

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

In the Matter of)
)
Telecommunications Relay Services)
And Speech-to-Speech Services for)
Individuals with Hearing and Speech)
Disabilities)
_____)

CC Docket No. 98-67

PETITION FOR RECONSIDERATION

SPRINT CORPORATION

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SUMMARY

The Bureau's 2003/2004 TRS Fund Order issued pursuant to delegated authority (1) established "interim" rates for various TRS services without any indication of when or by what procedure it would establish fixed rates, and, (2) rejected the compensation rate of \$14.023 per minute for VRS recommended by the NECA and instead prescribed an interim per-minute compensation rate for VRS of \$7.751. The Bureau's decision is flawed in a number of respects.

First the decision is *ultra vires*. The Commission has never before established "interim" rates for TRS service and TRS providers have had assurance, at the beginning of the funding year, of what the minimum rate would be for their reimbursable services and could plan and manage their businesses accordingly. Moreover, the Bureau's decision to reject the VRS providers' markup for profit and instead allow them to recover a return on their investment in VRS only is wholly unprecedented. Indeed, contrary to the Bureau's claim that the markup over expenses methodology utilized by VRS providers is not authorized by the Commission's rules, the Commission has consistently approved the compensation rates proposed by NECA based on data submissions of TRS providers which included a markup over operating non-capital costs.

Second, the Bureau has failed to provide any details as to how it calculated its VRS rate under a rate-of-return analysis. For example, the Bureau does not

- explain how it determined the investment base of VRS providers to which it applied the rate of return prescribed for local exchange carriers;
- explain the basis for its conclusion that a rate of return established for a capital-intensive service is appropriate for an expense-intensive service;
- explain why it is reasonable to assume (as the Bureau implicitly did) that the risk factors faced by local exchange carriers providing a necessary service to interexchange carriers on a monopoly or near-monopoly basis are the same as the risk factors faced by VRS providers offering a new competitive service for which demand is uncertain and the funding of which in doubt; or

- explain in any detail the adjustments it made to the data that TRS providers submitted to NECA, thereby depriving VRS providers the opportunity to determine from the *2003/2004 TRS Fund Order* whether those adjustments were correct.

Third, the Bureau's finding that VRS and VRI are essentially the same services which forms the basis for its view that the rates for VRS and VRI should be comparable is incorrect. The only similarity in the two services is that they both depend upon telecommunications to access the interpreter located in a remote location. In other critical respects, the two services are completely different.

Fourth, the Bureau claims that the "cost saving measures" it adopted for VRS should have prevented "the VRS compensation rate from more than tripling in the span of two years." *2003/2004 TRS Fund Order* at ¶31. The Bureau's claim here assumes that the VRS service initially provided is nearly identical to the service being provided today. Such assumption is incorrect. With the advent of broadband services to homes and offices, VRS providers have abandoned the original VRS provisioning model for which demand was almost non-existent and now offer an on-demand VRS service to consumers who had subscribed to these broadband services.

Fifth, the Bureau's decision has forced VRS providers to restrict the availability of their VRS offerings. A restricted service conflicts with the Commission's §225 duty to ensure the provision of functionally equivalent services to Americans who are deaf, hard-of-hearing or who are speech-impaired.

Thus, the Bureau should (1) reinstate the NECA rates effective July 1, 2003 on a permanent basis, and (2) complete its ongoing rulemaking instituted in December 2001 to establish a rate development methodology for VRS.

