

Before the  
Federal Communications Commission  
Washington D.C. 20554

In the Matter of )  
)  
Telecommunications Relay Services and ) CC Docket No. 90-571  
Speech-to-Speech Services )  
for Individuals with Hearing and Speech ) CC Docket No. 98-67  
Disabilities )  
) CG Docket No. 03-123  
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COMMENTS OF  
COMMUNICATION SERVICE FOR THE DEAF

Communication Service for the Deaf, Inc.  
102 North Krohn Place  
Sioux Falls, SD 57103  
605-367-5760 (V)  
605-367-5761 (TTY)

By: Karen Peltz Strauss  
KPS Consulting  
2120 L Street, N.W.  
Suite 400  
Washington, D.C. 20037  
[kpsconsulting@starpower.net](mailto:kpsconsulting@starpower.net)

Its Attorney

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## SUMMARY

The FCC has both the authority and the obligation to mandate both Internet relay services and video relay services (VRS), because each of these relay services have proven themselves capable of offering the type of functionally equivalent telephone service that was envisioned by the drafters of the Americans with Disabilities Act. With Internet relay, callers can make calls anywhere, at any time, with wireless and other Internet-enabled portable devices. VRS is the *only* communication service that allows individuals who use American Sign Language to enjoy naturally flowing conversations in their native or preferred language, replete with the emotional content and conversational nuances that hearing people typically enjoy in their voice-to-voice phone conversations. It is also the only relay service available to children, elderly and other deaf and hard of hearing individuals who are unable to communicate by text because of limitations in typing or reading. VRS has also significantly enhanced the ability of deaf and hard of hearing persons to use broadband technologies to secure and advance their employment opportunities.

The overwhelming response to both Internet-based relay services and VRS by the relay using public – both in terms of call volumes as well as petitions and comments to the FCC – evidences the burning desire of the deaf and hard of hearing communities to make these services a permanent and mandatory feature of telecommunications relay services (TRS). Over the past four years, VRS has grown from a tentative new program which people could use only at public stations outside their homes, to a mature home and office-based service that people have come to regularly and reliably depend upon for their daily telecommunications access.

While CSD takes no position on whether or how the costs of Internet-based relay or VRS should be shared by the states, we urge the Commission not to shift any funding for these services to the states until such time that these services become mandated. Were the Commission to impose financial obligations to support these services without a mandate, CSD fears that many states may be tempted not to take on the responsibility of providing these services. In addition, should the FCC decide to impose requirements on the VRS industry to locate incoming Internet-based calls, CSD cautions that the Commission first research carefully any practical limitations that may be associated with current locator technologies, so that providers are not forced to fulfill any obligations that are impossible to fulfill.

As it goes forward in determining an appropriate funding methodology for VRS, the Commission should remember that in the ADA, Congress sought *not* to single out people who were deaf, hard of hearing and speech disabled from all other ratepayers in Title IV. Rather than view relay services as a special telephone system – i.e., a special “accommodation” – that was specially funded, to the greatest extent possible, relay services and the funding for these services were to be integrated into our nation’s existing telephone system. In addition, Congress intended for any funding mechanisms chosen to be sufficient to support functionally equivalent relay services.

CSD agrees with the use of a per minute compensation method for VRS, but recommends that the Commission revise its rules to use session minutes, rather than conversation minutes as the measurement for reimbursement. CSD believes that reimbursement on a per session basis will not only serve to offset the considerable discrepancy between the time it takes to set up a TRS versus a VRS call – and thereby

more equitably reimburse VRS providers – but that this approach will also save money for the TRS Fund.

CSD urges the FCC to adopt a cost plus methodology that more appropriately takes into account both the labor intensive nature and the volatile status of the VRS industry. It is inappropriate to employ a return on investment of capital compensation method in the VRS context because this method is typically applied to capital intensive telephone companies operating in stable markets, not to competitive, labor intensive and risky industries such as VRS. In the event that the FCC insists on using a return on investment methodology, the Commission should first conduct a full investigation of the expenses associated with VRS operations, to determine the appropriate base against which to determine that return. This investigation will demonstrate the need to include labor as one of justifiable costs of doing business, a cost that is entitled to a reasonable return. CSD also proposes other adjustments to the current VRS compensation scheme, including ways to remedy the current pricing discrepancy among providers, setting the VRS rate every two years, and adequately compensating providers for mandated changes in answer speed levels.

CSD urges the Commission to permit reimbursement for engineering and other research and development costs needed to meet presently-waived minimum standards. These standards have already been defined as being necessary to provide functional equivalency and as such, providers should be doing what they can to try to bring their services up to these minimums.

In a separate pleading, CSD has urged the FCC to reinstate the current answer speed standard by January 1, 2005. In the alternative, CSD urges an answer speed of

85% of all calls in 30 seconds, to be measured monthly in a manner that is consistent across all VRS providers. With respect to other VRS matters, CSD urges the FCC not to condone or permit practices that prevent video relay services from being interoperable with one another. In addition, CSD supports continuation of a slightly modified version of the ten minute rule for VRS, allowing providers to be compensated for handling calls between VRS callers and other TRS users, allowing VRS agents to acquire information about sign language style and the nature of the call through customer questioning, allowing VRS agents to discontinue abusive, lewd or harassing calls when call content is directed to the VRS agent and permitting agents to discontinue sexually explicit calls that would otherwise cause them to become the objects of sexual harassment. CSD suggests that the FCC hold focus group discussions to determine whether VRS callers prefer “chatty” or idle VRS agents while on hold.

CSD believes that the composition of the NECA Advisory Council should remain as is, but that its role should be expanded to help the FCC monitor Internet-based services and VRS, to keep the Commission informed about technological and other relay trends, and to explore and debate TRS policy.

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COMMENTS OF  
COMMUNICATION SERVICE FOR THE DEAF

**I. Introduction**

Communication Service for the Deaf, Inc. (CSD) hereby submits these comments in response to the Further Notice of Proposed Rulemaking (FNPRM) adopted by the Federal Communications Commission (FCC) on June 10, 2004.<sup>1</sup> CSD is a private, non-profit organization that provides programs and services intended to increase communication, independence, productivity, and self-sufficiency for all individuals who are deaf and hard of hearing. Originally established as part of the South Dakota Association of the Deaf in 1975, CSD provides direct assistance to individuals through education, counseling, training, communication assistance, and telecommunications relay services. At present, CSD provides relay services as a subcontractor to Sprint or owns and maintains TRS operations-calls centers in over thirty states. In addition, CSD provides Internet-based and video relay services as a subcontractor to Sprint throughout the entire United States and its territories.

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<sup>1</sup> *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*

## **II. Internet-Based Relay Services Should be Mandated on a 24/7 Basis**

### **A. Internet-based relay services offer callers significant benefits.**

CSD urges the Commission to make Internet-based relay services a mandated form of telecommunications relay service (TRS) that is available to individuals seven days a week, twenty-four hours a day. The benefits of Internet relay have long been recognized by the FCC and, as evidenced by the spiraling growth in Internet relay demand, are now widely enjoyed by relay users. Internet-based TRS allows callers extraordinary portability, both because calls can be initiated from any computer or Internet-enabled device, and because Internet relay gives relay users access to mobile communications. Deaf, hard of hearing and speech disabled people that have wireless enabled personal digital assistants (PDAs) with Internet browser capability can easily make their relay calls over the Internet and thereby enjoy another form of communication that parallels the telecommunications services enjoyed by the general population. In the quest for functional equivalency, this offers a vast improvement over traditional voice-to-text relay. Put simply, just as hearing individuals can make a telephone call to anyone, from anywhere, at anytime, so too can individuals who are deaf, hard of hearing, and speech disabled individuals when using Internet relay.

