

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
)
National Exchange Carrier Association)
Payment Formula and Fund Size Estimate)
Interstate Telecommunications Relay)
Services (TRS) Fund for July 2004 Through)
June 2005)

AT&T REPLY COMMENTS

Pursuant to the Commission’s May 4, 2004 Public Notice (DA 04-1258), AT&T Corp. (“AT&T”) submits this reply to comments by other parties on the annual payment formula and fund size estimate for the Interstate TRS Fund (“Fund”) submitted on May 3, 2004 by the National Exchange Carrier Association (“NECA”).¹

The entire spectrum of commenters, including relay providers,² service vendors to those providers,³ and -- most tellingly -- representatives of consumers who are

¹ In addition to AT&T, comments were filed by Communications Services for the Deaf, Inc. (“CSD”); Hamilton Relay, Inc (“Hamilton”); Hands on Video Relay Services, Inc. (“Hands On”); MCI; NorCal Center on Deafness (“NorCal”); Sprint Corporation (“Sprint”); Telecommunications for the Deaf, Inc.; and other representatives of hearing-impaired persons (“TDI *et al.*”); and Verizon.

² See AT&T at 2-4; Hamilton at 2-5; MCI at 2-3; Sprint at 2.

³ See CSD at 6-16; Hands On at 9-15.

deaf, hard of hearing or who have speech disabilities and who use relay services⁴ unanimously recognize that the methodology NECA has used to develop the proposed reimbursement rates for TRS services is seriously flawed. As the commenters and numerous other parties have shown, both here and in related proceedings, the *June 30 Order*⁵ which was adopted last year by the Consumer and Governmental Affairs Bureau and which NECA has again followed in making its current proposals results in rates levels that are unattractive and non-compensatory to relay providers.⁶

This deficiency is particularly acute for Video Relay Service (“VRS”), which the Bureau order last year slashed to \$7.75 per minute from NECA’s proposed rate of \$14.023 per minute (which itself represented a significant reduction from the previous per minute rate of \$17.04). NECA’s current proposed rate of \$7.29, if allowed to take effect, will further exacerbate this serious existing problem.⁷

⁴ See NorCal at 1-4; TDI *et al.* at 5.

⁵ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, DA 03-2111 (Consum. & Gov’t Aff. Bur.) released June 30, 2003 (“*June 30 Order*”).

⁶ Even apart from the flaws in the *June 30 Order*’s methodology, commenters raise claims that the order failed to comply with notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. § 552, and exceeded the Bureau’s delegated authority because, among other reasons, it addressed novel issues which the Commission itself must resolve. See Hamilton at 8; MCI at 2; Hands On at 8, 13. These same claims were raised in petitions for reconsideration of the *June 30 Order*, which are still pending before the Commission. See, e.g., Sprint Petition for Reconsideration, filed July 30, 2003.

⁷ As AT&T has noted (Comments at 2-4), and as MCI confirms (at 3), the reimbursement rates that NECA has proposed for traditional TRS, internet protocol (“IP”) relay, and speech-to-speech (“STS”) relay service are equally

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As a direct, near-term consequence, commenters point out that the availability of VRS service has been significantly curtailed from the level that prevailed prior to the release of the *June 30 Order*.⁸ Both in the current and longer term, the insufficient VRS reimbursement rate also undermines the ability of VRS providers to hire and train qualified interpreters to perform that specialized function. The resulting shortage of interpreters leads to lengthened queues for customers waiting to place a VRS call, disrupting service and reducing service quality.⁹

Moreover, as several commenters point out,¹⁰ NECA has paradoxically disallowed research and development expenses from all relay providers reimbursements -- including, but again not limited to, VRS -- at the same time that the Commission established time-limited waivers for satisfaction of a number of its standards for those services, and has required relay providers to report periodically on their progress in achieving compliance with the waived criteria.¹¹ It is inexplicable how providers can be expected to overcome the serious technological obstacles to compliance with those now-

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problematic because they are based on the same flawed methodology used for the VRS rate.

⁸ See TDI *et al.* at 8; CSD at 9; Hands on at 3.

⁹ See TDI *et al.* at 8.

¹⁰ See Hands On at 17-18; CSD at 16; TDI *et al.* at 10.

¹¹ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Americans with Disabilities Act of 1990*, CC Docket No. 98-67 and CG Docket No. 03-132, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 03-112 (rel. June 17, 2003) ¶ 36.

waived standards in the absence of research and development. And, in all events, without reimbursement for research and development costs relay providers will have neither the incentive nor the ability to pursue further improvements in TRS offerings.¹²

Finally, and most critically of all, the proposed reimbursement rate levels threaten the fundamental goal of Title IV of the Americans with Disabilities Act (“ADA”) to provide persons with hearing and speech disabilities service that is “functionally equivalent” to that which is provided to persons without such disabilities in terms of availability of service providers as well as functions. As the comments of other parties confirm, the proposed reimbursement rates offer little incentive for new entrants to serve relay customers.¹³ Indeed, the proposed rates may well promote decisions by current providers to reduce the availability of current service offerings, or even to exit from the market altogether.¹⁴ Reimbursement rates that foster either of these outcomes would clearly disserve the public interest and the statutory objective of the ADA.

WHEREFORE, for the reasons stated above and in AT&T’s Comments, the Commission should decline to adopt the reimbursement rates proposed by NECA, and should direct NECA to recalculate those rates using the methodology employed prior to adoption of the *June 30 Order*.¹⁵ Additionally, the Commission should take prompt

¹² See NorCal at 1; TDI *et al.* at 10.

¹³ See Hamilton at 6.

¹⁴ See *id.* at 7; NorCal at 2.

¹⁵ Reinstating the prior methodology will result in higher reimbursement rates that will concomitantly increase the size of the Fund. This result, and the consequent increase in the amount of Fund payments by local exchange carriers (“LECs”)

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action to resolve the pending petitions for reconsideration of the *June 30 Order*, and the Commission should initiate a rulemaking to address further delineation of standards for setting reimbursement rates for relay services.

Respectfully submitted,

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that could thereby be flowed back by those carriers through charges to their access customers, underscores the urgent need for the Commission to eliminate that implicit subsidy from LEC access charges as AT&T showed its Comments (at 4-5).

CERTIFICATE OF SERVICE

I, Tracy Lea Rudnicki, do hereby certify that on this 2nd day of June 2004, a copy of the foregoing "AT&T Reply Comments" was served by U.S. first class mail, postage prepaid, on the parties listed below.

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