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PETITION FOR RECONSIDERATION

Sprint Corporation ("Sprint"), on behalf of the Telecommunications Relay Service ("TRS") operations of its subsidiary, Sprint Communications Company LP, hereby respectfully requests that the Consumer & Governmental Affairs Bureau ("Bureau") reconsider its *Order* FCC 03-2111 released June 30, 2003 (*2003/2004 TRS Fund Order*) in the above-referenced proceeding pursuant to delegated authority insofar as it (1) established "interim" rates for various TRS services without any indication of when or by what procedure it would establish fixed rates, and (2) rejected the compensation rate of \$14.023 per minute for Video Relay Service ("VRS") recommended by the TRS Fund Administrator, *i.e.*, the National Exchange Carrier Association ("NECA"), and set an interim per-minute compensation rate of \$7.751. Sprint urges instead that the Bureau reinstate all of the NECA recommended rates effective July 1, 2003 on a permanent basis and complete its ongoing rulemaking instituted in December 2001 to establish a rate development methodology for VRS. *See Telecommunications Relay Services And Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 16 FCC Rcd 22948 (December 21, 2001) (*VRS Funding Rulemaking*). As more fully explained below, the Bureau's decision here is *ultra vires*, and its actions with respect to VRS rates are (1) based

on a number of incorrect assumptions and inapt comparisons, (2) at odds with the FCC's statutory mandate under Section 225 to ensure that deaf and hard-of-hearing individuals receive telecommunications services that are functionally equivalent to the extent possible with telecommunications services provided to hearing individuals and to not "discourage or impair the development of improved technology," 47 USC §225(d)(2), and (3) otherwise contrary to the public interest.

I. BACKGROUND

A. The Commission's Finding That VRS is a Relay Service

In its *Improved TRS Order* issued March 6, 2000, in this docket (15 FCC Rcd 5140), the Commission concluded that VRS "is a telecommunications relay service" because "it make[s] relay services functionally equivalent to conventional telephone services for individuals whose first language is American Sign Language [ASL]." 15 FCC Rcd 5152 (¶23).¹ Although the Commission explained that "technological uncertainties" made "a mandatory requirement for [VRS] premature," *id.*, it "recognize[d] the enormous potential [VRS] holds for consumers," *id.* at 5153 (¶24), especially those deaf and hard-of-hearing individuals who may not have the typing skills to use a TTY.² Moreover, the Commission stated that it did not want to dictate how VRS

¹ Although the Commission referred to the service used the term Video Relay Interpreting (VRI) in the *Improved TRS Order*, it later learned that VRI was an entirely different service from the video service it found was within the TRS statutory definition and, therefore, eligible for reimbursement from the TRS Fund. Thus, "[i]n order to prevent any further confusion between these two distinct types of services," the Commission "change[d] the nomenclature for the service that is reimbursable to 'video relay services'." *Order on Reconsideration*, 16 FCC Rcd 4054, 4058 (¶10) (2000).

² In the *NPRM* in this docket, 13 FCC Rcd 14199 (1998), the Commission specifically pointed out that VRS would be of enormous benefit to those "groups of persons with hearing disabilities, such as small children, [who] may not have the ability to type on a TTY and, thus,

Footnote continues on next page.

was to be provided, leaving it to “market forces ... to determine the technology and equipment best suited for the provision of [VRS].” *Id.* at 5153 (¶23).

B. The VRS Funding Methodology

The Commission’s goal of encouraging the development of this new and potentially beneficial relay service also led the Commission to “permit recovery of costs associated with both intrastate and interstate calls from the interstate TRS Fund.” *Id.* at 5153 (¶24). The Commission explained that this “special funding arrangement” was based on the Commission’s statutory mandate “to encourage this new technology” and the Commission’s “recognition of concerns about the costs of the service and the potentially inadequate supply of qualified interpreters.” *Id.* The Commission also stated that its funding approach had “the potential to quickly give all consumers who can access it the benefit of video relay service.” *Id.*

The Commission did not require NECA to adopt a new methodology for funding the provision of VRS. Thus, NECA developed the rate to be paid to providers of VRS using the same per-minute compensation methodology it used to develop the rate for traditional TRS. Under that methodology, providers of relay services submit to NECA operating expense, tax and profit margin data.³ Providers of TRS services are not asked by NECA to furnish the types of information, such as net book capital investment in telecommunications plant, working capital and the other data that are necessary to establish a rate base to which a rate of return is to be

still are excluded from the benefits of telephone service despite the availability of TRS.” *Id.* at 14199 (¶29).

