

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

Telecommunications Relay Services and
Speech-to-Speech Services for Individuals
with Hearing and Speech Disabilities

CC Docket No. 90-571

CC Docket No. 98-67

CG Docket No. 03-123

**COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA
AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

The People of the State of California and the California Public Utilities Commission (“California” or “CPUC”) respectfully submit these comments in response to the Further Notice of Proposed Rulemaking on IP Relay and Video Relay Service (“FNPRM”) released by the Federal Communications Commission (“Commission” or “FCC”) on June 30, 2004, in the above-referenced dockets.

I. INTRODUCTION

In the FNPRM, the Commission seeks comment on a number of issues with respect to IP Relay and Video Relay Service (“VRS”) including the appropriate cost recovery methodology for IP Relay and VRS. In particular, the Commission asks whether IP Relay and/or VRS should become a mandatory form of TRS.¹ The

¹ The term *telecommunications relay service* means “telephone transmission services that provide the ability

Commission also seeks comment on what type of mechanism, if any, the Commission might adopt to determine which IP Relay and VRS calls are interstate and which are intrastate for purposes of reimbursement. Other issues include whether, when, and how the Commission should apply the speed of answer rule to the provision of VRS, whether there should be separate rates for IP Relay and TRS, and on redefining the composition, functions, and responsibilities of the Interstate TRS Advisory Council. The Commission has set forth a number of issues for comment in the FNPRM, and the CPUC comments only on some of these issues. Silence on the other issues connotes neither agreement nor disagreement with these proposals.

II. BACKGROUND

The CPUC is responsible for the administration of the California Relay Service (CRS). Its newest version begins December 2, 2004 and expands on California's multi-vendor environment that began in 1996. Consumers will be able to choose from three call center providers or may elect to use the preferred features of each, such as one vendor for VRS, another for traditional TRS, and a third for IP Relay. California's new program also unbundled network services, network management services, and call

for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio.” 47 U.S.C. § 225(a)(3). As the Commission provided in the FNPRM, TRS “includes services that enable two-way communication between an individual who uses a [TTY] or other nonvoice terminal device, and an individual who does not use such a device,” *id.*, as well as non-English relay services, Speech-to-Speech services (STS), and Video Relay Services (VRS), *see* 47 C.F.R. § 64.601 (9), (12), & (17), respectively. TRS also includes what is called IP Relay, whereby a user may connect to a TRS facility via a computer (or other similar device) through the Internet.“ In the Matter of Telecommunications Relay Service, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket No. 90-571, FCC 04-137, n.1 (rel. June 30, 2004) (FNPRM).

center services.² The CPUC believes such a competitive environment is an incentive for vendors to offer enhancements and a higher level of service quality while the state is able to realize program cost controls.

California welcomes the Commission's inquiry and recognizes the significant growth rate of IP Relay and VRS caused by the migration of customers from traditional TRS to IP Relay and VRS. As the Commission notes, the overall purpose of Section 225 of the Act is to "ensure that interstate and intrastate [TRS] are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."³ Further, Section 225 specifically directs the Commission to "ensure that regulations prescribed to implement this section encourage, consistent with Section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology."⁴

IP Relay allows people with hearing or speech disabilities to communicate with people who do not have such disabilities. IP Relay⁵ is a form of TRS, which enables

² Consumers may voluntarily file a simple "711 Form" in which they indicate their preferred vendor. Once filed, consumers will be able to dial 711 and have their call automatically routed to that vendor. 711 calls to and from consumers who have not filed a 711 Form will be routed among the three call centers.

³ 47 U.S.C. section 225(b)(1).

⁴ 47 U.S.C. section 225(d)(2).

