

**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)	CC Docket No. 98-67
Individuals with Hearing and Speech)	CG Docket No. 03-123
Disabilities)	

**MCI Comments
Petitions for Reconsideration Filed by
Hamilton and Hands On Video Relay**

I. INTRODUCTION

MCI, Inc. (“MCI”) respectfully submits the following comments in support of several requests for reconsideration filed by Hamilton Relay (“Hamilton”) and Hands On Video Relay (“HOVRS”) in response to the Commission’s response to the Commission’s recent Report And Order, Order On Reconsideration, And Further Notice Of Proposed Rulemaking.¹ In its June 30, 2003 Funding Order, the Commission modified the ratemaking methodology for video relay service (“VRS”) on an interim basis, moving from the expenses plus profit markup over expenses that had traditionally governed relay ratemaking, to a version of rate-base, rate of return

¹ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking (*2004 Report and Order*), CC Docket No. 90-571, CC Docket No. 98-67, CG Docket No. 03-123, rel. June 30, 2004. Both Hamilton and HOVRS’ Petitions for Reconsideration were filed October 1, 2004.

regulation.² NECA subsequently applied this interim rate-making method to all forms of relay in its *2004 Fund Size Estimate Report*.³ The Commission thereafter affirmed NECA's new methodology in its 2004 Report and Order without publishing a Public Notice seeking comment on whether there was a need to change NECA's long-standing rate-setting practices, even as it sought comment on the appropriate final rate-setting methodology for VRS.⁴

II. MCI SUPPORTS HAMILTON'S REQUEST TO RECONSIDER EXTENDING RATE BASE RATE OF RETURN REGULATION TO ALL FORMS OF TRS OTHER THAN VRS

MCI believes the Commission violated the Administrative Procedures Act ("APA") in adopting a new rate-setting methodology without publishing a Public Notice directing the public to comment on this possibility and seek alternatives. The purpose of the APA is to afford parties the opportunity to fully develop the record in order to allow the Commission to engage in fully informed and non-arbitrary decision-making.⁵

Hamilton's Petition for Reconsideration offers one alternative to rate-based rate of return regulation ("RBROR") for TRS, and asks the Commission to set aside RBROR for TRS and consider its methodology as one alternative in a proceeding that has been properly "Noticed."⁶ MCI supports this request, and asks the Commission to also include its proposal, proffered in its Comments to the FNPRM to also call for comments on returning to annual expenses plus a

² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 03-2111, 18 FCC Rcd 12823 (June 30, 2003) (*Bureau TRS Order*).

³ In the Matter of: Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Payment Formula and Fund Size Estimate Interstate Telecommunications Relay Services Fund For July 2004 through June 2005, (*NECA 2004 Fund Size Estimate*) CC Docket No. 98-67, May 3, 2004.

⁴ In these comments, when MCI refer to relay in general it includes all forms of relay other than VRS.

⁵ Cites from APA and Court decisions lecturing the FCC for violating the APA.

⁶ Hamilton Petition for Reconsideration ("Hamilton") at 16.

normal return on expenses in the range of 20% as the appropriate form rate setting for TRS. This is the historical amount MCI Global Relay has found necessary to earn on its relay expenses in order to justify staying in this line of business. Those Comments are attached and incorporated herein.

In the event the Commission does not open a full rulemaking on the proper rate setting methodology for TRS, as it has done for VRS, (and MCI strongly urges the Commission to do so), the Commission should choose among the options offered in response to Hamilton's petition. In addition to its own alternative, MCI also finds Hamilton's methodology to be one that would lead to sufficient operating returns for this non-capital intensive line of business. As Hamilton argues, because it is based on rates derived from winning competitive bids from each state relay contract, it ensures that rates will be reasonable and efficient, and in addition, is administratively simple.

MCI does point out that Hamilton's analysis should recognize that state rates are universally based on full minute rates – i.e. each call is rounded up to the closest minute. In contrast, NECA only allows rounding of reporting total conversation time. Had NECA's methodology been utilized by states, total minutes, both conversation and session, would have been approximately 14 percent less according to MCI estimates. Thus, Hamilton's methodology understates its estimate of the average interstate rate by approximately 14 percent. If the Commission utilizes Hamilton's methodology, it should make state rates consistent with federal rates, by correcting for both differential session/conversation measuring at the state level, but also differential rounding methods between the federal and state jurisdictions.

