

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

In the Matter of)	
)	
Telecommunications Relay Services)	
And Speech-to-Speech Services for)	CC Docket No. 98-67
Individuals with Hearing and Speech)	
Disabilities, and the Americans with)	
Disabilities Act of 1990)	
)	
NECA Interstate Telecommunications)	
Relay Services Fund Payment Formula)	
and Fund Size Estimate)	

COMMENTS OF HAMILTON RELAY, INC.

Hamilton Relay, Inc. (“Hamilton”), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission’s rules, 47 C.F.R. §§ 1.415, 1.419, hereby comments on the payment formula and fund size estimate, as amended, for the 2003-2004 Interstate Telecommunications Relay Services (“TRS”) Fund, which was submitted by the National Exchange Carrier Association (“NECA”) on May 5, 2003.¹

Hamilton is a provider of traditional relay services and speech-to-speech service (“STS”) in six states. In addition, in March 2003, Hamilton commenced nationwide service of Internet Protocol (“IP”) Relay immediately following the

¹ See *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, Errata* (filed May 5, 2003) (“NECA Proposal”); see also *National Exchange Carrier Association (NECA) Amends the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services (TRS) Fund for July 2003 Through June 2004*, Public Notice, CC Docket No. 98-67, DA 03-1527 (rel. May 7, 2003) (“Public Notice”).

Commission's grant of certain waivers to IP Relay providers. Later this year, Hamilton will begin providing video relay services ("VRS").

Hamilton fully supports NECA's proposed payment formula and fund estimate, and takes this opportunity to urge the Commission to adopt NECA's proposals, with the clarification that NECA should not be required to fund retroactive cost recovery for IP Relay providers that were not in compliance with FCC rules at the time that service was rendered.

I. NECA Correctly Notes the Difference in Cost Structure for the Various TRS Services

NECA has generally proposed decreasing the per-minute compensation levels for relay. NECA has nonetheless proposed an increase in the carrier contribution factor due to the combination of a significant reduction in the interstate revenue base used to fund the TRS program and a marked increase in demand for relay services. Hamilton agrees that these factors mandate an increase in the overall amount of the fund in order to meet the increasing demand for relay services.

Hamilton also concurs with NECA that three separate categories of compensation are necessary. Specifically, NECA proposes separate reimbursement rates for: 1) traditional TRS and IP Relay service; 2) STS; and 3) VRS. Hamilton agrees that the similarities in service between interstate TRS and IP Relay justify a combined payment formula. STS, on the other hand, continues to require a separate reimbursement rate because of the different costs and demands involved.

In much the same way, Hamilton agrees with NECA that VRS requires a separate per minute rate, and concurs with the rate proposed by NECA.² There are essentially three factors necessitating a higher reimbursement rate for VRS. First, the labor costs associated with VRS are far higher than traditional TRS, IP Relay service, or even STS. As NECA notes, VRS is dependent upon sign language interpreters who act as video interpreters.³ These individuals are highly skilled and justifiably demand a higher salary than traditional communications assistants.

Second, given the low volume of initial VRS traffic, it is impossible to achieve the efficiencies of scale with VRS that are realized with the much greater volume of traditional TRS and IP Relay. A traditional TRS provider can operate a large call center staffed with numerous communications assistants. In contrast, VRS call centers are typically very small. Higher labor costs, coupled with the current lower demand level for VRS, as compared to traditional TRS, therefore require a higher reimbursement rate for providers of VRS.

² Hamilton continues to support the Commission's position that a separate cost structure is required for traditional TRS (including IP Relay), VRS, and STS, because of material differences in the methods by which those services are provided. *See Telecommunications Services for Individuals with Hearing and Speech Disabilities*, Memorandum Opinion and Order and Further Notice of Proposed Rule Making, CC Docket No. 98-67, FCC 01-371, 16 FCC Rcd 22,948, paras. 22, 26 (2001) (noting that the "due to the unique characteristics of VRS, a separate reimbursement rate for VRS should be calculated" and that the "nature of VRS is very different from STS; STS is a speech-based service that involves the use of specially trained CAs who are able to understand and repeat the words of individuals who have speech patterns that are difficult to understand while VRS is a visual service that utilizes interpreters to interpret sign language over video facilities") (footnotes omitted).

³ NECA Proposal at 5.

Finally, VRS presents significant barriers to entry in terms of upfront capital investment and these costs must be recouped by VRS providers, particularly as the demand for VRS continues to remain low. As a result, the significant upfront capital investment and continued costs involved in providing VRS require a higher reimbursement rate for VRS providers.

As a result of all of the above factors, NECA's proposed reimbursement rate for VRS should be approved by the Commission.

II. NECA Should Not Be Required to Fund Cost Recovery for Certain IP Relay Providers

Finally, NECA has included \$6.4 million of its proposed fund to cover the apparent amount at issue in a pending Petition for Limited Reconsideration filed with the Commission by one of the IP Relay providers.⁴ It appears from NECA's records that NECA has already paid approximately \$16.4 million to IP Relay providers that provided IP Relay services between April 2002 and February 2003,⁵ even though those providers did not comply with Commission rules at the time. If this amount is combined with the proposed \$6.4 million, the total amount of reimbursements to IP Relay providers that were not in compliance with Commission rules at the time that service was rendered would be approximately \$22.8 million.

⁴ *Id.* at 10 & n.18 (citing Sprint's April 24, 2003 Petition for Limited Reconsideration of the Commission's *Order on Reconsideration* in CC Docket No. 98-67, FCC 03-46 (rel. Mar. 14, 2003)).

⁵ See TRS Fund Performance Status Report, Funding Year July 2002 – July 2003 (status as of April 30, 2003), available at ww.neca.org/source/NECA_154_1607.asp.

The overall TRS fund could be reduced by this \$22.8 million if the Commission reaffirms its decision not to allow cost recovery for IP Relay providers that were in violation of Commission rules prior to the issuance of waivers in March 2003.⁶ Such a reduction would benefit the public interest by lowering the overall charges to carriers which are in turn recouped from consumers of all telecommunications services.

III. Conclusion

For the foregoing reasons, Hamilton urges the Commission to approve NECA's proposed payment formula and fund size estimate, with the clarification that IP Relay providers should not be reimbursed by NECA if they were not in compliance with Commission rules at the time that service was rendered.

Respectfully submitted,

HAMILTON RELAY, INC.

/s/ David A. O'Connor

David A. O'Connor

Holland & Knight LLP

2099 Pennsylvania Ave., NW, Suite 100

Washington, DC 20006

Tel: 202-828-1889

Fax: 202-419-2790

E-mail: doconnor@hkllaw.com

Counsel for Hamilton Relay, Inc.

Dated: May 22, 2003

⁶ Hamilton has already filed comments urging the Commission not to allow retroactive cost recovery by IP Relay providers that did not comply with FCC rules prior to the issuance of waivers in March 2003. See Comments of Hamilton Relay, Inc. filed April 28, 2003. Hamilton hereby incorporates by reference its earlier comments regarding this matter.

WAS1 #1182675 v4