

**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	)	
	)	

**Reply Comments of the Ad Hoc Coalition  
of International Telecommunications Companies**

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**Reply Comments**

**I. Introduction and Summary**

The Ad Hoc Coalition of International Telecommunications Companies (“Coalition”),<sup>1</sup> by counsel, respectfully submits these Reply Comments in regards to IDT Telecom, Inc.’s (“IDT”) Petition for Rulemaking in the above-captioned proceeding (“Petition”). IDT filed its Petition on November 25, 2016, asking the Federal Communications Commission (“FCC” or “Commission”) to issue a Notice of Proposed Rulemaking (“NPRM”) to: (1) examine the Commission’s rules relative to the current contribution methodology for the Interstate Telecommunications Relay Service (“TRS”) Fund; and (2) revise the present TRS Fund contribution methodology to include intrastate revenue within the TRS Fund contribution base.<sup>2</sup> On December 18, 2015, the FCC solicited comments on IDT’s Petition.<sup>3</sup> With the exception of one lone dissent, the comments broadly supported IDT’s Petition.<sup>4</sup> Supporters include

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<sup>1</sup> The Ad Hoc Coalition of International Telecommunications Companies is a grassroots organization comprised of both U.S. and non-U.S. corporations, including prepaid calling card providers, international transport carriers, and a broad spectrum of entities engaged in the provision of wholesale communications services. <http://www.telecomcoalition.com/>

<sup>2</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Petition for Rulemaking, CG Docket No. 03-123, filed Nov. 25, 2015 (“IDT Petition”).

<sup>3</sup> Federal Communications Commission, Public Notice, Request for Comment on Petition for Rulemaking Filed by IDT Telecom, Inc. Regarding Interstate Telecommunications Relay Service Fund Contribution, CG Docket No. 03-123, DA 15-1453 (Dec. 18, 2015).

<sup>4</sup> See *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Comments of Hancock, Jahn, Lee & Puckett, LLC, filed Feb. 3, 2016 at 1 (“CAAG/Star VRS fully supports IDT’s proposal in its entirety, believes it is well

consumer groups, TRS/VRS providers and telecommunications providers (TRS Fund contributors). Like the majority of commenters, the Coalition fully supports IDT's Petition and herein dispels the outlying opposition. For the reasons articulated in IDT's Petition, supportive comments, and in these Reply Comments, the Commission should initiate an NPRM to evaluate the current TRS Fund contribution methodology. At the conclusion of its review, the Commission should exclude international revenue from the TRS Fund contribution base, or at a minimum, create separate contribution factors for interstate and international revenues to alleviate the disproportionate burden currently borne by providers, and ultimately consumers, of international telecommunications services. Moreover, the Coalition supports IDT's proposal to expand the contribution base to include intrastate revenues to further stabilize the Fund and fairly apportion contribution obligations among the jurisdictions supported by the Fund. As part of its review of the current TRS Fund contribution methodology, the Commission should consider the appropriate contribution factor to apply to intrastate revenues.

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within statutes and purview of the FCC to implement, and encourages the Commission to swiftly issue a Notice of Proposed Rulemaking ("NPRM") on the matter"); Comments of Sprint Corporation, filed Feb. 4, 2016 at 1 ("Sprint Comments") ("Sprint agrees that reform of the contribution mechanism for the TRS and indeed for all of the federal universal service programs is desperately needed and long overdue... Sprint thus supports IDT's call to initiate a proceeding to consider contribution reform so long as the proceeding encompasses both TRS and the federal USF programs."); Joint Comments of Sorenson Communications, Inc. and Capital Call, LLC, filed Feb. 4, 2016 at 1 ("Sorenson & Capital Call Comments")("As requested by IDT, the Commission should initiate a rulemaking to expand the contribution base for the Telecommunications Relay Services Fund ("TRS Fund") to include intrastate revenues."); Comments of Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America, Association of Late-Deafened Adults, Inc., Cerebral Palsy and Deaf Organization, Deaf Seniors of America, California Coalition of Agencies Serving the Deaf and Hard of Hearing, filed Feb. 4, 2016 at 3 ("Consumer Group Comments") ("[T]he Consumer Groups agree that recovery of support from providers of intrastate revenue is entirely appropriate and consistent with both the statute and Commission regulation."). USTelecom takes no "formal position on the IDT petition," but encourages the Commission to "consider substantive changes to the contribution methodology for the TRS fund." See Comments of United States Telecom Association (USTelecom) at 2, filed Feb. 4, 2016.