⁵ The Commission has previously concluded that IP Relay falls within the definition of TRS as defined in Section 225 of the Act. *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 02-121, 17 FCC Rcd 7779, n.1 (April 22, 2002) (*IP Relay Declaratory Ruling & FNPRM*). The Commission concluded that IP Relay falls within the definition of TRS because Congress broadly defined TRS to be a "telephone transmission service" that is constrained only by the requirement that the service provide a particular functionality. The Commission also provided that IP Relay provides the functionality of permitting a person with a hearing or speech disability to communicate by wire or radio with a person without such disabilities. *IP Relay Declaratory Ruling & FNPRM at ¶ 10*. The Commission also noted that this conclusion was consistent with the statutory admonitions that TRS be made

two-way communication between an individual who uses a text-based device (a computer, PDA, Web-capable telephone, or two-way pager) and an individual who does not use such a device. VRS⁶ is a form of TRS that uses videophones or computers and videoconferencing software and high-speed internet access to connect the TRS user to a communications assistant (CA) who communicates with the TRS user in American Sign Language or oral or signed transliteration. IP Relay and VRS use the Internet for the leg of the call to the CA.

We note the CPUC's California Relay Service Advisory Committee (CRSAC), an advisory board to the CPUC, strongly favors making IP Relay and VRS mandatory. The CRSAC recognizes the numerous benefits of IP Relay and VRS, including being more natural, efficient, and easier to use than traditional TRS.⁷ CRSAC also recognizes that IP Relay and VRS are more functionally equivalent to a non-TRS phone call. The CPUC fully appreciates CRSAC's position and the needs of the

available to the extent possible and in the most efficient manner, and that the Commission encourage the use of existing technology and not discourage the development of new technology. *Id.* The Commission expressly rejected the notion that TRS is limited to "telecommunication services," noting that TRS was specifically defined. *Id.* at ¶¶ 12-14. The Commission observed that it was "not required to, and consequently [did] not, make a finding whether IP Relay constitutes telecommunications, telecommunications service, or information service." *Id.* at ¶ 14.

⁶ The Commission has previously recognized Video Relay Service (VRS) as a form of TRS. *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 at ¶ 2 (March 6, 2000) (*Improved TRS Order & FNPRM*).

⁷ For example, CRSAC notes that for many, communicating in American Sign Language (ASL) is the most "comfortable or natural" language for them. ASL has a unique grammar. Using a TTY might be a challenge for a deaf person who learned how to communicate through signs or for a deaf person who has Minimal Language Skills. Communicating by ASL can reduce the misunderstandings that can occur by having to communicate in English by traditional TRS. In addition, CRSAC states that VRS provides the same immediacy and back-and-forth conversation as there is in a non-TRS phone conversation between two hearing people. CRSAC also notes that IP Relay is faster and much easier in terms of being able to "interrupt" the relay operator when needed.

community.⁸ However, for reasons discussed below, the CPUC believes that IP Relay and VRS cannot be made mandatory at this time.

Notwithstanding the feasibility of determining the geographic location of a party to the call, and therefore determining whether a particular IP Relay and VRS call is *intrastate* or *interstate*, the Commission should not shift the reimbursement of IP Relay or VRS calls to the states at this time. Because of the significant unsustainable burden that would be placed on the states and the potential to disrupt and undermine the viability of IP Relay and VRS, the Commission needs to continue the funding for IP Relay and VRS from the Interstate TRS Fund. The position we advocate here is consistent with comments California has filed previously with the Commission in which we argued that funding for IP Relay should continue to come from the Interstate TRS Fund. For the reasons discussed below, California maintains that reimbursement for IP Relay and VRS minutes should continue to come from the Interstate TRS Fund.

While we fully recognize the CRSAC strongly favors making VRS and IP Relay mandatory for many important reasons, as discussed below, California believes IP Relay and VRS cannot be made mandatory at this time. A significant portion of the costs of IP Relay and VRS would need to be paid by the states if the Commission decided to shift reimbursement costs to the states. Most, if not all, states do not have the TRS funds to assume these costs and would find these costs to be a significant unsustainable burden. The tenuousness of funding for IP Relay and VRS could

⁸ Letter from Philip H. Kaplan, to Steve Larson, Executive Director, California Public Utilities Commission, dated October 10, 2004.

potentially disrupt these services and undermine the viability of both. In addition, providing adequate state funding for IP Relay and/or VRS could jeopardize funding availability for traditional TRS and state equipment programs. California views the current situation, with IP Relay and VRS funded from the Interstate TRS Fund as the only way for the success of IP Relay and VRS to continue. However, it would be appropriate for the Commission to establish some standards for VRS and IP Relay, to improve the quality of these services, without making these services mandatory.