³ Although the cost information submitted to NECA uses the “functional accounting guidelines based on relevant Part 32 accounts,” NECA’s Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate filed May 1, 2003 in Docket No. 98-67 at 4, the Commission has previously found that TRS providers are not subject to Part 32 (or Part 36) of the Rules. *See Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, 8 FCC Rcd 5300, 5304-05 (1993).

applied. *See* 47 CFR 65.1 *et seq.* The Commission has since ordered NECA to continue to use this methodology while the Commission conducted a further rulemaking to develop a methodology for funding the provision of VRS. *See VRS Funding Rulemaking* 16 FCC Rcd at 22957 (¶24) (“In the interim...to ensure that providers are able to recover their fair costs related to providing VRS, we direct the TRS administrator to establish an interim VRS cost recovery rate using the average per minute compensation methodology used for traditional TRS”).

C. NECA’s Compensation Rates and Demand for VRS Prior To July 2003

The initial VRS per-minute rate proposed by NECA and approved by the Commission for funding year July 1, 2000 through June 30, 2001 was \$5.143.⁴ The rate was increased in February 2001 to \$5.539 and applied on a retroactive basis for the period beginning October 1, 2000.⁵ These rates were based on the costs of a VRS offering that required end users to leave their homes and offices and go to a public location where a VRS station was located, usually in a shopping mall or other public location. The stations were only open for limited periods during the business day and allowed at most only two VRS calls to be relayed at any one time. Given the substantial inconvenience associated with this early version of VRS, demand was negligible. Based on information supplied by NECA, only one entity filed a funding claim for VRS during this funding year, and the number of conversation minutes claimed by that entity was a paltry

⁴ *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (Fund Administration Fund Size Estimate and Payment Formula, July 2000 Through June 2001)*, 15 FCC Rcd 11384 (2000).

⁵ *See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (Fund Administration Fund Size Estimate and Payment Formula, July 2000 Through June 2001)*, 16 FCC Rcd 4651 (2001).

256.⁶ For the funding year July 1, 2001 through June 30, 2002, the per-minute rate for VRS was initially set at \$7.449;⁷ but again according to data supplied by NECA, no entity submitted any VRS minutes for compensation while this rate was in effect.⁸ Subsequently, the per-minute rate was increased to \$9.614.⁹

Around this same time, demand for high-speed broadband service, which is a necessary component in the provision of VRS, was increasing. For example, between December 1999 and June 2001 the number of residential and small business subscribers obtaining such services, including xDSL and cable modem service, increased by 333 percent, from about 1.8 million to 7.8 million.¹⁰ Given this growth in broadband services, the increase in the reimbursement rate and the decision to waive certain of the mandatory minimum standards for VRS providers, *see Order*, DA 01-3029, 17 FCC Rcd 157 (2001), Sprint together with Communications Services for the Deaf (“CSD”) began offering VRS in the second half of the 2001/2002 funding year directly to homes and offices, thereby enabling end users who had use of broadband services to conveniently access the service from their home or office computers. The result was that end

⁶ See NECA May 2002 Fund Payment/Size filed May 1, 2002 in CC Docket No. 90-571 (*Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*) at Exhibit 2, page 2B.

⁷ *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (Fund Administration Fund Size Estimate and Payment Formula, July 2001 Through June 2002)*, 16 FCC Rcd 12895 (2001).

⁸ NECA Fund Payment/Size Filing dated May 1, 2002 at Exhibit 2, page 2B.

⁹ *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (Fund Administration Fund Size Estimate and Payment Formula, July 2001 Through June 2002)*, 17 FCC Rcd 8840 (2002). The \$9.614 rate was applied on a retroactive basis for the period beginning August 1, 2001.

