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	)	and
Disabilities	)	
	)	CG Docket No. 03-123
Petition for Declaratory Ruling on	)	
Video Relay Service Interoperability	)	

Reply Comments on Relay Service Interoperability

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I. Introduction:

The purpose of this document is to demonstrate that historically and through evidence:

1) That FCC was established in 1934 with a main mission to serve and protect the consumers and not commerce.
2) That current practices in Relay Service Interoperability by a certain VRS provider violates the civil and legal rights of the people with hearing disabilities in the area of telecommunications

The co-authors of this document, Lawrence J. Brick and Alfred Sonnenstrahl have had extensive experience as consumers and advocates in the area of telecommunications. Their experiences date back to the days when the Western Union Telegraph machines owned by AT&T were first modified by a deaf man, Robert Weitbrecht, and hooked up to a phonotype (coupler) to become the first TTY or telecommunications machine that made communications over the telephone lines by people with hearing disabilities "readily achievable" in 1965 for the first time since the invention of the telephone by a hearing man, Alexander Graham Bell. Ironically, A. G. Bell's original purpose for inventing the telephone was to develop a hearing aid to enable deaf and hard of hearing people to communicate. This motivation stemmed from his being married to a woman who was deaf. This marvelous invention of communication served only to further isolate the people with hearing disabilities from the mainstream of American society. The development of the TTY originally created by the deaf man was but the first step in bridging the communication gap between the people with hearing disabilities and those who could hear. The next 40 years have seen a boom in the growth of technology that resulted improved communications via telephone, cable, and wireless technology to the point that functional equivalency in telecommunications is now possible and "readily

achievable" for the people with hearing disabilities for the first time since A. G. Bell's invention of the telephone.

Lawrence J. Brick has a degree in Counseling Psychology and is certified as a school psychologist, Supervisor of Special Education, and teacher of the deaf and has spent most of his working career in deaf education working with children from pre-school through high school. He has served in various capacities at state associations for the deaf, on the Board of the American Society for Deaf Children, Chairperson of the PA TRS Advisory Board, and succeeded Sonnenstrahl as DHHCAN's representative to the TRS Council of NECA.

Alfred Sonnenstrahl has a degree in engineering, worked in various human services settings with people with hearing disabilities, was Director of Telecommunications for the Deaf, Inc., represented DHHCAN (People with hearing disabilities Consumer Action Network) to the TRS Council of NECA, has worked for many years with top government and FCC officials and telephone industry leaders to improve telecommunication access for people with hearing disabilities, and collaborated with the FCC to create the Disability Rights Office.

Both Brick and Sonnenstrahl have three hats in common: as consumers of deaf services and technology; as professionals that provide services to people with hearing disabilities; and as parents of deaf children. Both are strong advocates locally and nationwide in the persons with hearing disabilities community and have received numerous awards in recognition of their services to the community. In summary, both are well qualified to comment on the state of communication technology today and the problems of Relay Services not being interoperable and how such lack of interoperability endangers functional equivalency in accessible communication for persons with hearing disabilities..

The Last Paragraph of President Abraham Lincoln's Gettysburg Address states:

It is rather for us the living, we here be dedicated to the great task remaining before us--that from these honored dead we take increased devotion to that cause for which they here gave the last full measure of devotion--that we here highly resolve that these dead shall not have died in vain, that this nation shall have a new birth of freedom, and that government of the people, by the people, for the people shall not perish from the earth."

The key words of this paragraph are:

"government of the people, by the people, for the people shall not perish from the earth"

Ironically one can see some parallels in the civil war during which President Lincoln sought to free the slaves and preserve the union and the telecommunications war to free another oppressed minority and preserve the functional equivalency rights and ease of telecommunication access of all peoples. The government exists to serve the people. Consumers are people; businesses and industry are not. The purpose of government is to serve the consumers and not be an avenue for business and industry to make money at the peoples' expense.

