

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals)	
with Hearing and Speech Disabilities)	
)	
Misuse of Internet Protocol (IP) Relay)	
Service and Video Relay Service)	

To: The Commission

**COMMENTS OF
TELECOMMUNICATIONS FOR THE DEAF AND HARD OF HEARING, INC.;
NATIONAL ASSOCIATION OF THE DEAF;
DEAF AND HARD OF HEARING CONSUMER ADVOCACY NETWORK; AND
CALIFORNIA COALITION OF AGENCIES SERVING
THE DEAF AND HARD OF HEARING**

Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), through undersigned counsel, National Association of the Deaf (“NAD”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”) and California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”) (collectively, the “Consumer Groups”) hereby submit their comments in response to the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”), FCC 06-58, released May 8, 2006, seeking comment on misuse of Internet Protocol Relay Service (“IP-Relay”) and Video Relay Service (“VRS”).

I. THE COMMENTING PARTIES

TDI is a national advocacy organization that promotes equal access to telecommunications and media for the 28 million Americans who are deaf, hard-of-hearing, late-deafened, or deaf-blind so that they may attain the opportunities and benefits of the

telecommunications revolution to which they are entitled.¹ TDI believes that only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

DHHCAN, established in 1993, serves as the national coalition of organizations² representing the interests of deaf, hard of hearing, and deaf-blind citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. DHHCAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

Established in 1880, the NAD is the nation's oldest and largest constituency organization safeguarding the accessibility and civil rights of 28 million deaf, hard of hearing, late deafened, and deaf-blind Americans in a variety of areas, including education, employment, health care,

¹ TDI educates and encourages consumer involvement regarding legal rights to telecommunications accessibility; provides technical assistance and consultation to industry, associations, and individuals; encourages accessible applications of existing and emerging telecommunications and media technologies in all sectors of the community; advises on and promotes the uniformity of standards for telecommunications technologies; works in collaboration with other disability organizations, government, industry, and academia; develops and advocates national policies that support accessibility issues; and publishes "The GA-SK" quarterly news magazine and the annual *Blue Book, TDI National Directory & Resource Guide for Equal Access in Telecommunications and Media for People Who Are Deaf, Late-Deafened, Hard-of-Hearing or Deaf-Blind*.

² The member organizations of DHHCAN include the American Association of the Deaf-Blind (AADB), the American Deafness and Rehabilitation Association (ADARA), the Association of Late-Deafened Adults (ALDA), the American Society for Deaf Children (ASDC), the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Communication Service for the Deaf (CSD), Deaf Seniors of America (DSA), Gallaudet University, Gallaudet University Alumni Association (GUAA), National Association of the Deaf (NAD), National Black Deaf Advocates (NBDA), National Catholic Office of the Deaf (NCOD), Registry of Interpreters for the Deaf (RID), Telecommunications for the Deaf and Hard of Hearing, Inc.(TDI), USA Deaf Sports Federation (USADSF), and The Caption Center/WGBH.

and telecommunications. A private, non-profit organization, the NAD is a dynamic federation of state associations and organizational affiliates and direct members. Primary areas of focus include grassroots advocacy and empowerment, captioned media, deafness-related information and publications, legal rights technical assistance, policy development and research, and youth leadership development. The NAD works closely with deafness related national organizations and is a member of several coalitions representing the interests of deaf, hard of hearing, late deafened, and deaf-blind individuals.

CCASDHH was established in 1988 and incorporated as a nonprofit statewide membership organization. On an annual basis, CCASDHH's member agencies³ ensure that a variety of social services are available serving 3.8 million deaf and hard of hearing individuals regardless of where they live throughout all 58 counties in California. Through its member agencies' diverse workforce, including Native American, Hispanic, Asian, Russian, Hmong, and African-American individuals who are deaf or hard of hearing, CCASDHH works hard to improve the quality of lives of Californians who are deaf or hard of hearing and who otherwise would not have full access to such services as telecommunications, education, certified sign language interpreters, parent-to-parent support for newborns identified with a hearing loss, literacy, employment development, and advocacy.⁴

³ CCASDHH's members include eight nonprofit community-based organizations providing various social services "of by and for" deaf and hard-of-hearing Californians -- NorCal Center on Deafness; Greater Los Angeles Agency on Deafness; Deaf Counseling, Advocacy and Referral Agency; Deaf Community Services of San Diego; Deaf and Hard of Hearing Service Center; Center on Deafness: Inland Empire; Orange County Deaf Equal Access Foundation and Tri-County GLAD - and the California Association of the Deaf, a statewide membership organization representing deaf and hard-of-hearing consumers.