¹⁰ According to the Commission, as of June 2001, approximately 7.8 million residential and small business customers subscribed to high-speed services. *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, 17 FCC Rcd 2844, App C, Table 3 (2002).

users began to avail themselves of VRS. Thus, whereas there were no compensable VRS minutes reported for the period July 1, 2001 to December 31, 2001, 141,224 VRS minutes were claimed for the second half of the funding year, *i.e.* January 1, 2002 -June 30, 2002.¹¹

Such usage clearly demonstrated that VRS offering would be well received as long as end users could utilize the service from their homes and offices instead of traveling to a public location during a defined period of time in order to make a VRS call. Stated differently, there would be a significant and growing demand for a VRS offering that was more functionally equivalent to conventional telephone services. And Sprint, together with CSD sought to provide a high quality functionally equivalent VRS service by offering an on-demand service that was available 24 hours a day, 7 days a week; by deploying a distributive network that enabled answer times for VRS calls to approach the answer times for conventional TRS calls; and by installing technology that enabled any person to make a VRS call regardless of the type of equipment, software applications and access facility, *e.g.*, xDSL, cable modem, ISDN etc., that such person used to make a VRS call. The initial costs of providing this more functionally equivalent form of VRS were substantial as attested to the fact that for the July 1, 2002 to June 30, 2003 funding year, NECA proposed -- and the Commission approved -- a per-minute compensation rate for VRS of \$17.044.¹²

¹¹ NECA Fund Payment/Size Filing dated May 1, 2003 at Exhibit 2, page 2B.

¹² *Proposed Payment Formula And Fund Size Estimate For The Interstate Telecommunications Relay Services (TRS) for July 2002 Through June 2003*, 17 FCC Rcd 11242 (2002).

D. The Bureau's 2003/2004 TRS Fund Order

Demand for VRS continued to grow during the 2002/2003 funding year.¹³ As a result the per-minute costs for the provision of a functionally equivalent VRS service began to fall. Thus, based on the cost data and demand projections submitted by the VRS providers, NECA proposed an 18 percent reduction in the VRS compensation rate from \$17.044 to \$14.023.¹⁴ The Bureau, however, rejected NECA's proposed rate and instead found that the per-minute rate for VRS, at least on an interim basis, should be \$7.751. For other services, the Bureau accepted the NECA-recommended rates, but adopted those rates only on an "interim" basis. Nothing in the *2003/2004 TRS Fund Order* explained how or when final rates would be established.

With respect to VRS, the Bureau justified its nearly halving of the rate proposed by NECA by comparing the current VRS per-minute rate with the per-minute rates for VRI. According to the Bureau, such comparison was appropriate because VRS and VRI "are essentially the same [services]," and are provided "us[ing] essentially the same video equipment and resources as VRS." *2003/2004 TRS Fund Order* at ¶30. The Bureau appeared to recognize that "there may be several factors that justify a VRS compensation rate that is higher than VRI." Nevertheless it stated that because the costs of providing the two services are, or should be, "comparable," the rate for VRS should not be much higher than the highest per-minute rate for VRI which the Bureau said was \$3.00. *Id.*

¹³ NECA Fund Payment/Size Filing dated May 1, 2003 at Exhibit 2 page 2B showing that for the period July 1, 2002 through March 31, 2003, there were 913,165 VRS minutes and that for the remaining three months of the funding year -- April through June -- an additional 502,729 VRS minutes were expected to be generated.

¹⁴ NECA Fund Payment/Size Supplemental Filing dated June 19, 2003. NECA originally proposed a VRS compensation rate of \$14.644 per minute but revised the rate downward when one provider reported to NECA that it had discovered an error in its cost submission.

In addition to its VRS/VRI rate comparison, the Bureau suggested that the rate for VRS should be comparable to the rate proposed by NECA for traditional TRS and Internet Relay service and more in line with the original VRS per-minute rates of \$5.143 and \$5.539 established for the 2000-2001 funding year. *Id.* at ¶32 (expressing concern that NECA’s proposed VRS rate “remains relatively high by comparison to the initial compensation rates for VRS and the rate proposed for traditional TRS and IP Relay Service”). Indeed, the Bureau opined that, given the facts that the Commission has allowed the costs of providing both intrastate and interstate VRS calls to be recovered from the Interstate TRS Fund and has waived several of the minimum mandatory TRS standards for VRS, the VRS rate should not have more than tripled in two years. *Id.* at ¶31.