Although text-based relay still largely relies on a half-duplex format, requiring parties to a conversation to take turns when conversing, Internet-based relay also offers its users a more natural phone experience, one in which parties can freely interrupt one another as needed. Other advantages of Internet relay are that it allows individuals to make several calls simultaneously and enables text-based relay users to more easily

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Proposed Rulemaking, CC Dockets No. 90-571, 98-67, 03-123, FCC 04-137 (rel. June 30, 2004 (“*2004 TRS Report & Order*”).

conduct conference calls. Over the past year, the many benefits of Internet relay have resulted in the number of these calls tracked through the Interstate Fund to far exceed the number of traditional TRS calls. With dependency on this form of telephone communication continuing to grow, it makes little sense for the FCC's rules not to include a mandate for these services.

**B. The FCC has authority to mandate Internet-based relay services.**

The FCC has already determined that Internet-based relay is a telecommunications relay service as defined by the Americans with Disabilities Act. When the Commission approved these services in 2002, it explained that Congress intended for the definition of TRS to encompass “all transmission using telephonic equipment or devices, whether over the public switched network, cable, satellite, or any other means, so long as the requisite functionality is provided.”<sup>2</sup> Internet relay provided this functionality, the Commission explained, because it enabled two way communication between people with hearing or speech disabilities and people without disabilities in a functionally equivalent manner, and fulfilled the Commission's obligation to encourage the use of new relay technologies. It mattered not, the FCC explained, whether a particular “telephone transmission service” was a telecommunications or information service, so long as its purpose and function was consistent with Congress's objective to facilitate telephone communication by people with hearing and speech disabilities.<sup>3</sup> With no legal obstacles to mandating Internet relay

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<sup>2</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc., Declaratory Ruling and Second Further Notice of Proposed Rulemaking*, CC Docket No. 98-67, FCC 02-121 (April 18, 2002) at ¶10.

<sup>3</sup> In its Internet relay ruling, the FCC specifically declined to rule on whether Internet based relay was a telecommunications or information service. *Id.* at ¶14.

and a burgeoning interest in the use of these services, the FCC should now take the next step to mandate the availability of these services nationwide.

### **III. Video Relay Services Should be Mandated**

#### **A. VRS offers extraordinary benefits to its users.**

The FCC seeks comment on whether it should make video relay services (VRS) a mandatory form of TRS. CSD urges the FCC to do so and fully supports the petition filed by the California Coalition of Agencies Serving the Deaf and Hard of Hearing submitted to the FCC on May 27, 2004 seeking this result. CSD proposes that the mandate for VRS begin as of January 1, 2006, so that providers have sufficient time after the Commission issues its next relay order to prepare for this new obligation.

The spectacular growth in VRS call volume over the past two years is the strongest testament to the profound impact that VRS has had on the lives of deaf and hard of hearing people. This has been buttressed by the vast outpouring of support for these services by the deaf and hard of hearing community. An on-line petition circulated by the National VRS Coalition urging the FCC to mandate VRS has been signed by more than 5,500 individuals from across the nation.<sup>4</sup> In addition, the FCC has received approximately 1000 comments from deaf and hard of hearing individuals and consumer organizations who have presented extensive testimonies on the ways that VRS has enhanced their ability to live independent and productive lives.

By any standard, the number of deaf and hard of hearing individuals who have come forward to express their interest in seeing VRS become a mandated service has been astronomical. A good majority of the people who have begun using VRS now make

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<sup>4</sup> National Video Relay Service Coalition Petition for Mandatory Video Relay Service on Behalf of the Deaf and Hard of Hearing Consumers of the United States of America.

this their primary telecommunication method. But while the voluminous response from relay users evidences their interest and need to integrate VRS into their daily routines, this is something that can only be achieved if VRS is mandated. CSD and others have laid out the extraordinary benefits of VRS to the Commission on numerous prior occasions; these are again summarized below.

VRS users are able to enjoy real-time conversations with a speed and flow that mirrors voice-to-voice telephone communications. Through VRS, parties can communicate emotional context, voice inflection and other non-verbal information that cannot be conveyed by text. This is because VRS allows deaf and hard of hearing people who use American Sign Language (ASL) to converse in their native or preferred language, a language with a complex grammatical structure that is very different from English or other spoken languages. In contrast, communications over traditional text-to-voice relay are slow and stilted, and occur in a manner that unnaturally inhibits the flow of a conversation. It is not easy to communicate in one's second language, let alone to have to type out a conversation in that language.<sup>5</sup> The delays inherent in traditional TRS have historically discouraged employers and mainstream businesses from using relay services, and have consequently impeded the full acceptance of these services in our society. Indeed, it is well known that resistance to these services frequently causes businesses and others to hang-up on traditional relay users.

VRS has also opened the channels of telephone communication for deaf and hard of hearing people with physical or mental limitations in typing, reading or writing

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<sup>5</sup> It is for this very reason that other parts of the ADA require sign language interpreters in medical, legal, and other settings. When enacting this landmark legislation, Congress recognized that communication in one's native language through interpreters – rather than passing written notes back and forth – was vital to obtaining effective communication in these situations.

English. Through VRS, deaf children, senior citizens and immigrants who cannot type English now have access to the telephone for the first time in their lives. For these individuals, the promises of the ADA are only now becoming a reality, more than fourteen years after the Act's passage.

Through VRS, ASL users can also fully participate in conference calls, where simultaneous communication is essential. While multiple party calling is already required under the FCC's relay rules, it is extremely difficult, and sometimes impossible to conduct these calls through traditional text relay because of the delays inherent in those transmissions. The immediate give and take that is characteristic of conference calls is finally possible through VRS.

Mandating VRS will also be consistent with the FCC's growing interest in fostering the deployment of broadband technologies. The FCC itself has acknowledged that VRS "can be a demand driver for broadband connections," connections which are necessary to enhance employment, educational opportunities, and access to long distance telemedicine.<sup>6</sup> The FCC has explained that the Internet has "become one of the greatest drivers of consumer choice and benefit, technical innovation, and economic development in the United States in the last ten years."<sup>7</sup> And the Commission has steadfastly

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<sup>6</sup>See e.g., *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, GN Dkt 04-54, FCC 04-55 at ¶ 2 (rel. March 17, 2004) ("[A]dvanced services have created new jobs, while enabling skilled employees to work more effectively in their current jobs. Advanced services have also created greater flexibility and opportunity in the workplace, particularly in the increased use of telecommuting by employees who remain connected to their jobs despite distance and other factors."). See also *id.* at ¶¶ 3,4.

<sup>7</sup>*In the Matter of IP-Enabled Services*, Notice of Proposed Rulemaking, WC Dkt No. 04-36, FCC 04-28 (rel. March 10, 2004) at ¶1

expressed its desire to ensure that the migration to Internet-based communication methods consider and respond to the needs of people with disabilities.<sup>8</sup>

The ease of using VRS – both for the deaf person who signs and the hearing person who receives those signed messages and responds in voice – enables deaf and hard of hearing people to effectively use the telephone to conduct job searches, make appointments for interviews, arrange for references, and – once on the job – perform a plethora of job duties involving phone communications. By providing the ability to converse by phone in a manner that parallels that of hearing individuals, VRS opens new opportunities for employment and job advancements that were previously unattainable. Although traditional text-to-voice relay calls tend to be long and drawn out, requiring each side of the conversation to read the other party’s message before responding, VRS calls are swift, allowing parties to exchange information in a fraction of the time. In the employment context, this saves the employer both time and money – time that his or her employee can use for other job responsibilities and money that would otherwise be spent on lengthy toll calls. In this manner, VRS already fulfills one of the Commission’s goals, *i.e.*, the use of broadband technologies to provide greater flexibility and opportunity for Americans in the workplace. In a country where the percentages of deaf individuals who are unemployed and under-employed far exceed the norm for the general population, this alone is cause for the Commission to mandate VRS.

VRS also facilitates access to interactive voice response (IVR) systems, which have become ubiquitous in our nation’s governmental offices, transportation authorities, educational institutions, and businesses. The FCC has recognized the fact that these systems often provide the only gateway to telephone access. It is for this reason that the

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<sup>8</sup> *Id.* at ¶¶5, 58-60.