## **II. Including Intrastate Revenues within the TRS Contribution Base Would Help to Ensure the Sustainability of the Fund and to Fairly Apportion Contribution Obligations**

### **A. The Current Contribution Methodology is Unsustainable**

The TRS Fund contribution base is shrinking. As Sprint points out, this largely stems from a shift in focus from voice to broadband services.<sup>5</sup> This trend can only be expected to continue since, in 2011, the FCC announced efforts to modernize its universal service programs to accelerate the transition from traditional telecommunications to IP-based and broadband services.<sup>6</sup> Meanwhile, demand for TRS, particularly VRS and IP-based services, has exploded.<sup>7</sup> Simply put, reliance exclusively on revenues from international and interstate telecommunications to fund TRS is unsustainable. Accordingly, to ensure the sustainability of the TRS Fund, the Commission must thoroughly examine the current contribution scheme, and adopt large-scale changes designed to keep pace with demand for TRS funding.

### **B. The Current Contribution Methodology Disproportionately Burdens International Telecommunications in Violation of the Communications Act and Administrative Procedure Act**

Furthermore, the current contribution methodology disproportionately burdens providers (and ultimately consumers) of international telecommunications, and to some extent, interstate revenue. While the Fund only taxes interstate and international telecommunications revenue, it subsidizes interstate, international *and* intrastate TRS.<sup>8</sup> International revenue bears the most significantly

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<sup>5</sup> Sprint Comments at 1.

<sup>6</sup> *In the Matter of Connect America Fund, a National Broadband Plan for our Future, et. al.*, Report and Order and Notice of Further Proposed Rulemaking, FCC 11-161 (Nov. 18, 2011).

<sup>7</sup> See, e.g., IDT Petition at 6-8.

<sup>8</sup> See *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 Red 5140, paras. 21-27 (Mar. 6, 2000) (approving the compensation of all (including intrastate) VRS calls from the Interstate TRS Fund); *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) (approving the compensation of all (including intrastate) IP Relay calls from the interstate TRS Fund); *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities; IP-based Captioned Telephone Service*, CG Docket No. 03-123, Declaratory Ruling, FCC 06-182

disproportionate share of the TRS funding burden. As compared to interstate and intrastate TRS usage, international TRS usage is miniscule,<sup>9</sup> revealing a significant gap between the services subsidizing TRS and the services actually supported by the Fund.<sup>10</sup> In short, the current methodology does not fairly apportion TRS contribution obligations among the services supported by the Fund.

As currently applied (including only interstate and international telecommunications revenues in the contribution base), the FCC's rules conflict with the Communications Act ("the Act") and the Administrative Procedure Act ("APA"). Title IV of the Americans with Disabilities Act ("ADA") (47 U.S.C. § 225 (1990)) provided for TRS to the deaf and hard of hearing. While Section 225 does not specifically require the FCC to impose TRS Fund contributions on an equitable basis, Section 201 of the Act requires all regulation of telecommunications service to be "just and reasonable."<sup>11</sup> Disproportionately burdening international services is neither just nor reasonable. In establishing the TRS Fund, the FCC assumed that because TRS would be available for international calls, international and interstate TRS use would be proportional to the revenue generated by international and interstate calls; therefore, the Commission found it reasonable to impose the TRS Fund surcharge on

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at para. 1 (January 11, 2007) (approving the compensation of all (including intrastate) IP CTS calls from the interstate TRS Fund).

<sup>9</sup> Available evidence suggests that current international TRS use is miniscule, but contributions assessed on international revenue account for more than ten percent of the TRS Fund. See Universal Service Monitoring Report 2011, CC Docket No. 98-202, table 1-6 (Rel. Dec. 2011), *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-311775A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311775A1.pdf) (finding international revenue comprised approximately 11.5% of the TRS Fund base); See also Coalition Application for Review and Coalition Opposition, *infra*, n. 10.