The Bureau also claimed that “the providers’ cost data cannot support the proposed compensation rate of \$14.023 per-minute.” *Id.* at ¶32. In particular, the Bureau said that the profits claimed by the providers which is based on “a percentage of total estimated VRS costs...is neither described nor authorized by [the Commission’s] rules.” *Id.* at ¶35. Instead, the Bureau stated that VRS providers are only entitled to a return on investment and, therefore, used the 11.25% established by the Commission for rate-of-return regulated local exchange carriers “as the relevant benchmark in analyzing and adjusting the providers’ profit data.” *Id.* The Bureau also took issue with labor costs claimed by certain providers, stating that they “appear to overstate their interpreter salaries due to estimates that incorporate labor inefficiencies and excess capacity, or that are based upon inconsistent reimbursable minutes and labor cost

behavior.” *Id.* at ¶36. And, the Bureau adjusted, without explanation, the tax allowances claimed by the providers in their submissions to NECA.¹⁵

II. ARGUMENT

A. The Bureau’s Decision is *Ultra Vires*.

The Bureau’s authority to decide matters under delegated authority is limited. As is relevant here, the Bureau cannot decide “[m]atters that present novel questions of law, fact or policy that cannot be resolved under existing precedents and guidelines.” 47 CFR §0.361(c). The Bureau’s *Order* exceeds its delegated authority in two important respects.

First, the Commission has never before established “interim” rates for TRS service. Although, in the past, retroactive increases have been prescribed, TRS providers have had assurance, at the beginning of the funding year, of what the minimum rate would be for their reimbursable services and could plan and manage their businesses accordingly. Here, however, by setting “interim” rates for all services, the Bureau is departing fundamentally from past practice, without any discussion of (a) its authority to establish interim rates, or (b) any discussion of the procedures it intends to use to establish final rates or the timing of such action. As a result, no provider of TRS services today knows what compensation it will receive for services currently being provided.

Second, the Bureau’s approach to setting interim VRS rates is wholly unprecedented. Plainly, the issue of whether providers of VRS service should be subjected to rate of return regulation is a new matter that must be decided by the Commission and not by the Bureau.

¹⁵ The Bureau encouraged providers to contact to discuss the adjustments made to their individual submissions. *Id.* at n. 91. During Sprint’s meeting with the Bureau, Sprint learned that Bureau applied a tax rate that was less than the statutory IRS rate which carriers are entitled to claim under a rate-of-return regulatory scheme.

Indeed, there is absolutely no Commission precedent for the Bureau's decision to reject the VRS providers' markup for profit and instead allow them to recover a return on their investment in VRS only. And, the Bureau cites none.

The Bureau claims that the markup over expenses methodology utilized by VRS providers is not authorized by the Commission's rules. However, it does not cite any rule where the use of such methodology has been proscribed. On the contrary, that approach has been the Commission's consistent practice with respect to all TRS rates.

Similarly the Bureau does not refer to any Commission decision where the Commission has found that VRS providers are only entitled to a return on their VRS investment. Certainly, the Commission's rate of return decisions applicable to local exchange carriers upon which the Bureau appears to rely are inapposite. The Bureau does not quote or otherwise refer to any language in either of the decisions it cites where the Commission found that its rate of return prescription is to be applied not only to dominant local exchange carriers providing services for which demand is relatively stable but also to competitive providers of VRS service which is in its infancy and for which demand is uncertain.

Further evidence of the fact that the Bureau exceeded its delegated authority by subjecting VRS providers to rate-of-return regulation is that NECA has never required VRS providers to furnish it the Part 32 data that would enable it or the Commission to calculate the investment base for VRS providers to which to apply a rate of return. *See* 47 CFR §65.800 *et seq.* Thus, VRS providers have never been required to provide NECA with their investment in the telecommunications plant (including plant under construction) used to provide VRS service, 47 CFR §65.820(a); material and supplies, 47 CFR §65.820(b); to the extent applicable, noncurrent assets, 47 CFR §65.820(c); and the "average amount of investor-supplied capital

needed to provide funds for a carrier's day-to-day interstate operations." 47 CFR §65.820(d). Rather, NECA has required that carriers furnish their ongoing day-to-day non-capital expenses of providing VRS services.¹⁶ Moreover, VRS providers are also asked to provide profits or margins.¹⁷ As stated, the Commission has consistently approved the compensation rates proposed by NECA based on these data submissions.