Commission has done what it can to improve IVR access by people with disabilities. For example, in the late 1990s, the FCC made a point of including IVR systems within the scope of its Section 255 rules governing telecommunications services, even though IVR services have historically been considered information, not telecommunications services. The Commission made this exception precisely because it understood that if people with disabilities were unable to use these systems, they could not have access to the underlying telephone services that were specifically mandated by Congress. In addition, in its First Improved TRS Order, the FCC adopted a number of measures to facilitate access to IVR systems through text relay, including new requirements for communication assistants (CAs) to use hot keys, permission to record IVR messages for the duration of a relay call, and permission not to charge callers for successive calls needed to capture the entire IVR message.

Unfortunately, since the time that the FCC adopted these Section 255 and TRS measures, there has not been an appreciable improvement in IVR access. IVR manufacturers who are now required to make their systems accessible to TTY users under Section 255 have all but ignored this mandate. And while the measures adopted in the TRS Order have somewhat aided the ability of CAs to transmit IVR messages, by and large, deaf individuals have remained without the ability to interact with IVR systems to the extent that the hearing public can. This is because typically CAs do not have enough time to relay information about prompts contained in an IVR message to callers, get their selections, and return to the IVR system's interactive menu to pick the chosen prompt. As a consequence, more often than not, CAs must make multiple calls to IVR systems in order to complete a requested transmission, expending greater time and resources on a

single call. In recent years, the proliferation of IVR systems has imposed considerable hardships on deaf people, who have increasingly found themselves without the means to access basic information or to reach their desired party by telephone. VRS is the first and only means of offering complete access to these systems by people who use sign language.

Another reason to mandate VRS is that under the FCC's present interpretation of allowable VRS expenses, unless VRS is mandated, there will be no flexibility nor incentive to research new technologies that can provide improved service features to VRS users – features that could facilitate access to telecommunications, expand VRS applications, and even improve cost efficiencies. This is because the FCC has refused to support research and development on non-mandated TRS minimum standards. As the telecommunications industry surges ahead in producing broadband technologies that are designed to significantly enhance communication for all Americans, it is critical to ensure that people who are deaf and hard of hearing will not be left behind. Increased reliance on VRS for everyday telecommunications needs means that consumers will soon demand full access to even more telecommunications service features. For example, the need for mobility in our society has already triggered an interest in video relay access over wireless services.<sup>9</sup> Continued exploration of technologies that can meet consumer demands for clear, crisp, and comprehensive video communications requires ongoing development, trials, and testing. If mandated, VRS will be more capable of reaching its full potential for its user community.

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<sup>9</sup> In fact, just this past spring, a presentation given at the FCC by Gunnar Helstrom of Sweden demonstrated how wireless video relay capability using third generation (3g) standards (and h.264 video) can enable clear and reliable video over much lower bandwidth speeds. This technology is already available in Stockholm.

**B. Over the past four years, VRS has grown into a mature relay service.**

In the year 2000, when the FCC concluded that VRS was “necessary to provide many people with disabilities relay service that is functionally equivalent to voice communications,”<sup>10</sup> neither the FCC nor the VRS industry was ready for a VRS mandate. Over the past four years, however, substantial changes and improvements in VRS have vastly improved both the technical capabilities and the acceptance and adoption of these services by the American public. If VRS was a nascent service in 2000 still waiting to grow its wings, one can say that in the past four years, this service has well taken flight. The dramatic differences between VRS of the year 2000 and VRS of the year 2004 reveal just how much these services have matured over the past few years:

2000: Nearly all VRS was accessed through public stations. VRS stations were located in consumer organizations, community service groups, schools, and other locations outside of the home or office. Consumers had to travel to these central locations to make calls. This created an artificial telephone scenario, as individuals were forced to plan ahead when making calls.

2004: Inexpensive web cams and VRS equipment are now routinely installed in homes and offices, enabling users to make calls at will.

2000: VRS usage was unpredictable. With slow growth, it was difficult for providers to anticipate calling patterns, plan VRS personnel needs, and therefore, keep down VRS costs.

2004: Calling patterns are now stabilizing, enabling VRS providers to make appropriate staffing decisions and to better control costs.

2000: VRS technology, including call routing, was still in its infancy.

2004: Improved technologies that allow distribution networks to provide faster answer speeds, better picture quality, improved end user functionality, and more customer friendly interfaces, have dramatically facilitated the use of VRS.

2000: Broadband penetration in the deaf community was very low.

2004: The use of high speed Internet access is growing, and new TV-based broadband appliances now enable consumers to use VRS without purchasing computer equipment.

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<sup>10</sup>*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, 15 FCC Rcd 5140 at ¶26. (rel. March 6, 2000) (“First Improved Services Order”).

2000: One VRS provider existed.

2004: Several VRS providers exist in a competitive VRS industry.

2000: VRS was considered an optional or “extra” service. Traditional text-to-voice TRS was the primary means of achieving telephone communication for the deaf and hard of hearing population.

2004: Great segments of the deaf and hard of hearing community now rely on VRS for their basic and daily telecommunications access.

The growth in VRS has provided deaf and hard of hearing people who use sign language with a new sense of independence that was previously unavailable to them. The advances that have been made and the fact that millions of Americans have come to rely on these services are reason enough to include them within the FCC’s categories of mandated relay services.

### **C. The FCC has both the authority and the obligation to mandate VRS.**

When Congress enacted the ADA, it defined TRS as a telephone transmission service that can provide the ability for people who were deaf, hard of hearing or speech disabled, “to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent” to the ability of individuals who do not have disabilities.<sup>11</sup> Although the ADA focused on text based relay, it did so because this was the *only* relay technology available at that time. Aware that new technologies, including video relay technologies, might one day become a reality, the Senate Committee responsible for approving Title IV of the ADA made clear its intent for the definition of relay services to remain flexible:

Current technology allows for communications between a TDD user and a voice telephone user by employing a type of relay system. . . . Although the Committee notes that relay systems represent the current state-of-the-art, this legislation is not intended to discourage innovation regarding telecommunications services to individuals with hearing and speech impairments. The hearing- and speech-

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<sup>11</sup> 47 U.S.C. §225(a)(3).

impaired communities should be allowed to benefit from advancing technology. As such, the provisions of this section do not seek to entrench current technology but rather to allow for new, more advanced, and more efficient technology.<sup>12</sup>

This legislative passage, which clarifies the ADA's statutory directive for the FCC to promulgate regulations that encourage "the use of existing technology and do not discourage or impair the development of improved technology,"<sup>13</sup> is not merely boilerplate language that was thrown into the statute. Rather, it was the product of long and thought-out discussions among consumers, industry and federal legislators, who desired to provide a clear and absolute instruction to the Commission to take advantage of new technologies that could enhance the functional equivalency of relay services as these technologies came along.

VRS has proven itself to be *the* most functionally equivalent service available to ASL users, who are now finally able to enjoy the type of telephone communications that the rest of society has enjoyed for well over a century. It is this service and this service alone that can fulfill Congress's universal service goal of ending telephone discrimination against deaf and hard of hearing people who were not served or were under-served by traditional TRS. As such, the ADA does not merely allow, but rather dictates the provision of VRS.

Some have questioned whether it is appropriate to mandate VRS because it is an Internet-based, or possibly an information service, rather than a telecommunications

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<sup>12</sup> S. Rep. No. 116, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. at 78 (1989) ("S. Rep."). 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 directs the Bureau to propose policies that "support the Commission's goal of increasing accessibility of communications and technologies for persons with disabilities." 47 C.F.R. §0.141(f).

<sup>13</sup> 47 U.S.C. §225(d)(2).

service. But the question of whether VRS or any other type of TRS is an information or telecommunications service has never been resolved by either Congress or the FCC. In addition, even back when Congress enacted the ADA, federal courts were unwilling to declare TRS a telecommunications-only service. At that time, local telephone companies were still under a restriction of the Modified Final Judgment issued by Judge Greene of the U.S. District Court that prevented them from providing information services, defined as services that involved “generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information which may be conveyed via telecommunications.”<sup>14</sup> In July of 1989, Bell Atlantic went to Judge Greene to seek a clarification and possible waiver of these restrictions because it was concerned that these limitations prevented it and other regional bell companies from operating their own relay services.<sup>15</sup> In his ruling, Judge Greene not only refused to exclude relay services from the definition of information services, but he concluded that “the transformation of information is the very crux and purpose of the TDD relay services” because the service transforms messages from spoken words to TDD and vice versa.<sup>16</sup> The opinion was delivered on September 11, 1989, ten months before Congress enacted the relay mandates of the ADA. That these events occurred while the ADA was still undergoing legislative consideration evidences the fact that Congress was both cognizant and accepting of the fact that relay services were not intended to be limited to traditional telecommunications services only.

