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Communication Service for the Deaf

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Video Relay Services Interoperability

The Problem:

There are presently eight providers of video relay service (VRS), a service that enables deaf people to use sign language to make telephone calls using remote interpreters that are accessed over the Internet. VRS is authorized, though not mandated, by the FCC under Title IV of the Americans with Disabilities Act (ADA), codified in Section 225 of the Communications Act. The ADA requires the provision of telecommunications relay services (TRS) to deaf, hard of hearing and speech disabled people that is functionally equivalent to voice telephone services offered to hearing people. VRS is the only type of relay service that enables deaf people who use sign language to communicate naturally and in real time in their native language (previously VRS users had to use slow text relay communications). Providers offering VRS are reimbursed through an interstate fund administered by the National Exchange Carriers Administration.

One VRS provider conditions the provision of free video equipment to consumers on an exclusivity arrangement that technically and contractually blocks VRS customers from making or receiving calls through other VRS providers. That provider, which holds over 65% of the market share, presently has very long waiting periods for consumers to make calls. A petition to the FCC, filed this year by consumers in California and supported by all leading national deaf and hard of hearing organizations, charged that the practice of not making equipment and service interoperable is a restrictive and unfair practice that denies functionally equivalent communication service to both deaf and hearing VRS users. The petition asks the FCC to outlaw the refusal to provide interoperability because this practice violates the following sections of the Communications Act:

- Section 225 – requiring functionally equivalent telephone service;

- Section 1 – requiring universal service;
- Section 201 – prohibiting unjust or unreasonable practices;
- Section 202(a) – prohibiting unreasonable discrimination;
- Section 251 – requiring telecommunications carriers to interconnect with one another and provide dialing parity, and prohibiting the installation of network features or capabilities not consistent with Sections 255 and 256; and
- Section 256 – permitting the Commission to develop standards for network interconnectivity to make communication services accessible to people with disabilities.

All of these provisions have played an integral role in our nation's efforts to have telecommunications provided through an open architecture that provides all people seamless access to all telecommunications networks.

Under the present scheme, VRS consumers must acquire multiple video devices in order to make and receive calls through other VRS providers. This is discriminatory, burdensome, and because of technical limitations placed on incoming calls, cannot achieve functionally equivalent telephone service. Specifically, if an individual has multiple devices, unsolicited incoming calls may be directed to the device that is not turned on, or may be routed to the wrong device by an Internet router, causing the individual to miss those calls. This scheme also discourages hearing people from using VRS because they can never know whether their VRS calls will reach their destination.

The Need for Interoperability:

- Title IV of the ADA was intended to help close the communication gap so that people who were deaf and hard of hearing could participate equally in a telecommunications network seamlessly enjoyed by all other Americans. Prior to the ADA's passage, states varied widely in the restrictions that they imposed on relay service users. Limitations on the number, length and time of day that relay calls could be made were common, and waiting times were extremely high. The ADA was designed to put an end to these restrictions and state variations, so that all TRS users would have the same seamless access – with full interoperability – to the nation's telephone network that the hearing community enjoyed.
- When a hearing person picks up a telephone to make a call, that individual can immediately access anyone, at anytime, regardless of the telephone carrier to which that person or the called party subscribes. When consumers are restricted to a single VRS provider, they cannot switch to another provider to make their calls, even when that provider is experiencing long wait times. Although it might take several minutes for

an interpreter to become free, the consumer has no choice but to wait – this is not functionally equivalent access.