⁴ Member agencies and CCASDHH were the primary forces in state legislation that established the TTY equipment distribution program and the California Relay Service, long before the Americans with Disabilities Act was passed. As direct service providers, CCASDHH

II. DISCUSSION

A. Communications Assistant Confidentiality

In its FNPRM, the Commission asks whether it would be appropriate for either IP-Relay or VRS Communications Assistants (“CAs”) to screen out and block or terminate calls that they determine are not legitimate. The Consumer Groups would object to any such screening by CAs. Because their members are users of both IP-Relay and VRS, the Consumer Groups are sensitive to the expectations of people who are deaf or hard of hearing when using these services. Specifically, there is a consumer expectation that CAs be transparent to the call. Transparency requires that the CAs treat anything said during a call as strictly confidential with the full expectation that the content of the call not be conveyed to anyone. Without that expectation of CA transparency, consumers making legitimate calls would not have the same feeling of privacy that hearing people have when they call each other.

IP-Relay and VRS are both forms of Telecommunications Relay Service (“TRS”). The Americans with Disabilities Act (“ADA”), PL 101-336, July 26, 1990, codified at 47 U.S.C. § 225, defines TRS as follows:

The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual *in a manner that is functionally equivalent* to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

member agencies have the pulse of the community they serve to best determine needs and priorities.

Id. at § 225(a)(3) (emphasis added). In short, TRS must be functionally equivalent to voice telecommunications services. Just as voice telephone users have an expectation of privacy when calling each other, so should IP-Relay and VRS users have the same expectation of privacy. If the CAs were required to screen out and block or terminate calls that they perceived to be a misuse of IP-Relay or VRS, consumers would not have the experience of functionally equivalent service, and without functional equivalency, there would be no compliance with the mandates of Section 225.

The requirement of strict confidentiality on the part of CAs must be protected, just as confidentiality is strictly protected when people speak to their physicians, therapists, lawyers or clergy. With each of these professionals, it is the expectation of confidentiality that makes free and open communication possible. The same is equally true for CAs, where the CA is fulfilling a role that makes it possible for two people to speak with each other through IP-Relay or VRS who would not have the capability of speaking with each other without a CA.

Lastly, just as is the case with telephone calls between hearing people, where only a party to the call can terminate the call, in the case of IP-Relay and VRS calls, only a party to the call should be able to terminate the call. If a CA had the discretion to terminate the call on his or her own volition, the CA would have authority over a call that no telephone company has over ordinary calls made between hearing people. That type of discretion would clearly violate the functional equivalency requirement of the ADA.

B. Alternative Remedies

1. IP-Relay. There are available alternative means to safeguard legitimate calls and ensure consumer confidence in the integrity and confidentiality of IP-Relay. The FNPRM asks about protecting merchants from misuse of IP-Relay in the case where people

are using stolen or fake credit cards to order merchandise, and often have such merchandise shipped to overseas locations. Merchants can use the same protections against credit card fraud when the caller is using IP-Relay as they use when the caller is making an ordinary voice call. Specifically, the merchant can ask for the 3-digit security code on the back of the credit card or the 4-digit security code on the front of the card as an additional protection. In addition, the merchant can delay shipment of the merchandise until after payment is confirmed with the credit card company. Finally, just as is the case with ordinary telephone orders, there is nothing preventing merchants from refusing orders requesting shipment to suspicious overseas locations. Commission action is not needed for any of these remedies. Merchants are free to implement them on their own. However, merchants should not be permitted to refuse to accept IP-Relay calls in general as a way to prevent fraud. Instead, they should use the protections discussed herein. In addition, as discussed below, education and outreach on the part of the Commission and the IP-Relay providers would be useful for the purpose of encouraging merchants to implement these protections.

2. *The Challenge of Preventing VRS Misuse.* The FNPRM also asks for comment on how to prevent misuse of VRS. VRS makes it possible for a person who is deaf or hard of hearing to use sign language to speak with a hearing person through a relay service where the CA is an interpreter who translates between the person who is deaf or hard of hearing using American Sign Language (“ASL”) and the hearing person speaking English or Spanish. As explained in the FNPRM, VRS is meant to provide functionally equivalent telecommunications service; it is not meant to be used as a means to obtain free remote video interpreting services, where the two parties to the call are on the same premises.

