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December 3, 2003

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VIA ELECTRONIC FILING

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, SW
Room TW-A325
Washington, DC 20554

Re: **EX PARTE PRESENTATION**

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, CG Docket No. 03-123

Dear Ms. Dortch:

On December 2, 2003, John Nelson and Gary Warren of Hamilton Relay, Inc. ("Hamilton"), and the undersigned on behalf of Hamilton, met with Tom Chandler, Gregory Hlibok and Cheryl King of the Commission's Disabilities Rights Office of the Consumer and Governmental Affairs Bureau ("Bureau") to discuss various issues in connection with the above-captioned "permit-but-disclose" proceedings. Pursuant to Section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), Hamilton hereby summarizes the substance of Hamilton's *ex parte* presentation. The following issues were discussed:

Video Relay Services ("VRS")

Hamilton discussed its entry into the VRS market following the Bureau's June 30, 2003 decision to lower the interim VRS compensation rate from $14.023 per minute to $7.751 per minute. Hamilton explained that the company had made commitments to enter the VRS market prior to the change in the interim rate, and that the decision to lower the rate had not been anticipated by Hamilton. Hamilton reiterated its comments in support of the Petitions for Reconsideration to restore the per-minute VRS compensation rate to the level proposed by NECA.

Hamilton also discussed the resubmission of its VRS cost data on August 22, 2003, and inquired whether the resubmitted data would be used in assessing a revised interim VRS rate or a permanent VRS rate.

In addition, Hamilton discussed its proposed alternative to the 11.25% rate of return used by the Bureau to lower the interim VRS rate. Hamilton noted that the proposed alternative was contained in its August 22, 2003 cost data resubmission, which was filed confidentially. Because the proposal was not publicly filed, and because it was discussed in detail at the *ex parte* presentation, Hamilton hereby includes a redacted version of the proposal in this letter:

> "Using 11.25 percent rate of return on investment is not an appropriate 'profit' calculation for telecommunications relay service for several reasons. Please see the list below:
>
> - Telecommunications Relay Service is not price regulated in the same manner as USF and rate-of-return ILECs.
> - Telecommunications Relay Service is not a monopoly but rather, competitively bid on a contract by contract basis.
> - Telecommunications Relay Service is not capital intensive as is the ILEC and cable industries. Rather, expenses are tremendously volatile and are constantly changing with the call volumes associated with Telecommunications Relay Service.
>
> Hamilton understands that the Commission feels a need to [ensure that profit levels are reasonable] for Video Relay Service. One approach may be to use an average of all the companies' 'profit' data for traditional Telecommunications Relay Service and apply it to the Video Relay Service calculation, as traditional Telecommunications Relay Service is a competitively bid service with [profit margins set by

> a competitive marketplace. Relay providers currently submit their annual costs of providing traditional TRS services, and the profits realized therein. The TRS Fund Administrator could calculate a profit margin as a percentage of revenues using the following formula: Profit Margin = Profits/(Costs + Profits). That percentage figure could be used as a guideline for determining if profit margins submitted on VRS are reasonable. This guideline may only be necessary during the startup years of VRS. As VRS begins to mature, and more historical VRS cost data is available, the VRS historical data may provide a more appropriate method for determination of a reasonable VRS profit margin.]"[1]

Hamilton recognizes that the comment period in response to the Petitions for Reconsideration of the Interim VRS rate decision has passed. Nonetheless, in the interest of having as complete a record as possible upon which to base the Bureau's decisions in that proceeding, Hamilton hereby requests a waiver of the filing deadline and asks that the Bureau consider Hamilton's proposed alternative to the 11.25% rate of return.

NPRM Issues

Hamilton and the Commission staff discussed several issues raised in the Petitions for Reconsideration of the Commission's June 17, 2003 Second Report and Order (FCC 03-112). Specifically, Hamilton reiterated its position that three-way calling is feasible to the extent that the TRS user has purchased a three-way calling feature from his or her LEC.

With respect to call release, Hamilton noted that TTY-to-TTY calls remain on the Hamilton network facilities even after a call is released by the Communications Assistant ("CA"), and therefore should be compensated. Hamilton reiterated its support for AT&T's request for reconsideration of the decision not to compensate providers for such calls.

Hamilton also indicated its support for a Commission rule requiring TRS providers to route wireline emergency calls to *an* appropriate public safety answering point ("PSAP") as opposed to *the* appropriate PSAP.

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[1] The actual figures submitted by Hamilton have been omitted and the text has been altered slightly from the original. Hamilton requests that all other portions of its August 22, 2003 filing remain confidential.

IP Relay Retroactive Compensation

Hamilton discussed the pending Petition for Reconsideration filed by Sprint Corporation ("Sprint") regarding retroactive compensation for certain providers of Internet Protocol ("IP") Relay providers. Hamilton noted its support for a federal certification program for IP Relay providers, and indicated that such a program, if it had been implemented in April 2002 when IP Relay was authorized, may have prevented certain IP Relay providers from unjustly receiving compensation when they did not meet all mandatory minimum requirements.

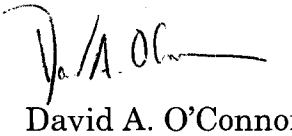
Captel Waiver

Finally, Hamilton sought further information on the extent to which three-way calling requirements had been waived in connection with the provision of captioned telephone service ("Captel"), and encouraged the Commission to clarify that this requirement is waived, on its own initiative if necessary.

In the event that there are any questions concerning this matter, please contact the undersigned.

Very truly yours,

HOLLAND & KNIGHT LLP



David A. O'Connor
Counsel for Hamilton Relay, Inc.

cc: Tom Chandler
Gregory Hlibok
Cheryl King