

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**REPLY COMMENT OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (PaPUC) respectfully asks that the Federal Communications Commission (FCC) accept this filing as the PaPUC Reply Comment (Reply) regarding the FCC Notice seeking Additional Comment on the Speed of Answer Requirement for Video Relay Service (VRS) dated February 8, 2005 (February Notice).

As an initial matter, the PaPUC's Reply Comment should not be construed as binding on the PaPUC in any proceeding before the PaPUC. Also, the views expressed herein may change in response to subsequent events including legal or regulatory developments at the federal or state level.

This Reply first raises four additional issues. These are the desirability of Video Relay Service (VRS), cost recovery, mandatory VRS Service, and line item surcharges. The PaPUC Reply Comment also responds to the Commission's six detailed questions on implementation of VRS.

The four additional comments urge the Commission to consider VRS to be a desirable IP-enabled service that supplements traditional TRS. Also, VRS should be treated, for purposes of cost recovery and revenue allocation, consistent with the classification for other IP-enabled services developed by the Commission in pending IP proceedings i.e., if IP-enabled services are interstate this IP-enabled service is interstate. Costs and revenues must follow this IP-enabled service as should be the case with other IP-enabled services. VRS must not become an unfunded federal mandate because states already fund supplemental efforts such as equipment distribution and news services. Finally, the Commission must prohibit the use of line-item surcharges on intrastate consumers to recover the costs for this IP-enabled service.

Finally, the PaPUC Reply Comment addresses the six detailed questions asked by the FCC regarding VRS in Paragraph 5 of this Reply Comment. The PaPUC suggests that the FCC consider developing a “service parity” approach between VRS and TRS services for the six questions. The PaPUC suggests this based on the recommendations of our TRS Advisory Board set forth in the letter attached with this Reply Comment.

Four Additional Issues

1. **Desirability of VRS Service.** The PaPUC shares the views of the Comments supporting the deployment of VRS because VRS appears to be an improved functional equivalent of traditional TRS. The PaPUC supports TRS programs as well as statutory mandates from our General Assembly regarding an equipment distribution program and news services for TRS

consumers. These programs are supported by a monthly assessment on access lines.

The PaPUC supports VRS based, in part, on the views expressed by some members of Pennsylvania's TRS Advisory Board.¹ The PaPUC also supports VRS because this expanded form of TRS is a positive supplemental service for traditional TRS for Pennsylvania consumers. VRS appears to be at least the functional equivalent of traditional TRS. VRS is, in some respects, superior to traditional TRS for deaf and hard of hearing consumers who lack typing or language skills. VRS for deaf and hard of hearing people is the most functional equivalent of traditional telephony for consumers who use American Sign Language (ASL) as their primary or preferred mode of communication. Moreover, the flow and speed of communication with VRS meets or exceeds current TRS technology because, unlike traditional Internet Protocol (IP) or traditional TRS, VRS communication is not restricted to the typing speed of an equipment user or Communication Assistant (CA). The usefulness of VRS is proportional to the quickness of responding to requests for VRS service and signing ability for this IP-enabled VRS. The PaPUC urges the FCC to consider implementation of the suggestions of the VRS Coalition to the extent they concur with our TRS Advisory Board. Our TRS Advisory Board appears to endorse a "service parity" approach as the best means for ensuring that VRS as an IP-enabled service equivalent to traditional TRS.

2. The Appropriate Cost Recovery Mechanism and Jurisdictional Separation of Costs. The PaPUC notes that several Internet Protocol (IP)

¹The PaPUC created its TRS Advisory Board on May 29, 1990 at Docket No. M-900239. The PaPUC TRS Advisory Board recommends policies and programs to promote TRS.

proceedings at the FCC are already decided or are under active consideration. The Commission is considering the overall regulatory scheme for IP services in its pending IP-Enabled Services docket at WC Docket No. 04-36. The Commission recently federalized IP services and preempted state regulation in a decision issued in the Vonage Preemption matter at docket WC Docket No. 03-211 and DA-2952 (the Vonage Petition). The Commission also recently granted a waiver of Commission regulations governing the use of North American Numbering Plan (NANP) resources so that an Incumbent Local Exchange Company (ILEC's) IP service could obtain and use NANP numbers on the same terms and conditions as non-IP service providers in CC Docket No. 99-200 (the SBC IP petition). Finally, the Commission tentatively concludes that IP services are a replacement for traditional telephony under CALEA in its decision at FCC 04-187 (the CALEA NOPR).

