

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

RECEIVED

JUL 30 2001

In Re Provision of Improved)
Telecommunications Relay Services)
and Speech-to-Speech Services for)
Individuals with Hearing and Speech)
Disabilities)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 98-67

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

I. INTRODUCTION

Pursuant to the July 9, 2001 *Federal Register* notice,¹ the United States Telecom Association (USTA)², respectfully, submits these comments concerning the Federal Communications Commission (Commission) request for public comment concerning cost recovery guidelines recommended by the Interstate Telecommunications Relay Service (TRS) Fund Advisory Council and the TRS Fund Administrator. USTA submits these comments concerning the guidelines to illuminate the basic statutory requirements that govern reimbursement for cost recovery from the Fund; and, also to recommend establishing guidepost for consideration and approval of requests for

¹ See, *Fed. Reg.* Vol. 66, No. 131 at 35765 (Jul. 9, 2001).

² The United States Telecom Association (USTA)(previously known as "the United States Telephone Associations") is the nation's oldest trade organization representing the local exchange carrier industry. USTA represents over 800 domestic telecommunications companies that provide a full array of voice, data and video services over wireline and wireless networks. USTA has long addressed matters pertaining to the Interstate Telecommunications Relay Service Fund (Fund). See, e.g., "Comments of the United States Telephone Association" *in re Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571 (Jan. 15, 1991); "Reply Comments of the United States Telephone Association" in CC Docket No. 90-571 (Feb. 15, 1991); "Reply Comments of the United States Telephone Association" in CC Docket No. 90-571 (Oct. 23, 1991); "Comments of the United States Telephone Association" in CC Docket No. 90-571 (Apr. 5, 1993); "Reply Comments of the United States Telephone Association" in CC Docket No. 90-571; "Opposition to Petition for Stay" in CC Docket No. 90-571 (Sept. 1, 1993); "Motion for Extension of Time and Opposition to Request for Stay" in CC Docket No. 90-571 (Oct. 1, 1993); "Opposition of the United States Telephone Association" in CC Docket No. 90-571 (Oct. 23, 1993); "Petition for reconsideration or Clarification of the United States Telephone Association" in CC Docket No. 90-571 (Nov. 1, 1993); "Reply Comments of the United States Telephone Association" in CC Docket No. 90-571 (Apr. 27, 1997); and "Comments of the United States Telecom Association" in CC Docket No. 98-67 (Jul. 30, 2001).

No. of Copies rec'd 014
LWA/DOE

cost recovery reimbursement from the Fund.

II. BACKGROUND

According to the *Fed. Reg.* notice cited above, the Commission seeks further comments concerning the administration of the Fund.

III. DISCUSSION

USTA comments in this matter that reimbursement for cost recovery from the Fund may only be made consistent with the governing statute, i.e., 47 U.S.C. § 225.³ The Commission is

³United States Code TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS
CHAPTER 5 - WIRE OR RADIO COMMUNICATION
SUBCHAPTER II - COMMON CARRIERS
Part I - Common Carrier Regulation

Sec. 225. Telecommunications services for hearing-impaired and speech-impaired individuals

(a) Definitions

As used in this section -

(1) Common carrier or carrier

The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in section 153 of this title and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 152(b) and 221(b) of this title.

(2) TDD

The term "TDD" means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) Telecommunications relay services

The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

(b) Availability of telecommunications relay services

(1) In general

In order to carry out the purposes established under section 151 of this title, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, 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.

(2) Use of general authority and remedies

For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, 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. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this chapter by a common carrier engaged in interstate communication.

(c) Provision of services

Each common carrier providing telephone voice transmission services shall, not later than 3 years after July 26, 1990, provide in compliance with the regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations -

(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) of this section and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d) of this section; or

(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) of this section for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) of this section for such State.

(d) Regulations

(1) In general

The Commission shall, not later than 1 year after July 26, 1990, prescribe regulations to implement this section, including regulations that -

-
- (A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;
 - (B) establish minimum standards that shall be met in carrying out subsection (c) of this section;
 - (C) require that telecommunications relay services operate every day for 24 hours per day;
 - (D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;
 - (E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;
 - (F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and
 - (G) prohibit relay operators from intentionally altering a relayed conversation.

(2) Technology

The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 157(a) of this title, the use of existing technology and do not discourage or impair the development of improved technology.

(3) Jurisdictional separation of costs

(A) In general

Consistent with the provisions of section 410 of this title, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

(B) Recovering costs

Such 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. In a State that has a certified program under subsection (f) of this section, a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

(e) Enforcement

(1) In general

Subject to subsections (f) and (g) of this section, the Commission shall enforce this section.

