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March 23, 2006

**Ex Parte**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 03-123**

Dear Ms. Dortch:

Today, Sherry Ingram, Ron Wood (by phone) and the undersigned of Verizon, met with Ian Dillner of Chairman Kevin Martin's office to discuss Verizon's position regarding the penalties NECA plans to impose on IP and Video Relay Providers in instances where the FCC's speed of answer levels are not met. Verizon's comments were consistent with the attached hand-out which was used as a basis for discussion in the meeting.

Sincerely,

A handwritten signature in black ink that reads "Donna Epps".

cc: Tamara Preiss  
Steve Morris



# **IP Relay Service and Video Relay Service: Speed of Answer**

March 24, 2006



## **Verizon Is Committed To Providing Quality and Timely Services to IP Relay and Video Relay Service Users**

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- Verizon is a leading provider of IP Relay Service, Video Relay Service, and traditional Telecommunications Relay Service.
- Verizon is one of the largest providers of IP Relay Service, with five IP Relay call centers handling hundreds of thousands of calls each month. Verizon developed the first application for wireless IP Relay Service.
- Verizon has every incentive to provide quality service and prompt call answer times in order to compete in the marketplace for TRS services. Verizon's loyal customer base is reflective of our high quality service.
- Verizon is actively working to grow its Video Relay Service business to enable more users who prefer using American Sign Language to communicate through a high speed internet connection.



## TRS Providers Face A Number of Requirements, Including Speed of Answer

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- TRS providers must meet a number of operational and technical standards, including communication assistant training and competency levels, call confidentiality requirements, and speed of answer requirements.
- The FCC's speed of answer rules, 47 C.F.R. § 64.604(b)(2), require:
  - For IP Relay Services (IPRS)
    - 85 percent of all calls must be answered within 10 seconds.
    - The IPRS speed of answer is measured on a daily basis.
  - For Video Relay Services (VRS)
    - Beginning on January 1, 2006, providers must answer 80 percent of all calls within 180 seconds.
    - By July 1, 2006, the answer speed drops to 150 seconds; beginning January 1, 2007, it becomes 120 seconds.
    - VRS speed of answer requirements are calculated on a monthly basis.



## NECA Has Recently Stated It Will Not Compensate Carriers That Miss Speed of Answer Requirements

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- On February 6, 2006, NECA informed TRS providers that, retroactive to January 1, 2006, providers would not be paid if they failed to meet speed of answer requirements. Specifically, NECA stated:
  - If IP Relay answer time is missed for a day, the Interstate TRS Fund will not reimburse the provider for the IP minutes handled that day;
  - If Video Relay Service answer time is missed for the month, the Interstate TRS fund will not reimburse the provider for a month's worth of Video Relay Service minutes.
- NECA stated that its decision not to pay providers who fail to meet the speed of answer requirements was based on 47 C.F.R. § 64.604(c)(5)(iii)(E), which states, “The TRS Fund Administrator shall make payments *only* to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604, . . .” (emphasis added)



## NECA's Decision Was Wrong As A Matter Of Law, Because It Failed To Consider Other Aspects of the TRS Rules

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- NECA misinterpreted the requirement that the administrator shall pay “only eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604, . . . .”
  - This is a reference to the fact that only certain “TRS providers [are] eligible for receiving payments from the TRS Fund” – *i.e.*, those receiving certification from the state or FCC. 47 C.F.R. § 64.604(c)(5)(iii)(F).
  - Even if a provider fails to meet a speed of answer requirement for one day (for IP Relay service) or one month (for Video Relay Service), that does not mean the provider is not generally “operating pursuant to the mandatory minimum standards” within the meaning of § 64.604.