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<sup>14</sup> United States v. AT&T Company, 552 F. Sup. 131, 227, 229 (D.D.C. 1982), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

<sup>15</sup> See e.g., Bell Atlantic’s Motion for a Declaratory Ruling Concerning Relay Services for Disabled Customers, United States v. Western Electric Co., U.S. Dist Ct for the District of Columbia (July 21, 1989).

<sup>16</sup> United States v. Western Electric Co., Memorandum, Civil Action 82-0192 (September 11, 1989). Although Judge Greene found relay services to fall squarely within the information services restriction, he

#### **D. Practical Implications of Mandating VRS**

The FCC seeks guidance on the practical implications of mandating VRS, including its potential impact on state TRS programs, the available labor pool of interpreters, and interpreter working conditions. CSD addresses each of these issues below.

State TRS Programs – CSD urges the FCC, as it moves forward in its plan to shift some of the VRS costs onto the states, to ensure that states have a voice in the mechanism that is ultimately chosen to allocate costs between state and the interstate jurisdictions. In addition, once states have begun to contribute to the costs of VRS, the FCC should make sure that they are given an ongoing role in the operations of those services.

As our nation’s communications networks shift from the public switched telephone network (PSTN) to the Internet, Congress and the FCC may be leaning toward discarding old models that separated the costs and operations of our nation’s telecommunications systems between state and federal jurisdictions to a new model that focuses solely on the interstate nature of Internet-based services. Should this come to pass, serious consideration must be given to where relay services will fall within this new paradigm. State relay administrators have historically played a significant role in determining the type and quality of relay services that their constituents both pay for and receive. Cognizant of local needs, in the past, these administrators have frequently improved upon the FCC’s minimum relay standards to provide the best relay products and services possible for their residents. In addition, many new relay innovations – such as VRS, speech-to-speech and non-English language relay service – have sprung up from

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found that the “exceptional purpose and . . . limited nature” of the telephone company’s request merited a waiver of the information service restriction for the purpose of offering relay services.

the states, where grass root movements to improve local services ultimately resulted in nationwide improvements for relay consumers everywhere. CSD believes that the role that states have come to play in helping to enhance telecommunications access through relay services should be able to continue, even as our nation's general telecommunications services shift from the PSTN to the Internet. We urge the Commission to carefully consider the consequences that its future rulings will have in this regard.

Availability of Interpreters – When the FCC first developed its mandates to caption television programs back in the late 1990s, there was considerable concern about whether there would be enough captioners to handle the increased demand stemming from the new requirements. What consumers predicted at that time – that requirements for captioning would trigger a new interest in employment in the captioning field – has since borne out. CSD predicts that the same will occur with sign language interpreting.

Creating a new and greater demand for VRS sign language interpreters will itself foster increased interest in this profession, as well as the necessary support and training programs to sustain this new field of employment. In the past, with the exception of areas such as Washington, D.C., Rochester, and other locations that witnessed large populations of deaf individuals, interpreters often had erratic employment, having to rely on freelance engagements that typically did not come with health or other employment benefits. In sharp contrast, interpreter positions at VRS centers come with steady hours, competitive pay, and benefits that are already beginning to attract a whole new population of potential employees. As this occurs, it is very likely that current interpreter training programs, such as those provided through the Rehabilitation Services

Administration of the U.S. Department of Education, as well as certification programs, such as those provided through the Registry of Interpreters for the Deaf and the National Association of the Deaf, will engage in coordinated efforts, including the development of appropriate curricula and specialty degree programs, to ensure a continued pipeline of available and skilled interpreters that can meet the demand for both community based needs and VRS.

Interpreter Working Conditions – As a mandate for VRS becomes a reality, it will be critical for providers to receive compensation at levels that offer their employees reasonable occupancy and utilization rates. To this end, CSD recommends using an average occupancy rate under 50%, to take into account both slow and heavily trafficked periods, such rate to be determined by dividing session time by available time. It is important to recognize that this occupancy rate approximates the standard for community interpreting.

If on the other hand, VRS compensation is insufficient to allow interpreters sufficient opportunity for breaks, then the potential for interpreter injury will rise dramatically. Significant physical and mental fatigue and increased interpreter error will occur because there will be insufficient time for interpreters to mentally and physically disengage themselves, and therefore refresh themselves, between calls.

#### **IV. The FCC Should Take Certain Precautions if it Decides to Shift Some of the Funding Obligations for Internet-based and Video Relay Services to the States**

The FCC asks about the extent to which states should share in contributing to the financial support for Internet based and video relay services. Although CSD does not take a position on this issue, or the method that may be used to determine each state's share, we do urge the FCC not to pass along any financial burden to the states unless

those burdens are accompanied by an explicit mandate for the provision of these kinds of relay services. As the Commission notes, if the burdens associated with paying for Internet relay or VRS are shifted but these services are not mandated, some states might be tempted to opt out of offering these services to avoid incurring new fiscal obligations. Were this to occur, the result would be disastrous, given the now enormous reliance on these services by the TRS user community.

CSD also urges that if the FCC does shift some of the costs for these services to the states, the Commission phase in this change. Over the past two years, states have not had to assume the costs of supporting intrastate video relay calls or text relay calls that take place over the Internet. Because some of the expenses that were traditionally associated with text-to-voice relay services have shifted to the Interstate Fund, many states have experienced an overall decrease in relay costs. Lead time will be needed by many of these states to once again secure appropriate funding from their local legislators and public utility authorities for the support of functional equivalency relay services.<sup>17</sup>

CSD also cautions that the FCC thoroughly review any technologies that are purported to automatically assign all incoming Internet relay calls to interstate and intrastate jurisdictions. The following practical limitations call into question the ability of these Internet locator services to determine the originating location of Internet based calls with 100% accuracy:

First, because IP addresses and IP services are not defined by state boundaries, it is difficult to identify IP locations in urban or suburban areas that straddle multiple state

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<sup>17</sup> For example, some states impose caps on these surcharges. In these states, relay administrators may need authorization from their state legislatures or regulatory bodies to increase the upper funding limit in order to cover the costs of Internet-based relay services.

lines.<sup>18</sup> Often fiscal considerations, rather than state borders, determine which server is assigned to a particular geographical location. As a consequence, identification of both dial and broadband IP addresses in these localities generally carry some degree of inaccuracy.

A second problem with current locator technologies is that the databases used for these technologies are often built from lists of entities that have self-registered their IP addresses. Often these entities go out of business or move on to other things, leaving behind their original IP addresses in those databases. New companies that are assigned the discarded addresses may not be in the same physical location as were their predecessors. This can cause these databases to contain incorrect physical identifiers for both the old and the new companies listed.

A final problem with relying on some of the new locator technologies is that in the case of very large servers, such as AOL, an IP server used to support a huge number of IP addresses may be in one physical location while the actual IP users using that server may be in distant locations. When this occurs, it is difficult to pinpoint the location of the IP user behind that server. This occurs as well in the case of corporations that have offices around the nation or the world, all of whom share a single server. For example, Corporation XYZ may have its headquarters, as well as its IP server located in Washington, D.C. But it may also have a virtual private network with connections in Texas, London, and South America. When an individual logs on from one of these remote locations, it may appear as if that individual is physically located in Washington

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<sup>18</sup> Examples of urban areas that sit astride two states are Minneapolis and St. Paul; Cincinnati, Ohio and parts of Kentucky; and Kansas City, Missouri and Kansas. Examples of urban or suburban areas that are near various state lines are the tri-state areas of New York City, New Jersey and Connecticut, and D.C., Maryland and Virginia.