(2) Complaint

The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

(f) Certification

(1) State documentation

Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

(2) Requirements for certification

After review of such documentation, the Commission shall certify the State program if the Commission determines that -

(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d) of this section; and

(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

(3) Method of funding

Except as provided in subsection (d) of this section, the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

(4) Suspension or revocation of certification

The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

(g) Complaint

(1) Referral of complaint

If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) of this section is in effect, the Commission shall refer such complaint to such State.

(2) Jurisdiction of Commission

After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if -

required to adhere to the determinations made by the United States Congress.⁴ Section 225(d)(3)(B) provides for cost recovery for "telecommunications relay services," which is defined at Section 225(a)(3) as a "telephone transmission service." Section 3(43) of the Act defines telecommunications as "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."⁵ Telecommunications and telecommunications services are, by statute, different from information services, which are defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications . . ."⁶ Information services most often use an underlying telecommunications service. If the request for reimbursement from the Fund fits into the category of telecommunications service, then, assuming other consistencies with Section 225, the service qualifies for reimbursement under Section 225(d)(3)(B).⁷ If not, it does not qualify for reimbursement and permitting such

(A) final action under such State program has not been taken on such complaint by such State -

(i) within 180 days after the complaint is filed with such State; or

(ii) within a shorter period as prescribed by the regulations of such State; or

(B) the Commission determines that such State program is no longer qualified for certification under subsection (f) of this section.

⁴47 U.S.C. §§ 151-152; 5 U.S.C. § 553; and, Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837 (1984).

⁵47 U.S.C. § 3(43).

⁶47 U.S.C. § 3(20)(emphasis added).

⁷Section 225(d)(3)(A) of the Act defers to Section 410 of the Act and **requires** that the cost for TRS service be separated by state and interstate jurisdictions ("Consistent with the provisions of section 410 of this Act, the Commission *shall prescribe* regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.")(Emphasis added.). Compare with 47 C.F.R. § 64.604(c)(5)(i)("Where appropriate, costs of providing TRS shall be separated in accordance with the jurisdictional separation procedures and standards set

reimbursement would violate Section 225's cost recovery provisions.

To the extent not already established, USTA believes the Commission should state that it has determined compliance with each statutory requisite. At a minimum, the Commission should state that it has determined that the requestor seeking reimbursement from the Fund is (1) acting as a common carrier in the context of its service provision for which it is specifically seeking reimbursement; and (2) that the service for which reimbursement is sought is a telecommunications service. In that regard, because the statutory requirements are mandatory and cannot be waived, the Commission should, consistent with all other procedural requirements, establish an approval checklist that is consistent with the relevant statutes and identifies in the approval determination that the requestor meets each statutory requisite for reimbursement as enumerated in 47 U.S.C. § 225 (Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals), and other governing statutory provisions, e.g., §§ 255 (Access by Persons With Disabilities), 410 (Use of Joint Boards--Cooperation with State Commissions), 3(10)(Common Carrier), 3(43)(Telecommunications), 3(44)(Telecommunications Carrier).

Thus, in soliciting public comment on a request, the Commission could apply the checklist to enable the public to comment as to whether the public agrees that the requestor satisfies all of the requisite statutory criterion governing cost recovery from the Fund. To that extent, the Commission may wish to establish a generic set of questions to be answered by the requesting party, stemming from the requisite statutes. These questions and responses thereto may better aid the public in

forth in the Commission's regulations adopted pursuant to section 410 of the Communications Act of 1934, as amended [emphasis added]." Section 410 is explicitly limited in scope to the "separation of common carrier property and expenses - 410(c) (47 U.S.C. § 410)(emphasis added). Therefore, TRS cost must be recovered from the interstate services, as the statute specifically contemplates. See 47 U.S.C. §§ 225(d)(3)(A) and (B).

commenting upon each request by ensuring that the statutory requisites are being addressed.⁸

It is incumbent upon the Commission to make this process simple for the agency's decision makers, the requesting party and the public. Therefore, the Commission could streamline the process by issuing a checklist for a requestor response which enumerates each statutory requisite and allows the requestor to respond specifically to the relevant inquiries. This approach to the Fund's guidelines may provide a greater degree of clarity, and prove more efficient and effective; and, therefore, better aid the public in its efforts to provide comment upon a request and the Commission in making its ultimate determination.