Alternatively, the Commission should adopt both state rounding practice and the use of session, rather than conversation minutes. Recording keeping would be more consistent across

jurisdictions, and in conformity with standard carrier billing practices. Record keeping costs would decline, and there would be no other net effect on the size of the Interstate TRS Fund.⁷

The Commission should also put out for comment the desirability of a two-year, rather than one-year rate setting method. Hamilton's methodology is based on a 3-5 year rate period, and this has been found to be a reasonable, and administratively efficient, time period at the state level. Similar advantages would accrue were this rating period adopted for Interstate relay services.

III. CERTIFICATION IS NOT REQUIRED FOR REIMBURSEMENT

MCI also agrees with HOVRS that relay providers are not required to be certified in order to be reimbursed from the Interstate Relay Fund. Section 225 only requires the Commission to certify states that wish to establish a state relay program.⁸ No other certification requirement exists in the law or in the Commission's rules. As HOVRS points out, any common

⁷ While total minutes would increase, rates would decrease proportionally. Meanwhile, total costs associated with record keeping should decline.

⁸ 47 U.S.C. § 225(f)(20).

carrier provider of relay services is entitled to be reimbursed from the Interstate Relay Fund for the provision of interstate relay services so long as it complies with the Commission's mandatory minimum standards.⁹

IV. CONCLUSION

For the reasons discussed above, WorldCom urges the Commission to adopt the positions advocated herein.

⁹ HOVRS Petition for Reconsideration at 3.

Statement of Verification

I have read the foregoing, and to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on November 15, 2004

/s/ Larry Fenster
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Certificate of Service

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In the Matter of)	
Telecommunications Relay Services for)	
Individuals with Hearing and Speech)	CC Docket No. 98-67
Disabilities, and the Americans with)	CC Docket No. 90-571
Disabilities Act of 1990)	CG Docket No. 03-123

MCI COMMENTS

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October 18, 2004

TABLE OF CONTENTS

I.	Summary	i
II.	Cost Recovery Methods For TRS	1
A.	The Commission Is Mandated To Promote Innovative Relay Services	1
B.	The Commission's Cost-Plus Methodology Allows Relay Providers to Recover their Reasonable Costs, which Includes a Reasonable Mark-Up Over Costs.	3
C.	Due to a Decade of NECA Requirements, MCI Relay Has Not Developed the Granular Cost Accounting Methodology That Would Allow Full Recovery of Its Relay Costs Under a Rate of Return Methodology	6
D.	The Commission Should Retain Interstate Jurisdiction of IP Relay and VRS	8
III.	Abuse of Communications assistants	12
A.	Congress and the Commission's Rules Only Require CAs to Handle Calls that would Normally Be Handled by Common Carriers	13
B.	Section 223 Absolves CAs of the Need to Carry Obscene or Harassing Calls	13

I. SUMMARY

In this Further Notice of Proposed Rulemaking (“FNPRM”), the Commission seeks comment on a variety of cost-recovery issues pertaining to Internet Protocol (“IP”) Relay and Video Relay Service (“VRS”).¹⁰ Specifically, the Commission seeks comment on the appropriate cost recovery methodology for VRS; whether and how to determine the jurisdiction of IP Relay and VRS calls; and whether IP Relay and/or VRS should become mandatory forms of TRS available at all times. The Commission also seeks comments on how to handle abuse of Communications Assistants (“CAs”) by callers who seek to either harass the CA, or harass a called party, behind the apparent anonymity of an IP Relay call.

The Commission has traditionally encouraged the development and diffusion of new communications services. It has traditionally done so with regard to relay services as well. However, decisions in the most recent Report and Order,¹¹ and the conclusions that appear implicit in this FNPRM, threaten to undermine the innovation and level of functional equivalency persons with speech and hearing disabilities have attained under the Commission’s former relay reimbursement methodology and its current reimbursement of IP-enabled relay services solely from the Interstate Relay Fund.

Due to the application of NECA’s former cost-plus methodology, combined with interstate recovery of IP-enabled relay services, the Commission is on the cusp of meeting Congressional mandates for to promote innovation for persons with speech and hearing

¹⁰ 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, &220.

¹¹ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, rel. June 30, 2004.

disabilities and achieve functional equivalency for persons with these disabilities for the first time. Today a relay call can be made from a variety of wired and wireless devices and this capability has enabled the deaf community to make relay calls from almost any location in the country whether a TTY device is available or not. The new capabilities to make wireless relay calls anywhere and anytime has been a tremendous step forward toward achieving the goal functionally equivalent communications for persons with speech and hearing disabilities.