Currently, non-facilities based internet service providers (ISPs) that provide the link to the Internet for a IP Relay or VRS call, do not contribute to the Interstate TRS or state TRS funds, although this “last mile” connection is a telecommunications service. In light of the dramatic growth of IP Relay and VRS, the Commission should address the impact of continuing to exempt ISPs who provide the link to the Internet for an IP Relay or VRS call from contributing to the federal and state TRS Funds.² All ISPs that provide IP Relay or VRS service, like facilities based telephone companies who offer last mile broadband connection, hold themselves out as providing an essential service to the public for a fee, like traditional TRS, and are obligated to contribute similarly to both federal and state TRS funds.¹⁰ The Communications Act is technology neutral. The nature of a service depends on whether it meets the particular definitional sections of the Act, not on the technology used to provide the

² California is currently in litigation on the Commission’s position exempting cable operators from contributing to universal service for their cable modem service.

¹⁰ Assuming arguendo that this “last mile” connection was not a telecommunications service, the Commission has authority pursuant to section 254, to require the ISP or broadband provider of an IP Relay or VRS call to contribute to the Interstate TRS Fund. Section 254(d) provides: “Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if

service or the facilities used to transmit it. Under this principle, those who are similarly situated and provide functionally similar services are treated similarly, and no particular technology is favored or disfavored.¹¹

California urges the Commission to consider the following principles inherent in the Act. First, customers who are disabled should have reasonable and affordable access to service that is functionally equivalent to voice-grade telephony service offered to non-disabled customers. Secondly, functionally equivalent service should be treated similarly when provided by those similarly situated regardless of the technology deployed or the facilities used, in order to prevent undue discrimination and regulatory arbitrage.

III. IP RELAY AND VRS SHOULD NOT BE A MANDATORY FORM OF TRS AT THIS TIME.

The Commission seeks comment on whether IP Relay and/or VRS should be required to be a mandatory form of TRS service. (FNPRM, pars. 231, 243.)

It is premature to make IP Relay and VRS a mandatory form of TRS. On February 24, 2004, the Consumer & Governmental Affairs Bureau issued an Order increasing the Interstate TRS fund size from approximately \$115 million to \$170 million for the 2003-2004 fund year as a result of the accelerated growth of IP Relay and VRS beyond the initial projections of the Fund Administrator.¹² The reimbursement for IP Relay

the public interest so requires.”

¹¹ See *Wireline Broadband Inquiry*, 17 FCC Rcd 3019, par. 7 (“We believe the statute and our precedent suggest a functional approach, focusing on the nature of the service provided to customers, rather than one that focuses on the technical attributes of the underlying architecture.”)

¹² See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 04-465 (Feb. 24, 2004).

and VRS for July 2004, just one month, was approximately \$14 million dollars.¹³ A significant portion of this amount would need to be paid by the states if the Commission decided to shift reimbursement costs to the states. As discussed further below, most, if not all, states do not have the TRS funds to assume these costs and would find these costs to be a significant unsustainable burden. These figures would only increase with the continued growth of IP Relay and VRS.

Due to the dramatic growth of IP Relay and VRS, both of which are accessed via internet service and/or broadband providers, the Commission needs to address the impact of exempting ISPs from contributing to the Interstate TRS and state TRS Funds. The costs of TRS are not directly recovered from TRS users.¹⁴ There are two aspects to the cost recovery framework for providing TRS.¹⁵ One is collecting “contributions” from “[e]very carrier providing interstate telecommunications services” based on “interstate end-user telecommunications revenues” to create a fund from which TRS providers may be compensated.¹⁶ The second aspect is the payment

¹³ National Exchange Carrier Association (NECA) TRS Fund Performance Status August Report, Funding Year July 2004-June 2005.

¹⁴ Congress expressly made clear that TRS users cannot be required to pay for the costs of TRS. Section 225(d)(1)(D) provides that Commission regulations must “require that users of [TRS] pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination.” 47 U.S.C. § 225(d)(1)(D).