## NECA's Decision Was Wrong As A Matter Of Law, Because It Failed To Consider Other Aspects of the TRS Rules (cont'd)

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- NECA incorrectly focuses on only one sentence in the rules, while ignoring other parts of the rules that require adequate and fair compensation to TRS providers. Section 64.604(c)(5)(iii)(E) also provides that:
  - TRS providers shall be paid “based on formulas approved or modified by the Commission,” which “*shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS*” (emphasis added).
  - TRS compensation formulas “shall be *based on total monthly interstate TRS minutes of use,*” which are “defined as the minutes of use for completed interstate TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit” (emphasis added).
- Nothing in the TRS payment formulas authorizes NECA to disallow compensation for minutes of use based on providers' failure to meet daily or monthly speed of answer requirements.



## Government Contract Rules Do Not Apply

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- Government contract rules do not apply to Verizon's provision of TRS services because there is no contract between Verizon and the FCC or NECA for the provision of these services.
- Verizon is entitled to payment for TRS services that were accepted both on theories of substantial performance and quantum meruit.



## **NECA's Decision Was Wrong As A Matter of Policy, Because It Will Increase Costs To An Already Rapidly Growing TRS Fund**

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- The TRS Fund has grown dramatically in recent years, fueled largely by demand for IP Relay and Video Relay Services.
  - IP Relay service represents 32% of the 2006 Interstate TRS Fund. IP Relay minutes have grown from 700,000 in mid-2002 to 6.5 million by the end of 2005.
  - VRS represents 59% of the Interstate TRS Fund, with minutes growing from zero in early 2002 to over 3 million at the end of 2005.
- Because the potential penalties are so severe, NECA's decision is likely to cause providers to increase staffing to cover potential "peak" call levels to avoid the risk of longer speed of answer if unexpected heavy call volumes materialize. Such uneconomic overstaffing will result in personnel being idle or underutilized during non-peak periods.
- For IP Relay in particular, measuring performance on a daily basis does not allow for any error; even a small call spike can result in a drop in speed of answer time averages, risking a loss of an entire day's revenue.
- Because the TRS cost formula is based on an average of carriers' costs, an increase in staffing among all TRS providers will lead to an increase in the formula for reimbursement, ultimately driving increased contributions to the fund.



## Creating Incentives For Inefficient Staffing Is Inconsistent With The TRS Rules

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- The NECA decision creates incentives that are inconsistent with the TRS rules, which anticipate efficient staffing levels tied to projected calling volumes, comparable to service provided to traditional voice callers.
  - The rules state that TRS staffing should be “adequate” to “provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.” 47 CFR 64.604(b)(2)(i)
  - Similarly, the speed of answer rules for IP Relay state that “adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.” 47 CFR 64.604(b)(2)(ii)



## NECA's Decision Was Wrong As A Matter of Policy, Because It is Unduly Punitive

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- The penalties suggested by NECA are unduly punitive:
  - By providing that *no* compensation will be paid for *any* minutes of use provided for the day (IP Relay) or month (Video Relay) in which a speed of answer standard was missed, NECA fails to recognize that the provider likely was meeting the mandatory minimum standards for a large portion of the calls handled in the applicable day or month.
  - The penalties are the same regardless of whether a provider misses the mandatory minimum standard by a small amount or by a wide margin.
- For IP Relay Service, the penalties are exacerbated by the fact that NECA is relying on daily, rather than the monthly, minimum standards.
  - Providers that consistently meet the minimum standard on a monthly basis may be penalized for unexpected call spikes driven by external events beyond their control on any given day.



