

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)
)
Telecommunications Services)
For Individuals with Hearing and Speech) CC Docket No. 03-123
Disabilities)
_____)

COMMENTS OF CSD ON
VIDEO MAIL

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SUMMARY

The Federal Communications Commission (FCC) has already decided the issue presented in this proceeding – whether telecommunications relay (TRS) users should have access to phone mail type features – on at least two prior occasions. On both of those occasions, the Commission concluded that the ability to leave and retrieve telephone messages constitutes TRS that is eligible for compensation from the Interstate Fund.

Video relay service (VRS) is the only technology available to provide functionally equivalent relay service to deaf and hard of hearing individuals who wish to converse naturally in sign language or who are unable to communicate by text because of limitations in typing or reading. Video mail is a VRS feature that completes the telecommunications picture for these individuals, allowing them to be fully connected to businesses, employers, families, and friends. VRS providers have already proven video mail to be technologically feasible, and a feature that is very desired by VRS consumers. The mandate for functionally equivalent telephone access, together with the ADA's directive to encourage new relay technologies and the FCC's requirement for relay providers to be capable of handling any type of call, provide the Commission with not only the authority, but in fact the obligation to direct compensation for video mail. To rule otherwise would perpetuate telecommunications discrimination against TRS users whose primary or sole means of communication is sign language.

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I. Introduction

Communication Service for the Deaf, Inc. (CSD) hereby submits comments in support of Hands On Video Relay Service's (HOVRS's) Petition for a Declaratory Ruling that video mail provided through video relay services (VRS) is eligible for compensation from the Interstate TRS Fund.¹ There is no difference between conversational minutes for voice mail, already reimbursable, and conversational minutes for video mail, but for the format of the message left by the caller through a communication assistant (CA).

As explained in HOVRS's petition, there are two ways to leave telephone messages using video relay services. Outgoing VRS video mail is originated when a deaf or hard of hearing person calls a hearing person who is not available to take the call. The deaf or hard of hearing signs his or her message to the VRS interpreter, who then voices the message into the recipient's voice mailbox or an answering machine for later

¹ See "Petition for Declaratory Ruling Filed Regarding Provision of Video Relay Service (VRS) Video Mail (March 31, 2004); Public Notice, DA 04-2062, CG Dkt. No. 03-123 (July 9, 2004).

retrieval. Inbound VRS video mail occurs when a hearing person dials a toll free number to access VRS, provides the video interpreter with the deaf or hard of hearing person's contact information (IP address, telephone number, name domain) to communicate over VRS, and, upon learning that the intended recipient of the call is unavailable, voices a message, which is then interpreted into American Sign Language (ASL) and sent via e-mail to the intended recipient for later retrieval.

Although the FCC has indicated that minutes incurred for outgoing video mail is reimbursable – when the message is initiated by a deaf or hard of hearing person – whether incoming video mail is reimbursable – minutes incurred when the message is left by a hearing person – remains the subject of this proceeding. CSD maintains that it makes little sense, and in fact violates the mandate for functionally equivalent telephone access for Americans who must use VRS as their primary or sole form of telephone communication, to permit compensation for the former and not the latter.²

In making a determination about whether video mail should be reimbursable, it should make no difference in which direction a phone message is being left. Nor, as holds true for voice mail, should it make any difference how or where the video message is stored – on an individual's computer, on a server housed by a telecommunications provider, or on customer premises equipment at the end user's location.³ In the attached chart, CSD demonstrates the parallels of processing three types of relay phone mail calls. The steps for each process, laid out side by side, reveals that the compensation being sought in HOVRS' petition is no different than compensation already authorized in other

² CSD has been providing VRS video mail at no charge to consumers over the past several months. However, the increasing popularity of this service is putting into question our ability to continue offering it without compensation.

³ See HOVRS petition at 3.

variants of phone mail. As holds true for these other relay features, no compensation is requested for any part of the call set up, nor the time it takes to forward a message to its answering destination. All that the FCC is being asked to do is to approve compensation for the *conversational minutes* needed to convert the message that the caller wishes to leave from voice to ASL. This is no different than the already-approved practices of providing compensation for the conversational minutes needed to convert phone messages from voice to text, text to voice, or, as noted above, sign language to voice.

