Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

To: The Commission

NATIONAL VIDEO RELAY SERVICE COALITION
COMMENTS ON SPEED OF ANSWER REQUIREMENT FOR VRS

The National Video Relay Service Coalition (the "Coalition")[1] hereby submits its comments in response to Public Notice, DA No. 05-339, released February 8, 2005 seeking additional comment on the speed of answer requirement for Video Relay Service ("VRS"). In its Public Notice the Commission asked whether a speed of answer rule should be adopted for VRS and included a series of questions regarding the specifics of a speed of answer requirement. These comments respond to each of the questions posed by the Commission.

I. Speed of Answer Requirement for VRS

The Commission should adopt a speed of answer requirement for VRS. In 1990, Congress enacted the Americans with Disabilities Act (the "ADA").[2] The main purpose of the

[1] The National Video Relay Service Coalition is an *ad hoc* group that includes the following organizations: Telecommunications for the Deaf, Inc. ("TDI"), Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN"), National Association of the Deaf ("NAD"), The Association for Late Deafened Adults ("ALDA"), the American Association of People with Disabilities ("AAPD"), Deaf and Hard of Hearing in Government ("DHHIG"), the California Coalition of Agencies Serving the Deaf and Hard of Hearing ("CCASDHH"), the Student Body Government of Gallaudet University ("SBG"), and the Registry of Interpreters for the Deaf, Inc. ("RID").

[2] PL 101-336, July 26, 1990.

ADA was to facilitate the integration of people with physical and other disabilities into the mainstream of society so that no person would be left behind. Title IV of the ADA addresses access to telecommunications by deaf and hard of hearing persons. Section 401 of Title IV, which was codified in Section 225 of the Communications Act of 1934, as amended (the "Act"),[3] requires that Telephone Relay Service ("TRS") be offered and defines TRS as:

> [T]elephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment 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 impairment or speech impairment to communicate using voice communication services by wire or radio.[4]

In short, the ADA requires that TRS services be functionally equivalent to voice telephone services. The ADA goes on to state:

> The Commission shall 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.[5]

In other words, the ADA not only requires the Commission to "encourage . . . the use of existing technology," but equally important, the Commission may not "discourage or impair the development of improved technology."[6] Because VRS is a relatively new technology that has the potential to provide a form of TRS that is a quantum leap closer to functional equivalency than traditional TRS, Section 225 of the Act requires the Commission to write regulations that ensure the development of VRS as a functionally equivalent service.

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[3] 47 U.S.C. § 225.

[4] 47 U.S.C. § 225(a)(3).

[5] 47 U.S.C. § 225(d)(2).

[6] *Id. See FNPRM* at ¶ 4.

Ordinary callers, using voice telephone service, expect and receive instant dial tone when they pick up the telephone to place a call. However, without a speed of answer requirement, many VRS users suffer intolerable delays when placing calls, and VRS will never become a functionally equivalent service. In addition to the fact that people who are deaf or hard of hearing should not be made to endure the indignity of these delays (delays which are not experienced by hearing people), such delays can have significant adverse consequences on the lives and well being of people who are deaf or hard of hearing. For example, a VRS user who is scheduled for a telephonic job interview could be late for the interview because of a delay in his or her VRS call being answered by a call center communications assistant. As a result, the job could be awarded to someone else. One of the purposes of the ADA was to make employment opportunities more available to people with disabilities. Therefore, adopting a speed of answer requirement is critical to achieve functional equivalency and the intent of the ADA.

II. Responses to Questions Posed by the Commission

The Coalition is pleased to provide the following responses to the questions posed by the Commission.

1. What should the speed of answer time be for VRS calls? What percentage of VRS calls should be required to be answered within that period of time?

Section 64.604(b)(2)(ii) of the Commission's rules requires that:

> TRS facilities shall, except during network failure, answer 85% of all calls within 10 seconds by any method which results in the caller's call immediately being placed, not put in a queue or on hold.[7]

In adopting the TRS speed of answer rule, the Commission stated:

> For a TRS user, reaching a CA to place a relay call is the equivalent of picking up a phone and getting a dial tone. Any interpretation of our rule that delays a customer's

[7] 47 C.F.R. § 64.604(b)(2)(ii).

> ability to place a call through the relay center clearly compromises the functional equivalence of relay service.[8]

What was true for TRS in 2000 is equally true for VRS today. As discussed in the previous section, the ADA requires that TRS provide functional equivalency to voice telephone services, and VRS is a form of TRS. When a voice telephone user picks up a telephone to place a call, the user expects and receives instant dial tone. The ADA mandates that a VRS user should expect and receive nothing less, and the speed of answer standard already established for TRS in Section 64.604(b)(2)(ii) provides for such functional equivalency.

