

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)
)
Telecommunications Services)
For Individuals with Hearing and Speech) CC Docket No. 98-67
Disabilities)
_____)

COMMENTS OF CSD ON
PAYMENT FORMULA AND FUND SIZE ESTIMATE
INTERSTATE TRS FUND
FOR JULY 2005 THROUGH JUNE 2006

I. Introduction

Communication Service for the Deaf, Inc. (CSD) submits these comments in response to the proposed 2005-2006 compensation rate for video relay service (VRS) submitted by the National Exchange Carriers Administration (NECA). Through its relationship with Sprint, CSD serves as a provider of VRS throughout all fifty states and the United States territories. As an organization run of, by and for deaf consumers since 1975, CSD is also a VRS consumer, with a mission to increase the communication, independence, productivity, and self-sufficiency of all individuals who are deaf and hard of hearing. From both of these perspectives, CSD urges the Federal Communications Commission (FCC) to consider carefully the impact that the next compensation rate will have on the pursuit of functionally equivalent VRS and VRS competition.

II. NECA's Proposed Compensation Rate

NECA reports that VRS providers have submitted average VRS costs per minute ranging from \$5.071 to \$10.512 for 2005, and from \$5.526 to \$11.193 for 2006. From this, NECA has calculated the proposed per minute reimbursement rate to be \$5.924, because it has weighted the rate by the lowest cost provider's market share, a share which is well over 60% of the market. As a consequence, as NECA notes, the proposed rate is "driven by the cost and demand characteristics of a single provider," and "only one provider's cost per minute is below the average, while all other providers' costs are above the average."¹

NECA suggests that "[b]ecause of the number of open issues before the FCC related to VRS, e.g., answer performance and interoperability and the timing of their resolution, and the likelihood of their adding costs to the provision of [V]RS, the Commission may wish to explore alternatives to the traditional rate calculation." CSD agrees, and urges the FCC to use an alternate method of determining the VRS compensation rate for 2005-06 so that all providers can offer these services on a level playing field.

The thousands of consumers who have taken part in VRS petitions and submitted comments in the FCC's various VRS proceedings over the past two years testify to the growing reliance upon these services by millions of deaf and hard of hearing Americans as their primary, and often sole, means of

¹ NECA Payment Formula and Fund Size Estimate - Interstate Telecommunications Relay Services (TRS) Fund for July 2005 through June 2006 (April 25, 2005) at 17 n.32.

telephone communication. These individuals have urged the Commission to promulgate VRS standards that ensure a communication service between deaf, hard of hearing and speech disabled individuals and other individuals that approximates, as closely as possible, telephone communication between conventional voice telephone users.² Unfortunately, the proposed compensation rate for 2005-06 will impede, rather than promote, the functionally equivalent service sought by these consumers.

It is an undisputed fact that the one provider that is driving the rate has, by far, the longest wait times – sometimes in excess of thirty minutes. Its refusal to make its equipment interoperable with the services of other VRS providers holds those individuals hostage to these answer speeds.³ The sizeable financial resources available to this provider have enabled it (1) to distribute enormous quantities of free VP-100s that have kept these consumers within its hold, (2) to open multiple VRS centers – frequently in areas where competitors or community interpreting centers already exist, (3)

² As the Senate Committee approving Title IV of the Americans with Disabilities Act explained, the mandate for relay services was intended to bring deaf, hard of hearing and speech disabled communities “into the telecommunications mainstream by requiring that telephone services be provided to hearing and/or speech impaired individuals in a manner that is functionally equivalent to telephone services offered to those who do not have these impairments. This requirement will serve to bridge the gap between the communications impaired telephone and the community at large. To participate actively in society, one must have the ability to call friends, family, businesses, and employers.” S. Rep. No. 116 101st Cong., 1st Sess. at 78 (1989).

³ As we have noted in previous submissions, individuals put up with this provider’s restrictions because the VP-100s that this provider distributes are free and enable them to make free point-to-point calls, and because these individuals often do not realize either the existence or the impact of the limitations being imposed upon them, especially in emergency situations – until after such equipment is installed in their homes. However, there is a growing discontent among these consumers, as evidenced the by extraordinary number of consumers who filed requests for mandatory VRS, interoperability, and a minimum speed of answer in this docket.

to exercise control over virtually all VRS equipment, including D-Links used by other providers, and (4) to lure sign language interpreters to its company with salaries and benefits that are far more generous than other providers are capable of paying. When combined, these various marketing strategies have enabled this provider to corner well over sixty percent of the VRS market; yet this provider has failed to share its good fortune with the consumers for whom it is providing VRS. Rather, this provider continues to collect the largest portion of NECA VRS funds while imposing the most restrictions and the worst answer speeds on its users. It is bad enough that the TRS Fund has supported such practices over the past two years. But if the VRS compensation rate is brought down to a level that only exceeds that of this single provider, the service levels of the entire VRS industry will be driven down to this lowest common denominator. Eventually, competitors – without the funds to effectively compete for customers with a better service and without a mandate for interoperability – will be driven out of the VRS industry, and a government sanctioned monopoly will be created. In the end, consumers will be the losers: they will have a single provider that offers poor service levels and gets rewarded through a federally administered program to do so.