Although the Consumer Groups agree that it is wrong to misuse VRS, to date claims of VRS misuse have been purely anecdotal in nature, and the extent of VRS misuse is unknown. Unless and until there is some data demonstrating that VRS misuse is actually a problem worth addressing, it would be an unfair intrusion of governmental authority to remedy a problem that might be minimal at worst.

If protection against misuse of VRS is needed, the issue is a difficult one. As explained above, the Consumer Groups object to the CA having a role in determining whether a VRS call is legitimate, because an enforcement role for the CA would compromise the confidentiality of the CA and violate the functional equivalency requirements of the ADA. But even if the CA were to have a role in policing misuse of VRS, absent some admission by one of the parties to the call, there are no objective or even subjective criteria to determine whether the two parties to the call are located on the same premises. Therefore, there does not exist an effective method for a CA to detect and prevent misuse of VRS.

3. *Location Registration.* Registration of VRS users would not be effective, because a VRS user can register at some location other than his or her true location if the VRS user intended to “call” people at his or her location to obtain free remote interpreter services. In any event, the Consumer Groups object to a registration requirement because it would be inconsistent with the functional equivalency requirements of the ADA and it would place an undue burden on VRS users that is not placed on voice telecommunications users for the purpose of preventing misuse of the telephone network. Although Voice over Internet Protocol (“VoIP”) users are required to register their location for the purpose of emergency call handling, VRS emergency call handling is not before the Commission in this FNPRM. The question of

VRS location registration for the purpose of emergency call handling is more appropriately addressed when the Commission considers issues related to VRS emergency call handling.

For the same reason that the Consumer Groups object to VRS location registration for the purpose of preventing misuse of VRS, the Consumer Groups object to IP-Relay location registration for the purpose of preventing misuse of IP-Relay. Location registration is not an effective remedy, because someone intent on misusing IP-Relay could simply provide a false registration address. In addition, location registration for the purpose of preventing IP-Relay misuse places an undue burden on IP-Relay users that is not placed on ordinary telecommunications users for the purpose of preventing misuse of telecommunications.

4. *Education and Enforcement.* The most effective means to prevent misuse of VRS is through a combination of education and enforcement. Both the Commission and the VRS providers can engage in outreach campaigns to explain the purpose of VRS and to explain why VRS cannot be used for free remote interpreting services for people located on the same premises. The Commission can encourage the VRS providers to conduct these campaigns by making it clear that such campaigns are reimbursable from the TRS Fund. In addition, each of the VRS providers can include information about VRS misuse on their websites, and when hearing people initiate VRS calls, they can be told that VRS is limited to calls with people at other locations and cannot be used as a substitute for remote interpreting services when the other party to the call is at the same location.⁵

To buttress the education and outreach campaigns, the Commission can adopt forfeitures in the form of reasonable fines to be assessed against those who misuse VRS. The Consumer Groups support forfeitures for misuse, because misuse of VRS has an adverse impact on the TRS

⁵ It would be inappropriate to provide the warning to a called party because the warning to a called party would destroy the transparency of the VRS service.

Fund, to the detriment of all consumers. The education and outreach campaigns can warn consumers of the penalties for misuse of VRS.

Similarly, the Commission and the IP-Relay providers can engage in education and outreach campaigns directed at merchants who are making credit card sales as a result of receiving IP-Relay calls. Because these campaigns are directed at businesses and involve business practices, they should be coordinated with the Federal Trade Commission, Department of Commerce, and national trade organizations such as the U.S. Chamber of Commerce and credit card companies. The campaigns can inform the merchants of the steps that they can take to prevent credit card fraud resulting from misuse of IP-Relay. As the Consumer Groups are recommending for VRS, the Commission can encourage the IP-Relay providers to conduct these campaigns by making it clear that such campaigns are reimbursable from the TRS Fund.

III. CONCLUSION

For the reasons discussed herein, the Consumer Groups oppose any Commission regulation or policy that would place the Communications Assistants in enforcement positions and thus violate the functional equivalency provision of the ADA and compromise the requirement for confidentiality on the part of Communications Assistants. The Consumer Groups also oppose location registration for the purpose of preventing misuse of IP-Relay and VRS because it also violates the ADA's functional equivalency provision and places an undue burden on consumers. Instead, the Consumer Groups would encourage merchants to use available commercial practices to prevent credit card fraud associated with misuse of IP-Relay and encourage education and enforcement programs to prevent misuse of VRS.

Respectfully submitted,

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