¹⁵ 47 C.F.R. § 64.604(c)(5)(iii)(F) provides: “TRS providers eligible for receiving payments from the TRS Fund are:

- (1) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to § 64.605; or
- (2) TRS facilities owned by or operated under contract with a common carrier providing interstate services operated pursuant to § 64.604; or
- (3) Interstate common carriers offering TRS pursuant to § 64.604.”

¹⁶ Contributions shall be made by all carriers who provide interstate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and

of money from the fund to eligible TRS providers to compensate them for the costs of providing eligible TRS services.¹⁷ All contributions are placed in the Interstate TRS Fund, which is administered by the TRS Fund Administrator, currently the National Exchange Carriers Association (NECA).¹⁸ The fund administrator reimburses “eligible” TRS providers¹⁹ for the costs of providing approved forms of TRS, presently, interstate traditional TRS, interstate Speech-to-Speech, interstate Spanish Relay service, and all IP Relay and VRS.

With regard to the provision of *intrastate* TRS, as a general matter the costs of providing *intrastate* TRS are recovered by each state.²⁰ The FCC does not specify a particular funding method for *intrastate* TRS or state TRS programs.²¹ States generally recover the costs of intrastate TRS either through rate adjustments or surcharges assessed on all intrastate end users, and reimburse TRS providers directly for their intrastate TRS costs.

resale services.

¹⁷ See 47 U.S.C. § 225(d)(3); 47 C.F.R. § 64.604(c)(5). The regulations, addressing these matters separately, characterize the former as “cost recovery,” see 47 C.F.R. §§ 64.604(c)(5)(ii) & (iii)(A) – (D), and the latter as “payments to TRS providers,” 47 C.F.R. §§ 64.604(c)(5)(iii)(E) & (F).

¹⁸ The amount of each carrier’s contribution is the product of the carrier’s interstate end-user telecommunications revenue and a contribution factor determined annually by the Commission. 47 C.F.R. § 64.604(c)(5)(iii).

¹⁹ 47 C.F.R. § 64.604(c)(5)(iii)(E) & (F) (setting forth, among other things, the eligibility requirements for TRS providers seeking to receive compensation from the Interstate TRS Fund).

²⁰ 47 U.S.C. § 225(d)(3)(B); see also 47 C.F.R. § 64.604(c)(5)(ii). However, the costs of providing certain types of *intrastate* TRS, including VRS and IP Relay, are currently not recovered from the states, but are recovered pursuant to the rules governing the recovery of the costs of *interstate* TRS. See *Improved TRS Order & FNPRM* at ¶ 15; *IP Relay Declaratory Ruling & FNPRM* at ¶ 20.

²¹ In a state with a certified TRS program, the state “shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of [section 225].” 47 U.S.C. § 225(c)(3)(B).

Section 225 provides that *all* providers of interstate telecommunications services must contribute their fair share to the Interstate TRS Fund. IP Relay and VRS are both forms of TRS. Common carriers that provide traditional TRS contribute to the Interstate TRS Fund. Similarly, ISPs should also contribute to the Interstate TRS Fund. In fact, as traditional TRS customers migrate to IP Relay and VRS it is necessary for the Interstate TRS Fund to expand to require contributions from ISPs in order for the Interstate TRS Fund to be sustainable. This shared cost mechanism is appropriate because a key motivation for deaf, hard of hearing, and speech-impaired TRS users to subscribe to their services is to have access to VRS and IP Relay.

Regardless of whether IP Relay and VRS were to be made mandatory, which they should not be, these services will necessarily have to be funded from the Interstate TRS Fund. The costs of reimbursing for intrastate IP Relay and VRS would be a significant unsustainable burden and a financial hardship on the states. States are not prepared to take on a share of these costs and because of this, states should have the option of choosing to not contribute to these costs.