## **In Other Contexts, Penalties For Failure To Meet Service Quality Standards Are Far More Limited Than What NECA Imposed**

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- In the state TRS arena and other contexts, regulators have:
  - ✓ imposed penalties for failures to meet standards when they are repeated or significant;
  - ✓ scaled penalties to meet the transgression;
  - ✓ placed a cap on the maximum penalty to be levied, or;
  - ✓ required exception reporting detailing root cause and corrective action plans in lieu of financial penalties



## State TRS Speed of Answer Penalties

State	Speed of Answer Requirement	Penalty
Massachusetts	85% in 10 seconds, measured daily	- \$1,000 for each day missed, not to exceed \$12,500 in a calendar month
California	Varies by product, most relevant average speed of answer requirements:  3.3 seconds TTY, 7 seconds speech to speech, 7 seconds VRS , 40 seconds for VRS w/ ISDN, 3.3 seconds other	- No penalty for first 10 daily misses each month  - 11th miss ranges from \$250 to \$1,500 depending on the % of TRS traffic handled by the vendor. Each subsequent miss increases penalty by 5%, not to exceed 4-6% of provider's monthly revenue based on % of TRS traffic handled by provider.  - Damage not assessed if miss is the result of greater than 10% increase in traffic resulting from sudden loss of service by another TRS provider
Tennessee	85% in 10 seconds reported monthly	No penalties assessed
Arizona	85% in 10 seconds measured daily	No penalties assessed



## State TRS Speed of Answer Penalties (cont'd.)

State	Speed of Answer Requirement	Penalty
Kentucky	85% in 10 seconds measured daily	Daily penalty scaled based on cumulative number of days missed: <ul style="list-style-type: none"><li>• \$500/day for first 14 consecutive days missed</li><li>• \$750/day for days 15 – 28</li><li>• \$1,000/day for each consecutive day beyond 28<sup>th</sup> day missed</li></ul>
Kansas	85% in 10 seconds measured monthly	- \$25,000 per month for each month missed
Oregon	85% in 10 seconds measured daily	- \$100 per day for each day missed



## State Directory Assistance Speed of Answer Penalties

State	Speed of Answer Requirement	Penalty
New Hampshire	90% in 10 seconds, measured monthly	- PUC must first issue a Show Cause Order (Providers opportunity to support Service Quality), and if found in violation fines can be assessed up to \$25,000 per incident.
Virginia	100% in 20 seconds, measured monthly	- PUC must first initiate a Show Cause proceeding, and if violations are not remedied, a fine of up to \$10,000 per day may be assessed.
Texas	85% in 10 seconds, or 100% in 5.9 seconds measured monthly	- PUC has the authority to levy up to a \$25,000 per incident. The penalty would be assessed based on the severity of the violation including history of previous violations, amount necessary to deter future violations, economic harm, and efforts to correct the violation. A penalty exceeding \$5,000 may be assessed only if the violation was considered in the highest class (most severe).



## State Consumer and Business Sales & Service Center Speed of Answer Penalties

State	Speed of Answer Requirement	Penalty
Ohio	100% in 90 seconds, reported and measured monthly	- \$1,000 per day after 3 consecutive months are missed and after action plans and explanations are reviewed by the commission and deemed willful violation
Delaware	85% in 20 seconds, measured monthly	- \$1,000 per missed day
Washington, DC	90% in 20 seconds, measured monthly	- \$300 per missed day
North Carolina	100% in 30 seconds, reported monthly but measured annually	- Penalty is levied only after missing the annual average service requirements and is scaled to address severity of violation.  - \$1,585 per unit (seconds) missed . For example, 5% miss equals \$7,925 (5x\$1,585). Additional fine based on number of missed months (3-5 months missed = \$40K, 6-8 months missed = \$80K, and 9-12 months missed = \$120K)
Massachusetts	75% in 20 seconds, measured monthly	- 1/12 of 1% of annual retail revenue for each month missed, and calculated on a 12 month rolling average



# Summary

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- NECA's decision was wrong as a matter of law because it failed to consider other aspects of the TRS rules, and wrong and as a matter of policy, because it failed to consider the costs to the TRS fund.
- The penalties NECA is imposing are far more punitive than other comparable penalties for failure to meet service quality standards.
- The FCC should direct NECA to stop withholding payment based on missed speed of answer requirements and ensure that IPRS and VRS providers are compensated for their reasonable costs of providing interstate TRS for all minutes of use.