<sup>10</sup> The Coalition challenged the Governmental Affairs Bureau's ("Bureau") proposed contribution factor for 2014-2015 through an Opposition filed on May 23, 2014. See *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 & 10-51, Opposition of the Ad Hoc Coalition of International Telecommunications Companies to the Imposition of the Proposed TRS Fund Contribution Factor on International Telecommunications Services, filed May 23, 2014 ("Coalition Opposition"). On July 30, 2014, the Coalition filed an Application for Review of the Bureau's Order establishing the 2014-15 TRS Fund contribution factor. As the Coalition noted in its Application, the current TRS Fund contribution formula effectively taxes a carrier's international revenue to subsidize interstate and intrastate TRS. See *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 & 10-51, Application for Review, filed July 30, 2014 ("Coalition Application for Review").

<sup>11</sup> 47 U.S.C. § 201.

international revenue to support the program.<sup>12</sup> However, actual international TRS usage pales in comparison to interstate usage. As a result, international services disproportionately bear the burden of TRS funding.

All FCC decisions must be supported by pertinent evidence or must be amended or reversed.<sup>13</sup> Because the FCC's presumptive reason for including international revenues in the TRS Fund contribution base is invalid, the Commission must revisit its TRS funding rules and adopt a more equitable contribution methodology reflecting actual TRS/VRS usage patterns. In this case, where the rule is based on an assumption that later proves to be untrue, maintaining the rule would constitute a deprivation of due process.<sup>14</sup>

**C. The Commission Should Examine its Current Contribution Methodology and Exclude International Revenues from the Contribution Base, Create Separate Contribution Factors for Interstate and International Revenues, and/or Expand the Contribution Base to Include Intrastate Revenues**

The Coalition submits that the Commission should exclude international revenues from the TRS Fund contribution base altogether. In the alternative, the Commission should conduct a study of actual usage for interstate and international TRS and modify the TRS contribution rules to create two separate TRS Fund contribution factors – one for interstate revenues, and another for international revenues – each based upon the proportion of compensable interstate and international TRS minutes used, and the costs of those minutes. And, as a matter of equity and sound policy, the Commission should suspend the current TRS Fund contribution factor for international revenue. At a minimum, however, the Coalition supports expanding the contribution base to include intrastate revenues in order to minimize any disproportionate burden borne by international services.

Expanding the TRS Fund contribution base to include intrastate revenues would go a long way toward solving both the unsustainability of the Fund and unfair apportionment of contribution

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<sup>12</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 71 Fed. Reg. 35553, 35554-55 (June 21, 2006) (“Telco Declaratory Ruling”).

<sup>13</sup> 5 U.S.C. § 556(d); 5 U.S.C. § 706.

<sup>14</sup> See, e.g., *Ibrahim v. Dep't of Homeland Sec.*, 538 F.3d 1250 (9th Cir. 2008).

obligations. Specifically, an expanded contribution base would allow the Commission to reduce the ever-rising TRS contribution factor while ensuring that contribution obligations fairly extend to all jurisdictions supported by the Fund. In particular, by expanding the contribution base to intrastate revenues, the Commission would reduce the disproportionate burden imposed in international revenues.

### **III. The Commission has Legal Authority to Include Intrastate Revenues within the TRS Fund Contribution Base**

Section 225 of the Communications Act clearly authorizes, and in fact mandates that the Commission recover the costs of intrastate TRS from intrastate services.<sup>15</sup> Section 225 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."<sup>16</sup> Currently, all federal TRS costs (interstate, intrastate and international) are recovered from interstate (and international) services. Section 225 not only authorizes, but in fact, requires the Commission to revisit its current contribution methodology to ensure that, consistent with statutory mandate, intrastate TRS costs are recovered from intrastate services.

Section 225 further provides that "The Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this subchapter with respect to any common carrier engaged in interstate communication."<sup>17</sup> The VON Coalition argues that this statutory provision merely "grants the Commission some enforcement authority over intrastate common carriers that fail to comply with the Act and FCC regulations promulgated thereunder" and does not "negate the statutory limits Congress imposed on the Commission's authority to collect intrastate revenue for

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<sup>15</sup> The Coalition respectfully disagrees with Sorenson and Capital Call's interpretation of Section 225(d)(3), finding it to be permissive guidance that the Commission can ignore.