2. When should a particular speed of answer rule be effective? Should VRS speed of answer standards be phased in over time? If so, how should the standards be phased in (i.e., what standards should apply at what points in time)?

The VRS speed of answer requirement should become effective within 60 to 120 days after the report and order is published in the Federal Register, and there is no need to phase in a speed of answer requirement over time. As already discussed, the ADA mandates functional equivalency for all forms of TRS. It is not functionally equivalent service, and in cases of emergency calls it is dangerous, when a consumer must wait 20 to 30 minutes or longer for a communications assistant to answer a VRS call, which is often the case with some VRS providers. This intolerable situation must be remedied immediately. The Coalition recognizes that a reasonable period of time is required for the VRS providers to hire and train communications assistants to handle VRS calls. Therefore, the Coalition suggests a 60 to 120 day time period for the rules to take effect.

The Coalition fundamentally opposes any phase-in period other than an effective date that provides for a reasonable amount of time for implementation as discussed above. However,

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[8] *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 ¶ 60 (2000) ("*Improved TRS Order*").

to the extent the VRS providers demonstrate that the effective date as discussed above needs to be extended for an additional 60 days, the Coalition will not oppose it.

3. What should be the starting and ending points for measuring speed of answer?

Section 64.604(b)(2)(ii) of the rules provides that for determining speed of answer, the start time is measured from when the call is delivered to the TRS facility's network. Subsection 64.604(b)(2)(ii)(A) states: "The call is considered delivered when the TRS facility's equipment accepts the call from the local exchange carrier (LEC) and the public switched network actually delivers the call to the TRS facility."[9] Similarly, in Public Notice DA No. 05-339, the Commission noted that in the IP Declaratory Ruling the Commission stated that for IP Relay "we will consider the call delivered to the IP Relay center when the IP Relay center's equipment accepts the call from the Internet."[10]

Given that VRS employs the Internet as its transmission channel, there is no reason to treat VRS any differently. Therefore, for VRS, the call should be considered delivered to the VRS provider when the VRS relay center's equipment accepts the call from the Internet. The end point of answer time should be measured when the VRS communications assistant answers the call and is ready to assist the customer.

For Voice Carry Over ("VCO") calls that utilize VRS, the proposed requirement that the communications assistant be ready to assist the customer is particularly important. VCO is a three-way call where the person who is deaf or hard of hearing speaks directly to the hearing person at the other end of the call, and the communications assistant relays the voice of the

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[9] 47 C.F.R. § 64.604(b)(2)(ii)(A).

[10] *Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Second Further Notice of Proposed Rule Making, CC Docket 98-67, FCC 02-121, 17 FCC Rcd. 7779 at ¶ 29 (2002) ("*IP Declaratory Ruling*").

hearing person in American Sign Language to the person who is deaf or hard of hearing. A number of VRS call centers are not equipped to handle VCO calls, and consumers have been having difficulty having VCO calls handled by communications assistants. Yet, for a person who is deaf or hard of hearing who can speak, VCO eliminates the need for a relay process in one direction. Therefore, VCO calls that utilize VRS are closer to functional equivalency than standard VRS.

4. How should "abandoned" calls be treated in determining a provider's compliance with a speed of answer standard?

The Commission noted that Section 64.604(b)(2)(ii)(B) of the rules[11] requires that abandoned TRS calls be included in the speed of answer calculation. The same should be the case for abandoned VRS calls, because such calls are answered by a relay center, the customer is kept waiting, but the call is never handled by a communications assistant because the customer hangs up.[12] Since abandoned VRS calls are no different from other abandoned TRS calls, they should be treated identically for determining a provider's compliance with the speed of answer requirement.

5. How should "call backs" – i.e., calls where the consumer elects to have the provider call the consumer back when a VRS CA becomes available to place the call, rather than have the consumer wait for the next available CA – be treated in the speed of answer calculation? Should, for example, such "call backs" be treated as abandoned calls? Should such "call backs" be prohibited once a speed of answer rule is adopted for VRS?

As the Commission noted, it is not permissible for TRS providers (including VRS providers) to offer their service as other than a relay service for live calls. A TRS call center is not and cannot legally be an answering service or a service to provide call backs to the call originator when the capacity for live calls is not available. The Commission was concerned that

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[11] 47 C.F.R. § 64.604(b)(2)(ii)(B).