In addition, California has a statutory limit on how much the CPUC can assess in a surcharge for intrastate TRS. Under the current circumstances, since ISPs do not contribute to Intrastate TRS funds, California would be required to ask the legislature to raise that cap. Such a request is unlikely to be successful in this time of fiscal conservancy.²²

²² For example, in the 2004 California legislative session, three of the CPUC's universal service programs were targeted as programs that are funded by de facto state taxes in the form of billing surcharges, and as such, were deemed worthy of elimination. Fortunately, they all narrowly survived the legislative battle.

IP Relay and VRS cannot be made mandatory by the Commission because if the Commission ever decides to shift intrastate IP Relay or VRS funding to the states, states would be without the means to adequately fund these two services. The tenuousness of funding for IP Relay and VRS could potentially disrupt these services and undermine the viability of both. The CRSAC notes that an increasing number of TRS users are in fact, foregoing their TTYs or even canceling landline phones, in favor of IP enabled services. The continuity and quality of service that IP Relay and VRS customers currently enjoy throughout the United States would be seriously degraded and consumers deprived of functionally equivalent telecommunications service.

One of the important benefits of IP Relay and VRS is that users, wherever they live, currently can choose any IP Relay or VRS vendor for every call and take advantage of service offered everywhere. Currently, like all other states, the CPUC has contracts only with each of its own California Relay Service providers. Such contracts ensure that the CRS provider will provide service that meets the standards mandated by the Commission and also those standards required by the CPUC. Consequently, California consumers can and do use IP Relay and VRS providers that do not have a contract with the CPUC. If IP Relay and VRS were to be mandatory, the Commission would have to devise an equivalent to call blocking so that IP Relay or VRS providers offer service only to those states with which they have a contract. The Commission would have to investigate whether this is feasible. It would be inefficient and burdensome for IP Relay and VRS providers to receive reimbursement from those

states that choose to participate, and particularly, states where the IP Relay provider does not have an existing TRS contract.²³

The Commission also seeks comment on the potential implications for state TRS programs of making VRS mandatory, the available labor pool of qualified interpreters, and the interpreters' working conditions. (FNPRM, par. 245.)

As stated above, California does not support VRS becoming mandatory at this time. In addition to the fiscal constraints on making VRS mandatory, there are technical issues that would need to be addressed. There would need to be a new set of standards for Video Interpreters, training, and qualifications due to the major differences between video interpreting and interpreting conversations where all parties are together. Within this inquiry, the Commission is considering the impact of VRS on the labor pool (which is limited) of qualified interpreters. VRS requires more skilled, experienced and qualified interpreters. VRS interpreters must be able to handle a wide variety of phone calls requiring skill in the full spectrum from American Sign Language (ASL) to signed or oral transliteration with very little or no advanced input as to what to expect when taking a call. Some new requirements for VRS could be part of Commission minimum standards even if IP Relay and VRS are not mandatory but are determined to be optional services reimbursable by the Interstate TRS Fund.

Other VRS issues include the VRS platform. A video standard needs to be determined for all VRS providers and users, in order to keep the costs down and to ensure interconnectivity that is not the case today. California also notes that if VRS

²³ FNPRM, ¶ 221, 244.

(and IP Relay) were to be mandatory, the VRS vendors of both would have to incorporate a recovery plan to back up the system in the event of a disaster.

IV. DETERMINING WHICH IP RELAY CALLS ARE INTERSTATE AND WHICH ARE INTRASTATE

The Commission seeks further comment on whether use of a fixed allocator could be a reasonable approach in determining which IP Relay or VRS calls are (or could be considered) intrastate and which are (or could be considered) interstate, and if so, how such a scheme should be designed and implemented. (FNPRM, pars. 223, 242.)

As the Commission notes in the FNPRM, the Internet currently has no equivalent to the PSTN's ANI. While a fixed allocator (as a proxy for the actual identification of a particular call as intrastate or interstate) may be one method of assigning costs, due to the significant unsustainable burden that would be placed on the states and the potential to disrupt and undermine the viability of IP Relay and VRS, the Commission needs to continue the funding for IP Relay and VRS from the Interstate TRS Fund. Moreover, the Commission may want to look at allocation in a more comprehensive proceeding where all the costs of IP enabled services are evaluated and the impact of shifting costs to the states can be examined. For example, this could be done in the Jurisdictional Separations proceeding.²⁴

The Commission also invites further comment on whether registration should be used to determine whether an IP Relay or VRS call is interstate or intrastate.