The overall thrust of developments regarding IP-enabled services appears to endorse federalization and exclusive Commission jurisdiction over IP services. The PaPUC reiterates its concern that the decisions made in this proceeding about this IP-enabled service must be consistent with the other decisions regarding IP-enabled services. If the Commission determines that federalization is appropriate, the Commission should determine that VRS is also a federal IP-enabled service and allocate the costs and revenues accordingly.

The combination of pending and decided IP-enabled services proceedings suggest a legal and regulatory view of IP-enabled services as interstate and subject to exclusive federal jurisdiction under a "mixed use" doctrine.² The PaPUC is concerned that IP-enabled VRS not depart from any

²*In re: Petition for Declaratory Ruling that Pulver.com's Free World Dialup is Neither Telecommunications nor a Telecommunications Service*, 19 F.C.C. R. 3307, WC Docket No. 03-45 (February 19, 2004), the Commission determined that

general federalization regime that emerges from these other IP service proceedings. The Commission should not, on the one hand, classify emerging IP services as interstate in nature and then, on the other hand, classify TRS replacement services like VRS as intrastate using the obsolete interstate-intrastate formula abandoned in other IP service proceedings. If IP services are interstate and the intrastate component is so inextricably intertwined with interstate services as to warrant exclusive Commission jurisdiction, VRS must also be classified as an IP service using the same regulatory approach.

Any other approach would separate costs for some IP services by resorting to an obsolete interstate/intrastate formula abandoned in other

computer-to-computer IP-enabled Voice Over Internet Protocol (VoIP) is an information service. In *IP-Enabled Services, Notice of Proposed Rulemaking*, WC Docket No. 04-36, FCC 04-28, (March 10, 2004), the FCC undertook a general inquiry into the regulatory treatment accorded IP-enabled services. In the *AT&T Petition for a Declaration that IP-Enabled Services are exempt from Access Charge*, WC Docket No. 02-361 (April 21, 2004), the Commission determined that Phone-to-Phone VoIP was a telecommunications service not exempt from access charges and left unresolved the question of AT&T's liability for previous access charges for earlier VoIP services. In the Matter of CALEA, RM-10865, Docket No. ET 04-295 (August 9, 2004), the Commission tentatively concluded that VoIP was a "telecommunications" service, as opposed to an information service, for CALEA but issued a Notice of Proposed Rulemaking (NOPR) to further examine the issues surrounding CALEA. In *Vonage Holdings Corporation Petition for a Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211 (November 12, 2004), the Commission preempted state certification of IP-enabled VoIP services and asserted exclusive federal jurisdiction because VoIP is not "purely intrastate" as it is practically and economically impossible to separate interstate and intrastate components of this mixed use VoIP service without negating federal objectives. In *In the Matter of the North American Numbering Plan*, CC Docket No. 99-200 (February 1, 2005), the Commission granted SBC's waiver request and thereby allowed SBC's IP-enabled VoIP service to obtain telephone numbers, numbers normally provided only to state-certificated telecommunications services, directly from the North American Numbering Plan (NANP) administrator.

proceedings. Moreover, such an approach undermines the credibility of the legal reasoning set forth in decisions already issued regarding IP services.

3. Mandatory Imposition of VRS Service. For the reasons set forth in detail above, the Commission's legal approach must be consistent with decisions already made, or will soon be made, in other IP service proceedings. If the Commission views other IP-enabled services to be interstate in nature, VRS is also presumably interstate because VRS, like other IP-enabled services, uses a digital IP-platform. In regard to this IP-enabled service, the PaPUC recognizes Pennsylvania's TRS Advisory Board's view that VRS is a viable and needed, albeit probably interstate, improvement to traditional TRS.³ VRS, if classified as an interstate IP-enabled service, should be supported by interstate federal revenues. The states, such as Pennsylvania, which provide other TRS support from intrastate assessments, such as equipment distribution and news services, should not be burdened with an unfunded federal mandate for a federal interstate service.

4. Line-Item Surcharge. The FCC should not permit a line-item surcharge on consumer bills to reimburse carriers for the cost of this VRS initiative. A federal line-item surcharge approach will result in state commissions having to spend state resources addressing consumer complaints about federal initiatives by unhappy or confused consumers. This already occurs with frequency regarding federal Universal Service Fund (USF) surcharges and internet service. The costs for TRS and the number of proceedings, will increase if another federal line-item surcharge is appended to state consumer bills.

³See Attachment A filed with this Comment.