IV. CONCLUSION

WHEREFORE, the reasons stated by USTA in these comments, to the extent not incorporated in the Fund guidelines, USTA urges that the Commission take all actions consistent with these comments. Specifically, USTA believes the Commission should state, *inter alia*, that it has determined compliance, especially with regard to whether the requester seeking

⁸ For example, in a recent matter seeking authority for reimbursement, the requesting party filed its petition seeking reimbursement and subsequently filed additional supplementation about its proposal in *ex parte* filings before the Commission. The Commission therefore solicited public comments upon the collection of *ex partes* and the requesting party's petition. Parties seeking to comment upon the request had to obtain and review all of the relevant documentation. See, *Fed. Reg.* Vol. 66 at 37631-37632 (Jul. 19, 2001). See, also, "Petition For Clarification WorldCom, Inc." in re Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Dkt. No. 90-571 (Dec. 22, 2000)(WorldCom Petition); "Petition for Reconsideration, WorldCom, Inc.", in re Telecommunications Services and Speech-to-Speech Services for Individuals with Hearing and speech Disabilities, CC Docket No. 98-67 (Jul. 27, 2000)(WorldCom withdrew its petition for reconsideration. See, *ex parte* letter from Larry Fenster of WorldCom to Magalie Roman-Salas, Secretary, Federal Communications Commission, in CC Docket No. 98-67 (Jun. 6, 2001: "On July 21, 2000, WorldCom, Inc. . . . petitioned the Commission to reconsider its decision that telecommunications relay services are not telecommunications. Please withdraw this request from our petition for reconsideration." (Emphasis added.)); "Reply to Opposition WorldCom, Inc." in re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67 (Sept. 7, 2000); WorldCom Petition at 3; and, *ex parte* letter from Larry Fenster of WorldCom to Karen Peltz-Strauss, Deputy Bureau Chief, Federal Communications Commission Consumer Information Bureau (Mar. 30, 2001). Thus, rather than having the public cull through numerous relevant documents pertaining to a request for reimbursement from the Fund, the Commission could streamline the process by establishing the necessary inquiry and response for requesters, seeking reimbursement from the Fund.

reimbursement from the Fund is (1) acting as a common carrier in the context of its service provision for which it is specifically seeking reimbursement; and (2) that the service for which reimbursement is sought is a telecommunications service.

Respectfully submitted,

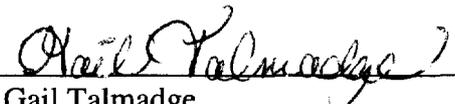
By: 

THE UNITED STATES TELECOM ASSOCIATION
Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie E. Rones
Its Attorneys

July 30, 2001

CERTIFICATE OF SERVICE

I, Gail Talmadge, do hereby certify that on July 30, 2001, a copy of *Comments of the United States Telecom Association*, in CC Docket No. 98-67, was either hand-delivered or deposited in the U.S. Mail, first-class, postage prepaid, to the persons on the attached service list.


Gail Talmadge

Dana Jackson, Disabilities Rights Office
Consumer Information Bureau
Federal Communications Commission
445 12th Street, SW - Room 4-C746
Washington, DC 20554

ITS
CY-B400
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Sheryl Todd
Accounting Policy Division, CCB
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dorothy Attwood, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Michele Walters
Accounting Policy Division, CCB
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Cynthia B. Miller
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Stephen A. Gregory
State of New Jersey Board of Public
Utilities Telephone Relay Advisory Board
515 Lakeview Avenue
Pitman , NJ 08071

Marylyn Howe, Director
Massachusetts Assistive Technology Partnership
1295 Boylston St. - Suite 310
Boston, MA 02215

Alfred Sonnenstrahl
Sonny Access Consulting
10910 Brewer House Road
North Bethesda, MD 20852

Bob Segalman, Ph.D.
3330 Tropicana Court
Sacramento, CA 95826

Sarah Blackstone, Phd.
1 Surf Way, #237
Monterey, CA 93940

Sally F. Davis
700 East Ranch Rd.
Sacramento, CA 95825

David Coco
13264 Kerrville
Austin, TX 78729

Nancy B. Swigert
American Speech-Language Hearing Assoc. (ASHA)
10801 Rockville Pike
Rockville, MD 20852

Kirk Behnke
2904 Gohn Drive
Willow Grove, PA 1090

Bob Dunbar
Idaho Telecommunications Relay Service
P.O. Box 775
Donnelly, ID 83615

Northern Virginia Resource Center
for Deaf and Hard of Hearing Persons
10363 Democracy Lane
Fairfax, VA 22030

Robert Nichols
DC-SHHH Group
1618-C Belmont St., NW
Washington, DC 20009

Arvilla Rank
National Catholic Office for the Deaf
7202 Buchanan Street
Landover Hills, MD 20784

