Before the
Federal Communications Commission
Washington D.C. 20554

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

REPLY COMMENTS OF
COMMUNICATION SERVICE FOR THE DEAF, INC.
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 reply comments in response to the proposed 2005-2006 compensation rate for telecommunications relay services (TRS). CSD has a direct interest in the outcome of this proceeding, both as a consumer and a provider of TRS. Most importantly, CSD wishes to ensure that the 2005-06 compensation rates are adequate to ensure functionally equivalent TRS for all TRS users.

II. Parties to this Proceeding Recognize the Need for a VRS Rate that is Based on Standard Criteria Applied by all Providers

Virtually all parties whose comments address the video relay service (VRS) rate have asked the FCC to consider the impact that minimum standards of service quality will have on this rate. This is because, as acknowledged by the National Exchange Carriers Administration (NECA), one lowest cost provider that is providing levels of service far below other providers has driven down the proposed 2005-06 rate. As a consequence, the calculated rate is not based on criteria that is uniform across all VRS providers. Hamilton, for example, has noted that resolution of the speed of answer and interoperability issues "will significantly affect VRS costs, and thus rates," and has urged the FCC to revisit the VRS rate after the agency has resolved both of these issues. Hamilton Comments at 4-5. Sprint, noting that quality of service standards are likely to increase the costs of VRS, similarly recommends that the Commission set a temporary VRS rate, which will need to be adjusted retroactively once answer speed and other quality of service standards are made effective. Sprint Comments at 5.

Telecommunications for the Deaf, Inc. and the Deaf and Hard of Hearing Consumer Advocacy Network (TDI *et .al.*) go further, to suggest that if implemented, the proposed rate of $5.924 will cause "a deterioration in the availability of VRS provided to consumers" because other providers, forced to cut costs, will have to hire fewer interpreters, and consequently, shorten their hours and extend their wait times. TDI *et. al.* at 3. The result, they accurately predict, will be an inferior service that will not meet the standard of functional equivalency required by Title IV of the Americans with Disabilities Act. Similarly, HOVRS warns that if adopted, the proposed $5.924 rate will result in a "lowering of service quality as all other providers must reduce their video interpreter costs to meet the decreased rate level."

HOVRS Comments at 5. CSD agrees with these statements, as well as with HOVRS' conclusion that adoption of the calculated rate will injure VRS competition. The fact is that if other VRS providers are forced to reduce the quality of their own service, they will be powerless to compete with Sorenson's dominant market position, so long as Sorenson is permitted to maintain a closed, non-interoperable system. *See* HOVRS Comments at 5. At that point, Sorenson's dominance will effectively drive all other providers out of the VRS market and result in a government-sanctioned monopoly service.

CSD, HOVRS, and TDI *et. al.* have presented the Commission with various alternative methodologies for determining the 2005-06 VRS rate, which, given the circumstances of the VRS market, are far more equitable than using a weighted average. CSD urges that the Commission not only to select one of these methodologies in place of the calculated rate of $5.924; we also urge that the Commission adopt this methodology *now*, before the start of the next TRS year. FCC's rules state that the formulas used for making payments to relay providers "should appropriately compensate interstate providers for the provision of VRS, whether intrastate or interstate." 47 C.F.R. §64.604(c)(5)(iii)(E). Industry and consumers have already waited more than a year for the FCC to promulgate service standards for VRS, yet the agency's schedule for deciding these matters still remains uncertain. While a retroactive application of a new rate would be better than no adjustment at all, if too much time passes before the new rate becomes effective, the proposed rate of $5.924 will not "appropriately compensate" all but the lowest cost provider. Put simply, if this calculated rate is put into place for an extended period of time, damage to CSD and other VRS providers may be too severe to ever allow for economic recovery.

III. The FCC Should Sever the Internet Relay and Traditional Relay Rates.

CSD agrees with the many commenters to this proceeding who have urged the FCC to separate the traditional TRS rate from the rate calculated for Internet relay services. AT&T Comments at 1 n.1; Sprint Comments at 2-3; Ultratec Comments at 3-4.[1] So long as the average costs for providing each of these services differ from one another, it makes little sense to use a single rate for their reimbursement. If the rates for these services are not separated, providers who offer only traditional TRS will be penalized and Internet relay providers will be unjustly enriched.[2]

Hamilton suggests that it would be preferable to combine the Internet and traditional rate, absent any "material savings" to the NECA Fund.

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[1] According to NECA, the impact to the Fund of separating these rates for 2005-06 will be negligible; severing the rate will cost the fund less than $12,000, and will not increase the contribution factor. NECA Narrative Filing at 21 n. 40. NECA's TRS Advisory Council also recommended separating the two rates.

[2] Contrary to Nordia's assertions (Nordia's Comments at 2) relay providers have had more than ample notice that the FCC was contemplating a severing of these rates. This issue was raised nearly a year ago in the FCC's June 2004 Notice of Proposed Rulemaking, and the Commission now has a complete record on which to base a reasoned decision. *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 (June 30, 2004) at ¶233.

Hamilton Comments at 4. But CSD submits that rather than ask whether a particular rate benefits the Fund, the FCC should be asking whether a particular rate can "compensate TRS providers for reasonable costs of providing interstate TRS," as is required by the FCC's own rules. 47 C.F.R. §64.604(c)(5)(iii)(E). To do otherwise might result in the FCC having to change its methodology annually, depending on which calculation would be most beneficial to the Fund. In contrast, a severed rate, one which accurately compensates both Internet and traditional TRS providers for their reasonable and fair expenses, will equitably reimburse providers for their expenditures and best ensure the integrity of the TRS Fund.

IV. NECA Should be Permitted to Base its Rate Calculations on Recent Relay Trends

AT&T suggests that NECA, by basing its contribution factor on the four month period between October 2004 through January 2005, has over-inflated demand which will cause an over-recovery of relay contributions. AT&T Comments at 2. CSD disagrees. While there may be times when it is appropriate to calculate the contribution factor based on a full year's worth of relay service – i.e., times when the demand for the various types of relay services are relatively stable – this is not one of those times. The introduction of Internet relay, VRS and captioned telephone has put TRS usage in a state of flux, as consumers across the country increasingly become familiar and dependent on newer, innovative TRS technologies. In this environment, reliance on a recent four month period to determine compensation rates is most justified. NECA is correct in wanting to create a safety margin that ensures adequate funding as demand for these new services steadily rises. The consequences of doing otherwise – and risking significant shortfalls – could be severe for consumers and providers alike.

Respectfully submitted,

/s/

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