In its most recent Report and Order, the Commission affirmed the use of rate base, rate of return, regulation as the method by which the National Exchange Carrier Association (“NECA”) would determine recoverable costs for nearly all relay services, even after 10 years of using a cost-plus methodology that has allowed relay providers to be compensated for their costs of providing service plus a normal return. This approach has achieved great benefits for relay users. All forms of relay, not only VRS, share essentially the same cost structure: approximately 90 percent of costs are operating expenses, and 10 percent of costs are capital investments. Applying a traditional rate of return methodology to TRS will not produce rates of return sufficient for relay providers to engage in the research, development, and training needed to keep pace with the rapid pace of technological development that is occurring throughout the telecommunications industry. Maintaining rate of return regulation for relay would therefore impede innovation and violate both the ADA and the 1996 Act as described above. Moreover, rate of return regulation, properly performed, is overly complicated, and is unnecessary to maintain cost discipline in the industry. By continuing to average costs across all relay providers, the Commission will continue to provide incentives for relay providers to “beat the average” by reducing their costs, thereby driving introducing market discipline and promoting innovation. Therefore, MCI urges the Commission to expand its inquiry of appropriate cost

recovery methodologies in this FNPRM from VRS to all relay services, return to its 10 year reliance on a cost-plus reimbursement methodology, and allow a single, consistent, mark-up over expenses of 20 percent for all relay providers. This is the minimum mark-up over expenses relay providers need to absorb the staffing and business risks of this competitive industry.

The Commission should also retain interstate reimbursement for all forms of IP-enabled relay services. At the instant the Commission is about to assert sole jurisdiction over all other IP-enabled services, this Bureau seems intent on shifting responsibility for IP-enabled services primarily to the states. It is well known that the jurisdiction from an IP-enabled call cannot be automatically and accurately determined. The Commission seems to have rightly rejected a fixed allocator to establish jurisdiction and instead seems to favor registration. The Commission should reject registration as well. Registration is uniformly opposed by users. They find it to be an invasion of privacy and would greatly reduce their willingness to use these innovative IP-enabled relay services. Registration would violate the ADA's mandate for the Commission to forbear from adopting regulations that would impair the development of improved technology for persons with speech and hearing disabilities and would deny persons with speech and hearing disabilities access to functionally equivalent advanced communications, as required by Section 255 of the 1996 Act.

If the Commission does allocate some reimbursement for IP-enabled services to the states, it must ensure that the level of functional equivalency and user choice that has been established to date is not diminished. First, it must ensure it has unassailable authority to require states to actually reimburse IP-enabled providers that have not been chosen to provide relay services for the state. Second, it should require states to reimburse IP-Relay at the effective state reimbursement rate for text relay. Third, the Commission must ensure that IP-Relay providers

are not subject to scrutiny of their costs by multiple regulatory agencies. Finally, the Commission must prevent states from requiring IP-enabled relay providers from locating their call centers in their states in order to be reimbursed (even if they are not the “contracted” relay provider.) Failing to do this would also grant an unfair advantage to Sprint’s IP-enabled relay services, since it holds the majority of state relay contracts.

Finally, the Commission must allow Communications Assistants to disconnect from a call that has either directly harassed or abused the CA, or requests the CA to insert him or herself into the call in a demeaning or abusive manner. CAs are not required to handle either type of call. The first instance, where abuse is directed at the CA before the call is connected is not a relay call, and nothing prohibits the CA from giving a warning to cease abuse and disconnecting if abuse continues. The second instance, where the CA is inserted into the call in a demeaning or abusive manner is more complicated, because the Commission’s rules require CAs to carry all types of calls. The intent of this requirement though is for relay providers to carry all *types* of calls that common carriers would normally be required to make.¹² The proper comparison is whether a provider of traditional operator service is required to demean themselves during the call. The answer is clearly “No.” CAs do relay that the transmitting party sounds drunk or angry, but they are not required to become drunk or angry. Moreover, Section 223 of the Communications Act makes it a crime to make obscene or harassing calls to any *person* ...”¹³ When an abusive caller attempts to insert the CA into the conversation in an abusive fashion, he or she become a party to the call, and Section 223 subsequently applies to them. For these reasons, there is nothing to prohibit CAs from acting professionally when confronted with the

¹² 47 C.F.R. ' 64.604(3)(ii)

¹³ 47 U.S.C. ' 223(a)(C)

attempt to insert them into the call in any inappropriate manner; give a warning to retain the conduit role of the uninformed role of the CA, and disconnect if the warning is not heeded.