II. The Commission has Already Approved Relay Access to Phone Mail as a Functionally Equivalent Relay Service.

Regulatory issues concerning the handling of telephone messages through voice mail-type services are not new to the FCC. On two separate prior occasions, the Commission has examined this issue in some detail, first with respect to the TRS user's ability to leave messages for non-TRS users, and second with respect to the TRS user's ability to retrieve messages left by others. Both Commission analyses yielded the same result; in both instances, the Commission concluded that the functional equivalency mandates of Title IV of the Americans with Disabilities Act (ADA) dictated the handling of these types of calls.⁴

A. Access to Voice Mail and Other Interactive Voice Response Systems

In March of 2000, the FCC considered the extent to which TRS users must be able to access enhanced or information services, including interactive voice response systems, in part so that these individuals could leave messages for other individuals through voice mail. After careful analysis of the ADA's legislative history of the ADA, the Commission concluded that the Act expressly required access to these type of

⁴ Title IV has been codified at Section 225 of the Communications Act. 47 USC §225.

services.⁵ Specifically, the FCC found that the mandate to provide TRS users with the ability to communicate by wire or radio is broad enough to encompass both telecommunications and information or enhanced services. Citing to various sections of the Communications Act, the Commission explained that TRS is not limited to telecommunications services, but rather includes “the transmission . . . of writing, signs, signals, pictures and sounds of all kinds . . . including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.”⁶ To conclude otherwise, the FCC went on,

would restrict us from ensuring that TRS is provided in a manner functionally equivalent to that provided users of voice telecommunications services, as the definition requires. Thus, a narrow interpretation would curtail delivery of relay services, rather than facilitate them, as Congress has expressly directed us to do in section 225(b)(1)(requiring us to ensure that “relay services are available, to the extent possible and in the most efficient manner . . .)⁷

In order to fulfill its mandate to provide functionally equivalent TRS, the FCC established a new mandate for TRS access to interactive menu and voice mail systems. It was doing so, it explained, because the rapid speed of the messages and prompts typically used in these systems presented considerable barriers to TRS callers that either prevented call completion or required multiple calls to access the desired information or leave messages.⁸ Out of its concern that TRS users were being denied access to these services, now used extensively by governmental offices and businesses throughout the United States, the Commission prescribed several new measures for the handling of these calls.

⁵ *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 Docket No. 98-67, FCC 00-56, 15 FCC Rcd 5140 (rel. March 6, 2000) (First Improved TRS Order) at 88.

⁶ *Id.*, citing to 47 U.S.C. at § 153 (33), 153 (51) (omissions and parenthetical in original).

⁷ *Id.* at ¶89.

⁸ *Id.* at ¶92.

These included a requirement for CAs to alert users that they had reached a recorded message through a "hot key,"⁹ a mandate for relay centers to record and rewind recorded messages for the length of the call,¹⁰ and a prohibition against imposing multiple phone charges when successive calls were needed to complete relay interactions with voice or menu systems.¹¹

What is noteworthy about the Commission's action in the above Order is that it went beyond requiring TRS for telephone calls where one individual simply calls another and, upon reaching that party, carries out a conversation in real-time through a CA. Rather, the FCC recognized that in today's fast paced society, interacting with recorded devices and phone mail systems is commonplace. The FCC issued these rules in the interest of making sure that relay users have telephone access in all types of telephone situations, to ensure that the overall phone experience for deaf and hard of hearing and speech disabled people is functionally equivalent to the phone experience of people who do not use relay services.

Also noteworthy is the fact that to arrive at the conclusion that it did, the Commission relied in part on a colloquy that had taken place during House deliberations of the ADA. This legislative exchange demonstrated the unequivocal intent of the ADA's drafters to bring voice mail and other enhanced services under the wing of TRS as soon as these services became technologically possible.¹² To this end, the Commission acknowledged its obligation to regularly "evaluate the state of technology

⁹ *Id.* at ¶94.

