declaratory Ruling*, 17 FCC Rcd. at 7779 ¶¶ 20-21.

³¹ *See generally* Application for Review at 14-18.

For instance, the Commission sought comment in 2013 on whether to transfer responsibility for IP CTS to the states (which included a request for comments on whether states should pay for intrastate calls while the TRS Fund pays for interstate calls).³² Consumer groups responded negatively, explaining the dangers of, among other things, separating intrastate iTRS funding from the interstate TRS Fund, arguing that such a decision would cut against the Commission’s mandate to ensure the availability of TRS to deaf and hard-of-hearing consumers.³³ These comments showed that the Commission should think twice before revisiting any jurisdictional separation decision.

Finally, IDT also incorrectly argues that “the Commission has conceded that its authority to authorize the recovery of intrastate services from the Fund is limited in scope and time.”³⁴ However, the Commission’s intent to revisit iTRS funding at some undefined future time does not undermine the Commission’s authority to adopt and continue its current funding methodology, and IDT points to no authority purporting to limit the Commission’s discretion. While the Commission has stated that the “Act envisions that the funding support for TRS

³² *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-118, 28 FCC Rcd. 13,420, 13,483 ¶ 137 (2013) (“2013 R&O and FNPRM”).

³³ See Petition for Stay of Telecommunications for the Deaf and Hard of Hearing, Inc., Association of Late-Deafened Adults, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America, National Association of the Deaf, American Association of the Deaf-Blind, Cerebral Palsy and Deaf Organization at 5, CG Docket Nos. 13-24 & 03-123 (filed Sept. 30, 2013).

The consumer groups told the Commission that state TRS programs are “chronically underfunded and are subject to the uncertainties of state appropriations processes.” *Id.* at 5; see also Comments of Hearing Loss Association of America at 8, CG Docket Nos. 13-24 & 03-123 (filed Feb. 26, 2013).

³⁴ Application for Review at 13.

should be separated between the states and the federal government,”³⁵ this statement does not serve to diminish the Commission’s statutory discretion.

2. The Commission Has Jurisdiction over Intrastate Internet-Based TRS under a Standard Section 2(b) Analysis.

Even if § 225(d)(3) did not directly give the Commission discretion and flexibility regarding its funding of iTRS, the Commission has discretion to make this jurisdictional decision under a standard Section 2(b) end-to-end jurisdictional analysis.³⁶

In the absence of a specific statutory jurisdictional statement the Commission traditionally applies the so-called “end-to-end analysis,” which is based on the physical end points of the communication, to determine whether a service is intrastate or interstate. The Commission considers “the continuous path of communications”: where the end points of a communication are within the boundaries of a single state the service is deemed purely intrastate; where the service’s end points are in different states or between a state and a point outside the United States, the service is deemed a purely interstate or international service.³⁷ Services that are capable of both intrastate and interstate communications are deemed jurisdictionally mixed. In these cases, the Commission may exercise its authority to treat jurisdictionally mixed services as entirely interstate where (1) it is impossible or impractical to separate the service’s intrastate components from its interstate components, and (2) state regulation of the intrastate component

³⁵ 2013 R&O and FNPRM, 28 FCC Rcd. at 13,483 ¶ 137.

³⁶ See *Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1, 3 (D.C. Cir. 2000); *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion & Order, FCC 04-267, 19 FCC Rcd. 22,404, 22,412-22,414 ¶¶ 16-18 (2004) (“*Vonage Order*”).

³⁷ See *id.*; 47 U.S.C. §§ 152(b)(1) & 153(21).

would interfere with valid federal rules or policies. Such is the case with iTRS,³⁸ and the Commission has explicitly exercised this discretion with respect to VRS.³⁹

iTRS is a jurisdictionally mixed service because it permits both intrastate and interstate communications. While it may not be *absolutely* impossible for iTRS providers to segregate interstate and intrastate iTRS minutes, it certainly is impractical, as discussed in more detail below. Moreover, there is no service- or engineering-driven reason why iTRS providers would need to know their users' actual locations at the time they place or receive a call, and even less reason to know the location of the other party to the call. Requiring iTRS providers to devote resources to engineering such capabilities rather than improving service is not a wise or legitimate policy goal. Coupling that with the serious risk that separating funding for intrastate iTRS from interstate iTRS would seriously undermine the Commission's ability to fulfill its availability mandate leads to the conclusion that the Commission reasonably treats iTRS as entirely interstate services.

For example, VRS can be both a nomadic or mobile telecommunications service in that it can be used anywhere the user can access a broadband Internet connection and configure his device. In a traditional VRS call, the VRS user who makes a call contacts a VRS interpreter ("VI"), who is a qualified sign language interpreter, through specialized IP-compatible customer premises equipment ("CPE") over a broadband Internet connection. The VRS user and the VI communicate via this Internet-enabled video connection, and the VI then places a telephone call to the party the VRS user wishes to call. While VRS providers are required to keep records of

³⁸ See, e.g., *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 368 (1986).