III. Uniform Service Standards and Interoperability Are Needed to Level the VRS Playing Field.

Uniform answer speeds and a mandate for interoperable service are critically needed to determine the true costs of providing functionally

equivalent VRS service, to create a level playing field for all VRS competitors, and to achieve the best service for consumers. The FCC has already acknowledged that VRS providers who want to provide a functionally equivalent speed of answer are unable to do so without adequate funding. The Commission has said that it understands “the apparent ‘Catch-22’ that so long as a mandatory minimum standard is waived providers cannot be compensated for the costs of meeting the requirement, but that without additional compensation they cannot cover the costs of meeting the requirement to therefore justify the end of the waiver.” The FCC even has promised to “closely monitor all of the TRS waivers to ensure that they do not have the unintended effect of ‘lowering the bar’ for quality of service where it is not necessary to do so because of technological or other similarly compelling reasons.”⁴ We submit that if the rate is set at \$5.924 – a rate that only exceeds the costs of the one provider that offers the slowest speeds of answer – that bar will most definitely be lowered.

Because VRS is a personnel-intensive service, costs can be kept down when answer speeds are kept high. If the compensation rate is set at the artificially low rate of \$5.924, the dominant provider – despite its poorer service – will be able to maintain and increase its hold on the market because

⁴ *In the Matter of 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 Dockets No. 90-571, 98-67, 03-123, FCC 04-137 at ¶122. (June 30, 2004)

it will continue to lock its customers into its service and because other providers will be unable to afford higher quality services.

Prior to the first VRS rate reduction in June 2003, CSD had been providing VRS 24 hours a day, 7 days a week, with answer speeds that met the FCC's standards for traditional TRS. When the rate was reduced, CSD had no choice but to drastically cut hours and days of operation. CSD still – nearly two years later – has not been able to restore these hours. An increase in the number of VRS minutes have brought economies of scale that have enabled CSD to reduce costs and improve wait times during the intervening years. But with the new rate cut, again, CSD and other providers will have to extend answer times and limit service hours simply to stay in business. Customers will no longer have the ability to obtain improved service as there will be no incentive, let alone the ability, for competitors to provide that service. Again, the consequence will be a monopoly that prospers through government-administered funds.

VRS users are now forced to use a service reminiscent of the substandard text-to-voice relay services that existed back in the early 1980s, *i.e.*, a service that imposed long waiting periods to make a single call, imposed blockage rates that far exceeded blockage rates typically experienced by voice users, and imposed other user restrictions. The proposed rate rewards the provision of such inferior VRS levels of service. The only way to

avoid this is to promulgate standards that require all VRS providers to provide the same quality of VRS service for the same compensation rate.

IV. Proposed VRS Rate Calculation Alternatives

CSD offers the following alternatives for calculating a more equitable compensation rate for VRS on an interim basis only, until such time that the Commission implements its standards for VRS service levels:

A. Eliminate the dominant provider's average costs from the calculation

According to NECA, if the dominant VRS provider's average costs are excluded from the 2005-06 rate calculation, the compensation rate will be \$7.061.⁵ Insofar as virtually all costs – with the exception of costs for certified deaf interpreters – have been allowed by NECA, it is this rate that would more accurately reflect the costs of, and compensate providers for, functionally equivalent VRS. Indeed, the fact that no other costs have been disallowed prove that a major factor – if not *the only* factor – driving down the dominant provider's costs is its higher answer speeds. CSD submits that other providers should not be penalized for trying to provide a superior service that is consistent with the ADA's requirements for functional equivalency.

CSD anticipates, and wishes to respond to two potential objections to this approach. First, the FCC may be reluctant to adopt the higher rate

⁵ This is \$1.137 more than the proposed rate when the dominant provider's average costs are included.

because it may provide a windfall to providers whose costs are appreciably below that level. Indeed, unlike traditional TRS/Internet relay, where the difference between the final compensation rate (proposed at \$1.312) and the lowest provider's costs is negligible (averaging approximately \$0.29 for Internet relay for 2005-2006⁶), the price differential between \$7.061 and the lowest VRS provider's costs for 2005 (\$5.071) approaches \$2.00 for 2005, and approximates \$1.50 for 2006 (for 2006, the lowest average costs were estimated to be \$5.526). For this reason, CSD agrees that it would be fair for the Commission to cap the amount of reimbursement that any one provider may receive, over and above that provider's actual costs.