¹⁰ *Id.* at ¶95.

¹¹ *Id.* at ¶96.

¹² *Id.* at ¶90, citing to the colloquy, found at 136 Cong. Rec. H2434 (May 17, 1990). The colloquy made clear that as soon as "technology can make these services available utilizing a relay service," they needed to be made available to TRS users. See *First Improved TRS Order* at ¶90.

available to provide relay services, and determine what is possible” in order to fulfill its statutory directive to make relay services available “to the extent possible”¹³ As technology improved, the Commission explained, so too were TRS features and standard offerings required to improve. VRS is the newest technology available to improve phone mail access for individuals who use ASL. As such, the Commission has not only the authority, but in fact the obligation to make this application available to TRS users.

B. Answering Machine Message Retrieval

The second FCC Order that addressed a phone-mail type relay service reviewed the extent to which TRS providers are required to retrieve voice messages from answering machines or voice mail systems when those messages are left by third parties for TRS users.¹⁴ With this feature, upon a TRS user’s request, the CA calls the user’s voice mail service or answering machine to retrieve recorded voice messages and convert them to text for the TRS caller. In June of 2003, the FCC concluded that relay providers must provide this TRS feature because they had the “responsibility to ensure that TRS users receive functionally equivalent telecommunications services. . . . The record reflects that TRS providers currently provide these features, it is technologically feasible, and these features are desired by TRS consumers.”¹⁵

Similarly, CSD has established that VRS providers already provide video mail, this feature is technologically feasible, and it is a feature desired by VRS consumers. As a service that will enhance functional equivalency for ASL users, video mail is therefore

¹³ *Id.* at 91, citing 47 U.S.C. § 225(b)(1).

¹⁴ *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 Docket No. 98-67, CG Docket No. 03-123, FCC 03-112 (rel. June 17, 2003) (Second Improved TRS Order) at ¶63.

¹⁵ *Id.* at ¶65.

squarely covered by the ADA's mandates for TRS access. Moreover, giving VRS users the ability to directly receive messages in sign language can even eliminate the need for these individuals to rely on TRS to retrieve voice mail, freeing up communication assistants for other calls, and saving the Interstate Fund the costs of processing those calls. Retrieving voice mail can be more time consuming than other relay calls because CAs often must redial voice response units several times just to locate and capture recorded messages.¹⁶

III. Full Access to Video Mail is Required to “Get Connected” and Achieve Functionally Equivalent Telephone Service

That the FCC came to the above decisions on relay access to phone mail systems was both appropriate and consistent with the letter and legislative intent of the ADA. In its most recent TRS Order issued this year, the FCC explained that the purpose of Title IV is to eliminate discrimination against individuals with disabilities with respect to telecommunications barriers.¹⁷ To achieve this end and to comply with its obligation to further the Communication Act's requirement for universal service,¹⁸ the Commission took upon itself the responsibility to require these phone mail features because they were needed to ensure telephone service that is functionally equivalent to that which is available to people without hearing loss or speech disabilities.

¹⁶ Although, under the FCC's rules, a CA is now permitted to tape record messages for the length of a relay call, even the act of capturing these recorded messages in their entirety may take several phone calls, especially where the CA must navigate through multiple prompts in order to reach the desired message.

¹⁷ *In the Matter of Telecommunications Relay Services and Speech to Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking*, CC Dockets No. 90-571, 98-67, 03-123, FCC 04-137 (rel. June 30, 2004) (Third Improved TRS Order) at ¶3 n.17; See also Second Improved TRS Order at ¶2, noting that the ADA's preamble talks of establishing a “clear and comprehensive prohibition of discrimination on the basis of disability,” and citing to the ADA's Purpose and Summary, 1990 U.S.C.C.A.N 512.

¹⁸ See Second Improved TRS Order at ¶1 n.3, citing H. Rep. No. 485, 101st Cong., 2d Sess. at 129 and S. Rep. No. 116, 101st Cong., 1st Sess. at 77-78.