Sprint does not argue that the Commission is without the authority to subject VRS providers to rate-of-return regulation if the Commission finds that such regulation applied to competitive providers of non-common carrier services such as VRS is warranted and in the public interest. But, to subject VRS providers to such regulation requires that the Commission engage in a rulemaking proceeding to develop an appropriate rate of return for a expense-intensive service offering,¹⁸ the providers of which face the unique risks associated with a new service offering in a competitive market such as unpredictable demand and the uncertainty that if demand falls below the levels used by NECA to develop the rate, they will be able to recover all of their operating costs. It would be arbitrary and capricious for the Commission to simply apply the rate of return it has prescribed for local exchange carriers to VRS providers. As stated, those

¹⁶ These expense items include such cost items as rent; utilities; building maintenance; property tax; furniture; salaries and benefits; telecommunications expenses; office expenses; staff management expenses; billing expenses; relay center management; annual administrative and overhead expenses; and depreciation expenses. *See* Appendix A to NECA's May 1, 2002 Payment Formula and Fund Size Estimate submitted by NECA in CC Docket No. 90-571.

¹⁷ Cost-plus contracts are used in Federal Government contracting because "[i]t is in the Government's interest to offer contractors opportunities for financial rewards sufficient to stimulate efficient contract performance, attract the best capabilities of qualified large and small business concerns to Government contracts and maintain a viable industrial base." 48 CFR 15-404-4(a)(2).

¹⁸ WorldCom has informed the Commission that "approximately 20 percent of VRS costs are fixed, non-recurring investment costs and the 80 percent are variable, recurring costs, mostly associated with operator salaries." Comments of WorldCom filed February 28, 2002 in this Docket at 2.

carriers are dominant; provide a capital-intensive service for which demand is relatively stable; are able to file tariffs adjusting their rates during the two year rate-of-return monitoring period if their returns are falling short of the Commission's prescribed rate; and, may not be subject to complaints for overearnings for the past period. And, given that the Commission cannot apply rate-of return regulation to VRS providers without conducting a rulemaking proceeding, it is clear that the Bureau is without delegated authority to apply the rate of return prescribed for an entirely different segment of the industry to an assumed investment base in setting the compensation rate for VRS providers.

B. The Approach Used by the Bureau to Derive the Compensation Rate for VRS is Unexplained and Unexplainable.

In addition to being *ultra vires*, the Bureau has failed to provide any details as to how it calculated its VRS rate under a rate-of-return analysis. The Bureau does not, for example, explain how it determined the investment base of VRS providers to which it applied the rate the rate of return prescribed for local exchange carriers. Clearly, it could not have used the various components that under Commission rules comprise an investment base, *i.e.*, telecommunications plant (including plant under construction), material and supplies, noncurrent assets, and working capital, since as stated, VRS providers have never been asked to provide such data to NECA.

Similarly, the Bureau has failed to offer any information as to how it arrived at its decision to apply the rate of return established for local exchange access service to VRS. The Bureau does not explain the basis for its conclusion that a rate-of-return established for a capital-intensive service is appropriate for an expense-intensive service. Nor has it explained why it is reasonable to assume (as the Bureau implicitly did) that the risk factors faced by local exchange carriers providing a necessary service to interexchange carriers on a monopoly or near-monopoly

basis are the same as the risk factors faced by VRS providers offering a new competitive service for which demand is uncertain and the funding of which in doubt.