D.C. The problem here is although the locator technology may identify the location of the remote server, the underlying user locations may not be readily identifiable.

Before the FCC imposes requirements on the VRS industry to locate incoming Internet based calls, it is critical for the Commission to understand the practical limitations of current locator technologies, lest obligations be imposed on providers that are impossible to fulfill.

**V. The Commission Should Employ a Compensation Methodology for VRS that Fully Takes into Account the Nature of this Service**

The FCC seeks comment on the appropriate compensation methodology for VRS, including whether the FCC should continue to use a rate of return on capital investment or a different approach for compensating VRS providers. Among other things, the FCC asks commenters to address how any particular methodology is supported by the nature of VRS, the ADA and the Commission's rules.

**A. The FCC should reimburse VRS providers based on session minutes.**

Since the inception of VRS, VRS providers have been compensated on a per minute basis. While CSD has no objection to the Commission permanently adopting a per minute compensation method, CSD does propose that this method be revised somewhat for VRS. Specifically, with traditional TRS, call set-up time has always been rather short. Over the past decade, this set up time has dropped significantly, in large part because standardized technology between manufacturers, ubiquitous interoperability, automated interfaces with end user equipment, and agent processes now allow consumers to dial through the agent position with little or no interaction within seconds. As a consequence, it has been relatively easy for TRS providers to absorb the costs of setting up TRS calls, and receive compensation only for conversation minutes.

By contrast, setting up a VRS call involves many complicated processes that typically take much longer. When setting up a VRS call, the provider must ensure that there is an appropriate technology handshake, that the interface between the user's and the provider's equipment is correct, and that there is a match between the interpreter's skills and the caller's signing abilities. Additionally, before an actual VRS conversation can begin, VRS callers and video interpreters must negotiate fingerspelling, predominantly to convey the outbound phone number the customer wishes the interpreter to call or to provide advance numerical instructions that will be needed for an anticipated IVR system, such as an insurance claim number, bank account number, or credit card number. Conveying this numerical or alphabetical information may require several back and forth attempts and confirmations before the VRS agent is certain that he or she has received the correct information. This is especially the case when the consumer is using a non-PC, TV-based VRS appliance that does not have text chat capability and the video connection may not adequately support fingerspelling at lower bandwidth speeds from the customer's home or office. Although this process often takes several minutes, it is one for which, under the present scheme, the provider receives no reimbursement.

In order to offset the considerable discrepancy between the time it takes to set up a TRS versus a VRS call, CSD proposes that the Commission revise the compensation methodology for VRS to allow providers to be reimbursed for session, rather than conversation minutes. If this is done, providers would no longer need to consider the significant level of risk that is now included in calculating costs based on varying call set up and wrap up times. Although session time reimbursement would increase the number of billable minutes, it would lower the per minute cost dramatically. The result is likely

to be an overall decrease in the cost for the same service because providers would no longer be calculating risk for call set up and wrap up times.

**B. The Commission should consider the labor-intensive and risky nature of VRS in determining its compensation methodology.**

CSD also continues to oppose use of a methodology that employs a rate of return on capital investment. In the past, the FCC has typically applied the rate of return on investment methodology to stable and established, capital intensive telephone companies with heavy investments in telephone facilities and large communications infrastructures. In contrast to companies that have significant telecommunications facilities, VRS providers do not have any investments in a communications infrastructure of capital equipment that is used to build and maintain a network. Rather, VRS is a service whose “infrastructure” costs are mostly attributable to labor expenses.

There are various tiers of personnel used to provide VRS, all of which are critical to the proper functioning of this service. First and foremost, VRS requires the hiring of interpreters, who must be skilled enough to handle any type of VRS call, without prior notice of the need for specialized vocabulary that might arise during a conversation. This means that VRS providers must have on hand highly qualified interpreters who have significant experience in all types of interpreting. Second, VRS call centers utilize managers to conduct ongoing scheduling, training on standardized relay procedures, performance monitoring, operations support, and security checks. Finally, VRS demands high level engineers that can integrate complicated hardware platforms and software technologies. These various personnel costs form the backbone of VRS costs, for which VRS providers need to be adequately compensated.

A return on capital investment methodology is also inappropriate because it fails to take into account the highly competitive nature of VRS and the many uncertainties still associated with the future of this service. Specifically, it remains to be seen whether future VRS funding will come from federal or state sources, whether VRS will remain optional or become mandatory, or whether VRS rates in the future will depend on state-issued RFPs or NECA-based cost submissions. The financial risks associated with VRS, the considerable fluctuation in compensation rates, and the uncertain nature of existing VRS waivers continue to wreak havoc on the ability of most VRS providers to accurately plan for their provision of these services. Because VRS funding is so volatile, and because VRS is a labor, rather than capital-intensive service, restoration of the FCC's original model based on a return on projected expenses is the most reasonable and appropriate cost recovery methodology for VRS. In determining what a reasonable return to VRS providers should be, the Commission should consider other government contracts that employ a cost plus methodology. Whatever amount is chosen should provide a sufficient cushion to ensure that VRS providers can be both effective and competitive in the VRS industry.

The FCC questions whether a cost plus return methodology would be inconsistent with the cost reimbursement schemes set forth in the ADA. In fact, however, there *were no* TRS reimbursement schemes set forth in the ADA. In an attempt to craft its own theory about Congress's plan for TRS cost recovery, the FCC mischaracterizes the true debate that took place at the time that the ADA was under consideration.

A review of the ADA's legislative history, and a discussion with any one of the ADA drafters will reveal that these legislators were far less concerned about the specific

cost methodology that would be used for reimbursing interstate TRS costs than they were with making sure that there would be sufficient funding to cover these costs. Throughout the many ADA legislative debates that took place in the halls of Congress, one thing remained clear – that Congress encouraged the recovery of TRS costs in a manner that would best achieve its goals of functional equivalency. To this end, Congress provided guidance on relay funding in a few very defined areas: first, it issued a mandate for TRS costs to be recovered from *all* telephone subscribers of *all* types of intra- and interstate services,<sup>19</sup> second, it directed that the costs of providing intrastate service were to generally be recovered by intrastate subscribers and the costs of providing interstate service were to generally be recovered by interstate subscribers,<sup>20</sup> third, it included a directive that TRS users not be saddled with assuming all TRS costs,<sup>21</sup> and fourth, it declared its intent for TRS surcharges not to be inappropriately labeled on telephone bills in ways that would single out people who were deaf, hard of hearing, or speech disabled.<sup>22</sup> What Congress did *not* do was to dictate a particular funding methodology for either intra-state or interstate relay services, choosing instead to focus more on its goals to ensure full support for functionally equivalent relay services.

Yet now, virtually out of thin air, the FCC seems to suggest that Congress did in fact have a plan in mind for relay compensation. For example, the FCC states that using a cost plus methodology “ignores the role of TRS as an accommodation under Title IV of

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<sup>19</sup> H. Rep. No. 485 Part 4, 101<sup>st</sup> Cong., 2d Sess. (1990) at 67 (“H. Rep.”). For example, the House Report made clear that contributions for interstate service needed to come from private telecommunications systems, as well as services provided over the public switched telephone network. This was designed to provide a significant measure of economic security for TRS.

<sup>20</sup> 47 U.S.C. §225(d)(3)(B).

<sup>21</sup> 47 U.S.C. §225(d)(1)(D).

<sup>22</sup> The House Report cautioned that “relay services are of benefit to all society and [noted its expectation] that any funding mechanism not be labeled so as to prejudice or offend the public, especially the hearing-

the ADA for persons with disabilities.”<sup>23</sup> The Commission also notes that it does not wish to place “undue burdens on the Interstate TRS Fund.”<sup>24</sup> The Commission’s discussion in this regard is very telling. What it shows is that the Commission has erroneously grouped together relay services with other accommodations required in the ADA that are subject to undue burden limitations.

