

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)
)
Telecommunications Relay Services) CC Docket No. 03-123
And Speech-to-Speech Services for) CC Docket No. 98-67
Individuals with Hearing and Speech)
Disabilities)
_____)

EX PARTE AMENDMENT TO COMMENTS ON
PETITIONS FOR VRS WAIVERS

Communication Service for the Deaf, Inc.
102 North Krohn Place
Sioux Falls, SD 57103
605-367-5760

By: Karen Peltz Strauss
KPS Consulting
3508 Albemarle Street, N.W.
Washington, D.C. 20008
kpsconsulting@starpower.net

Its Attorney

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I. Introduction

On October 20, 2003, Communication Service for the Deaf submitted comments supporting petitions filed by Hamilton Relay, Inc. and Hands On Video Relay Service for VRS waivers of several telecommunications relay services (TRS) mandatory minimum standards. Although CSD still supports an extension until January 1, 2008, for waivers on equal access to interexchange carriers, long distance billing, automated emergency call handling, pay per call services, automatic call forwarding, and voice initiated calls, by this pleading CSD withdraws its support for a five year waiver on the speed of answering VRS calls.¹ In its stead, CSD proposes that the waiver for speed of answer be granted at most for one year, after which time such waiver would expire. In addition, CSD urges the Commission to consider requiring VRS as a mandatory service to be provided twenty-four hours a day, seven days a week. CSD believes that until VRS becomes a mandatory service, its quality and availability will be less than functionally equivalent for VRS consumers, in violation of the Americans with Disabilities Act (ADA).

The cornerstone of the Americans with Disabilities Act's (ADA) requirement for telecommunications relay services is that these services must be functionally equivalent to conventional voice telephone services. The goal of the ADA was to extend the Communication Act's promises of universal service to people with hearing and speech disabilities, who, prior to the ADA, had no guarantees of telephone access. In crafting rules to govern TRS over the past thirteen years, the FCC has made every effort to comply with Congress's intent to provide TRS in a manner that is as similar in function and quality to conventional voice telephone services as possible.

When VRS was first conceived, consumers immediately saw this as a promising technology to achieve greater functional equivalency to people with hearing disabilities. VRS offered the first time in history that deaf individuals who used American Sign Language could communicate in their own language by phone. The ability to convey one's emotions and thoughts in one's native tongue is far more natural than communicating by text. When the FCC approved VRS for reimbursement as a TRS service in its March, 2000 Improved Services Order, it did so with the understanding that this service would finally provide the ability for people with hearing disabilities to communicate by telephone with other people in a manner that is functionally equivalent to the ability of individuals who do not have hearing disabilities.²

At the time that the FCC was initially contemplating cost recovery for VRS, a number of parties requested the Commission to not only authorize VRS, but to also phase

¹ CSD also continues to support Hands On's request to permit credit card billing for international calls and an indefinite waiver for VRS calls that involve visually pornographic, sexual, obscene or lewd conduct or harassment.

² *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. March 6, 2000) ("Improved Services Order") at ¶22.

in a mandate for VRS within a few years.³ The Commission rejected that request, explaining that there were too many “technological uncertainties that [made] a mandatory requirement for [VRS] premature.”⁴ In the interest of spurring growth in the VRS industry, the Commission decided to permit VRS to exist as a reimbursable but voluntary service, one that would not be required twenty-four hours a day, seven days a week.

II. Prior VRS Waivers Were Necessary

The FCC’s March 2000 decision not to make VRS mandatory was a sound one. At the time, most VRS users accessed video relay through stations that were located in public sites such as colleges, libraries, deaf consumer associations and community centers. Scarcely any consumers owned the software and hardware, including web cameras, that would enable them to access VRS from their homes or offices. In this environment, the volume of VRS calls remained low and fluctuated greatly from hour to hour and day to day. Moreover, as the FCC noted, holding off on a VRS mandate was needed to allow further exploration into the technologies designed to maximize VRS performance. The Commission explained that its approach enabled “market forces, not the Commission, to determine the technology and equipment best suited for the provision of [VRS], and allow[ed] for the development of new and improved technology.”⁵

In the Spring of 2001, both Hamilton and Sprint filed petitions with the FCC seeking additional waivers of the TRS mandatory minimum standards for VRS calls. Included within these was a request for a waiver of the FCC’s requirement for providers to answer 85% of all incoming calls within 10 seconds. Consumer groups supported the

³ Id. at ¶23, citing comments submitted by the National Association of the Deaf/Consumer Action Network at 5-8; Northern Virginia Resource Center at 1. Telecommunications for the Deaf, Inc at 6-7, and others.

⁴ Id. at ¶23.

⁵ Id. at ¶23.

waiver requests, noting that “strict compliance with the existing standards would be detrimental to the public interest.”⁶ As with the FCC’s prior decision not to mandate VRS, consumers agreed that it was still too early to enforce all of the functionally equivalent mandatory minimum standards for this very young service. At the time, however, consumers requested that a firm deadline be set so that functional equivalence could ultimately be achieved.