II. COST RECOVERY METHODS FOR TRS

A. The Commission Is Mandated To Promote Innovative Relay Services

Congress has passed legislation with the intent of providing persons with speech and hearing disabilities the capability of participating equally in all aspects of contemporary communications. Title IV of the Americans with Disabilities Act of 1990 (“ADA”), codified at section 225 of the Communications Act of 1934, as amended (“Communications Act”), requires the Commission to ensure that TRS is available, to the extent possible and in the most efficient manner, to individuals with hearing and speech disabilities in the United States.¹⁴ This same legislation also requires the Commission to implement regulations that promote “...the use of existing technology and do not discourage or impair the development of improved technology.”¹⁵

Congress also passed Section 255 of the Telecommunications Act of 1996 (“1996 Act”). The 1996 Act required the Architectural and Transportation Barriers Compliance Board (“Access Board”), in conjunction with the Commission, to develop accessibility guidelines for telecommunications equipment.¹⁶ The Access Board called for functionally equivalent use by persons with disabilities.¹⁷ Since then, the Commission has made the provision of functionally equivalent service a guiding principle by which to analyze disability-related regulatory questions.

Due to the application of NECA’s former cost-plus methodology, combined with interstate recovery of IP-enabled relay services, the Commission is on the cusp of meeting these

¹⁴ Pub. L. No. 101-336, § 401, 104 Stat. 327, 366-69 (1990) (adding section 225 to the Communications Act of 1934, as amended, 47 U.S.C. § 225).

¹⁵ 47 U.S.C. § 225 (d)(2)

¹⁶ 47 U.S.C. § 255(e).

¹⁷ 36 C.F.R. § 1193.3.

Congressional mandates for the first time. IP-Relay, VRS, and other services were each developed under NECA's former cost-plus methodology. These services are bringing new communications possibilities to persons with speech and hearing disabilities that are finally beginning to realize the above-mentioned mandate of the ADA and the functional equivalency required by the 1996 Act.

With IP-Relay, users gain access to a flexible service that can be accessed from any IP-capable device both wireline and wireless. Perhaps the greatest improvement is the ability of the user to choose its relay provider. Prior to IP-relay users have had to use the relay provider chosen for them by the state. The advent of IP Relay has allowed users to achieve a level of functional equivalency long enjoyed by other phone users -- the freedom to choose their own relay provider. Allowing users the freedom to choose their relay provider also encourages industry competition and the development of new and innovative services which, in turn, increases the number of products and services that are functionally equivalent.

For example, MCI has recently added "Wireless IP-Relay" to its menu of competitive relay services, allowing its users the mobility of wireless service by making a relay call from many wireless devices including Blackberrys, wireless PDAs, Hiptops, Sidekicks, and AT&T Wireless' recent OGO. Customers who have a terminal client already installed on these devices simply download and install additional software and they are able to make a wireless IP-Relay call. The ability to use relay service to connect to wireless devices has proved increasingly popular and has provided a level of freedom and functional equivalency never previously achieved.

MCI has also developed a service it calls "IP-Relay Voice," whereby persons without speech or hearing disabilities may reach a user of IP-Relay Voice who is logged into the IP-

Relay server, by calling a toll free number from anywhere in North America. Customers may download and install software onto their computers that allows them to receive incoming relay calls, instant messages from other IP-Relay Voice users, as well as communicate with TTY users.

In addition to the relay services MCI is developing, Captioned Telephone Service and VRS also provide functionally equivalent service to persons with speech and hearing disabilities by continuing innovation and user choice and those companies that have developed these services can better comment on them in more detail. MCI believes, however, that the Commission should be wary of modifying either its cost allocation rules, or its cost methodology for relay services, lest it stifle the competition and innovation that have moved the industry toward functional equivalency.

B. The Commission's Cost-Plus Methodology Allows Relay Providers to Recover their Reasonable Costs, which Includes a Reasonable Mark-Up Over Costs.