While relay services were definitely intended to offer a means of remedying past discrimination, the relay mandates of the ADA are very different from the other sections of the ADA that created mandates for accommodations. This difference is readily apparent when one looks at the fact that relay services are intended to bridge the telephone gap *between* deaf, hard of hearing and speech disabled people on the one hand and all other Americans on the other, rather than to mandate an accommodation *for* the deaf or hard of hearing relay user. It is for this reason that nowhere in the language or the legislative history of the ADA will the FCC be able to find any mention of relay services as an “accommodation” whose funding is subject to the undue burden defenses that apply to the other sections of the ADA.

In mandating relay services, Congress made clear that it did not want to single out people who were deaf, hard of hearing and speech disabled from all other ratepayers with a special telephone system that was specially funded.<sup>25</sup> Rather, Congress’s goal was to integrate relay users into the mainstream of our existing telephone system, and to provide adequate funding to achieve that objective. Indeed, it was for this reason that the House

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impaired and speech-impaired community.” H. Rep. at 68. The Senate, too, noted its disapproval of such labeling. S. Rep. at 83.

<sup>23</sup> June 2004 Report and Order at ¶179.

<sup>24</sup> June 2004 Report and Order at ¶90.

<sup>25</sup> For this very reason, Congress rejected early attempts by some of the regional Bell companies to create a federally funded relay corporation that would be solely responsible for overseeing the nation’s relay services.

and Senate struggled with whether to allow the use of relay surcharges on telephone bills. Consumers opposed this funding method because it separated out the costs of relay from other telephone expenses and often imposed restrictive caps on relay expenses. It is for this very reason that Congress lauded state programs, such as those in New York and Delaware, that used ratemaking approaches, not surcharges, to TRS reimbursement. The legislators understood that this approach to cost reimbursement offered an integrated and flexible funding source that would have the advantage of allowing TRS reimbursement to fluctuate with the costs of relay operations.<sup>26</sup> Aware of the financial hardships that had plagued the relay services of the 1970s and 1980s, Congress wanted to be very careful *not* to impose funding restrictions that could in any way impede the provision of these services. A cost plus methodology will come closest to achieving this goal by compensating providers for the true and complete costs of providing VRS.

In the event that the Commission insists on using a rate of return on investment methodology, the Commission should first conduct a full investigation of the expenses associated with VRS operations. Rather than simply choose to provide a return on *capital* investment, which has no application in the VRS context, the Commission should first study and decide upon the appropriate base against which a rate of return should be determined. At a minimum, because VRS is a highly labor intensive service, the FCC should consider labor to be a justifiable cost of doing business that requires a reasonable return. As noted above, labor costs constitute a significantly greater proportion of the costs of providing VRS than they do for other forms of TRS. VRS compensation needs

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<sup>26</sup> Congress was aware, for example, that just two years prior to the ADA, the New York Public Service Commission had chosen to treat relay costs as one of the many operating expenses of its forty-one telephone companies, allocating the costs of providing these services to each of those companies based on

to take into account that highly skilled interpreters and managerial staff, not capital intensive equipment and physical property that are at the core of traditional telephony, are needed to sustain VRS operations. In order to remain in business and be fully compliant with the FCC's regulations, VRS providers need to be able to receive a return on these labor costs.

### **C. Additional Funding Considerations**

In addition to the above, CSD requests that the Commission undertake the following additional considerations in determining VRS compensation:

1. Remedy the current pricing discrepancy - Out of the fifteen VRS centers used in the 2004-2005 rate calculation for VRS through NECA's data collection process, the largest three centers comprised 64% and 65% of the total projected minutes for both years, respectively. While an outside observer is unable to factually ascertain if the top three centers are indeed under the control of one provider, it would seem that the larger providers are dominating the rate calculation through the current methodology, and that an alternate method of weighting would be more equitable among VRS centers. Indeed, at present, the current rate does not even cover CSD's and Sprint's combined allowable costs.

In order to remedy the discrepancy in provider pricing, CSD proposes that when NECA calculates pricing for each funding period, it be instructed to limit the weight of the costs submitted by any one provider to 33% of the total costs submitted by all providers. If no more than 33% of the compensation rate is determined by the submissions of a single vendor, the monopolistic effect that is now present, possibly

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the number of their access lines. New York intended for these companies to report and recover these costs through routine ratemaking proceedings.

caused by the absence of mandates for answer speed levels as well as the lack of guidance on ways to apply some of the other TRS standards, could be prevented.

2. Set the VRS rate every two years - In order to add additional stability to the VRS rates, CSD urges that the VRS compensation rate be set on a two year basis. Over the past few years, providers have had to constantly readjust their planning cycles and budgets for VRS, incurring significant harm each time that the VRS rate has been changed. In addition, the wild fluctuation in this rate from year to year has forced providers to drastically change the level of their video relay service, with negative outcomes for consumers. If the rate were set every two years, provider risks would be reduced and there would be far more consistency in the availability and quality of the VRS product for consumers.

One can better understand the need for improved VRS financial stability by comparing the VRS and traditional TRS reimbursement models. TRS rates are predominantly set through multi-year contracts set by the states. Because so significant a portion of the TRS funding base is stable, TRS providers are able to ride the “highs and lows” of fluctuations in interstate TRS rates. VRS providers, on the other hand, are solely reliant on the Interstate Fund. Because changes to these rates have occurred annually, they have dramatically and negatively impacted a provider's ability to provide consistent and high quality service to VRS consumers. A two year rate will go a long way toward remedying the instabilities presented by the current timetable.

3. Adequately compensate providers for mandated answer speed service levels – Once the FCC mandates an answer speed service level, it must equitably compensate providers so they can meet that level. What is critical here is for the FCC to clearly

define both answer speed service levels and how those levels are to be both measured and delivered, so that providers will measure, process, and report calls uniformly and accurately.

## **VI. Research and Development Costs Associated with Temporarily Waived VRS Standards Should be Compensated.**

CSD urges the FCC to discontinue its practice of disallowing costs associated with research and development undertaken to meet presently-waived minimum standards. Under the ADA, the Commission is charged with defining functional equivalency through its mandatory minimum standards.<sup>27</sup> Throughout the years, the FCC has modified these standards in response to new technologies that have changed the scope of relay services. As the FCC has made these changes, there has been the occasional need to grant temporary waivers of some of the minimum standards. All the while, however, it has been the understanding of prior Commissions, TRS providers, and the relay user community that these standards would ultimately go into full force and effect once they became technically feasible. It is for this reason that the FCC has always required providers to submit reports on their efforts to develop technical solutions for standards that are temporarily waived.<sup>28</sup> Until now, the message to providers has always been clear: even if a minimum standard is temporarily waived, providers should be doing whatever

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<sup>27</sup> June 2004 Report and Order at ¶189 n.540, citing to various parts of the ADA's legislative history indicating that the FCC's mandatory minimum standards were to define functionally equivalent relay service.

<sup>28</sup> For example, in the past, TRS providers consistently had to submit progress reports to the Commission on their efforts to handle relay calls made with coins at payphones. Despite the fact that this standard was temporarily waived, the FCC repeatedly encouraged industry to undertake research and development to find a solution to handle these calls. This is because, although waived, the coin-sent paid requirement remained part of the FCC's mandatory minimum standards. *See e.g., In the Matter of Telecommunications Services, and the Americans with Disabilities Act of 1990, Order*, CC Dkt 90-571, 93-1317, 8 FCC Rcd 8385 (adopted August 20, 1993, released November 29, 1993); *In the Matter of Telecommunications Services, and the Americans with Disabilities Act of 1990, Memorandum Opinion and Order*, CC Dkt 90-571, DA 95-1874, 10 FC Rcd 12775 (August 25, 1995).

they can to meet that standard, under the assumption that later on, the waiver will be eliminated.