II. Main Intent of the Americans for Disabilities Act (ADA):
The main intent of the ADA that was signed into law by then President George Bush, Sr. was to level the playing field for all people with disabilities. Assuming that it was "readily achievable", the main intent was to ensure access to people with disabilities that was "functionally equivalent" in terms of:

a. Access: If one who is not disabled can use a facility or product, it must be usable for all disabled people. Example: a telephone must have the magnetic coil in the receiver so that it is compatible with hearing aid users and TTYs so that a person with a hearing aid or TTY can use the phone just like those who have normal hearing. A telephone without the magnetic coil is not compatible with hearing aids and TTYs.

b. Ease of Access: The product or facility must enable the disabled person to have access that is "functionally equivalent" or just as easy to use as when used by those who are not disabled. The TTY payphone is an excellent example of this. A hearing person can pick up the handset and make a voice-to-voice phone call. A deaf person can pick up the handset and make a TTY-to-TTY phone call. When the connection to a TTY occurs, a TTY in a drawer at the bottom of the pay phone comes out for the TTY interaction. The user of the TTY payphone can call another TTY user **OR** call the Telecommunications Relay Service (TRS) to connect to a non-TTY user without going through special configurations.
c. Cost of Access: Paying for high broadband speed to use Video Relay Service (VRS) with a Video Phone (VP) should be considered as cost of access. Is the cost considered as "functionally equivalent"? Currently VRS and VP require a minimum of 256k-upload speed in order for sign language communication to be smooth and not jerky. Many DSL broadband providers do not offer upload speeds that meet this requirement unless the residential customer is willing to pay the higher commercial rates. A hearing person can make effective internet phone calls with broadband upload speeds of less than 256k and pay about $30.00/month for the broadband DSL service. A deaf person cannot make effective Internet phone calls with his VP with broadband speeds of less than 256k and would need either to pay a higher rate than $30.00/month for the faster DSL speed offered to businesses or use a cable modem which meets the VP upload speed requirements and pay over $50.00/month. The cost of access to phone calls via the Internet is not "functionally equivalent" for people with hearing disabilities who are VP users. A similar comparison can be made for comparing inexpensive phones costing hearing people $20.00 with inexpensive TTYs costing people with hearing disabilities $100 plus and expensive phones with many features, including answering machines, costing over

$100.00 with expensive TTYs with similarly many features costing $500.00. When the TTYs first appeared in the 1960's, because TTY-to-TTY conversations were so much slower than voice-to-voice conversations, long distance carriers offered considerable discounts to TTY users to meet the concept of charging at "functional equivalency" rates.

III. The VP100 violates the Intent of ADA because it is not interoperable. The product is discriminatory and inaccessible for many people and it violates the civil and legal rights of the people with hearing disabilities. There are historical precedents in which the government regulated a telephone industry that was engaged in business practices similar to what the manufacturer of the VP100 is currently engaged in:

a. **The VP100 intentionally limits users to one VRS provider, the manufacturer's own VRS, and the manufacturer of the VP100 makes a profit via their Video Relay Service (VRS).** Instead of making a profit on the product itself, the manufacturer is making an additional profit on the VRS that they provide by directing all calls made on the VP100 to their VRS and blocking attempts to call other VRS providers via the VP100. In contrast, a regular phone can be used to access **ANY** long distance provider. The telephone manufacturer profits from the sales of the telephone and not from the provision of long distance service. The telephone manufacturer does not build into the telephone a program, software, or hardware to direct calls to a specific long distance carrier nor does it install blocking mechanisms to prevent the telephone from connecting to any other long distance carrier. For people with hearing disabilities, the VP is the equivalent of the hearing person's regular telephone and connecting with the VRS is the hearing person's equivalent of connecting with the long distance carrier. The "functional equivalency" and civil rights of individuals with hearing disabilities are being restricted and violated and they are being oppressed as well because freedom of choice, compared to those who can hear, is not available.

b. **The VP 100 is not available to individuals who have normal hearing.** Not making the VP100 available to hearing people forces the hearing person to use the VP100 manufacturer's VRS if the hearing person wishes to communicate with the person with a hearing disability using a VP100. Again the VP100 manufacturer is profiting not from the sales of the product, but from the VRS the VP100 manufacturer restricts the hearing person to. Not making the VP100 available to hearing people is discriminatory against the hearing people and there are precedents in which the Supreme Court has ruled against such reverse discrimination as exemplified here. This practice also has the effect of increasing the number of unnecessary VRS minutes as the hearing caller with visual communication skills has to call the VP100 manufacturer's VRS instead of being able to call the VP100 user directly which leads unnecessarily to increased costs to the telephone companies through the Interstate TRS fund.

