

Before the  
Federal Communications Commission  
Washington D.C. 20554

In the Matter of )  
 )  
Telecommunications Services )  
For Individuals with Hearing and Speech ) CG Docket No. 03-123  
Disabilities, and the Americans with )  
Disabilities Act )  
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COMMENTS OF COMMUNICATION SERVICE FOR THE DEAF, INC.

**I. Introduction**

Communication Service for the Deaf, Inc. (CSD) hereby submits these comments in response to the Federal Communications Commission’s (FCC) Further Notice of Proposed Rulemaking (FNPRM) addressing the misuse of video relay services (VRS).<sup>1</sup> The FCC reports that it continues to receive anecdotal evidence that VRS is being used for communications that do not involve telephone access. CSD agrees with the Commission that VRS should *not* be a substitute for in-person interpreting services or video remote interpreting (VRI), which are services performed on a fee-for-service basis. CSD provides the following recommendations for how the FCC can ensure that VRS is not used as a substitute for these fee-based services.

**II. Assessing VRS Misuse**

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<sup>1</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities, Misuse of Internet Protocol (IP) Relay Service and Video Relay Service*, CG Dkt 03-123, FCC 06-58 (May 8, 2006) (“Misuse NPRM”). Although the FCC’s FNPRM addressed misuse of both Internet Protocol Relay Service and VRS, these comments address only VRS misuse.

The FCC asks whether it is possible for VRS providers and communications assistants (CAs) to determine whether a VRS call is being used as a substitute for an in-person interpreting service or VRI. As a corollary to this question, the agency seeks information about whether VRS providers have procedures in place to ensure that the VRS calls they handle and submit for compensation are legitimate, and further asks whether, if a provider applies these procedures to terminate an illegitimate call, it should receive compensation for the conversation time of the call prior to its termination.

CSD does in fact have in place procedures to determine whether calls made to its CAs are legitimate VRS calls, as well as procedures for CAs to terminate these calls when they are not legitimate. Specifically, CSD's training manuals make clear that CSD VRS does not permit calls in which the video and audio callers (or all parties to a teleconference call) are *known* to be located in the same room. The manual goes on to explain that “[t]hese calls are a misuse of NECA funds, for such funds are intended to make telecommunications equally accessible, not to pay for interpreting situations where the involved parties are responsible for covering the cost,” such as in the case of doctors who need interpreters for their patients or companies who need interpreters for job interviews. In the event that a CA is certain that same room interpreting is taking place, the CA is to summon another video interpreter who oversees the VRS operations for that center (a “floater”) to confirm this fact. Such confirmation must be accomplished by viewing the video screen, not by asking questions of the callers. If the CA's assessment of the

situation is confirmed, the callers are notified that the call cannot be completed and it is terminated.

It is important to note that the ability of a CA to detect same room interpreting misuse will vary considerably, depending on the circumstances of the call. Below are three possible call scenarios:

- Calls in which Same-Room Interpreting is Patently Obvious – In this situation, both parties to the call are clearly in the CA’s video field and therefore it is patently obvious to the CA during the set up of the call that both parties are communicating with each other in the same room. This can also occur when the exchange of audio information during the call set up makes clear that two parties are situating themselves in the same room (for example, “You go sit over there and then we will arrange for VRS to interpret our meeting.”) When this occurs and is confirmed by two VRS interpreters (the one who is handling the call and a floater), CSD’s agents inform the parties to the call that the FCC prohibits same room interpreting through VRS, and will not complete the call. Because in this instance, the call has not even been initiated, no billing is submitted for the call.
- Calls in Which Misuse Occurs After the Call is Set Up – At times, a VRS call is set up and it becomes apparent that the call entails same room interpreting only *after* the call is in progress. When this happens, CSD’s CAs have been instructed that they should terminate the call, again with the support of a floater or supervisor, in order to prevent the misuse from continuing. Because this type of call may have been legitimate when it first

began – but ceased being legitimate sometime thereafter – billing is submitted for the conversation minutes that occurred up until the point that the misuse is detected. CSD believes that billing for this initial portion of the call is appropriate because the provider acted in good faith in first accepting the call and then in terminating the call, and should not be penalized for actions of consumers that are outside of its control. Of course, all billing ceases once the call is disconnected.

