

KPS CONSULTING

“Building an Access Bridge in Technology and Telecommunications”

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September 14, 2005

Jay Keithley
Thomas Chandler
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Ex Parte Letter on the Provision of
Qualified VRS Interpreters**

Dear Mr. Keithley and Mr. Chandler:

As you are aware, FCC rules require all VRS providers to ensure that their interpreters are qualified to handle the calls to which they are assigned. A “qualified interpreter” is defined as one who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.” 47 C.F.R. §64.604(a)(1). FCC rules also require communication assistants who handle VRS calls to stay with the call for a minimum of ten minutes. 47 C.F.R. §64.604(a)(5). In a very small minority of calls, these requirements come into conflict with one another.

Generally, when a VRS call arrives at a call center from a deaf and hard of hearing person, the next available interpreter uses the call set-up period to quickly assess his or her ability to achieve effective communication for the caller. If the interpreter determines that he or she is not qualified to take the call, a different interpreter is summoned. Very occasionally, however, the interpreter, believing him or herself to be qualified, will proceed with the call, only to discover shortly thereafter (*i.e.*, within the first 10 minutes) that effective communication is not taking place. Sometimes, this failure to achieve communication is pointed out by one of the parties to the call; other times, the interpreter him or herself recognizes the need to change interpreters to ensure that the parties are understanding one another. At this point, the interpreter has a dilemma: should he or she remain on the call, knowing that effective communication is not taking place just to achieve

compliance with the 10 minute minimum, or should he or she summon a different interpreter to comply with the overall directive to “interpret effectively [and] accurately?” It has come to CSD’s attention that different providers respond differently to the above situation: upon learning that communication is not taking place before the 10 minute minimum has expired, some providers allow the interpreter to re-assign the call to a different interpreter; others do not. Recent events show that the consequences of not making the transition to a qualified interpreter can be dire.

Under Titles I through III of the Americans with Disabilities Act, as well as other federal laws that require interpreting services – for example, the Rehabilitation Act and the Individuals with Disabilities Education Act – an entity cannot fulfill its legal obligation to provide interpreting services unless these services can achieve effective communication between the parties. Whether or not an interpreter is qualified is determined both generally (e.g., the interpreter’s certification level and past experience) and on an individual basis. What this means is that although an interpreter generally may be qualified to handle most situations, he or she may come upon an instance that requires specific skills that he or she does not have; in that situation, the interpreter will not be qualified to provide effective communication and an alternate interpreter must be obtained. In many situations, the failure to replace that interpreter would constitute a violation of these statutes.

CSD believes that the same principle applies under Title IV. Because the standard for a qualified interpreter is the same under Title IV as it is under other parts of the ADA, if a deaf or hearing VRS user does not believe that effective communication is occurring, or if it comes to the interpreter’s own attention that effective communication is not occurring, then the law seems to require the VRS provider to change the interpreter as soon as possible, notwithstanding the 10 minute rule. This interpretation of the law is based on the premise that if effective communication is not occurring, *there is no qualified interpreter*, and the VRS provider is not in compliance with the FCC’s rules. Until the qualified interpreter is provided, the violation continues; i.e., the provider remains out of compliance with Title IV even if (or perhaps especially if) it keeps the unqualified interpreter on the call for the remaining 10 minutes. Of course, once a qualified interpreter replaces the original interpreter, the 10 minute period must begin to run and *that* interpreter must remain with the call for at least 10 minutes.

Sincerely,

Karen Peltz Strauss

Karen Peltz Strauss
Legal Consultant to CSD

cc: Gregory Hlibok