- Congress directed the FCC to include within its TRS rules a mandate for all carriers to “provide telecommunications relay services on a non-discriminatory basis to all users within their serving area.” Restricting calls to and from other individuals violates this mandate. Allowing a practice that cuts deaf people off from hearing people who are attempting to communicate with them via relay services also is contrary to Title IV’s goals to further the independence and productivity of TRS users.
- In addition to being discriminatory, restricting the interoperability of VRS is extremely dangerous in emergency or urgent situations. If the provider blocking access is operating at full capacity, consumers need a way to access a different provider. This is particularly important if a particular provider’s network is unintentionally shut down or overwhelmed by an influx of calls, for example, when there is a national crisis or a weather disaster. As of January 2006, FCC rules will require VRS providers to automatically and immediately refer all emergency calls to public safety answering points (PSAPs). This is to ensure that the deaf community will be able to access police, fire, and medical assistance via the telephone network. Without interoperability, consumers will not be able to have equal access to emergency services. This is especially the case because of the limited number of interpreters to which any one provider has access.
- The FCC’s recent IP-enabled Order on E911 requires interconnected VoIP providers to handle emergency calls to 911 PSAPs, including an obligation to provide emergency personnel with the call back number of customers. Deaf and hard of hearing people who use VRS need the same ability to access emergency services, both with respect to incoming and outgoing calls. Without interoperability, if one provider’s interpreters are tied up, the caller has no option to make outgoing calls for help through another provider. A restricted, non-interoperable system makes receiving return (incoming) calls difficult because if the person has multiple devices for outgoing calls (which is going to be increasingly likely if one provider’s system remains locked), the routers for the two devices may direct incoming calls from emergency centers to the wrong device and then the call will not be answered. Alternatively, the wrong device may be turned on, which will also result in the call being blocked.
- Denying full emergency access specifically hurts our nation’s homeland security policies, which are designed to facilitate, not restrict, access to emergency support. The FCC has now agreed to sponsor any relay center’s application to the Department of Homeland Security’s National Communications System to obtain Telecommunications Service Priority.

Relay centers that receive such status will be given priority when it comes time to restore telecommunications services after a disaster occurs. The failure to require VRS interoperability runs counter to this objective, as it will virtually ensure that consumers using a provider that is not interoperable will be left without access in the event that that provider has an emergency that forces it to shut down its operations.

- The FCC's overriding interest in keeping network architecture open and interoperable among communication carriers was recently demonstrated in the Commission's decision to fine Madison River Telephone Company for blocking its ports to calls made over the Internet. The decision, brought under the authority of Section 201(b) (requiring carriers to provide "just and reasonable" communication service practices), is consistent with the FCC's longstanding policy to ensure a seamless communications network that is equally available to all Americans, and further highlights the need for all VRS providers to keep their ports open to all VRS calls, regardless of the providers handling those calls.
- Money flowing through the federally administered TRS NECA Fund should not be used to support restrictive and anti-competitive practices that block VRS calls. If left to continue, the present scheme will produce a VRS monopoly by one VRS provider that will reduce incentives to adequately respond to consumer needs in a free and open marketplace.
- Maintaining an exclusive pool of sign language interpreters that can only be used to serve a select group of customers makes inefficient use of the presently limited supply of interpreters in the United States, because those consumers are unable to use the interpreters of an alternate provider when the restricted provider is operating at capacity.
- In addition to the above, the distribution of free equipment and/or free broadband lines that block users from the use of other VRS provider services should be declared impermissible under the FCC's January 26, 2005 order prohibiting the use of any type of financial incentives to encourage or reward a consumer for placing TRS calls. When a provider distributes equipment to consumers completely free of charge, and then blocks those users from making any VRS calls through other providers, it is essentially rewarding those consumers with a free video device (and the ability to make free point-to-point calls) in exchange for having the consumers use its service for VRS. Not only do these consumers have a financial *incentive* to use the donated device for VRS, in fact, they are *forced* to do so because the donating provider has erected a barrier to all other providers.
- At present, there is no numbering scheme for VRS users that is consistent

with the numbering scheme administered under the North American Numbering Plan. Rather, only the provider that has restricted its services is allowing its users to use NANP numbers to access its services only. A seamless numbering scheme that allows all VRS users – deaf and hearing – to contact each other to the same extent that VoIP users are able to converse with each other is now necessary to achieve functional equivalency under the ADA.