²⁴ In the Matter of Jurisdictional Separations Reform, CC Docket No. 80-286.

(FNPRM, pars. 224, 242.) The Commission seeks further comment on whether TRS consumers would view registration as an excessive burden. (FNPRM, pars. 225, 242.) The Commission seeks comment on the possibility of false registration and/or location information and whether it is necessary to have procedures to verify registration information. (FNPRM, pars. 228, 242.)

The CPUC continues to oppose the implementation of a registration scheme for the purpose of determining whether an IP Relay or VRS call is interstate or intrastate. The CPUC has stated previously that some consumers may not want to be burdened with some of the steps associated with higher security, such as user registration, sign-ins, or passwords.²⁵ Many users dislike customer profiles and are unwilling to submit personal information via the Internet. Moreover, TRS consumers may view any registration scheme as an additional burden, especially since they have enjoyed three years of unfettered use of IP Relay with no registration requirements. A registration requirement could also impose an additional burden on IP Relay providers. Such a scheme would be cumbersome and unworkable for the same reasons cited in the FNPRM such as the possibility of false registration information, prolonged call setup times, and increased costs. Further, any effort to verify registration information will be time consuming, labor-intensive, and costly.

²⁵ *Comments of the California Public Utilities Commission and the People of the State of California*, CC Docket No. 98-67, (September 24, 2003).

V. IP RELAY: SEPARATE RATES FOR IP RELAY AND TRADITIONAL TRS

The FCC seeks comment on whether to require the TRS Fund Administrator to determine and propose, and the Commission to adopt, separate compensation rates for IP Relay and traditional TRS. (FNPRM, par. 233.)

The Interstate TRS Fund Administrator could determine and propose, and the Commission could adopt separate compensation rates for IP Relay and traditional TRS if the two prove to be sufficiently different to justify separating them. These two rates were originally tracked separately by the TRS Fund Administrator but were combined when there was little distinction between the two. However, such a determination may be ripe for a revisit. The Commission and the Fund Administrator may need to determine if the appropriate data is being considered in each case. There may likely be little difference in the costs of labor for traditional TRS and IP Relay and labor constitutes a major share of the cost. However, the Commission has acknowledged the possibility of some use of speech-to-text software.²⁶ There may now be a difference in transmission times for the same conversation. For example, the use of split screens in IP Relay allows the text-user to type while still receiving the CA's text, unlike half duplex TTY. Conversation minutes/costs thus *might* be less for IP Relay than for traditional TRS.²⁷

²⁶ *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CC Docket No. 98-67, FCC 03-190, 18 FCC Rcd 16121 at ¶¶ 4, 33, 42 (August 1, 2003).

²⁷ According to the Voice on the Net Coalition (VON), voice data packets do not use as much bandwidth and make phone calls essentially as cheap to transmit as e-mail. VON also points out that networks based on software rather than hardware are easier to alter and maintain. The Precursor Group reports that a SIP softswitch is about one-tenth the cost of a circuit switch, on a one-for-one replacement basis. VON also cites

VI. OTHER ISSUES

The Commission seeks comment on whether a particular speed of answer requirement should be adopted for VRS and whether there are a sufficient number of interpreters available to ensure that providers could meet a particular speed of answer rule and how a particular rule might affect the cost of providing VRS. (FNPRM, par. 246.)

California suggests there are presently not enough interpreters available to impose the same speed of answer requirement on VRS as there is for traditional TRS. The CRSAC raises concern over the lack of qualified interpreters available to meet the increased need of both VRS interpreting and community interpreting.²⁸ CRSAC would like the Commission to find ways to address this labor shortage, for example, by encouraging VRS providers to contribute to the training and development of interpreters. It is worth repeating, as the Commission noted, that VRS is a highly competitive service, and providers who do not provide prompt and efficient service will run the risk that customers will go elsewhere.²⁹ California also notes that because VRS is an optional but reimbursable service, it is appropriate to provide flexibility that might not be warranted for a mandatory service. In addition, because the interpreter pool is so limited, a VRS provider would need extra interpreters waiting and ready to

Sonus Networks' estimate that operating savings could be 50 percent to 60 percent. *Unleashing the Full Promise and Potential of Internet Voice Communication*, Voice on the Net Coalition, June 2004.