c. **There are historical precedents in which the government regulated the phone industry whose business practices were similar to what the VP100 manufacturer is engaged in.** Some 40 years ago AT&T used to rent telephones and the customers renting the telephones from AT&T could use only AT&T as their long distance carrier. AT&T was ordered by the courts to sell their telephones competitively on the market. As a result many companies started producing telephones to compete with the AT&T phones and new telephone companies entered the field to provide long distance service in competition with AT&T. In 1981 FCC under court order supervised and carried out the break up of AT&T in 1982 into smaller phone companies. These actions by the courts, FCC, and the government separated the telephone product, the telephone, from the provider of telephone services. The break up of the AT&T monopoly fostered competition and reduced costs for telephone service. The government's court decisions and regulation of Microsoft is another example of government action to force Microsoft to

make their operating systems open to other company's software and programs and to weaken their monopolistic business practices. With both AT&T and Microsoft, the government stepped in for the common good of the consumers.

IV. Section 503 of the Rehabilitation Act of 1973 states:

a. Any contractor receiving federal funds must not be discriminatory.

FCC instructed NECA to collect money from common carriers to pay certified VRS providers, who must comply with Section 503 that includes non-discriminatory practices. Below are three examples of the violation of Section 503:

1. VP100 is not available to hearing people.
2. Non-interoperability of the VP100 violates the civil rights of and restricts the choice of VRS providers by VP100 users.
3. Due to non-interoperability of the VP100, VRS users with hearing disabilities are dependent on one provider. Due to longer Average Speed Answer (ASA) and possible shut downs, Sorenson VRS users have no choice but to rely on one provider for their opportunities, such as job performances, while hearing phone users enjoy the variety of options to enhance their opportunities, such as employment.

V. Section 504 of the Rehabilitation Act of 1973 states:

a. Any agency receiving federal funds must not be discriminatory.

b. Any contractor having contracts with agency receiving federal funds must not be discriminatory.

Section 504 makes it clear that any facility that receives federal funds must not be discriminatory and must be accessible to all persons with disabilities. In addition any agency or business that contracts with an establishment that receives federal funds must comply with the regulations as well. Currently there are educational institutions and state agencies that are supported in whole and/or in part by federal funds that have contracts with the

VP100 providers and these facilities appear to be in violation of Section 504.

VI. Questions:

a. Is it appropriate for a closed discriminatory network provider to be reimbursed from federally regulated funds through Interstate TRS Fund for providing a service? If AT&T was not permitted to be a closed provider of long distance calls, why should an exception be made for another telecommunications industry that provides VPs and the VPs are programmed to use only the specific business' VRS? The VP100 being closed makes it non-interoperable and is discriminatory, violates the VP100 users' freedom of choice of VRS providers, and continues to perpetuate the practice of oppressing a minority group. In addition the reverse discrimination in not making it available for hearing people is contrary to the Supreme Court decision in the Bakke vs. The University of California in Berkeley case when reverse discrimination for the purposes of affirmative action was declared unconstitutional. If such business practice is unconstitutional, then the VRS provider to the VP100 users should not be reimbursed.
b. Since the VP100 is a discriminatory product as discussed in sections III, IV, and V above, is it in violation of the ADA and Sections 503 and 504? If so, then the VRS provider to the VP100 users should not be reimbursed.
c. Since the VP100 is being used in some of the partially and fully funded federally funded institutions, are these institutions in violation of the federal laws (ADA and Sections 503 and 504)? If so, then the violation must be corrected or the funding of these institutions should be discontinued.
d. If the VP100 is in violation of the federal laws (ADA and Sections 503 and 504), then would federal agencies that reimburse the VRS provider answering calls made from VP100 be in violation?

e. What message is the FCC sending by not only permitting, but also fostering a business via reimbursement, to continue victimizing and oppressing a minority group and restricting their freedom of choice?
f. Which is a priority: equal access and rights of consumers or excessive profitability of the industry?
g. Is it appropriate to force over 4,200 common carriers to cover unnecessary minutes caused by non-interoperability and not allowing potential hearing users with visual communications from having access to VP100?

VII. Recommendations:

a. FCC should act proactively by promoting interoperability immediately.
b. Discontinue funding of all providers that are using non-interoperable equipment.

Respectfully submitted by

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