As MCI stated in its Comments responding to NECA's fund size estimate for July 2004 through June 2005,¹⁸ "[w]hat is remarkable about NECA's recent filing is it extends the errors made in the 2003 Funding Order, which were limited to VRS rate-setting, to STS, IP-Relay, and traditional relay."¹⁹ The Commission appears to have recognized the error of this decision with regard to VRS and is seeking comment on alternatives to rate of return regulation for VRS in the FNPRM. However, all relay services deserve the same opportunities to receive enough return to

¹⁸ In the Matter of: Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Payment Formula and Fund Size Estimate Interstate Telecommunications Relay Services Fund For July 2004 through June 2005, (*NECA 2004 Fund Size Estimate*) CC Docket No. 98-67, May 3, 2004.

¹⁹ MCI Comments, Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 98-67, May 24, 2004.

provide more innovative services, not just VRS. The Commission should therefore apply the same cost-plus methodology to all forms of relay service.

The Commission begins its inquiry into cost recovery issues pertaining to IP Relay, but limits those issues to questions of jurisdiction. The Commission only leaves open the possibility of altering the cost methodology with regard to VRS. This is a mistake. All forms of relay share essentially the same cost structure: approximately 90 percent of costs are operating expenses, and 10 percent of costs are capital investments. Applying a traditional rate of return methodology to TRS will not produce rates of return sufficient for relay providers to engage in the research, development, and training needed to keep pace with the rapid pace of technological development that is occurring throughout the telecommunications industry. Maintaining rate of return regulation for relay would impede innovation and violate both the ADA and the 1996 Act as described above.

Prior to the Report and Order in which this FNPRM is contained, the Commission had accepted the cost-plus methodology employed by NECA to determine the cost portion used to determine rates at which relay providers would be reimbursed.²⁰ Allowing profit in addition to pure expenses is consistent with economic theory, which predicts that competitive firms will recover their costs, plus a normal return. Relay providers have traditionally included a mark-up over costs because it was allowed in prior NECA cost submission forms. This allowance has been an essential component for being able to receive a normal return in an industry whose cost structure is defined by approximately 90 percent of its costs due to expenses and approximately 10 percent of its costs due to investments. A normal return would simply be impossible in an industry with

²⁰ See, NECA's 2003 Relay Center Data Request Instructions, Section II.E

this cost structure, were its reimbursement to be established utilizing any form of rate base, rate of return regulation.

NECA has never published a single, consistent, mark-up over expenses for every relay provider to utilize. Relay providers, especially new entrants, face significant risks earning a normal return. This risk must be factored into the mark-up allowed over expenses. Relay providers bidding on a state contract where they have not been the relay provider do not have time of day or seasonality demand data on which they may make reliable staffing decisions. Demand uncertainty, coupled with employee turnover, requires relay providers to receive a mark-up over expenses of 20 percent in order to receive a normal rate of return. The Commission should establish such a mark-up in order to promote competitive entry, consumer choice and ongoing innovation.

MCI notes that Hamilton Relay has recently filed a Petition for Reconsideration, where it asks the Commission to adopt a cost recovery methodology other than rate of return regulation to determine allowable costs.²¹ An alternative to considering MCI's proposal in this proceeding would be to grant Hamilton's Petition to Reconsider its June 30, 2004 decision to apply rate of return to IP-Relay, CTS, Text Relay, and STS, immediately revert to its former cost-plus methodology in the interim, and subsequently open a Notice of Proposed Rulemaking on appropriate cost recovery methodologies for these relay services that would continue to fulfill the mandate of the ADA for text relay, IP-Relay, VRS, STS, and CTS. Relay providers are united in their opposition to using rate of return regulation as the basis for reasonable recovery of relay costs.

²¹ Hamilton Relay, Petition for Reconsideration, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, October 1, 2004.

C. Due to a Decade of NECA Requirements, MCI Relay Has Not Developed the Granular Cost Accounting Methodology That Would Allow Full Recovery of Its Relay Costs Using a Rate of Return Methodology

One aspect of the relay cost recovery method utilized by NECA over the last decade has been its forbearance from requesting the level of capital investments directly or indirectly incurred by relay providers.²² MCI currently reports project-specific investments and treats these as expenses over the life of the project. When MCI Global Relay makes investments, these items are included in larger roll-ups in the company's accounts. MCI does not currently have a method to directly and indirectly assign relay capital investments as requested on NECA's October 11, 2004 "Relay Services Data Request." MCI would have to revamp its current accounting methods in order to gain the reimbursement allowed under rate-or-return regulation, even though it would be insufficient. Moreover, proper application of rate of return methodology to each relay provider to determine allowable costs, and then averaging these costs across relay providers, as proposed by NECA would subject NECA to an unnecessarily complicated inquiry into the components of capital, such as net working capital, allowance for funds used during construction, cash working capital, etc.

