

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

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

To: The Commission

**REPLY COMMENTS
OF HAMILTON RELAY, INC.**

Hamilton Relay, Inc. (“Hamilton”) hereby submits its reply to the comments submitted in response to the Commission’s *Further Notice of Proposed Rulemaking* issued on June 30, 2004 (“*FNPRM*”).¹

I. Internet Relay Issues.

A. Internet Relay Is Inherently Interstate in Nature.

In its comments, Hamilton voiced its strong support for continuing to fund Internet Relay providers solely from the interstate Telecommunications Relay

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, CC Docket No. 90-571, CC Docket No. 98-67, CG Docket No. 03-123, FCC 04-137, ¶¶ 220-258 (“*FNPRM*”). Hamilton respectfully requests leave to file these reply comments one day late, based on a miscalculation of the reply comment deadline. Comments were due in this proceeding on October 18, and the reply comment deadline was inadvertently calculated as thirty days thereafter (November 17). Hamilton submits that no party will be harmed by Commission consideration of these reply comments, since they are based solely on the comments filed in this proceeding and not on any reply comments. Furthermore, Hamilton submits that the public interest will be served by Commission consideration of the information contained herein.

Service (“TRS”) fund.² In support, Hamilton noted that Internet Relay calls cannot practicably be separated into interstate and intrastate components.³ Other parties agree.⁴ SBC states that all Internet Protocol (“IP”)-enabled services “are inherently interstate.”⁵ SBC also notes the inherent difficulties in separating the interstate and intrastate components of IP-enabled services, including Internet Relay.⁶

The Commission apparently agrees with this approach. In a Press Release issued on November 9, 2004, the Commission stated that it has invoked its preemption powers and unanimously determined that certain IP-enabled services, including an IP service provided by Vonage, are not subject to “the patchwork” of state public utility regulations.⁷ Hamilton strongly supports the Commission’s decision in the *Vonage* case, and submits that the same logic applies to Internet Relay. Consequently, Internet Relay calls should continue to be considered interstate in nature and thus funded solely from the Interstate TRS fund. Any

² Hamilton Comments at 3.

³ *Id.* at 2.

⁴ MCI Comments at 8; SBC Comments at 3.

⁵ SBC Comments at 2.

⁶ *Id.* at 5. Hamilton agrees with SBC that an Internet Relay call constitutes one end-to-end call and not, as the Commission appeared to suggest, two separate calls — one between the end user and the Communications Assistant (“CA”) and one between the CA and the called party. *See id.*

⁷ *FCC Finds that Vonage Not Subject to Patchwork of State Regulations Governing Telephone Companies*, Public Notice at 1 (rel. Nov. 9, 2004) (“*Vonage*”). The Commission did not address whether the service being provided by Vonage is a telecommunications service or information service, but Hamilton believes this issue is irrelevant to the jurisdictional determination that the service is “interstate” and thus exempt from state public utility regulations.

decision to the contrary would be irrational in light of the *Vonage* decision and would be unsupported by the record developed in this proceeding.

B. Jurisdictional Proxies Will Not Work.

Hamilton also reiterates its objection to the proposed imposition of “proxy” methods for guessing at the jurisdictional nature of Internet Relay calls. The Commission proposed two proxies, both of which, Hamilton submits, are unworkable. The first involves a fixed allocator to apportion Internet Relay calls between the Interstate TRS fund and the states. The second proxy would mandate customer profile information in an effort to determine the location of the caller. In its comments, Hamilton cited numerous problems with both proxy models, and concluded that they are unreliable and unworkable.⁸

Other commenters agree.⁹ In addition to the unreliability problems noted by Hamilton, SBC notes that a mandatory “customer profile” proxy method would further exacerbate the problems with call set-up delays.¹⁰ TRS users consistently have expressed concern in the past with respect to lengthy call set-up times. The Commission should avoid any mandates that would force call set-up times to be even longer. TRS users deserve a system that is functionally equivalent to

⁸ Hamilton Comments at 4-7.

⁹ See MCI Comments at 8; SBC Comments at 7.

¹⁰ SBC Comments at 7.

traditional telephone services, and indeed the Communications Act requires such a system.¹¹

It is for these reasons that Hamilton disagrees with the minority of commenters who support a proxy model.¹² There is almost universal agreement that mandating customer profiles would be invasive and time consuming, would produce inaccurate, or at least questionable, results, and would offer no tangible benefits.¹³ Any argument that such a system would help prevent fraudulent transactions is belied by the fact that Internet Relay providers would be unable to verify the location information given by the relay user.¹⁴

With respect to a fixed allocator, the Commission lacks the authority to require all states to offer Internet Relay service, thus calling into question the ability to implement a fixed allocator model. The Commission specifically noted this shortcoming in the *FNPRM*.¹⁵ Unless the Commission mandates Internet Relay, a fixed allocator model would be impossible to implement, because some states may

¹¹ MCI agrees, noting that a mandatory customer profile proxy would be “an invasion of privacy” which would “deny persons with speech and hearing disabilities access to functionally equivalent advanced communications, as required by Section 255 of the 1996 Act.” MCI Comments at 8-9.

¹² See Verizon Comments at 2 (supporting mandatory customer profiles); Sprint Comments at 5-6 (rejecting mandatory customer profiles but supporting a fixed allocator proxy).

¹³ MCI Comments at 8-9; SBC Comments at 6-7; Sorenson Comments at 7 (with respect to VRS); Hands On Comments at 2-8; Sprint Comments at 5; AT&T Comments at 2 (urging the Commission to defer any decision on jurisdictional issues until the Commission decides IP-enabled services jurisdiction questions generally).