- Calls in Which the CA May Suspect Misuse Through Call Content. – On occasion, it may appear to a CA that a VRI call is taking place, for example, when the visible party has a side conversation with another person in the middle of the conversation. However, in these instances, where the two parties are not in clear view of CA and there is no obvious dialogue that unequivocally contains statements that the parties are in the same room, the CA can only *suspect* that this is a same room call, and it would be inappropriate to allow the agent the discretion to police or monitor the call content or to interrogate either of the parties to the call. For the past decade and a half, the Commission has abided by the principle that CAs are “transparent conduits” who must relay “conversations without censorship or monitoring functions.”<sup>2</sup> CSD agrees with prior statements by the Commission that compliance with this policy is needed to provide relay users

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<sup>2</sup> *In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act*, Report and Order and Request for Comments, CC Dkt 90-571, FCC 91-213 at ¶13 (July 26, 1991).

with “confidence in the basic privacy of their conversations.”<sup>3</sup> Giving CAs the discretion to judge if and when a particular call content signals same room interpreting would violate the Americans with Disabilities Act’s (ADA’s) mandate for relay calls to be functionally equivalent to conventional voice telephone calls.

### **III. Responding to Misuse Calls**

The FCC asks whether providers should be required to maintain records of illegitimate calls and whether this is consistent with its rule prohibiting CAs from keeping records of the content of relay calls beyond the duration of those calls.<sup>4</sup> The Commission also asks whether it would be appropriate to include in such records the date, time, and nature of the call and the reason why the call was determined to be illegitimate.

CSD does maintain records of the occurrence of terminated calls as a result of misuse. Although to date, no CSD customer has ever challenged a call termination after being informed of the FCC rules regarding same room interpreting, having such records is intended to better enable CSD to respond to complaints that might result from such disconnections. CSD believes that maintaining these records is acceptable because these calls are not legitimate calls, and therefore fall outside the FCC’s rules governing relay call confidentiality. Put simply, when consumers choose to make illegitimate calls, they give up their right to TRS confidentiality.<sup>5</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> Misuse NPRM at ¶20. The Commission cites to 47 C.F.R. §225(d)(1)(F).

<sup>5</sup> CSD believes the same holds true for calls involving profanity, threats, or lewd comments that are directed to the CA. When communications are directed to the

Conversely, if a legitimate call is being placed but that call contains illegal, profane or otherwise questionable content (e.g., involving the sale of drugs), that call must continue to receive the protections of the TRS confidentiality provisions and no records of the content of those calls should be allowed. The only permissible records in this instance would be the call detail records to complete and verify accurate billing. The FCC has always required CAs to maintain complete and unequivocal call privacy, so that they are not placed in the difficult position of having to determine the true meaning of any given relay call.

The FCC also asks whether it should waive or modify any of its TRS rules to enable VRS providers to ensure that the calls they handle are legitimate.<sup>6</sup> Although it is not easy for a CA to ignore certain call content – especially when it contains profanity, obscenity or violence – early on, the FCC decided that it is not appropriate to empower CAs to make judgments about the conversations they facilitate. Otherwise, what one CA may deem permissible conversation, another might find extremely offensive. Never knowing whether their calls would pass

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video interpreting agent and not the third party, technically they are not “relay” calls. In June of 2004, the FCC requested comment on the extent to which it should regulate relay calls that are abusive, sexually explicit, obscene, threatening, use inappropriate conduct or language or that involve illegal acts. *Telecommunications Relay Services and Speech-to-Speech Relay Services for Individual with Hearing and Speech Disabilities*, Report And Order, Order On Reconsideration, and Further Notice Of Proposed Rulemaking, CC Dkt. Nos. 90-571, 98-67, 03-123, FCC 04-137 (19 FCC Rcd 12475 at ¶255 (June 30, 2004). At that time, CSD explained that where abuse, obscenity or threatening behavior is directed at a VRS interpreter, the interpreter is removed from her role as a conduit, and that agent should have the right to terminate such communications. Again, CSD believes it is appropriate policy to keep records of instances in which such calls are terminated. CSD Comments at 41 (October 18, 2004).