As the agency charged with ensuring functionally equivalent service to relay consumers, the FCC should be doing what it can to support, rather than hinder provider efforts to meet temporarily waived standards. CSD urges the Commission to permit reimbursement for research and development needed to find solutions to temporarily waived standards. Unless the FCC changes its stance on this issue, providers will have virtually no incentive to undertake any efforts to bring relay services up to the minimums already set by the Commission. Smaller providers in particular will not be able to handle the costs of finding these solutions if these costs are not reimbursable by the Interstate Fund.<sup>29</sup>

## **VII. The Minimum Standard for VRS Answer Speed Should Achieve Functional Equivalency**

As the FCC notes, VRS consumers have grown frustrated with having to wait long periods of time to make VRS calls. The Commission understands that “long wait times undermine the notion of functional equivalency, mandated by Congress,” and asks for comment on the appropriate speed of answer for VRS.

As CSD has indicated in multiple pleadings before the Commission, developments in VRS technologies, increased VRS competition 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. Although the number of VRS users does continue to grow, demand for VRS has finally stabilized to

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<sup>29</sup> As raised in its Petition for Reconsideration of the June 2004 Report and Order, CSD notes in particular the pressing need for compensation associated with research and development costs associated with finding

the point where VRS projected call volumes for a particular speed of answer make staffing far more predictable than ever before. Indeed, prior to the FCC's decision to reduce VRS rates on June 30, 2003, CSD was already in compliance with the 85/10 speed of answer standard.

In its Petition for Reconsideration filed on September 30, 2004, CSD urged the Commission to eliminate the answer speed waiver by January 1, 2005 and to provide adequate compensation to support the 85/10 standard after that time. As an alternative, CSD proposes that the FCC adopt a mandate requiring 85% of all VRS calls to be answered within 30 seconds, to be measured on a monthly basis, again so long as there is adequate reimbursement for this level of service. CSD further proposes that the FCC conduct an annual review of this standard. As volumes grow and costs can be lowered during off peak hours, this standard can be re-evaluated to be brought closer to the mandate for 85% of all calls to be answered within 10 seconds.

In order to determine an appropriate answer speed, NECA should continue requesting average speed of answer information from all VRS providers. Providers should not be permitted to include within their answer speed measurements and reporting to the FCC either VRS calls that are returned at a later point in time by the provider or that are selected out of queue.

## **VIII. Other VRS Issues**

A. Interoperability of VRS – CSD urges the FCC to require all video relay services to be interoperable with one another. Blocking or otherwise restricting VRS access is both unfair and dangerous to relay consumers, unfair because it does not allow consumers

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a solution for handling emergency VRS calls, a presently-waived standard that will begin for VRS providers in January 2006.

to achieve the same level of communications access as is enjoyed by people who can use voice-to-voice communications, and dangerous because it prevents consumers from reaching other providers in an emergency or in the event that a particular provider's network is unintentionally shut down.

Denying interoperability runs counter to two federal objectives, first ensuring that relay services parallel conventional telephone services to the greatest extent possible, and second, ensuring that our nation's homeland security system is one that facilitates getting help in the event of an emergency. A hearing person can pick up a wireline or wireless telephone and contact anyone and anywhere by that phone, regardless of the carrier to whom that individual or the called party subscribes. As a program that is federally administered and financed by the general population of interstate telephone subscribers, all video relay services should be equally accessible and available to all of its users. It is a violation of the ADA for the FCC to either condone or allow restrictive practices that do not further this objective.

B. VRS calls to other TRS users - Over the past few years, many deaf individuals have begun to discard their TTYs in favor of pagers and other text messaging devices. As these same individuals now begin to use VRS to meet their relay needs, there is even less reason - except for emergencies - for them to keep these devices. The problem is that ASL users still need a means of making calls to deaf, hard of hearing or speech disabled individuals who may not know sign language. In order to communicate by phone, it is critical for VRS users to be able to call individuals who use traditional TRS, Captel, and other relay services. Full telecommunications access means that relay users of different services should be able to call each other across these different services. CSD seeks

confirmation from the FCC that these types of VRS to TRS, VRS to Captel, or VRS to STS calls are eligible for compensation under its rules.

C. 10 Minute Rule – CSD believes that the FCC should retain its minimum standard requiring VRS agents to remain on VRS calls for at least ten minutes, but recommends that the ten minute period commence only after the VRS provider has ensured that the interpreter designated for the particular VRS call is an appropriate match for the video caller. As the FCC indicates, not every VRS agent will be suitably matched to every VRS caller. For example, although CSD’s interpreters are certified and highly qualified to handle all types of VRS calls, occasionally, calls come in from individuals who have minimal language skills. These individuals, who often live in independent living centers, frequently communicate through a system of mimes and gestures rather than actual signs. If an individual with minimal language skills calls into a VRS center, the provider may need to switch that individual to an interpreter who is well acquainted with his or her skills before a full ten minutes of conversation have taken place. However, once an appropriate interpreter-consumer match has been made and the interpreter successfully begins to interpret the call, the ten minute rule should fall back into place to ensure continuity for both parties to the VRS call.

D. Questions to Caller – In the VRS environment, a VRS agent must become visually acquainted with callers to ensure that communication is both established and understood by all parties to the VRS call. The ability to ask questions to the VRS video user during call set up to both acquire knowledge about the caller’s sign language style and to gain an understanding of the nature of the call can assist interpreters with unique vocabulary that is not routinely encountered, and provide them with other information

that can improve the quality of their interpreting. CSD recommends that interpreters be permitted to ask callers such questions, but that they also give callers the opportunity to decide whether or how they will answer those questions. In this manner, VRS providers will not interfere with the independence their customers.

It should be noted that with the additional information that can be obtained during this call set up period and a revised ten minute rule, there will be improved matches between customers and interpreters, conversation time should decrease, and fewer problems will be encountered mid-call. In other words, better call set up = shorter conversation time = lower cost to the Interstate Fund.

#### E. Abuse and Harassment of VRS Agents

The FCC seeks guidance on the extent to which it should regulate relay calls that are abusive, sexually explicit, obscene, threatening, use inappropriate conduct or language or that involve illegal acts. Abusive calls may be divided into two categories, those that are directed to the CA or VRS agent and those that are directed to one of the other parties. Where abuse, threatening or inappropriate communications are directed to third parties during a relay call, generally CSD believes that CAs and VRS agents must continue to relay those communications. As the FCC notes, because CAs take the place of transparent telephone wires, they cannot assume a censorship role, deciding which calls are and are not appropriate for relay transmissions.

At the time that the FCC first drafted its rules on confidentiality, states varied widely in their confidentiality policies. Many states had affirmative disclosure laws that required their residents to disclose any knowledge about child, spousal or elderly abuse, even if such knowledge was acquired during a relay call. After carefully considering the advantages and disadvantages of these disclosure statutes as weighed against the need for

relay confidentiality, the FCC concluded that CAs had to maintain complete and unequivocal call privacy, or they would constantly be placed in the difficult position of having to determine the true meaning of what was being said during a relay call. This would have posed a considerable challenge during text-to-voice relay calls, where a joke could have been mistaken for an actual threat of abuse or bodily harm. Although the FCC understood that it was not easy for a relay operator to ignore certain call content – especially when it contained profanity, obscenity or violence – it decided that it was not appropriate to empower relay operators to make judgments about the conversations they facilitated. What one CA considered light hearted humor that could pass for appropriate relay call content, another might find extremely offensive. Never knowing whether their calls would pass muster, consumers would quickly lose confidence in the relay system, frustrating Congress’s goal of achieving equal telephone access. In the end, the FCC decided that state affirmative disclosure statutes conflicted with the ADA’s requirements for confidentiality, and would be preempted by the latter. It is important to note that the FCC adopted this confidentiality policy at a time when Section 223 of the Communications Act – prohibiting obscene or harassing telephone calls – had already been enacted.

For the most part, CSD believes that this original FCC policy on confidentiality remains sound, and that CAs should be required to continue handling all calls regardless of their content. However, CSD proposes two caveats to this general rule with respect to VRS. In the past, the FCC’s policies applied to traditional text-to-voice relay services. Harassing calls take on new significance with video relay, where, as the FCC notes, the anonymity of both the callers and the VRS agent are no longer guaranteed.

First, CSD maintains that where abuse, obscenity or threatening behavior is directed at a VRS agent and not the other party, that agent has always had the right to terminate such communications. When call content is directed to an interpreter and not to a called party, it takes the interpreter outside of his or her role as a conduit, and removes the communication from the protection of the FCC's regulations.