¹⁴ Sprint Comments at 5.

¹⁵ *FNPRM* ¶ 223.

choose not to include Internet Relay in their array of relay services, leaving the burden for paying the intrastate portion of Internet Relay on the states that choose to include Internet Relay as an intrastate relay service.¹⁶

Even if Internet Relay is mandated, problems with a fixed allocator model remain. As an initial matter, the imposition of a fixed allocator would be patently inconsistent with the Commission's decision in the *Vonage* case and other precedent.¹⁷ It would be irrational for the Commission to conclude on the one hand that certain IP-enabled services are strictly interstate offerings, while on the other hand conclude that other IP-enabled services such as Internet Relay may be separated along jurisdictional lines by a proxy allocation method.

Hamilton submits that there is no sound basis upon which to make an allocation, and that an approximate allocation may be subject to legal challenges by states that deem the allocation method unreasonable or unfair. Such a situation would create uncertainty in the Internet Relay industry and may slow the growth of this important relay service.

Moreover, there has been no demonstrative (or even suggestive) evidence submitted in support of the assertion that a fixed allocator would be accurate or

¹⁶ Nonetheless, as Hamilton noted in its comments, Hamilton remains generally supportive of mandating Internet Relay.

¹⁷ See *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, WC Docket No. 03-45, FCC 04-27, 19 FCC Rcd 3307, 3316, ¶ 16 (rel. Feb. 19, 2004) (noting that "federal authority has already been recognized as preeminent . . . in the area of the Internet . . .").

would actually accomplish the intended results. There are several reasons for this. First, there are currently varying levels of broadband deployment in the states. If a uniform fixed allocator is used, those states with low broadband penetration rates will be burdened with a disproportionate intrastate allocation compared with those states that have a higher broadband penetration rate.

Second, it is important to note that Internet Relay long distance calls are free to the user. Consequently, there is apt to be more interstate Internet Relay traffic than otherwise would be the case, which would cause further distortion under a fixed allocator method. Third, fewer voice-originated calls are made using Internet Relay, as compared to traditional TRS, which again would arbitrarily skew jurisdiction.¹⁸ In short, Hamilton believes that any fixed allocator method would be an arbitrary division subject to legal challenge. Absent any evidence that a fixed allocator would accomplish its goal as proxy, and given the unnecessary administrative costs involved with such an approach, Hamilton submits that there is no justification for the adoption of a fixed allocator proxy.

II. The Commission Should Continue to Establish an Annual Rate for Video Relay Services.

Currently, the per-minute VRS compensation rate is set annually by the Commission, along with the compensation rates for all other relay services. The Commission has sought comment on whether the VRS compensation rate should be

¹⁸ There are also more outgoing calls than incoming calls with Internet Relay, as compared to traditional TRS.

set for a two-year period instead.¹⁹ Hamilton supports the retention of a one-year rate cycle for VRS services. Although Hamilton is sensitive to the concerns raised by other commenters, principally that a two-year period would provide rate stability and allow for better business planning,²⁰ there are significant drawbacks to a two-year period.

First, a two-year period would fail to account for the dramatic technological improvements being made by VRS vendors. Hamilton fully anticipates that these improvements will help drive down the cost of providing VRS. Theoretically, VRS rates should correspondingly decrease each year. In contrast, if the Commission were to “lock in” the VRS rate in June 2005, consumers would be stuck with that rate until June 2007, despite the anticipated technological improvements made by VRS vendors during that time. As VRS matures, consumers should continue to benefit from improved services and lower rates, and Hamilton therefore supports a one-year rate period.

Additionally, it would be premature at this point to decide that the VRS rate can be set for a two-year period, because the Commission has not yet established a permanent rate methodology for VRS. Until the interim (and flawed) “rate of return” methodology is replaced by a rational, permanent rate methodology, the VRS compensation rate should be re-evaluated on an annual basis. It is possible

¹⁹ *FNPRM* ¶ 247.

²⁰ Sorenson Comments at 14; Communication Service for the Deaf (CSD) Comments at 27.

that a two-year period would be appropriate once a permanent rate is established and VRS has sufficiently matured, but until such time Hamilton urges the Commission to retain the current one-year period.

III. TRS Advisory Council.

In its comments, Hamilton voiced its support for maintaining the current composition of the Commissions' voluntary Interstate TRS Fund Advisory Council (Council).²¹ Hamilton and other commenters share the view that the Council serves a valuable role and should not be eliminated.²² CSD notes that many states have established similar intrastate advisory committees "with extraordinary success."²³ Like the Council, these committees provide invaluable assistance to regulatory authorities. Hamilton urges the Commission to recognize the Council's importance and the almost universal support in the relay community for the Council.

With respect to Council nomination procedures, Hamilton stated in its comments that the current procedures are adequate and need not be changed by the Commission. Sprint and CSD agree.²⁴ Hamilton disagrees with Sorenson's proposed change in nomination procedures, under which a position on the Council would be granted "to the organization that provided the most minutes for the particular segment of TRS during the twelve months prior to the appointment

²¹ Like Hamilton, Sprint supports the inclusion of non-relay interstate telecommunications consumer advocates. Sprint Comments at 14; Hamilton Comments at 13.

²² Sprint Comments at 14; CSD Comments at 37.

²³ CSD Comments at 38.

²⁴ CSD Comments at 39; Sprint Comments at 15 n.9.

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period.”²⁵ Hamilton submits that the current procedures are adequate and have brought a broad representation to the Council. The current nomination procedures have served well since the inception of the Council, and Hamilton supports the retention of those procedures.

Respectfully submitted,

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²⁵ Sorenson Comments at 21.