In its June 2003 Order, the FCC spoke of the importance of ensuring that TRS users have the opportunity, through telecommunications access, to “get connected,’ so that they may participate fully in the economic and social fabric of American life, now shaped by the telecommunications revolution and information age.”¹⁹ As noted above, the FCC has already determined that an integral part of getting connected is having the ability to leave and retrieve phone mail. Moreover, the FCC has acknowledged that relay services are intended to facilitate communication not just *by* individuals who have hearing losses or speech disabilities, but rather *between* those individuals and others who do not need these services. Just this year, the Commission confirmed that “TRS is intended to benefit not just persons with particular disabilities, but all persons as the availability of TRS eliminates telecommunications barriers that also prevent, for example, hearing individuals from initiating telephone calls to persons with hearing disabilities.”²⁰ It thus makes little sense to permit deaf and hard of hearing people who use VRS to be able to leave voice messages for people who are hearing, but not to permit those hearing individuals to leave messages in sign language for deaf and hard of hearing VRS users.

A. TRS Providers Must Be Capable of Handling Any Type of Call

Disallowance of reimbursement for VRS calls also violates one of the FCC’s own mandatory minimum standards. Specifically, FCC rules require that TRS providers be “capable of handling any type of call normally provided by common carriers” and impose the burden of proving the infeasibility of handling any type of call on these carriers.²¹

Virtually all common carriers currently handle the transmission of calls made to voice

¹⁹ Second Improved TRS Order at ¶3.

²⁰ Third Improved TRS Order at ¶2 n.15, citing H.R. Rep. No. at 135 (1990); S. Rep. at 83 (1989).

²¹ 47 C.F.R. ¶64.604(a)(3).

mail network systems or home and office-based answering devices.²² As noted above, the ability to leave and retrieve messages has become commonplace in modern day telephone communications. The vast majority of Americans use either network voice mail or customer premises equipment to capture incoming messages when they are not available to take those messages in person. Moreover, the ability to capture all incoming phone messages is especially crucial in the business world. From small proprietorships to large businesses, entrepreneurs heavily rely on phone mail as a vital component of their business operations. Denying this ability to individuals who must use VRS to communicate by phone prevents these people from being fully “connected,” can hurt their ability to effectively compete in the business world, and constitutes discrimination under Title IV of the ADA. Put simply, deaf and hard of hearing consumers who rely on VRS for their telephone communications need the same ability to receive phone messages as do individuals who are not reliant on VRS.

B. The Commission Has an Obligation to Encourage New Relay Technologies.

The FCC is well aware that Congress intended for it to develop regulations that would “not discourage or impair the development of improved technology.”²³ While acknowledging that text-to-voice relay was the state of the art at the time that the ADA was enacted, the Senate Committee responsible for approving Title IV of the ADA made very known its intention that relay users be “allowed to benefit from advancing

²² Note that the analogy here is not to whether common carriers offer the network-based voice mail services or end user answering equipment, but rather the fact that they routinely transmit the telephone conversations that terminate or are stored at those locations.

²³ 47 U.S.C. §225(d)(2).

technology. As such, the provisions of [Title IV] do not seek to entrench current technology but rather to allow for new, more advanced, and more efficient technology.”²⁴

Denial of compensation for video mail would not only violate this principle; it would also conflict with the Commission’s own efforts to expand the deployment and use of broadband services. VRS has proven to be an extraordinarily beneficial real-time broadband service for deaf individuals whose principle language is ASL. In addition, for thousands of deaf children, deaf seniors, deaf immigrants and others who can sign but cannot type, VRS provides the *only* means of using telephone services. If the FCC has already determined that Title IV’s mandate for functional equivalency requires the handling of TTY and voice mail through TRS, then so too must it conclude that incoming – along with outgoing – video mail is eligible for reimbursement.