Moreover, because the Bureau did not give any details as to the adjustments it made to the data that TRS providers submitted to NECA, there is no way for VRS providers to determine from the *2003/2004 TRS Fund Order* whether those adjustments were correct. The information given to Sprint at its *ex parte* meeting with the Bureau subsequent to the release of the *2003/2004 TRS Fund Order* raises significant concern about the legitimacy of such adjustments. As one example, Sprint learned that the Bureau decided that Sprint's use of the IRS statutory tax rate was inappropriate and that the claimed tax allowance should be based on a tax rate closer to Sprint's actual effective tax rate. Such adjustment is totally at odds with rate-of-return ratemaking standards. Under these standards, carriers are allowed to use the statutory IRS tax rate to compute their tax allowance as opposed to their effective rate. This is so because a corporation's actual effective rate in any given year is based on any number of factors including the fact that the losses in certain parts of the business can be used to offset taxable income in profitable parts of the business. Applying the effective tax rate to Sprint's VRS service would necessarily mean that Sprint's other business would be cross-subsidizing the taxes to be paid by VRS. There is absolutely no Commission precedent sanctioning such cross-subsidization.

The Bureau also disallowed what appears to be a significant amount of the interpreter salaries reported by VRS providers. The basis for these disallowances is the Bureau's conclusion that interpreter salaries "incorporate labor inefficiencies and excess capacity." *2003/2004 TRS Fund Order* at ¶36. But again the Bureau offers no details as to how it came to such conclusion.

The Bureau appears to suggest that it is justified in withholding such details because “[s]everal providers requested confidential treatment of their filed documents....” *Id.* at ¶33. But, the need to maintain confidentiality does not excuse the Bureau’s (and Commission’s) obligation to set forth the basis for its findings so that all interested parties are given a full explanation for the Bureau’s decision. Here, the Bureau could have easily accommodated such obligation with the requests for confidential treatment by issuing an Order under seal and allowing *in camera* inspection to those interested parties who signed non-disclosure agreements. The fact that the Bureau chose not to make such accommodation undermines the legality and sustainability of its decision.

C. The Bureau’s Reliance on VRI Rates to Judge the Reasonable of NECA’s Proposed VRS Rates is Misplaced.

The Bureau’s decision to reject NECA’s proposed VRS rate appears to be founded on the Bureau’s belief that the rate for VRS should be more in line with the rate for VRI. Thus, the Bureau, citing a Sprint presentation prepared to explain the Federal Relay Service to various departments and agencies in which the rate for VRI is shown to be at most \$3 per minute, states that it sees no reason “why VRS should cost five times more” than VRI since “the two services are essentially the same.” *2003/2004 TRS Fund Order* at ¶30. The Bureau’s finding that VRI and VRS are the same service is incorrect.

Perhaps the only similarity in the two services is that they both depend upon telecommunications to access the interpreter located in a remote location. In other critical respects, as the Chief of the Bureau has recognized, the two services are completely different.¹⁹

¹⁹ See K. Dane Snowden, “FCC Adds Video Relay Services to State Relay Center Services,” http://ftp.fcc.gov/cgb/dro/views_article.html in which the Chief of the Consumer and

Footnote continues on next page.

For example, VRI is only available during normal business hours and in order to ensure interpreter availability, a person must reserve the service, sometimes up to two weeks in advance. In contrast, VRS has developed into an on-demand service that, at least until the Bureau nearly halved NECA's proposed VRS compensation rate, was available 24 hours a day, 7 days a week, 365 days of the year.

Moreover, because VRI is most often used in cases where hearing and deaf consumers are located in the same room and in-person interpreters are not available, the interpreter is called directly from the end users' location. VRS, on the other hand, links a deaf person and a hearing person who are in different locations through the interpreter via the telecommunications network. As stated above, establishing this link in a time period that could be considered to provide near functional equivalence to the telecommunications services provided hearing individuals requires the deployment of a distributive network as well as the installation of technology that enables any person to make a VRS call regardless of the type of equipment, software applications and access facility used by that person. In short, VRS and VRI, despite the fact that they both use interpreters, are simply not "essentially the same services" whose provisioning costs should be nearly identical.