²⁸ CRSAC notes there appears to be an exodus of interpreters from community interpreting to VRS interpreting, due to the attractive employment setting of VRS. CRSAC provides that while more interpreters are needed for VRS, there is also a great need for community interpreters.

²⁹ Hands On *Petition* at 5.

accept calls if a 10 second ASA were required. As a result, this will increase VRS costs.

The Commission invites comment on whether to adopt a different standard for the in-call replacement of CAs that applies to traditional TRS calls and, if so, what that standard should be. (FNPRM, par. 248.)

The CPUC raises the possibility that a certified and ethical interpreter is obligated to seek a replacement if there is not a good match between the interpreter's skills and the parties involved. In such an event, a replacement will need to be made once and the second interpreter would be expected to remain in-call for a longer period as familiarity with linguistic requirements and context increase as the call progresses.

The Commission also seeks comment on whether VRS CAs should be permitted to ask questions of the VRS user during call set-up so that the VRS CA can gain an understanding of the context of the call and the communication requirements (i.e. along the ASL interpretation to signed or oral transliteration continuum) before the CA begins relaying the call. The Commission also invites comment on how, if such questions are permitted, the Commission may ensure that the VRS CA does not interfere with the independence of the caller should the caller choose not to answer the questions. (FNPRM, par. 249.)

Interpreters who work in person routinely begin with a quick informal linguistic assessment of the consumers and the context in order to then interpret or transliterate fluently and appropriately. This is the foundation of the RID Code of Ethics and the new National Interpreting Certification process. Because of the enormous variety of consumers and contexts in which VRS interpreting takes place, interpreters need to

assess a situation at the outset of a call. Communication can fail unless the interpreter/CA is able to determine the requirements and expectations of the consumers in each call. Although a caller may decline to respond, the result may be a less than adequate interpretation. For these reasons, the Commission may want to consider support for a brief assessment with the right of the caller to decline. California would encourage VRS vendors to make an effort to educate their customers as to the reason and value of such preliminary questions as part of their marketing and outreach materials. California looks forward to the day when consumers will routinely and volunteer such information without being prompted at the start of each call or through VRS caller profiles.

The Commission seeks comment on whether the composition of the TRS Advisory Council should be changed or expanded to include parties that represent the TRS Fund or any other relevant interests not currently represented on the Council. (FNPRM, par. 251.)

The CPUC encourages the Commission to set up guidelines for TRS Advisory Council nominees and to be aware of potential conflicts of interest of board members. The CPUC would like to note that most current members are not self-appointed but are nominated by the organizations they represent.

VII. ABUSE OF COMMUNICATIONS ASSISTANTS (CAs)

The Commission seeks comment on whether the Commission should adopt TRS rules directed at curbing abusive calls directed at the CA or the called party. (FNPRM, par. 258.)

CRSAC suggests that if the abuse is being directed to the CA, there should be some protocol that warns the abuser that this is not acceptable and the CA will end the call if the abuse does not stop. If the abuse is directed at the called party, CRSAC believes that some protocol needs to be developed for CAs to break confidentiality if they felt harm was imposed on others.

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VIII. CONCLUSION

California welcomes the Commission's inquiry into the cost recovery mechanisms for IP Relay and VRS. For the reasons stated above, due to the significant growth rate of IP Relay and VRS caused by the migration from customers from conventional TRS to IP Relay and VRS, the Commission needs to continue reimbursing IP Relay and VRS from the Interstate TRS Fund and expand the pool of contributors to the Interstate and state TRS Funds. In addition, although IP Relay and VRS should not be made mandatory at this time, California believes that some minimum standards can be established by the Commission and met by vendors if they are to continue to be eligible for reimbursement by the Interstate TRS Fund.

Respectfully submitted,

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