Conclusion

Video mail offers the newest technology in phone mail for VRS users who use ASL as their primary or sole means of communication. Because there is no difference between conversational minutes for video mail and other forms of phone mail – but for the format of the transmissions used in these messages – compensation through the

²⁴ S. Rep. at 78. Later in the Report, the Senate Committee emphasized that the minimum federal standards used to govern the provision of TRS “should not have the effect of freezing technology or thwarting the introduction of a superior or more efficient technology.” *Id.* at 80. In addition, as noted in CSD’s comments on the NECA proposed rates, one of CGB’s own delegated functions similarly directs the Bureau to propose policies that “support the Commission’s goal of increasing accessibility of communications services and technologies for persons with disabilities.” 47 C.F.R. §0.141(f).

Interstate TRS Fund should similarly be authorized for this VRS feature.

Respectfully submitted,

/s/

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Attachment A

Item	VRS (Set Up, Conversation Time, and Wrap Up)	Billable VRS Minutes	TRS (Set Up, Conversation Time, and Wrap Up)	Billable TRS Minutes	Voice Mail Retrieval through TRS by TTY Users	Billable TRS Minutes
1	Inbound Voice User Dials 800 Number	NO	Inbound Voice User Dials 711 or 800 Number	NO	TTY User Establishes Voice Mail Message Box	NO
2	Voice User Gives Agent IP Number for Video User	NO	Voice User Gives Agent TTY Number	NO	A Voice User places an Outgoing Message in Voice on the TTY User's Voice Mail Box	NO
3	Agent Attempts to Out dial IP Number for Video User and No User Answers	NO	Agent Attempts to Out dial TTY Number and No User Answers	NO	A Voice User calls the TTY Users' Voice Mail Box and Leaves a Message	NO
4	Outbound IP User Has Video Mail Capability	NO	Outbound TTY User Has TTY Answering Machine Capability or Provides TTY Tones on an Automated Voice Mail System	NO	TTY User Desires to Retrieve Voice Messages Left by Various Callers When They Become Aware of Messages Waiting	NO
5	Agent Inquires if Voice User Would Like to Leave Video Message if User has Option Available	NO	Agent Inquires if Voice User Would Like to Leave TTY Message if User has Option Available	NO	TTY User Dials TRS Agent Requesting A Connection to the Voice Mail Box	NO
6	If Customer Confirms Desire to Leave Message, Agent Accesses Video Capture Screen	NO	If Customer Confirms Desire to Leave Message, Agent Redials TTY Number to Access TTY Machine	NO	Agent Out dials to Voice Mail Box when Prompted by TTY User to Access System	NO
7	Agent Successfully Connects with Video Capture Screen and Prompts Voice User to Begin Speaking	<i>DESIRED</i>	Agent Successfully Connects with TTY Answering Machine or Automated Voice Mail System and Prompts Voice User to Begin Speaking	YES	Agent Successfully Connects with Voice Mail System and Begins to Relay VRU Options to TTY User	YES
8	Voice User Begins Speaking and Agent Signs Message in Sign Language for Capturing Video Message	<i>DESIRED</i>	Voice User Begins Speaking and Agent Types Message to Leave on TTY Answering Machine or Automated Voice Mail System	YES	Agent Redials Several Times to go through Options and Retrieve Voice Messages as the VRU Times Out and Subsequent Connections and Relay Conversation Time is Generated	YES
9	Agent Disconnects Recording of Video Upon Completion of Message and Confirms with Voice User Message Has Been Left	NO	Agent Disconnects from TTY Answering Machine Upon Completion of Message and Confirms with Voice user Message Has Been Left	NO	Agent Disconnects from VRU Upon Completion of Relaying Voice Messages and Confirms with TTY User That The Line Has Been Disconnected	NO
10	Agent Sends E-Mail Message with Video Attachment and Disconnects from Inbound Voice Caller Unless Voice User Desires to Make Another Sequential Call	NO	Agent Disconnects from Inbound Voice Caller Unless User Desires to Make Another Sequential Call	NO	Agent Disconnects from Inbound TTY Caller Unless User Desires to Make Another Sequential Call	NO
11	Agent Is Available for Making Another Call	NO	Agent Is Available for Making Another Call	NO	Agent is Available for Making Another Call	NO