Rather than make complicated inquiries into the allowable costs of each relay provider, the Commission should continue to authorize NECA to average costs across relay providers. The Commission has found this averaging process induces efficiency and competition into the provision of relay services. Relay providers able to meet the mandatory minimum standards at

²² NECA's 2003 Relay Center Data Request Instructions do not make allowance for capital investments.

less cost than others would benefit, and less efficient providers would be penalized and be forced to become more efficient or risk not recovering their costs.²³ As the Commission said in 1993:

“We tentatively conclude that this portion of our proposal will create strong incentives for TRS providers to offer high quality, innovative services at reasonable cost. To the extent a TRS provider's costs are high relative to the industry average, this proposal permits payment based only on the average cost. By employing the use of historical data, the plan discourages cost padding. Moreover, by compensating TRS providers based on actual relay minutes, those TRS providers who provide excellent service to the public and thereby generate strong demand, will benefit.”

Consequently, the Commission need not apply rate of return regulation in order to introduce cost discipline into the market for relay services. The Commission’s application of rate of return methodology, the disallowance of research and development costs, the disallowance of costs associated with services that are not mandated or for quality features of mandated services that go beyond mandatory minimums, and other disallowances the Commission has recently engaged, in are therefore both unnecessary and in violation of both the ADA and the 1996, because they impair the development of improved technology for persons with speech and hearing disabilities. Moreover, rate of return methodology is an unnecessarily complicated methodology for the Commission to apply for relay providers, such as MCI, who operate their relay business as stand-alone operations.

A methodology that continued weighted cost averaging, provided a mark-up on expenses as described above, that allowed recovery of research and development costs, and allowed recovery of costs for service quality in excess of mandatory minimum and costs for voluntary

²³ See, In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Order On Reconsideration, Second Report And Order, And Further Notice Of Proposed Rulemaking, CC Docket No. 90-571, 8 FCC Rcd 1802 (1993), &24.

services would both encourage innovation and continue the market discipline of cost averaging.²⁴ MCI urges the Commission to apply its long-standing, and proven, cost methodology (albeit with a calculated and consistent mark-up over expenses) for all relay services.

D. The Commission Should Retain Interstate Jurisdiction of IP Relay and VRS

The Commission seeks to devise a mechanism to shift a portion of the reimbursement associated with these two IP-enabled relay services to the state jurisdiction. Not only would this endeavor contradict the expectation the Commission will find all other IP-enabled services to be interstate services subject solely to the Commission's jurisdiction,²⁵ the specific allocation measures are cumbersome, inaccurate, and most importantly violate the Commission's mandate to promote efficient and innovative relay services and functionally equivalent communications.

The Commission essentially, and rightly, rejects an allocator based on existing TRS services as inaccurate.²⁶ Instead, the Commission favors requiring users of IP-enabled relay services to register their location on each and every call in order to determine whether the call is an interstate or intrastate call. As MCI has discussed in several rulemakings addressing this very issue, relay users find registration to be an invasion of privacy that would greatly reduce their willingness to use these innovative services. Such a requirement would violate the ADA's mandate for the Commission to forbear from adopting regulations that would impair the development of improved technology for persons with speech and hearing disabilities as required by Section 225 of the Communications Act and would deny persons with speech and hearing

²⁴ Weighting by proportion of costs would not give true outliers any influence on rate setting, for they would by definition be outliers, signified by the low volume associated with these currently disallowed costs.

²⁵ In the Matter of IP-Enabled Services, Notice Of Proposed Rulemaking, WC Docket No. 04-36, rel. March 10, 2004, & 41.

²⁶ FNPRM, & 222.

disabilities access to functionally equivalent advanced communications, as required by Section 255 of the 1996 Act. Moreover, registration is an inaccurate method of allocating jurisdictional minutes. Not only may users give false location information, with devices accessing IP-enabled relay services, the originating and/or terminating leg do not necessarily have fixed locations. For registration to be accurate it would be necessary for users to register for each and every relay call. Not only is this a violation of the principal of functional equivalency (non-disabled customers whether they use wireline, wireless or broadband services, are not required to register for each call), it would curtail the use of these innovative services by bogging their use down in invasive and cumbersome procedures that users will shun. Clearly such a requirement would violate the functional equivalency standard of the ADA.