<sup>16</sup> 47 U.S.C. § 225(d)(3).

<sup>17</sup> 47 U.S.C § 225 (b)(2).

contribution to the federal Fund.”<sup>18</sup> Yet, the VON Coalition fails to point to any authority for this narrow interpretation of Section 225. Section 225 generally vests the Commission with authority to regulate the provision of and compensation for intrastate TRS. Specifically, Section 225 instructs the Commission to “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”<sup>19</sup> Within in that same section, for the purpose of carrying out that mandate, the statute vests the Commission with the *same authority* it holds with respect to interstate common carriers over intrastate common carriers. The VON Coalition’s narrow reading of Section 225 is simply not supported by the plain words of the statute. As Sorenson and Capital Call acknowledge, “Title IV created an explicit exception to the scope of the Commission’s general jurisdiction under Section 2(b) of the Communications Act: 6 47 U.S.C. § 225(b)(2) expressly grants the FCC jurisdiction over both interstate and intrastate carriers for the purpose of administering the nationwide provision of TRS.”<sup>20</sup>

Furthermore, the statute merely *allows*, but does not require, states to establish programs to manage the provision of and recovery for intrastate relay service. By making establishment of state telecommunications relay services programs voluntary, Congress clearly intended to relegate authority to the FCC to oversee funding and cost recovery for intrastate relay services in certain cases. The VON Coalition latches on to the fact that all states have chosen to establish programs to manage intrastate TRS as evidence that the Commission’s exercise of jurisdiction over intrastate TRS is “unnecessary.” The VON Coalition once again misses the point. This statutory language clearly shows that Congress intended to authorize the Commission to oversee the administration and/or administer intrastate TRS.<sup>21</sup> Importantly, as Sorenson and Capital Call point out, Congress authorized the FCC

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<sup>18</sup> See *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Comments of the VON Coalition at 2-3, filed Feb. 4, 2016.

<sup>19</sup> 47 U.S.C § 225 (b)(1).

<sup>20</sup> Sorenson & Capital Call Comments at 2.

<sup>21</sup> See *also* Sorenson & Capital Call Comments at 4.

to implement a recovery mechanism to support *nationwide* TRS.<sup>22</sup> Accordingly, the Commission should determine that Congress authorized it to manage intrastate IP-based and traditional TRS, including collecting compensation for such services, from all jurisdictions.

#### **IV. Including Intrastate Revenue in the TRS Contribution Base Would Not be Administratively Complex**

As IDT points out in its Petition, expanding the TRS Fund contribution base to include intrastate revenues would not be administratively difficult, since interstate carriers already report intrastate revenues as a component of their total revenues reported on Form 499-A for TRS purposes.<sup>23</sup> The Commission would only need to adopt a new reporting system for those relatively few carriers who provide intrastate only services. Likewise, adopting two separate contribution factors for interstate and international services would not be administratively complex since the Commission already administers a funding mechanism with numerous contribution factors (the FCC regulatory fee).

#### **V. Conclusion**

For the foregoing reasons, the Coalition hereby respectfully requests that the Commission suspend the imposition of the TRS Fund factor on international telecommunications revenues. Concurrent with this suspension, the Coalition requests that the FCC open a rulemaking proceeding or otherwise undertake a study to determine the fundamental inequities in the current system of calculating and assessing contributions on international services, culminating in, at a minimum, the adoption of unique TRS Fund contribution factors for end-user revenues derived from each of the following: (1) interstate telecommunications services; and (2) international telecommunications services. In addition, for the reasons stated herein, the Coalition supports IDT's request to expand the TRS Fund contribution base to include intrastate revenues. In conjunction with its review of the current contribution system, the Coalition urges the Commission to evaluate the appropriate contribution factor to apply to intrastate services.

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<sup>22</sup> *Id.* at 3.

<sup>23</sup> *See* IDT Petition at 13; *See also* Sorenson & Capital Call Comments at 7.

Respectfully submitted,

Ad Hoc Coalition of International Telecommunications Companies  
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A handwritten signature in black ink, appearing to read 'JSM', with a long horizontal flourish extending to the right.

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