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June 4, 2004

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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 June 3, 2004, John Nelson, Gary Warren and Dixie Ziegler of Hamilton Relay, Inc. ("Hamilton"), and the undersigned on behalf of Hamilton, spoke via telephone with Commissioner Adelstein's staff members Scott Bergmann and Anne Perkins concerning various telecommunications relay service ("TRS") 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:

Cost Recovery

Hamilton voiced its strong opposition to the rate of return analysis contained in the Bureau's June 30, 2003 *Interim VRS Order*¹ and most recently used by NECA in its proposed rates for all forms of TRS, including traditional TRS, Internet Protocol ("IP") Relay, Speech-to-Speech ("STS") and video relay service ("VRS").² Rate of return regulation is inappropriate to TRS, which operates in a competitive marketplace. Hamilton also argued that the adoption of rate of return regulation will stifle competition in the TRS market and impair the development of innovative TRS technologies. Most importantly, its adoption is harmful to TRS customers because it undermines the basic promise of functional equivalence.

Hamilton noted that parties have not had an opportunity to comment on the Bureau's sudden change in calculation of the rates for TRS. Until there is an opportunity for notice and comment on this issue, Hamilton urged that the Commission direct NECA to revert to the "cost plus" methodology that has been used since the inception of TRS. Hamilton stressed that the "cost plus" methodology effectively constrains TRS providers' profits for traditional TRS and STS, because those services are competitively bid in each state.³ Simply comparing the NECA rates to those rates paid by the states ensures that costs are reasonable.

Hamilton also recognized the Commission's need to ensure that provider costs are "reasonable" for VRS, and to that end offered an alternative to the rate of return methodology, as discussed in the next section.

An Alternative to Rate of Return

This alternative proposal was originally contained in Hamilton's August 22, 2003 confidential cost data submission, which stated in pertinent part:

¹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 03-2111, para. 35 (CGB rel. June 30, 2003).

² *Telecommunications Services for Individuals with Hearing and Speech Disabilities. and the Americans with Disabilities Act of 1990*, Interstate Telecommunications Services Fund Payment Formula and Fund Size Estimate, CC Docket No. 98-67, at 4-7 (filed May 3, 2004).

³ The same is true for IP Relay, since providers are compensated for that service at the same rate as for traditional TRS.

“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.]”⁴

911 - Wireline Service

In response to an inquiry from Scott Bergmann regarding emergency call handling, Hamilton stated that if a TRS provider delivers a wireline 911 call to a Public Service Access Point (“PSAP”) that can handle the request of the relay user, it should not matter if the responding PSAP is the PSAP that would have received the call if the wireline relay user had called directly, without the use of relay.

Answer Speed Waiver for VRS

Hamilton noted that VRS is a competitive service, and that VRS consumers throughout the country have a choice of VRS providers. If one provider does not answer calls in a timely fashion, consumers will migrate to one that does. Nonetheless, Hamilton indicated that consumers will be better served if all VRS providers meet minimum answer speeds. To that end, Hamilton believes that a waiver for VRS answer speed may no longer be required, *provided that* VRS providers are appropriately compensated for their costs in meeting the answer

⁴ 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.

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speed requirement. An answer speed requirement will increase VRS providers' labor costs because more interpreters will need to be hired; accordingly, it is critically important that the imposition of a mandatory answer speed be tied to an increase in the per minute VRS reimbursement rate to cover additional labor costs.

* * *

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

Respectfully submitted,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "David A. O'Connor". The signature is fluid and cursive, with a long horizontal stroke at the end.

David A. O'Connor

Counsel for Hamilton Relay, Inc.

cc: Scott Bergmann
Anne Perkins

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