Nancy Block
National Association of the Deaf
814 Thayer Avenue
Silver Spring, MD 20910-4500

Scott Shefferman
WorldCom, Inc.
1133 19th Street, NW
Washington, DC 20036

Joyce Robbins
736 Ojai Avenue
Sun City Center, FL 33573

Kelly Cameron
Robert L. Galbreath
Powell, Goldstein, Frazer & Murphy, LLP
1001 Pennsylvania Avenue, NW, 6th Floor
Washington, D.C. 20004

Andrew Lipman
Michael Mendelson
D. Anthony Mastando
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW - Suite 3000
Washington, DC 20007-5116

Gallaudet University and the Trace Center
Of the University of Wisconsin
800 Florida Avenue, NE
Washington, DC 20002

John Jaco
Executive Director, SHHH
7910 Woodmont Avenue, Suite 1200
Bethesda, MD 20814

Augusta Goldstein
5431 California Street #1
San Francisco, CA 94118

Fred Nisen, Esquire
1324 Addison Street #7
Berkeley, CA 94702

Cheryl Heppner
Executive Director
Northern Virginia Resource Center for the Deaf
and Hard of Hearing Persons
10363 Democracy Lane
Fairfax, VA 22030

Andrea Williams
Michael Altschul
Cellular Telecom Industry Association
1250 Connecticut Avenue, NW, Suite 200
Washington, DC 20036

Leo LaPointe
49 Highland Terrace
Worthington, OH 43085

Kirsten Nyrop
Gus Estrella
United Cerebral Palsy
1660 L Street, NW - Suite 700
Washington, DC 20036

Durward D. Dupre
Hope E. Thurrott
Southwestern Bell Telephone Company
One Bell Plaza, Room 3023
Dallas, TX 75202

Peter Arth, Jr.
William N. Foley
Helen M. Mickiewicz
Public Utilities Commission State of California
505 Van Ness Avenue
San Francisco, CA 9410

Mark C. Rosenblum
Peter H. Jacoby
AT&T
295 North Maple Avenue
Basking Ridge, NJ 07920

Pamela Y. Holmes
Ultratec, Inc.
450 Science Drive
Madison, WI 53711

Kathryn Marie Krause
Qwest Corporation
1020 19th Street, NW - Suite 700
Washington, DC 20036

Davida M. Grant
SBC Communications, Inc.
1401 I Street, NW - 11th Floor
Washington, DC 20005

John M. Goodman
Verizon
1300 I Street, NW
Washington, DC 20005

Leon M. Kestenbaum
Jay C. Keithy
Sprint Corporation
401 9th Street, NW - Suite 400
Washington, DC 20004

Jonathan S. Marashlian
The Helein Law Group, PC
8180 Greensboro Drive - Suite 700
McLean, VA 22102

EllenAnn G. Sands
Nowalsky, Bronston & Gothard
3500 North Causeway Blvd. - Suiet 1442
Metairie, LA 70002

Thomas Mendenhall
Country Road Communications
1500 Mt. Kemble Avenue - Suite 203
Morristown, NJ 07960

Angie Kronenberg
Wilkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384

Lance J.M. Steinhart, PC
6455 East Johns Crossing - Suite 285
Duluth, GA 30097

Steven A. Augustino
Melissa S. Conway
Kelley Drye & Warren, LLP
1200 19th Street, NW - Suite 500
Washington, DC 20036

Benjamin H. Dickens, Jr.
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, NW
Washington, DC 20037

Richard J. Dyer
O'Melveny & Myers, LLP
555 13th Street, NW
Washington, DC 20004-1109

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, NW - Suite 701
Washington, DC 20006

Carl Wolf Billek
IDT Corporation
520 Broad Street
Newark, NJ 07102-3111

David W. Zesiger
Independent Telephone & Telecommunications
Alliance
1300 Connecticut Avenue, NW - Suite 600
Washington, DC 20036

David D. Davidson
Consumer Assistance Division
Maine Public Utilities Commission
242 State Street
18 State House Station
Augusta, ME 04333-0018

Frank Landis
Nebraska Public Service Commission
300 The Atrium - 1200 N Street
P.O. Box 94927
Lincoln, NE 68509

Stephen L. Earnest
Richard M. Sbaratta
BellSouth Corporation
675 West Peachtree Street, NE
Atlanta, GA 30375

Lynda L. Dorr
Public Service Commission of Wisconsin
610 N. Whitney Way
Madison, WI 53705-2750

Karen Brinkmann
Richard R. Cameron
Latham & Watkins
1001 Pennsylvania Avenue, NW - Suite 1300
Washington, DC 20004-2505