³⁹ *2013 R&O and FNPRM*, 28 FCC Rcd. at 8627 n.43 (noting that "all VRS calls are compensated from the Fund because it is not possible to determine when a particular call is intrastate or interstate.").

their users' Registered Location,⁴⁰ VRS providers do not necessarily know precisely where their users are using their device on any given call. And while VRS providers know the telephone number their users wish to call (or the number calling the VRS subscriber), they do not necessarily know the location of the non-VRS subscriber. Indeed, there is no business or engineering basis to know it because VRS providers like Sorenson are not, for instance, wireless carriers who could at least know the cell site to which the caller was located. VRS providers seek to provide VRS seamlessly throughout the nation to give their users functional equivalence no matter where they and the other party happen to be located.⁴¹

Similarly, though it operates somewhat differently from VRS, IP CTS still relies on a broadband connection in order for the technology to work. In a standard IP CTS call, the traditional voice part of the call is connected to the other party over the PSTN and to an IP CTS communications assistant ("CA") over a broadband Internet connection using specialized IP-compatible CPE. IP CTS providers therefore are not part of the call flow between the caller and receiver and are thus not in the same position to know the actual location of both ends of a call as, for instance, an underlying wireless or wireline carrier may be. And like VRS, given the

⁴⁰ See 47 C.F.R. § 64.611.

⁴¹ IDT attempts to argue that VRS providers can determine the endpoints of VRS calls as a result of data collected pursuant to 47 C.F.R. §§ 64.604(c)(ii)(D)(2)(i)-(x), which require VRS providers to collect, among other things, incoming and outgoing IP addresses. But the Commission has previously noted that iTRS providers cannot automatically determine caller location. See *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration, FCC 05-48, 20 FCC Rcd. 5433, 5434 n. 8 (2005) ("Internet addresses have no geographic correlates, and there is currently no Internet address identifier comparable to the Automatic Number Identification (ANI) in the PSTN that can automatically give the location of the Internet user."); *2004 Report and Order*, 19 FCC Rcd. at 12,491 ¶ 25 ("Because Internet addresses have no geographic correlates (*i.e.*, because Internet addresses are assigned without identifiers of geographic location), the record does not indicate that TRS providers can automatically determine the location of the caller, and therefore determine whether the call is interstate or intrastate.").

prevalence of wireless phone numbers and abbreviated dialing sequences, simply knowing the phone numbers at each end of the call is not sufficient to know the location of either endpoint. Also like VRS, there is no service-driven reason why an IP CTS provider would need to know, or would improve its IP CTS service by knowing, the callers' actual locations.

Indeed, a Section 2(b) analysis of these iTRS technologies yields a similar result to the Commission's decisions in the VoIP context.⁴² In its 2004 *Vonage Order*, the Commission applied a Section 2(b) analysis and ruled that telephone calls using broadband Internet connections that could be used from multiple locations would fall solely under interstate jurisdiction even where the technology allowed for intrastate calling.⁴³ The Commission acknowledged that certain characteristics of IP-enabled telecommunications services like VoIP weigh in favor of purely interstate jurisdiction. These include among others "a requirement for a broadband connection from the user's location [and] a need for IP-compatible CPE." As discussed above, VRS and IP CTS require a broadband connection and specialized, IP-compatible CPE in order to function; VRS can be moved from one geographic location to another; and iTRS can be mobile or nomadic when the end user's underlying service is mobile or nomadic—a fact not known to the IP CTS provider which does not distinguish between fixed, nomadic and mobile underlying services as chosen by the end user. It only makes sense for the Commission to consider VRS and IP CTS as technologies similar to VoIP for a jurisdictional analysis.

The Commission also noted that there was no service-driven reason for VoIP providers to attempt to reengineer their technology to be able to locate both end points of a VoIP call.⁴⁴

⁴² See *Vonage Order*, 19 FCC Rcd. at 22,424 ¶ 32.

⁴³ See *id.* ¶ 22 & n.85.

⁴⁴ *Id.* ¶ 25.

Similar to the VoIP context, requiring iTRS providers “to attempt to incorporate geographic ‘end-point’ identification capabilities into [their] service solely to facilitate the use of an end-to-end approach would serve no legitimate policy purpose. Rather than encouraging and promoting the development of innovative, competitive advanced service offerings, [the Commission] would be taking the opposite course, molding this new service into the same old familiar shape.”⁴⁵

IDT does not even attempt to wrestle with this history or analysis, and for good reason. It is impractical for iTRS providers to segregate intrastate from interstate iTRS calling minutes, and there is no good policy reason to force them to do so in light of the harm it would do to the Commission’s ability to execute its mandate to ensure access to functionally equivalent telecommunications service.

