

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)
)
Telecommunications Services)
For Individuals with Hearing and Speech) CC Docket No. 03-123
Disabilities, and the Americans with)
Disabilities Act)
_____)

REPLY COMMENTS OF CSD ON
PAYMENT FORMULA AND FUND SIZE ESTIMATE
FOR INTERSTATE TRS FUND
FOR JULY 2006 THROUGH JUNE 2007

I. All Parties to this Proceeding are United in their Objections to the NECA Filing

Communication Service for the Deaf, Inc. (CSD) submits these reply comments in response to comments submitted by other parties to the Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate for July 2006–June 2007, submitted by the National Exchange Carriers Administration (NECA) to the Federal Communications Commission (FCC) on May 1, 2006, amended May 10, 2006. All parties commenting on this proceeding joined CSD in raising concerns about the arbitrary, uncertain, and closed nature of the deliberations that led to the proposed rate.¹ Many questioned the FCC’s sudden and unexplained actions and its total disregard for the Administrative Procedure Act’s requirements for notice and comment prior to making significant changes in

¹ Hamilton at 2 (“the procedures for deriving the formula were fundamentally flawed”); HOVRS at 18 (“the complete elimination of marketing/advertising costs . . . is contrary to established practice and based on a flawed definition rationale inconsistent with NECA’s own data collection form and with the reality of the VRS marketplace”); Sorenson at 8-9 (“the use of methodologies that vary significantly from year to year leads to massive uncertainty”); Sprint Nextel at 1 (there is no predictability in the process for establishing TRS compensation rates).

its rate setting policy.² All called upon the FCC to develop a transparent process on the record that is rational, reflective of the needs of consumers and the mandates of the Americans with Disabilities Act, and responds to the nature and demands of this unique industry.³ And all agreed that the categorical exclusion of all marketing costs and certain outreach costs is inappropriate, not only because these costs historically have been allowed, but because they are necessary to achieve the ADA's goals of functional equivalency by expanding public awareness of relay services,⁴ and are consistent with the use of Part 32 Rate of Return methodology.⁵ Moreover, the new distinctions of marketing and outreach that were employed in NECA's recent filing are unsupported by regulatory precedent. It is inappropriate to use these at this late hour, when all providers reported their marketing and advertising costs based on NECA's original definitions.⁶

CSD also agrees with commenters on two other points, first, that the failure to adequately adjust the TRS rates in response to NECA's adjustment in demand is inconsistent with prior practice and will fail to provide reasonable compensation for the upcoming year,⁷ and second, that NECA's decision to suddenly use a weighted average of each cost category, after sixteen years of applying the total cost per minute for each provider in determining each TRS rate not only departs from prior practice without adequate justification, but cuts against the ability of providers to

² Hamilton at 3; Sorenson at 12-14.

³ HOVRS at 18; Sorenson at 5-6; Hamilton at 4-5, 8.

⁴ Sorenson at 5, 17-20; Hamilton at 6.

⁵ Hamilton at 5; HOVRS at 13-14.

⁶ See *e.g.*, Sorenson at 13.

⁷ HOVRS at 4; Sorenson at 11, 26-27.

compete with one another by micromanaging the manner in which each provider must develop their VRS business models.⁸

CSD uses the remainder of these replies to specifically address the need to reimburse providers for the reasonable costs associated with certified deaf interpreters (CDIs).⁹

⁸ Sorenson at 14-15.

⁹ Although to date, CSD has not utilized CDIs, CSD maintains that it is reasonable for VRS providers to use the services of these individuals and would like to retain the option to do so in the future.

II. Expenses Associated with Certified Deaf Interpreters (CDIs) are Reasonable and Should be Allowed.

Long before CSD provided video relay services (VRS), it provided community sign language interpreter services. With more than thirty years of experience in this field, CSD agrees with HOVRS that there is considerable value in utilizing CDIs to facilitate communication in situations where the deaf party to the call may have minimal language skills or otherwise need the added expertise of a person who has grown up in the deaf community. HOVRS defines various categories of such individuals: “[f]oreign born persons, young children, persons from very rural or isolated areas using ‘home’ signs, persons who are severely physically or mentally ill, deaf persons who are uncomfortable with hearing persons, and persons with non-standard language skills.”¹⁰ The latter group is largely composed of individuals who have lower incomes and minimal educational backgrounds. These individuals have often grown up isolated – sometimes with little if any schooling – and are not familiar with either American Sign Language (ASL) or English grammar.