<sup>6</sup> Misuse NPRM at ¶18.

muster, consumers would quickly lose confidence in the relay system, frustrating Congress's goal of achieving equal telephone access. CSD believes that this FCC policy on confidentiality – which already takes into account section 705 of the Communications Act – remains sound, and that CAs should be required to continue handling, and be prohibited from keeping records of, such legitimate calls.

#### **IV. Recommendations for Curbing Same Room Interpreting through VRS**

##### **A. VRS Registration is Not an Appropriate Means of Curbing Misuse**

The FCC asks whether other steps, such as user registration, should be adopted to curtail the misuse of VRS. While CSD believes that VRS registration may assist in achieving other objectives of the ADA, such as the handling of 9-1-1 emergency calls, CSD does not believe that registering VRS users will deter the use of these services for same room interpreting. To begin with, while Internet relay misuse typically takes advantage of the anonymity of the caller, calls made over VRS are anything but anonymous, with the caller's face in plain view. Thus, while a registration requirement might deter potential Internet relay offenders from continuing to perpetrate their wrongdoing because they may not want to reveal their identities, this would not be the case for VRS users, because to a certain extent, their identities are revealed every time they log onto a VRS call.

Additionally, unlike illegitimate Internet relay calls, which generally involve *hearing* people who are unfairly taking advantage of a free and anonymous telephone service designed for people who cannot hear, the individuals to a VRS same room interpreting call are *potentially* legitimate VRS users, that is, one party

to the call is typically deaf or hard of hearing and the other is hearing. While registration of Internet relay abusers may discourage any and all use of Internet relay by the hearing wrongdoers who otherwise would have no interest in ever using relay services, VRS registration is not likely to deter misuse by deaf and hard of hearing individuals who are otherwise potentially bona fide VRS users.

#### B. Suggestions to Curb Relay Misuse

If the FCC wishes to curb the misuse of same room VRS interpreting, it needs to first consider why these calls are taking place. While some businesses and individuals may intentionally seek out VRS as a no-cost interpreting service, others may simply be ignorant of the purpose of telecommunications relay services. With little knowledge of TRS or the ADA, some businesses may actually perceive VRS to be the perfect solution for meeting their need to communicate with their deaf employees and the deaf public. When VRS providers “look the other way” and continue to process these calls as VRS communications, they encourage such abuse of the relay system. Yet these trends can be reversed. Specifically, reducing VRS same-room interpreting can be achieved through greater provider and FCC outreach and education, and through improved Commission guidance, as follows:

##### 1. *Education and Outreach.*

First and foremost, it is imperative for the FCC – in conjunction with the Department of Justice – to undertake comprehensive efforts to better educate businesses and individuals about the role of VRS and the fact that this service is not a substitute for interpreting services otherwise required under the ADA. This can and should be achieved through mainstream and disability organization

publications and media outlets, fact sheets, web pages, conferences, and other means designed to reach the largest audiences possible. In addition, providers should be directed to share information about the limitations of VRS with their potential customers. There are various opportunities for the distribution of such information: at the time that video equipment is installed in the homes and businesses of VRS users, when updating VRS provider websites, at conferences, and when engaging in other contacts with potential and existing customers.

## *2. FCC Guidance on Misuse.*

Although, as noted above, CSD strongly believes that the Commission's minimum TRS standards must continue to protect the privacy and confidentiality of all callers and not grant additional discretion to CAs to monitor actual call content, CSD does believe that guidance is in order to put an end to what may be the existing practices of some VRS providers to permit same-room interpreting. Specifically, these providers need direction on when it is permissible or necessary to terminate VRS calls that are illegitimate. Clearly defining when it is appropriate to take such action would go a long way toward reducing this form of VRS misuse.

## **V. Conclusion**

CSD shares the FCC's concerns about VRS (and Internet relay) misuse and offers its cooperation to the Commission in future efforts to curb the inappropriate use of these vital services.

Respectfully submitted,

/s/

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