

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Telecommunications Relay Services)	CC Docket No. 98-67
And Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	
)	
Petition for Limited Reconsideration of)	
Communication Services for the Deaf)	
_____)	

PETITION FOR LIMITED WAIVER
AND REQUEST FOR EXPEDITED RELIEF

I. Introduction

Communication Services for the Deaf (CSD) hereby respectfully requests a limited waiver of the Federal Communications Commission's (FCC's) minimum standards to the extent that such standards require the provision of video relay services (VRS) for calls consisting of depositions and other legal proceedings. Over the past year, CSD's VRS centers have received an increasing number of requests to provide VRS in depositions and other legal proceedings. Where CSD has knowledge that all parties to such proceedings are located in the same room, CSD declines to provide relay services. In this waiver request, CSD petitions the Commission to also allow CSD to deny calls involving legal proceedings that are initiated between parties located in two separate and remote locations. CSD maintains that a conflict between FCC rules governing the provision of VRS on the one hand and state statutes governing the provision of legal interpreters on the other, jeopardizes legal protections for deaf consumers that these state statutes were intended to create and

potentially exposes CSD's VRS interpreters to civil and criminal liabilities. Because the continued handling of these legal proceedings through VRS may be detrimental to both deaf parties and CSD's interpreters, CSD requests that the relief sought through this petition be granted on an expedited basis.

CSD has been the nation's leading provider of VRS since September of 2000. Through a contract with the Sprint Corporation, CSD currently provides approximately 240 hours of VRS for individuals on a monthly basis. CSD's VRS services are provided from eight different states: Texas, Washington, Maryland, New York, Minnesota, Colorado, South Dakota and Illinois. CSD centers in these states handle VRS calls originating and terminating throughout the entire United States and its territories.

At the time that the FCC approved VRS, it encouraged the pooling and centralization of VRS resources as a way to spur the growth of these services while ensuring their provision on a cost efficient basis:

Given that demand for VRI will be low initially, because the service is in its infancy, we believe it makes sense to aggregate demand as much as possible to those centers interested in offering VRI. It is not efficient to have relay interpreters associated with one state or an interstate relay center with down time while there are people throughout the country who want to make calls through VRI but cannot . . .”¹

CSD agrees that the centralization or regionalization of VRS services is necessary to facilitate the development of these services. However, as discussed below, the centralized nature of VRS is one of the reasons that compliance with the legal interpreting credentialing requirements of all fifty states is not feasible.

¹ In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking, CC Dkt No. 98-67, FCC 00-56 (Rel. Mar. 6, 2000) at ¶25.

II. Federal law – TRS Minimum Standards

In March of 2000, the FCC promulgated rules governing the provision of video relay services.² While the Commission made the provision of VRS voluntary, it stated that where VRS is provided, it must conform to minimum telecommunications relay services (TRS) standards contained elsewhere in the Commission's rules.³ Although the Commission did adopt certain exceptions to those standards for VRS, its rules governing the handling of all types of calls did not fall into one of those exemptions.⁴ Accordingly, TRS standards continue to require VRS providers to relay any kind of call otherwise provided by common carriers.⁵ It is from this provision that CSD now seeks a limited waiver for calls involving depositions and other legal proceedings.

III. State Statutes Governing Legal Interpreting

The specific qualifications, credentialing and licensing needed to interpret in a legal setting is generally governed by state law.⁶ Yet state interpreter laws significantly differ from one another; thus, an interpreter qualified to provide legal interpreting in one state is not automatically qualified to interpret in legal proceedings in other states. As noted above, at any given time, a VRS call may come into a CSD center from any one of the fifty states, the District of Columbia, and United States territories. What this means is that even if some of CSD's VRS

² Improved Services Order.

³ Improved Services Order at ¶39. The Commission explained that it is appropriate to apply national minimum standards to all relay services supported by the Interstate TRS fund.

⁴ Improved Services Order at ¶42.

⁵ 47 C.F.R. §64.604(a)(3), implementing 47 U.S.C. §225(d)(1)(E).

⁶ A summary of state interpreting laws has been prepared by the National Association of the Deaf and can be found at <http://www.nad.org/infocenter/infotogo/asl/InterpStateLaws.html>. Note that this version of the summary does not contain all of the Texas provisions referenced in this document as these were enacted into law after the summary was prepared.

interpreters are qualified to provide legal interpreting in some jurisdictions, it is impossible for CSD to ensure that all of its VRS interpreters are meeting all of the legal interpreting qualifications of every one of these locations. At present, it is not possible for VRS centers to positively determine where VRS calls originate. This makes it virtually impossible to determine whether a given VRS interpreter who answers a call is qualified to interpret in legal situations in the state from which the call is originating. Moreover, even assuming that a caller is able to inform the CSD interpreter of the originating state, and CSD has a list of interpreters qualified to handle legal proceedings in each of the states, there can be no guarantee that the specific interpreters needed will be present and readily available to interpret for the call in question.