Second, the average rate methodology has been successful in offering TRS providers an incentive to keep their costs below NECA's TRS compensation rates. CSD agrees that the FCC should not eliminate that incentive by penalizing providers who are able to reduce their costs. However, unlike the situation for TRS, where all providers are held to identical standards, the lowest cost VRS provider is providing a much lesser standard of service, both in terms of the speed of its service and in terms of the restrictions it imposes on its users. The above approach should be followed until all VRS providers are required to follow the same minimum

⁶ This was derived by taking the average of the 2005 (\$1.04) and 2006 (\$1.012) lowest Internet relay average costs (\$1.026) and subtracting it from the combined proposed rate: $\$1.312 - \$1.026 = \$0.286$. There is a negative price differential between the proposed combined rate (\$1.312) and the lowest traditional TRS costs (the average of the 2005 lowest cost of \$1.176 and the 2006 lowest cost of \$1.207 = \$1.192) because the combined rate is lower than these lowest average costs.

service standards. In any event, however, the above scheme is fair because even under this scheme, the lowest cost provider can still reap *some* benefit by having the lowest expenditures.

B. Average all VRS costs without weighting the minutes of any single VRS provider

An alternative for the FCC would be to average the costs of all VRS providers without weighting the minutes of any of the providers. At present, the dominant provider is providing VRS in an artificial and anti-competitive environment that denies interoperability of service and fails to comply with any minimum standards of service quality. Until such standards are set, a rate that is weighted toward that provider's costs by more than 60% is simply unfair to other providers, especially when it is undisputed that these other providers will not be able to be fairly compensated for their VRS costs if the proposed rate is adopted. As noted earlier, NECA has not disallowed VRS costs submitted by other providers. This means that with the exception of the dominant provider, every provider forced to accept the proposed rate will actually lose money on every VRS call made through its service. Weighting all provider costs equally will produce a reimbursement rate of approximately \$7.325, and more fairly compensate all providers. Again, adjustments can be made to avoid any unjust windfalls to providers that offer a lesser service at lower costs.

C. Tie the VRS compensation rate to service levels

A final alternative would be to tie the compensation rate to service levels. It is simply unfair to reward providers for poorer service. Linking the rate to service levels will instead reward providers for approaching functionally equivalent VRS. One way to do this might be to eliminate the lowest provider's costs (\$5.347) and the highest provider's costs (\$10.905) and take an un-weighted average of the remaining provider's costs (\$7.005). That rate could then be applied to all providers meeting an answer speed at a certain level, while those not able or willing to meet that answer speed would receive reimbursement for their actual costs or \$7.005, whichever is lower.

V. CSD Renews Its Application for Review of the June 2004 Rate Order

On July 26, 2004, CSD filed an application for review of the FCC's June 2004 Rate Order. That application complained that the FCC had made several assumptions about relay services that ignored relay history and Congressional intent to fully meet the telephone accessibility needs of people who are deaf and hard of hearing. Among other things, CSD urged the Commission to understand that the VRS rate is linked to VRS quality, not to apply a different standard of functional equivalency for VRS simply because this service is not yet mandated, and to reimburse costs associated with VRS research and development. On December 30, 2004, the Consumer and Governmental Affairs Bureau issued an order revising the compensation rate for VRS. Although that order took into account additional data submitted by VRS providers, it did not address the above issues, nor did it generally

address the rate of return methodology adopted in its June 2004 Rate Order. For these reasons, CSD continues to seek review of the Bureau's June 30, 2004 Order.

VI. Conclusion

VRS has brought deaf and hard of hearing communities into the mainstream of our nation's communications networks. But the FCC should not be fooled into assuming that the growing reliance on these services signifies satisfaction with the existing service levels of the dominant provider. This Commission has received well over 1,000 consumer comments to the contrary – in addition to thousands of signatures on petitions urging VRS to become a mandatory service (with mandatory minimum standard obligations); as we have noted before, by any standard, the proportion of deaf individuals who have pleaded their case to the Commission is voluminous. Greater use of VRS has occurred because of the incredible benefits of VRS – more natural interpersonal communications, increased job opportunities, increased access to interactive voice response systems, conference calling, and access for previously un-served deaf populations. But the deaf and hard of hearing community has grown increasingly frustrated with the restrictions imposed upon their communication access. These consumers have urged the FCC to establish standards of service quality that will put an end to the shortened hours, higher blockage rates, and long answer speeds that have

kept them from having the same level of communication access as is available to voice telephone users.

In addition to rewarding poor service in violation of the ADA, the proposed compensation rate gravely threatens VRS competition. In the interest of providing functionally equivalent VRS in a competitive environment, encouraging improvements to VRS, and fairly compensating all providers for their VRS expenses, the FCC should (1) adopt one of the above proposed alternatives on an interim basis for determining this year's VRS rate and (2) act swiftly to establish and implement both a uniform speed of answer for VRS and a mandate for VRS interoperability.

Respectfully submitted,

/s/

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