5. The Six Questions. As a general matter, the PaPUC asks the FCC to consider imposing service quality mandates on VRS providers that are equivalent to those already imposed on TRS. The PaPUC suggests that the FCC consider the viability of a “regulatory parity” approach. The PaPUC makes this suggestion based on communications from our TRS Advisory Board, as well as individual members, consistent with the letter attached as Appendix A to this Reply Comment. In that letter, Pennsylvania’s TRS Advisory Board recommends that the FCC require the VRS providers to meet requirements similar to those of the TRS i.e., 80 percent of the calls must be answered within 10 seconds, and to provide appropriate reimbursement to the VRS providers so that they can meet the FCC’s requirements.

The PaPUC thanks the Commission for providing an opportunity to file this Reply Comment.

Respectfully submitted,
Pennsylvania Public Utility Commission

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ATTACHMENT A

**PENNSYLVANIA
TELECOMMUNICATIONS RELAY SERVICE ADVISORY
BOARD**

October 7, 2004

The Honorable Wendell F. Holland
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dear Chairman Holland:

At the September 16 quarterly meeting of the PA TRS Advisory Board, a motion was passed to request your support for the VRS (Video Relay Service) by sending comments to the FCC prior to their deadline for public comments.

The VRS for deaf and hard of hearing people who uses American Sign Language as their primary or preferred mode of communication is the most functional equivalent technology to appear on the TRS screen. Communication via the TRS requires the use of a camera and computer or a TV and video link camera combined with broadband connections via cable or DSL. The person wishing to use the VRS uses the equipment to call a VRS provider (AT&T, Sprint, MCI, CSD, Hamilton, HOVRS, Sorenson, etc.) that provides a bank of certified sign language interpreters, one of whom appears on the caller's computer or TV screen, much like the CA (Communication Assistant or Operator) that answers the caller using the TRS. The VRS user signs to the VRS interpreter appearing on the screen the phone number to call. The VRS interpreter, like the TRS CA, wears a headset and microphone and makes the call. After the usual connection and explaining the VRS to the person answering the phone, the sign language interpreter signs or interprets what the person is saying and verbalizes or reverse interprets what the VRS sign language user is signing.

The flow and speed of communication meets the functional equivalency requirements of FCC that far exceeds current TRS technology that relies on the use of the TDD

(Telecommunication Device for the Deaf) or the IP (Internet Protocol) Relay services via the computer. The speed of the traditional TRS or IP Relay communications is restricted by the typing speed of the TDD or CPU user as well as the CA's typing speed (minimum 60 WPM required of CA's), which at its best is far slower than typical voice communication. Voice communication between two hearing conversant is at minimum three times as fast and more typically 4 times faster. The interaction between the person using sign language and the person talking via the assistance of the VRS interpreter via the VRS is equally as fast.

When VRS was first used, NECA with the approval of FCC was reimbursing the VRS providers at the rate of at least \$18.00 per minute. With this reimbursement rate, VRS users were getting interpreters on the screen in less than 30 seconds and the services were offered 24 hours per day, 7 days per week. Although the VRS had not yet been approved by FCC as a viable communications relay service, the VRS providers were meeting, if not exceeding, most of the rules and regulations required of the TRS providers. Because of the superiority of this service compared to the TRS, the VRS industry grew rapidly. In the last year, FCC has cut the reimbursement rate to \$14.00 per minute to \$8.00 per minute to almost \$7.00 per minute. As the rates were reduced, the quality of the VRS has rapidly deteriorated. In order to survive, the VRS providers have had to cut back on the numbers of interpreters in their phone bank as well as the hours that the services are available. Now the wait is often more than 10 minutes and sometimes as long as 45 minutes before an interpreter appears on the CPU or TV screen and the hours are restricted to day times and week days only, when demand is at its peak. Since VRS is not required to meet the FCC rules and regulations that apply to the TRS, the cutbacks are legitimate but the deaf or hard of hearing person who has difficulty with English and or typing has suffered.

Since the FCC has requested public comments, the Advisory Board requests that the PUC commissioners use the powers of the state utility agency to ask that FCC approve the VRS as a viable and much needed service, require the VRS providers to meet the requirements similar to that of the TRS, (i.e. 80 percent of the calls must be answered within 10 seconds, 24/7, etc.), and to provide appropriate reimbursement to the VRS provider so that they meet the requirements.

The support and guidance of the PUC representatives participating in the PA TRS Advisory Board meetings have been and continues to be a source of inspiration to the consumer members of the board and we look forward to the continued impressive support of the Commissioners.

Sincerely yours,

Diana Bender, Chairperson
Lawrence J. Brick, Board Member
PA TRS Advisory Board

cc: Vice Chairman Robert K. Bloom
Commissioner Glen R. Thomas
Commissioner Kim Pizzingrilli