In the D.C. metropolitan area, many deaf individuals who fall into this “minimal language” category used to routinely visit Gallaudet University’s legal services law clinic, housed at the National Center for Law and Deafness from 1975 through 1995.¹¹ Although all lawyers at the clinic were able to sign directly with their clients, it was not at all uncommon to turn to the expertise of CDIs to facilitate conversations with deaf individuals who did not strictly use ASL. The added

¹⁰ HOVRS at 8.

¹¹ Gallaudet University closed NCLD in January of 1996.

knowledge of deaf culture that these deaf interpreters possessed, as well as their unique ability to communicate through gestures and other means, were especially critical to achieving effective communication about legal matters, such as immigration, wills, housing and Social Security, but just as needed to communicate routine matters, such as the need for further documentation or additional appointments to address the client's problem.

AS HOVRS points out, the FCC's mandatory minimum standards already require qualified VRS interpreters who are "able to interpret effectively, accurately and impartially, both receptively and expressively, using any specialized vocabulary."¹² This standard, taken from the Department of Justice's regulations on Titles I through III of the Americans with Disabilities Act, is designed to ensure that full, effective and accurate communication takes place through interpreters.¹³ When a CDI is needed to achieve such communication, the failure to provide such an individual amounts to noncompliance with the ADA.¹⁴ The same should hold true for the provision of effective communication under Title IV.

Moreover, it is more than likely that utilization of CDIs, even if compensable by the TRS Fund, will end up costing the Interstate Fund little or no additional expense. First, as noted by HOVRS, CDIs are needed only rarely; the vast majority of deaf VRS users can achieve effective communication through hearing

¹² 47 C.F.F. 64.604(a)(1).

¹³ See e.g., 28 C.F.R. §36.104; 56 Fed. Reg. 35553 (July 26, 1991).

¹⁴ By way of example, most recently, CDIs were hired to facilitate communication for a deaf-blind individual who participated in the Title IV Stakeholder Dialogue held on May 8, 2006, as part of the National Council on Disability's implementation review of the ADA. While in this case, the CDI was an in-person interpreter, this individual was used in conjunction with other hearing interpreters in the room to make sure that the deaf-blind individual could effectively participate in the proceedings.

interpreters. Accordingly, HOVRS estimates that compensation for the reasonable costs of CDIs would amount to only little over a penny in the VRS rate. More importantly, however, in the long run, inclusion of expenses for CDIs in the calculation of the VRS rate is likely to cut overall VRS costs – or at least cause them to “break even.” If communication with a deaf VRS user who has minimum signing skills is attempted with a hearing interpreter who is ill-equipped to understand the signs or gestures of that individual, the interpreter will be forced to request that individual to clarify his communications – most likely not once, but several times throughout a conversation. The back and forth that will consequently take place before effective communication is achieved will take time – i.e., extra minutes – that will be billed to the TRS Fund. It is far more time and resource efficient – as well as logical – to permit compensation for the additional, though very minimal, costs associated with a CDI, so that prompt and efficient communication can be achieved.

III. Conclusion

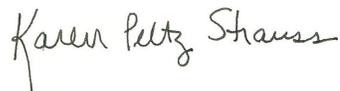
CSD proposes that the FCC freeze the current VRS rate of \$6.644 to ensure stability and consistency until the FCC adopts a permanent VRS rate methodology, but at a minimum for a period of at least 12 months. Anything shorter than that period would be highly disruptive to both VRS providers and the consumers that they serve. During this period, the Commission should determine a permanent VRS methodology by refreshing the record through additional notice to and comment from the public. If the FCC is unwilling to freeze the rate during the time that it takes to determine a permanent methodology, CSD urges the FCC to

reinstate expenses for marketing and outreach, to allow reasonable costs for CDIs, and to adequately adjust the TRS rates in response to NECA's adjustment in demand for the 2006-2007 funding year.

Respectfully submitted,

/s/

Ben Soukup, CEO
Communication Service for the Deaf
102 North Krohn Place
Sioux Falls, SD 57103
605-367-5760



By:

Karen Peltz Strauss
KPS Consulting
3508 Albemarle Street, NW
Washington, D.C. 20008
202-641-3849
kpsconsulting@starpower.net

May 24, 2006