Second, to the extent that a VRS call involves visually pornographic, sexual, obscene or lewd conduct or harassment, the VRS agent should have the right to discontinue the call, even if the lewd content is directed to a third party. Because of the visual nature of VRS, graphic conversations involving these types of communications can be quite distressing for a VRS agent. What occurs on a call involving visually sexual or lewd conduct is a far cry from the text-to-voice conversations that take place when one cannot see the TRS communications assistant who is typing and voicing. If a VRS user acts out something that is sexually explicit while completing a conversation through VRS, the visual nature of the call forces the VRS agent to become part of the sexual act, making that agent the object of sexual harassment.

CSD does not believe that it is appropriate to force VRS agents to process visually sexual conduct designed to harass the VRS agent, even if those calls are consensual between the calling and called party. Nor should a VRS agent have to relay a conversation where the individual on video exposes indecent body parts. In both instances, the VRS provider should be given the discretion to terminate the call.

The FCC also asks about the extent to which things that appear on the video screen during the course of a VRS call should be kept confidential. Because it was Congress's intent under the ADA to have relay calls take the place of direct voice to voice calls, CAs

who conduct traditional text-to-voice calls routinely relay everything that they hear. For example, if the CA hears water running, a child laughing or a door slamming, he or she will type that out (typically in parentheses) during the course of a relay call, regardless of whether the individual speaking takes note of that background event. Just as CAs relay everything that they hear on a text call, so too should VRS agents relay or interpret everything that they see while on a video call. Thus, if abuse takes place in the background of a VRS call, the VRS agent should continue to fully disclose what he or she witnesses to the audio caller. In this fashion, the burden to report the alleged abuse will shift to the audio caller, in the same way that one party to a conventional voice call would bear the burden of alerting authorities about abuse that he or she may hear directly over the phone.

F. Communications While Remaining Idle – The FCC also seeks comment on the most appropriate conduct for VRS agents during idle periods on a VRS call, for example, while one of the parties is waiting for the other’s response. As transparent conduits on text relay calls, CAs traditionally do not engage in conversations with relay users outside of the actual call between the relaying parties. The practice of remaining silent, however, may not be appropriate in the video relay context because the individual using sign language can actually see the interpreter on his or her screen. In addition, chatting in sign language with the video party may actually assist the interpreter to become better acquainted with the sign language style of that individual, which in turn can facilitate and speed the completion of the VRS call. If this is allowed, however, then the question of whether the agent can chat with the audio caller comes into play as well. Because engaging in conversation with relay users is technically outside the realm of a CA’s

responsibility, CSD suggests that this matter would be best resolved by obtaining the preferences of VRS users themselves, for example through focus groups convened by the FCC. It has been CSD's experience that some individuals are in favor, while others are opposed to having the VRS agent chat with callers during idle time.

### **IX. The Role of the NECA Advisory Council Should be Expanded**

Federal legislators who drafted the ADA were aware that ongoing input from the relay user community would be critical as the FCC implemented the TRS mandates. For example, in its legislative report, the Senate specifically encouraged the FCC to create a TRS advisory committee whose composition would include a majority of relay consumers:

[G]iven the unique and specialized needs of the population that will be utilizing telecommunications relay services, the FCC should pay particular attention to input from representatives of the hearing and speech impaired community. It is recommended that this input be obtained in a formal manner such as through an advisory committee that would represent not only telecommunications relay service consumers but also carriers and other interested parties.<sup>30</sup>

When, in 1993, the FCC issued its rules on the financing of interstate relay services, it directed NECA to create an advisory council, in part as a response to this directive.<sup>31</sup> The FCC is now reevaluating the appropriate mission and composition of this council, and asks whether there are ways in which the council may play a more productive role.

CSD does in fact believe that there are ways that the council can play a greater role in the administration of our nation's relay services. For well over a decade,

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<sup>30</sup> S. Rep. at 81 (1989).

<sup>31</sup> *In the Matter of Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Third Report and Order*, CC Dkt No. 90-571, FCC No. 93-356 at ¶8 (rel. July 20, 1993). Although the FCC contemplated creating a federal advisory committee at the time, there were no more slots for a new committee available. The next best thing was to create an advisory committee through NECA.

numerous states have set up advisory committees with extraordinary success. These committees have provided an ongoing dialogue among consumers, carriers, state regulatory bodies, and TRS providers in efforts to resolve complicated relay questions, receive and respond to complaints and provide recommendations for relay service improvements.<sup>32</sup>

Since the 1980s, deaf and hard of hearing consumers have urged the FCC to have its own federal advisory council on telecommunications relay service issues. With a limited number of federal advisory committees, however, the Commission has been reluctant to use one of its advisory committee slots for this purpose. CSD now proposes that the duties and responsibilities of NECA's advisory council be expanded to include issues that address not only the financial administration of interstate relay services, but other matters that generally concern the implementation of our nation's relay programs. As TRS technologies continue to evolve, the wealth of expertise on this council can be used to keep the Commission informed about technological advances, explore and debate policy options, define research needs, and provide ongoing advice on the development of the FCC's regulations. Moreover, because Internet-based relay services and VRS are primarily interstate services, the quality of these services have escaped the careful scrutiny of state program administrators. Another critical role that the council can play is to assist the Commission in monitoring these programs on a nationwide basis.

We have already witnessed dramatic changes in both the role and function of relay services in our nation as these services have migrated to the Internet. The FCC has been challenged by many of the issues presented by this migration, and would benefit

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<sup>32</sup> California's many relay advisory councils are exemplary in this regard. At least sixteen other states have advisory committees, including New York, Illinois, Alabama, Utah, Texas, New Hampshire, and Hawaii.

from the advice and counsel of an advisory body that can explore and assist the Commission in responding to these and other relay trends.

The FCC asks as well about the composition of the current NECA Advisory Council. It says that although the council has TRS users and providers, it does not have any members that represent the TRS Fund or the consumers of interstate telecommunications services from whom the costs of interstate TRS are recovered. CSD disagrees that no such individuals are represented on the council. In fact, every council member is also a member of the general public that pays into the Interstate TRS Fund as well as a consumer of interstate services. The FCC's suggestion that no such individuals are represented on the council implies that council members are not interested in protecting the interests of the general public. This could not be further from the truth.

First, NECA's Advisory Council members are already charged with representing the public's interests, as they are affected by fluctuations in the NECA Interstate Fund. But these members recognize that the interests of the general public – or those that pay into the Interstate Fund – are not merely fiduciary. Rather these council members realize that members of the general public, i.e., the people that pay into the Interstate Fund, are all potential or actual relay users, and have as much to gain through the provision of functionally equivalent relay services as do deaf, hard of hearing and speech disabled users of TRS. Every TRS call involves at least two parties, one of whom typically does not have any disability. CSD submits that all interested parties are already fairly represented on the council and sees no reason to either change the composition of the Council or the nomination procedure.

## **X. Conclusion**

As we approach the fifteenth year of the anniversary of the Americans with Disabilities Act, we urge the FCC to take actions that will truly fulfill Congress's goals to provide functionally equivalent relay services for our nation's deaf, hard of hearing and speech disabled citizens. To this end, we urge the Commission to make both Internet and video relay services mandatory, to ensure the continuation of these services if their funding partially shifts to the states, to compensate VRS providers based on session minutes, to employ a compensation methodology that takes into account the labor intensive and risky nature of VRS, to reimburse providers for research and development costs associated with temporarily waived standards, to adopt an answer speed designed to achieve functional equivalency, to require VRS providers to make their services and equipment interoperable with one another, and to expand the role of the NECA Advisory Council.

Respectfully submitted,

/s/

Ben Soukup, CEO  
Communication Service for the Deaf  
102 North Krohn Place  
Sioux Falls, SD 57103  
605-367-5760



By: Karen Peltz Strauss  
KPS Consulting  
2120 L Street, NW  
Suite 400  
Washington, D.C. 20037  
202-478-6148  
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