Requiring VRS interpreters to handle calls involving depositions and other legal proceedings may also expose VRS interpreters to liability risks. This is because certain states, in addition to establishing legal interpreter obligations, impose monetary fines on interpreters who provide legal interpreting services if they are not properly credentialed. The state of Texas is one such example. There, a deaf person who is a party or witness in a civil case or in a deposition is entitled to have his or her proceedings interpreted by a court-appointed interpreter.⁷ Texas courts must appoint certified court interpreters in a civil or criminal cases when requested to do so by a party or witness to a case.⁸ Texas law defines a “certified court interpreter” as an individual who is a qualified under Article 89.31, Code of Criminal Procedure, Section 21.003, Civil Practice and Remedies Code, or certified for this purpose by

⁷ Texas Statutes - Civil Practice and Remedies Code §21.002(a) (1987).

⁸ Texas Statutes – Government §57.002, added by Acts 2001, 77th Leg., ch. 1139 §, eff. Jan. 1, 2002.

the Texas Commission of the Deaf and Hard of Hearing.⁹ Under Texas law, a person who advertises or otherwise represents him or herself to be a certified court interpreter *without the appropriate certificate* may be convicted of a criminal misdemeanor, punishable by an administrative penalty.¹⁰

IV. Other Ethical and State Law Conflicts

The goal of state legal interpreting laws is to ensure that deaf consumers have a complete and accurate understanding of the events that take place during a deposition or a legal proceeding.¹¹ The critical need for accuracy in these proceedings also imposes on sign language interpreters an ethical obligation to take certain safeguards, safeguards which may be impossible or impractical in a VRS setting. Specifically, according to the Registry of Interpreters for the Deaf (RID), a national organization of professionals who provide sign language interpreting services, interpreters to a legal proceeding should – *before* they begin interpreting – review the case file in question, discuss the case with the parties in order to place the proceeding in the proper context, and explain to the deaf consumer how interpreting

The court may also appoint a court interpreter on its own motion.

⁹ For example, Section 21.003 of the Civil Practice and Remedies Code establishes the following qualifications for certified court interpreters: “The interpreter must hold a current Reverse Skills Certificate, Comprehensive Skills Certificate, Master's Comprehensive Skills Certificate, or Legal Skills Certificate issued by the National Registry of Interpreters for the Deaf or a current Level III, IV, or V Certificate issued by the Board for Evaluation of Interpreters.”

¹⁰ Texas Statutes – Government §§57.026; 57.027.

¹¹ Since the right to a qualified interpreter is given to a deaf person, one may argue that such individual may relinquish this right, and all parties could stipulate to the use of an interpreter that is not fully credentialed in a VRS setting. However, the likelihood of a deaf consumer fully understanding the significance of such a waiver is very small, especially without a fully credentialed interpreter to explain the consequences of giving up this right. State laws on legal interpreting were designed to guarantee legal protections to deaf parties and witnesses; giving up these protections should be discouraged, as such action would not be in keeping with the underlying objectives of these statutes. Moreover, even if a deaf individual does agree to give up his or her right to a credentialed interpreter, this will not relieve the interpreter of liability under state laws that require such interpreters to hold specific credentials as discussed below; nor will it relieve lawyers, courts, and police of their obligations under state and federal law to provide licensed or otherwise credentialed interpreters.

in a legal setting differs from typical interpreting. In other words, it is the interpreter's ethical obligation to ensure, to the best of his or her ability, that the deaf individual has a full and accurate understanding of the legal proceeding about to take place. Anything short of this could result in serious and adverse consequences for that individual, especially where the loss of life, liberty or property is at stake. Indeed, it is for this reason that two or more certified interpreters are often present in a legal proceeding, especially those involving criminal interrogations by law enforcement officials.

The nature of VRS call set-up does not lend itself to informing a deaf consumer about the process of legal interpreting or the particular facts of the legal matter at hand. Because VRS is a form of TRS, FCC rules require VRS centers to meet speed of answer requirements. Individual parties to a VRS call have an interest and a right to have their conversation begin as close to the time that their call comes into the VRS center as possible. To this end, as soon as a VRS call comes in, the VRS interpreter sends a "video connect" command to the caller's computer to establish a video connection, greets the caller with a standardized greeting, and immediately calls the outbound audio party on a telephone line. After explaining VRS to the called party simultaneously in voice and sign language, the CA proceeds to commence interpreting the call for the parties. This process, which is performed as expeditiously as possible to afford functionally equivalent telephone service, does not afford the time and opportunity needed to convey the type of legal information that can be provided to deaf consumers outside of the VRS setting – i.e., information

that is critically needed to ensure that such consumers have a full understanding of the legal proceeding.