The FCC granted the speed of answer waiver for two years, and explained that this time was needed for the VRS market to develop. Because demand for VRS was still uncertain, it felt that the 85/10 rule would prevent new providers from competing for a share of the VRS market. Providers were nevertheless urged to meet the needs of callers during the term of the waiver.⁷

III. Functionally Equivalent VRS is Now Essential

The FCC’s decision to grant the speed of answer waiver again paid off. Flexibility in the way that VRS could be provided facilitated VRS growth and induced additional companies to enter the VRS business. Over the past two years, six providers have begun providing VRS in the United States, enabling consumers to have choice in this mode of telecommunications. And technologies for handling VRS calls have improved significantly, with the launching of distribution networks capable of cutting answer speeds, improvements in picture quality and end user equipment functionality, incorporation of customer friendly interfaces that have dramatically facilitated use of the

⁶ *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order (“VRS Waiver Order”), CC Dkt 98-67, DA 01-3029 (rel. December 31, 2001) at ¶8, citing TDI Comments at 1,3; NAD Comments at 1.

⁷ VRS Waiver Order at ¶16.

service, and the availability of TV-based broadband appliances that have enabled consumers to integrate the service without the need for costly computer equipment.

The strides made over the last two years, however, suggest that it is time to reconsider the future of VRS as a voluntary TRS service. Consumers no longer need to venture to public stations to make VRS calls; they can now do so with hardware and software installed right in their own homes and offices. And although the numbers of VRS users does continue to grow as more individuals learn about the extraordinary nature of this service, demand for VRS has finally stabilized to the point where VRS projected call volumes make staffing far more predictable than ever before. In fact, prior to the FCC's interim reduction of the VRS rates on June 30, 2003, CSD was not only in compliance with the 85/10 speed of answer standard, but had also begun providing VRS on a 24 hour/7 day a week basis. It is apparent that over the past two years, VRS has gone from a service that was merely a enjoyable TRS enhancement to a service upon which deaf consumers have come to regularly and reliably depend on for their daily telecommunications access.

The Commission may grant a waiver to its rules if parties are able to demonstrate that the requested waiver is in the public interest.⁸ In order to grant a waiver, the Commission has said that it must take a "hard look" at the waiver application, and then "explain why deviation better serves the public interest."⁹ CSD submits that, given all of the improvements and growth in the provision of VRS, a waiver of the speed of answer standard is no longer in the public interest. The ADA's mandate for functionally equivalent relay service is absolute. Where functionally equivalent VRS is possible, as it

⁸ FPC v. Texaco, Inc. 377 U.S. 22, 39 (1964)

is now, the FCC has an obligation to ensure the provision of such service. CSD has already shown that VRS providers can meet the 85/10 answer speed which exists for other TRS services. As there are no technical obstacles to enabling VRS users to enjoy a speed of telephone service that is comparable to that available to voice users, meeting this speed of answer should no longer be waived by the Commission.

IV. A One Year Waiver for the Answer Speed Standard May be Appropriate.

CSD is concerned that the interim reduction in rate for VRS is designed to provide cost recovery for what has become a less than functionally equivalent video relay service. Since the rate was reduced, CSD and other providers have been forced to reduce hours of VRS operation and impose longer answer times during peak calling periods. The impact has been greatest on consumers, who now have a service that is inferior to that which they enjoyed prior to the cut in reimbursement. As the Commission moves forward in finalizing its VRS rate, CSD urges the Commission to elevate the rate to ensure a functionally equivalent service, rather than to lower the rate to meet lesser minimum standards.¹⁰ Eliminating the waiver for speed of answer will further this objective, because it will raise the functionally equivalent bar for all VRS providers. So long as the rate reflects a higher standard of service, VRS providers will, once again, be able to staff adequate positions to absorb spikes in call volumes, provide adequate breaks for VRS agents, and comply with the 85/10 speed of answer minimum standard.

⁹ VRS Waiver Order at ¶7, citing WAIT Radio V. FCC, 418 F. 2d 1153, 1157 (D.C. Cir. 1969); Northeast Cellular Telephone Company, L.P. v. FCC, 897 F. 2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ CSD notes that waivers for equal access to interexchange carriers, long distance billing, automated emergency call handling, pay per call services, automatic call forwarding, and voice initiated calls fall into a different category, as these address technical difficulties associated with providing these services. As prior submissions to the Commission have made clear, because VRS is primarily an IP service, compliance with these minimum standards is difficult, if not impossible for VRS providers at this time.

Unfortunately, because the VRS rate remains interim, it is difficult, if not impossible for VRS providers to commit to meeting the 85/10 service level without incurring significant financial risk at this time. It is for this reason that CSD supports a waiver of the speed of answer requirement for a one year period. CSD urges the FCC to promptly stabilize the VRS rate in a manner that allows VRS providers to prepare to meet the 85/10 standard of functional equivalency at the conclusion of this year.

VI. Conclusion

Developments in VRS technologies and experience in handling VRS calls over the past two years have eliminated the uncertainties that initially justified the need for a waiver of the 85/10 speed of answer minimum standard. CSD urges the Commission to renew the waiver for this standard for a period of one year only to allow for stabilization of the VRS rate. After that time, all VRS providers should be expected to answer 85% of all calls within 10 seconds, in accordance with the ADA's functional equivalency mandate. In addition, CSD urges the Commission to consider mandating VRS nationwide. Only if this service is mandated and provided twenty-four hours a day/seven days a week will it truly provide the functionally equivalent service contemplated in the ADA.

Ben Soukup, CEO
Communication Service for the Deaf
102 North Krohn Place
Sioux Falls, SD 57103
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