[12] *See Improved TRS Order* at ¶¶ 59 n.117 & 64 (March 6, 2000) (*Improved TRS Order*).

this type of call back arrangement:

> . . . relieves the provider of its central obligation to be available when a caller desires to make a TRS call, and permits the provider, and not the caller, to ultimately be in control of when a TRS call is placed. As we have noted, the functional equivalency mandate rests in part on the expectation that when a TRS user reaches a CA that is the equivalent of receiving a dial tone.[13]

Although the Commission distinguished the above situation from one where the customer has a choice of waiting for an available communications assistant or leaving a message for the TRS provider to call back, the Commission was nevertheless concerned that even the use of an optional call back feature is "inconsistent with the functional equivalency mandate. . . ."[14]

The Coalition opposes any call back feature that is used to undermine functional equivalency and the implementation of a speed of answer requirement. As the Commission noted, a call back feature is inconsistent with the functional equivalency mandate, because users of ordinary voice telephone service can obtain dial tone on demand, can place a call when they desire, and are not subject to a call back feature, even on an optional basis.[15]

For example, a call back feature, even an optional call back feature, raises a host of new questions such as the following: What queue or priority level would be given to call backs? How long should someone wait by their computer or camera expecting a call back? If a call back is missed, does the consumer know, or would this be confusing? How would this practice be accepted by the wider relay user community which is used to most forms of TRS on demand,

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[13] *See Federal Communications Commission Clarifies that Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices are Improper and Reminds that Video Relay Service (VRS) May not be Used as a Video Remote Interpreting Service,* Public Notice, CC Docket No. 98-67, CG Docket No. 03-123, DA 05-141 at 4 (Jan. 26, 2005).

[14] *Id.* at 4 n.16.

[15] We ask the Commission to distinguish call backs from reconnection of VRS calls that were in progress, but were inadvertently disconnected due to a technical problems. Such reconnections should be permitted at the discretion of the VRS user, and should not be

and would permitting call back for VRS set the wrong precedent for other forms of VRS? For these and other reasons, a call back feature raises more problems than it solves for VRS consumers and should not be permitted.[16]

6. Should a provider's compliance with a speed of answer rule be measured on a daily or monthly basis? Or should it be measured on some other basis?

As the Commission noted, Section 64.604(b)(2)(ii)(C) of the rules provides that compliance with the TRS speed of answer requirement be measured on a daily basis.[17] Since VRS is a form of TRS, there is no reason to measure compliance on any other basis.

7. In connection with the adoption of a speed of answer requirement for VRS, should providers be required to submit reports to the Commission detailing call data reflecting their compliance with the speed of answer rule, and if so, how frequently should such reports be filed (e.g., monthly, quarterly or semi-annually)?

The Coalition urges the Commission to adopt rules requiring VRS providers to submit reports on a monthly basis to the Commission detailing call data reflecting the providers' compliance with the speed of answer rule. As discussed earlier, the quality of VRS as offered by some providers is intolerable. Customers often must wait 20 to 30 minutes or longer for their call to be answered by a communications assistant. Once a speed of answer rule is adopted, the only way that consumers can be assured of quality VRS service is for the Commission to monitor compliance with the rule. The filing of monthly reports by the VRS providers offers an easy way for the Commission to perform such monitoring.

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considered call backs.

[16] If some type of call back feature is permitted, for the same reason that abandoned calls should be included when determining compliance with a speed of answer requirement, calls that are subject to call back, even optional call back, should be included in the determination of speed of answer compliance. As is the case with abandoned calls, VRS calls subject to call back are answered by a relay center. However, the customer is kept waiting, and the call is not handled by a communications assistant when the customer originally chooses to place that call.

[17] 47 C.F.R. § 64.604(b)(2)(ii)(C).

III. Conclusion

For the reasons stated herein, the National Video Relay Service Coalition respectfully requests that (1) the Commission adopt a speed of answer rule for VRS; and (2) that the rule include the following requirements: (i) that 85 percent of all VRS calls be answered by the VRS call center within 10 seconds, (ii) that the rule become effective within 60 to 120 days after publication in the Federal Register with no phase-in period over time, (iii) that the start point for measuring speed of answer be when the call is delivered to the VRS relay center and that the end point be when the communications assistant answers the call and is ready to assist the customer, (iv) that abandoned calls be included when measuring compliance, (v) that call backs be included when measuring compliance, (vi) that compliance be measured on a daily basis, and (vii) that monthly compliance reports be filed with the Commission by the VRS providers.

Respectfully submitted,

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Dated: February 25, 2005