⁴⁵ *Id.*

CONCLUSION

For the reasons stated above, the Commission should deny IDT's Application for Review.

Respectfully submitted,



John T. Nakahata
Christopher J. Wright
Mark D. Davis
Stephen W. Miller
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street, N.W., Eighth Floor
Washington, D.C. 20036
T: (202) 730-1300
jnakahata@hwglaw.com

*Counsel to Sorenson Communications, Inc. ,
and CaptionCall, LLC*

August 11, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this day, true and correct copies of the foregoing Opposition to IDT's Application for Review were sent by U.S. Postal Service, postage prepaid, to the following parties to the proceeding:

Angela Roth
ASL Services Holdings, LLC
3700 Commerce Blvd., Suite 216
Kissimmee, FL 34741
CEO of ASL Services Holdings, LLC

Mary C. Albert
COMPTEL
1200 G Street NW, Suite 350
Washington, DC 20005
Assistant General Counsel to COMPTEL

Jeff Rosen
Convo Communications, LLC
6601 Owens Drive Convo 115
Pleasanton, CA 94588
General Counsel to Convo Communications, LLC

David A. O'Connor
Wilkinson Barker Knauer, LLP
2300 N Street NW, Suite 700
Washington, DC 20037
Counsel to Hamilton Relay, Inc.

Carl Wolf Billek
IDT Telecom, Inc.
520 Broad Street
Newark, NJ, 07102
Senior Regulatory Counsel to IDT Telecom, Inc.

Scott R. Freiermuth
Sprint Corporation
6450 Sprint Parkway
Overland Park, KS 66251
Government Affairs and Federal Regulatory Counsel to Sprint Corporation

Pamela Y. Holmes
Ultratec, Inc.
450 Science Drive
Madison, WI 53711
Director of Consumer and Regulatory Affairs for Ultratec, Inc.

Kevin Rupy
United States Telecom Association
607 14th Street NW, Suite 400
Washington, DC 20005
Senior Director of Policy Development at the United States Telecom Association

Claude L. Stout
Telecommunications for the Deaf and Hard of Hearing, Inc.
8630 Fenton Street, Suite 604
Silver Spring, MD 20910
Executive Director of Telecommunications for the Deaf and Hard of Hearing, Inc.

Cheryl Heppner
Deaf and Hard of Hearing Consumer Advocacy Network
3951 Pender Drive, Suite 130
Fairfax, VA 22030
Vice Chair of Deaf and Hard of Hearing Consumer Advocacy Network

Steve Larew
Association of Late-Deafened Adults, Inc.
8038 MacIntosh Lane, Suite 2
Rockford, IL 61107
President of the Association of Late-Deafened Adults, Inc.

Anna Gilmore Hall and Lisa Hamlin
Hearing Loss Association of America
7910 Woodmont Avenue, Suite 1200
Bethesda, MD 20814
*Executive Director and Director of Public
Policy for the Hearing Loss Association of
America*

Howard A. Rosenblum
National Association of the Deaf
8630 Fenton Street, Suite 820
Silver Spring, MD 20910
CEO of the National Association for the Deaf

Mark Hill
Cerebral Palsy and Deaf Organization
1219 NE 6th Street, Apt 219
Gresham, OR 97030
*President of the Cerebral Palsy and Deaf
Organization*

Sheri A. Farinha
California Coalition of Agencies Serving the
Deaf and Hard of Hearing
4708 Roseville Road, Suite 112
North Highlands, CA 95660
*Chairperson of the California Coalition of
Agencies Serving the Deaf and Hard of
Hearing*

Mark Gasaway
American Association of the Deaf-Blind
P.O. Box 8064
Silver Spring, MD 20907
*President of the American Association of the
Deaf-Blind*

Nancy B. Rarus
Deaf Seniors of America
5619 Ainsley Court
Boynton Beach, FL 33437
President of Deaf Seniors of America

Julie Anne Schafer
Registry of Interpreters for the Deaf
333 Commerce Street
Alexandria, VA 22314
*Director of Public Policy and Advocacy for
the Registry of Interpreters for the Deaf*

Mike Strecker
CSDVRS, LLC (ZVRS)
600 Cleveland Street, Suite 1000
Clearwater, FL 33755
Vice President of CSDVRS, LLC

John Goodman
Purple Communications, Inc.
595 Menlo Drive
Rocklin CA 95765
*Chief Legal Officer of Purple
Communications, Inc.*

Jeremy M. Jack
CAAG VRS
P.O. Box 667020
Houston, Texas 77266
Vice President of CAAG VRS


Caroline Schuitema
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