There is yet another problem with requiring VRS centers to handle legal proceedings. Title IV of the ADA considers relay operators – in this case, VRS interpreters – to be transparent conduits to the conversations they interpret. Accordingly, the ADA prohibits 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 a call.”¹² The FCC has emphasized the importance of providing relay users with full confidence in the privacy of their conversations; this is considered essential to providing a service that is functionally equivalent to regular telephone service.¹³ Accordingly, the Commission’s minimum standards unequivocally prohibit relay operators from divulging the content of a relayed conversation, even if doing so would be inconsistent with state or local law.¹⁴ Indeed, the FCC has held that “[a]ny state statutes that conflict with ADA disclosure provisions generally would . . . be preempted by the ADA to the extent they affect relay communications.”¹⁵

However, the evidentiary rules of many, if not most, state courts require that sign language interpreters used in legal proceedings be available to testify as to the

¹² 47 U.S.C. §225(d)(1)(F).

¹³ In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, Report and Order and Request for Comments. CC Dkt. No. 90-571, FCC 91-213 (July 26, 1991) (First Report and Order) at ¶13.

¹⁴ First Report and Order at ¶14; 47 C.F.R. §64.604(a)(2). The Report and Order did note limited situations in which relay operators may be required to disclose information about interstate and foreign telephone transmissions in response to a court-issued subpoena or upon demand of a lawful authority. However, the FCC made clear that this would be permissible only when government officials make “authorized requests . . . in connection with specific incidents of possible law violations,” and noted that such requests were likely to be “extremely rare.” Report and Order at ¶14 n. 14.

accuracy of their interpretations.¹⁶ Courts deem the interpreter to be acting as an agent for the parties; once the authenticity of the interpreter's statements on behalf of the deaf party is established, what the deaf person said through the interpreter can be related without hearsay objections to statements made by third parties. Moreover, in the event that there is a dispute as to what has been interpreted, courts permit parties to cross examine an interpreter to clarify the nature or content of his or her interpretations. Again, a conflict with the FCC's minimum TRS standards may prevent an interpreter from fulfilling these state law duties. Specifically, TRS rules would appear to prohibit interpreters from providing testimony about the content of VRS calls, even if those calls involved legal proceedings.

Until such time that the FCC resolves the issue presented, CSD has and will continue to fulfill its legal mandate to handle legal interpreting calls from remote locations (where each party is not in the same location). It is also taking measures to fully and clearly inform callers of any limitations that its interpreters may have with respect to the handling of legal communications. For example, CSD's website explains the difficulties inherent in meeting all of the various state legal interpreting credentialing requirements.¹⁷ In addition, CSD's VRS interpreters directly inform callers that they may not be qualified under applicable state laws to provide interpreting for legal proceedings.

¹⁵ First Report and Order at ¶14 n.14.

¹⁶ For example, Texas law requires interpreters to take an oath that they will "make a true interpretation to the deaf person of all the case proceedings in a language that the deaf person understands" and "repeat the deaf person's answers to questions to counsel, court, or jury in the English language, using the interpreter's best skill and judgment." Civil Practice and Remedies Code § 21.005 (1) and (2).

¹⁷See www.c-s-d.org.

Although the provision of information about the limitations of legal interpreting through VRS will alert callers to the fact that CSD's interpreters may not be fully licensed or credentialed to interpret in every state, a waiver of the obligation to handle these calls is needed to ensure that deaf parties and CSD's interpreters are not pressured into proceeding with these calls, in violation of the deaf consumer's right to fully credentialed interpreters, and the interpreter's legal and ethical obligations under many state laws and RID guidelines to decline these interpreting assignments.

V. Conclusion

At present, the only way that CSD can handle VRS calls involving legal proceedings on demand is to use interpreters that are not necessarily licensed for the states in which those calls are taking place. Continuing the practice of handling these calls may violate the interpreting statutes of one or more of these states, place the legal rights of deaf individuals in jeopardy, and put CSD's interpreters at risk of incurring civil and criminal penalties.¹⁸ The conflicts are several: on the one hand, FCC minimum standards require communication assistants to handle all calls; on the other, state interpreting statutes prohibit the use of interpreters who do not have the specific credentials for legal interpreting in their states. On the one hand, FCC minimum standards require call set-up to be as expeditious as possible; on the other, state and RID standards require that parties receive full explanations about the nature of the legal proceedings at issue before commencing the interpretation of those

¹⁸ In the event that the legal proceeding is taking place between parties in two separate states, the interpreter could conceivably be acting in violation of not one, but two states. In fact, some states might also require the interpreter to be qualified in the state in which the call is being interpreted – requiring simultaneous certification in three states.

proceedings. On the one hand, FCC minimum standards establish strict confidentiality requirements that prohibit communication assistants from divulging the content of their interpreted conversations; on the other, state and possibly federal laws require these interpreters to testify as to the accuracy of their interpreted conversations. For all of these reasons, CSD respectfully requests that the Commission grant this petition for limited waiver in an expedited fashion. A protracted proceeding may result in irreversible harm to both deaf consumers and CSD interpreters.

Respectfully submitted,

Communication Services for the Deaf
102 North Krown Place
Sioux Falls, SD 57103
605-367-5760

By: Karen Peltz Strauss
KPS Consulting
3508 Albemarle Street, N.W.
Washington, D.C. 20008
(202-363-5599)

Its Attorney

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