

KPS CONSULTING

“Building an Access Bridge in Technology and Telecommunications”

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December 15, 2005

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Ex Parte Presentation**
CG Docket No. 03-123

Dear Ms. Dortch:

On December 14, 2005, David O'Connor on behalf of Hamilton Relay, George Lyon on behalf of Hands On Video Relay Service, and the undersigned, on behalf of Communication Service for the Deaf, Inc. (CSD), met with Monica Desai, Jay Keithley, Tom Chandler and Greg Hlibok of the FCC's Consumer and Governmental Affairs Bureau, to discuss video relay service (VRS) blocking practices.

During the meeting, VRS providers in attendance requested that the Commission immediately implement a ban on provider practices that prevent callers from accessing multiple VRS providers. Such a prohibition would readily resolve the vast majority of VRS call blocking problems, and could be accomplished quickly and easily by adopting the following rule:

“Each provider of Internet-based or video relay services has the duty not to restrict users of Internet text, voice or video relay services to a single relay provider, either contractually or technically, or to otherwise intentionally block calls to or from the relay equipment or services of other providers.”

Refusing access to multiple providers through restrictive practices that tie the provision of consumer equipment or services to a single provider denies functionally equivalent communication services required under section 225. It was noted by CSD that in addition to the practice of tying equipment to a blocking restriction, a new practice by HOVRS of restricting access to HOVRS customers who receive money for DSL service may not be permissible under the FCC's January 26, 2005 "no incentive" ruling. HOVRS disputed that interpretation and stated that its practice is indistinguishable from Sorenson's practice of blocking access to other VRS providers. HOVRS also stated its position that both practices should be deemed unlawful and unreasonable under Section 201 of the Communications Act.

During the course of the discussion, it was noted that there are several differences between cell phones and VRS that make blocking inappropriate for the latter. These are:

- When a VRS provider denies a consumer the ability to access multiple VRS providers from its equipment, it leaves that consumer with no choice but to acquire multiple devices if that consumer wants access to more than one provider. Individuals who do use multiple devices, however, run the risk of missing incoming calls when those calls are either directed to the device that is not turned on or routed to the wrong device by an Internet router. This is discriminatory, not in keeping with the functionally equivalent mandates of Section 225, and extremely dangerous in the event of an emergency. Cell phone users do not have this problem – they can call and receive calls from any other cell phone user, regardless of the carrier that each uses.
- While it is true that cell phones are typically tied to the provision of service, the cell phone industry is a privately-operated industry whose business policies and operations are driven by competitive marketplace trends. Because the cell phone industry is highly competitive, companies must respond to subscriber demands; in turn, subscribers are able to benefit from considerable choice in their selection of wireless phones and services. In contrast, VRS is a federally operated program, whose funding is provided solely through a federally administered fund. Rates for VRS are not driven by consumer demand or activity; rather they are set exclusively by the FCC. Nor do VRS consumers have the same level of choice in VRS equipment or the same level of control over the operations of VRS providers as do cell phone users.
- On a number of occasions, the FCC has explained that VRS is a public accommodation under the Americans with Disabilities Act.

As such, it comes with a long list of mandatory minimum standards, all of which are designed to ensure functionally equivalent service that can bring deaf and hard of hearing people into the mainstream of society. In other words, VRS is subject to a specific set of rules that are intended to bring a particular service to a particular population in order to curb disability discrimination. There are no similar rules and regulations for cell phone use.

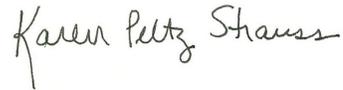
- Wireless calls take place over networks that are not dependent on the availability of any specific personnel. Accordingly, when an individual picks up a cell phone to make a call, so long as cell phone service is available, that individual can get through to the called party in a matter of seconds. In sharp contrast, because VRS is dependent on the availability of sign language interpreters, it is common to experience delays in completing a call. Blocking practices make extremely poor use of the limited number of interpreter services in the United States. So long as blocking is permitted, VRS users will not be able to make calls with the same speed and facility as either wireless or wireline users.
- The Commission has already issued clear orders directing network neutrality over the Internet. The FCC's overriding interest in keeping network architecture open and interoperable among communication carriers was, for example, demonstrated in the Commission's decision to fine Madison River Telephone Company for blocking its ports to calls made over the Internet. The decision was brought under the authority of Section 201(b) (requiring carriers to provide "just and reasonable" communication service practices). No recent similar decisions have been issued concerning cell phone access.
- The ADA was originally drafted to make TRS functionally equivalent to wireline services. Voice users are able to dial around their pre-subscribed existing long distance simply by dialing a 10-10-XXX number. This is not possible for VRS users that are blocked from accessing other providers.

Some additional discussion took place concerning the difficulties that occur when attempting to make incoming calls to VRS users when their equipment is linked to a closed directory (Lightweight Directory Access Protocol or LDAP). Attached to this ex parte letter is a recent submission to the North American Numbering Council that addresses this issue, and recommends connecting VRS end users to the North American Numbering Plan. This document was submitted by CSD only.

Finally, during the meeting, FCC staff requested feedback on two issues: (1) whether and how providers should be denied compensation if they do not meet the speed of answer rules and (2) whether VRS incoming calls that receive busy signals are counted by providers in calculating their speeds of answer. Providers will offer their individual views on these issues at a later point in time.

This letter is being filed electronically.

Sincerely,

A handwritten signature in cursive script that reads "Karen Peltz Strauss".

Karen Peltz Strauss
Legal Consultant, CSD

Enclosure