The Commission recognizes that IP-enabled relay services are voluntary. As a consequence, states are not required to reimburse relay providers for these services. The Commission seems to believe that if it mandates the provision of these services, states will be required to reimburse providers of these services, and it may subsequently shift a share of the cost of providing these services to the states. Such a seemingly innocuous view actually threatens the viability of IP-enabled relay services and threatens to reduce the level of functional equivalency that is just being achieved.

IP-enabled services have dramatically grown in use and innovation because providers must compete for each and every call in order to be reimbursed. Traditional relay providers have less incentive to innovate once they win a state contract. While the Commission could mandate intrastate reimbursement of IP-enabled services by making them mandatory services,²⁷ it is not clear that it has authority to mandate multiple IP-enabled relay providers to be reimbursed from

²⁷ 47 U.S.C. ' 225(d)

intrastate relay funds.²⁸ Section 225(f)(2) requires the Commission to certify state programs that select a single carrier for reimbursement so long as the state program meets or exceeds its mandatory minimum requirements. For example, the state of Maryland requires users to certify location, and does provide reimbursement for intrastate IP-Relay minutes, but only allows AT&T, the relay provider who has been chosen to provide relay services, to receive this reimbursement.

If this model were spread to all states, users would no longer have the choice of their IP-enabled relay provider. Not only would such an outcome defeat the purposes of the Communications Act in general, it would eliminate the main engine for innovation among IP-enabled relay providers, namely the need to compete for each and every call in order to receive reimbursement. The intense competition thus engendered among service providers has created service differentiation, service innovation, and additional outreach – each traditional goals of the Commission and Congress. In addition, IP-enabled relay services provide not just choice among service providers, but also choice among methods of accessing IP-Relay – wireline and wireless; narrowband and broadband. These great benefits could disappear if the Commission were to simply hand reimbursement of some portion of IP-enabled relay services over to the states.

The Commission should also reject the allocation of IP-Relay costs to the states because it would add unnecessary administrative expense to the provision of IP-Relay. In its Recommended Internet Protocol Recovery Guidelines, NECA stated that were the Commission to require even some IP-Relay costs to be recovered from the states, “IP-Relay costs could significantly increase, however, if providers are required to establish and maintain billing and

²⁸ In the past the Commission encouraged multi-vendor provision of relay service, but never found it had authority to mandate its provision.

reporting relationships with every state.”²⁹ Every commenting party held the same view on this issue.

If the Commission were to mandate the provision of IP-enabled services, it must do so in a manner and makes the states responsible for some portion of IP-enabled reimbursement, it must ensure that the level of functional equivalency and user choice that has been established to date, is not diminished. First, it must ensure it has unassailable authority to require states to actually reimburse IP-enabled providers that have not been chosen to provide relay services for the state. Otherwise, relay users may lose the ability to choose their provider of relay service, and lost the ability to choose their method of accessing relay service, thus diminishing functional equivalency.

Second, the Commission must ensure that reimbursement rates set by the states are sufficient to reimburse IP-Relay providers for each and every call. This should be done by tying the IP-Relay reimbursement rate to the effective state reimbursement rate for text relay.

Third, the Commission must ensure that IP-Relay providers are not subject to scrutiny of their costs by multiple regulatory agencies. MCI expends significant time and effort compiling its annual cost filing, responding to questions from NECA regarding its costs, and providing additional data to NECA regarding its costs. The Commission must prevent states from playing any similar cost determination role by state relay providers

Finally, the Commission must prevent states from requiring IP-enabled relay providers from locating their call centers in their states in order to be reimbursed (even if they are not the “contracted” relay provider). IP-enabled services can be provided from a single call center. The

²⁹ Recommended Internet Protocol (IP) Cost Recovery Guidelines, submitted by NECA, October 9, 2002, CC Docket No. 98-67, at 14.

Commission would not only be mandating inefficiency, it would also grant an unfair advantage to Sprint's IP-enabled relay services, since it holds the majority of state relay contracts.

III. ABUSE OF COMMUNICATIONS ASSISTANTS

The Commission has been made aware of the abuse of CAs that has become a problem because a small group of users feel the anonymity provided by IP-Relay provides them the cover to make such calls without consequence. Such practices include

- a user directing the CA to employ non-Relay, unprofessional, tone of voice (i.e. "sound like you have a cold, sound like you are drunk");
- a user directly addressing the CA in an inappropriate manner (e.g. threats, profanity, verbal abuse or humiliation), either during call set-up or during the call);
- a user directing the CA to say inappropriate things about themselves (e.g. "I am the relay operator and I stink").