Governmental Affairs Bureau notes that VRI and VRS are different services and therefore the two should not be confused.

D. The Bureau's Comparison to the Initial VRS Rates and the Rates Now Being Proposed by NECA is Inapt.

Another apparent basis for the Bureau's decision to cut the VRS rate proposed by NECA nearly in half is its observation that the "cost saving measures" it adopted for VRS, *i.e.*, funding both interstate and intrastate VRS calls from the Interstate TRS Fund and waiving the application to VRS of several of the mandatory minimum mandatory standards prescribed for conventional TRS, should have prevented "the VRS compensation rate from more than tripling in the span of two years." *2003/2004 TRS Fund Order* at ¶31. The difficulty with the Bureau's observation here is that it assumes that the VRS service initially provided is nearly identical to the service being provided today. Such assumption does not recognize the evolution that has occurred in the provision of VRS.

As discussed, the initial offering of VRS required end users wanting to avail themselves of interpreting services to leave their homes and offices and travel to public location such as a public mall where a VRS station was located. Offering VRS in this fashion enabled VRS providers to minimize their costs. The stations were only open for limited periods during the business day; only one or two VRS calls could be made at any given time, enabling VRS providers to greatly limit the number interpreters they needed to hire; and there was no need to deploy a distributive network to reduce answer times to a reasonable level.

With the advent of broadband service to homes and offices, VRS providers were able to abandon the original VRS provisioning model for which demand was almost non-existent in any event, and begin to offer the on-demand VRS service to consumers who had subscribed to these broadband services. The costs of providing an on-demand VRS service are substantial and provide the reason which the Bureau said was lacking as to why the costs to provide VRS tripled over the span of two years.

E. The Bureau's Decision Has Made the Provision of a Nearly Functionally Equivalent VRS Impossible to Achieve.

An on-demand VRS service that is available any time day or night has proven to be extremely popular in the target market. Demand for VRS increased, producing efficiencies for VRS providers and enabling NECA to propose a VRS compensation rate for the 2003/2004 funding year that is about 18% lower than the VRS rate for the 2002/2003 funding year. At the proposed NECA rate, Sprint is confident that together with CSD it can continue to move toward providing a functionally-equivalent VRS service and thereby enable the Commission to meet its obligations under Section 225 of the Act. Of equal importance, the provision of a functionally equivalent service would likely lead to increased demand for the service, enabling VRS providers such as the Sprint and CSD to spread the costs of the service over more users which, in turn, would allow for further reductions in the VRS compensation rates.

The Bureau's decision, if allowed to stand, would break this "virtuous circle." Indeed, nearly halving the NECA proposed VRS compensation rate has already required that Sprint and CSD make changes in their VRS offering. The service is no longer available 24 hours a day, 7 days a week, and users of VRS are likely to experience delays in having their VRS calls answered by an interpreter.²⁰ Further reductions in the availability of the service are probable.²¹

The Bureau, and the Commission if it subsequently affirms the Bureau's decision, may well be satisfied with a severely restricted VRS offering. But Sprint believes that such decision is simply incompatible with the Commission's obligation under Section 225 to ensure the

²⁰ Sorenson has announced similar changes in its provision of VRS services.

²¹ Given these changes, demand for VRS is likely to fall which would require an upward adjustment in the VRS per-minute compensation rate. Consistent with Commission precedent, such adjustment would have to be made retroactive.

provision of functionally equivalent services to Americans who are deaf, hard-of-hearing or who are speech-impaired. In sum, there is simply no way that the Bureau's decision here is consistent with the public interest.

III. CONCLUSION.

For the reasons stated above, Sprint respectfully requests that the Bureau reinstate the NECA-recommended rates for all relay services effective July 1, 2003 on a permanent basis and complete its ongoing rulemaking instituted in December 2001 to establish a rate development methodology for VRS.

Respectfully submitted,

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July 30, 2003

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Reconsideration of Sprint in CC Docket No. 98-67 was sent by electronic mail or First Class U.S. Mail, postage prepaid, on this 30th day of July 2003 to the parties listed below.


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