Many of these users wrongly believe the Commission's rules require CAs to transmit whatever is communicated to them. They have gained this knowledge from bulletin boards that teach pranksters how to use IP-Relay for abusive purposes. Consequently, a small group of callers, whom MCI believes are not speech or hearing impaired, are threatening wider acceptance of relay among the non-disability community and degrading the work experience of large numbers of CAs.³⁰ Persons often become CAs with the intent of helping persons with speech or hearing disabilities and are not only degraded by the abuse, but feel betrayed by relay service itself. As a result, CA morale suffers and relay providers find it increasingly difficult to staff CAs for IP-Relay.

³⁰ MCI holds this belief because many of these callers are unaware of basic relay protocol such as the use of the term "GA."

A. Congress and the Commission's Rules Only Require CAs to Handle Calls that would Normally Be Handled by Common Carriers

The Commission has interpreted Section 255 as requiring carriers to provide to provide persons with speech and hearing disabilities, communications service that is functionally equivalent to a hearing person.³¹ Common carrier providers of operator services are not required to carry calls that abuse the operator. Common carriers offering service other than operator service are unaware of abuse or harassment directed at the called party, and so CAs should be equally "unaware." But that is not the case with common carrier operator service. Common carrier operators are not required to withstand abuse or harassment from the calling party and neither should CAs be so required. Moreover, when one or both of the parties to a call injects the CA into the call in a non-professional manner, it would in fact be a violation of the Commission's requirement that CAs be well versed in hearing and speech disability cultures, languages, and etiquette.³²

B. Section 223 Absolves CAs of the Need to Carry Obscene or Harassing Calls

Section 223 makes it a crime not only to make obscene and harassing communications to a called party, it also makes it a crime to make obscene or harassing calls "whether or not any conversation or communication ensues...and with the intent to ...abuse...or harass *any* person who receives the communications."³³ In this case *any* person includes the CA. Certainly therefore, a CA may refuse to carry a call if sexual, racial or other abuse or harassment ensues

³¹ Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, Report And Order And Further Notice Of Inquiry, WT Docket No. 96-198, rel. Released: September 29, 1999, &23.

³² 47 C.F.R. ' 604(a)(1)

³³ 47 U.S.C. ' 223(a)(C)

prior to connecting with the called party. Such a call is illegal under Section 223 of the Communications Act, and is not even a relay call.

MCI recognizes there is a subjective element to determining obscenity or harassment when directed to the called party after a connection with that party is established. A caller may be angry at the called party, or may use sexually or racially explicit language with the called party. The language or tone may or may not be appropriate, and CAs are trained to handle these situations in a professional manner. For example, if the calling party is drunk or angry, the CA will indicate this to the called party, but the CA is under no obligation to sound drunk or yell at the called party. Such behavior would violate professional etiquette and open the relay provider to a complaint. Such behavior inappropriately attempts to inject the CA into the call.

When an abusive caller attempts to insert the CA into the conversation in an abusive fashion, he or she becomes a party to the call, and Section 223 subsequently applies to the CA. That makes such a relay call illegal under Section 223, and the relay provider is not required to allow its facilities to be used for illegal purposes, pursuant to Section 223 of the Communications Act. The Commission states that an illegal call under Section 223 does not directly address the obligation to handle such a call in confidence³⁴ But there is no confidence violated if a CA refuses to continue a call where he or she is the subject of abuse, but is willing to handle a call and convey the manner of the transmitting party in a professional manner.

MCI therefore recommends the Commission clarify that CAs are permitted to provide a warning to either party if the CA has become injected into the call in an abusive or harassing manner. If such redirection fails to eliminate attempts to inject the CA into the call in an abusive or harassing manner, or the calling party directly abuses the CA before a call is connected, CAs

³⁴ FNPRM, §258.

should be allowed to terminate communication. Relay providers should be required to record and log all such instances, their outcomes, and summarize these findings on their annual reports to the Commission.

Frankly, the problem has gotten out of hand because pranksters believe they have found a loophole in the rules governing relay service. MCI is confident that a few disconnects of pranksters who have no need of relay in the first place, will preserve relay for persons with speech and hearing disabilities, and dramatically improve the morale of CAs.

For the reasons above, MCI urges the Commission to accept its recommendations

Respectfully submitted,

/s/Larry Fenster

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Statement of Verification

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on October 18, 2004

/s/ Larry Fenster

Larry Fenster