

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)
_____)

OPPOSITION TO SNAP PETITION BY
COMMUNICATION SERVICE FOR THE DEAF, INC.

I. Introduction

Communication Service for the Deaf, Inc. (CSD) hereby submits this Opposition to the petition filed by Snap Telecommunications, Inc. on July 14, 2006, requesting a waiver of the Federal Communications Commission's (FCC's) video relay service (VRS) interoperability rule for eight months.¹ CSD believes that Snap had more than sufficient notice to achieve interoperability of its video technology before receiving certification to provide its service and that the company has failed to make the necessary showing under the FCC's rules to justify this waiver.

II. Snap had sufficient notice to incorporate interoperability into its video technology.

¹ Snap Telecommunications, Inc. Request for Limited Waiver (July 14, 2006), (Snap Petition).

On May 9, 2006, the FCC released an order prohibiting VRS providers from restricting consumers to individual VRS providers.² The FCC found the failure to provide VRS interoperability to be “inconsistent with the functional equivalency mandate, the public interest, and the TRS regime as intended by Congress,” and noted that the practice of blocking VRS users “raises serious public safety concerns.”³ The FCC’s interoperability ruling requires that all VRS consumers be able to place a VRS call through the services of any VRS provider, and that all VRS providers be capable of receiving calls from, and making calls to, any VRS consumer. The order was in response to a petition filed by the California Coalition of Agencies Serving the Deaf and Hard of Hearing filed on February 15, 2005, and followed FCC meetings and the submission of comments in support of interoperability by consumers nationwide and by nearly every VRS provider, for a period of more than two years.⁴

Only a few months *after* the California petition was filed, during the months of June and July, 2005, representatives of Snap Telecommunications visited the offices of various FCC Commissioners to urge the Commission to direct the Commission’s Disability Rights Office (DRO) and the National Exchange Carriers Administration (NECA) to consider Snap to be eligible to receive compensation from

² *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Further Notice of Proposed Rulemaking, CG Docket No. 03-123, FCC 06-57 (May 9, 2006) (Interoperability Order).

³ Id at ¶¶29; 76.

⁴ Some of these meetings were held before the petition for interoperability was filed.

the NECA Interstate TRS Fund as a VRS provider.⁵ Shortly after that, on July 22, 2005, Snap also met with staff of the Consumer and Governmental Affairs Bureau to discuss VRS certification, wherein the attendees addressed matters of VRS interoperability.⁶ At the time that all of these meetings were held, Snap was aware of its plans to use session initiation protocol (SIP) video technology for its VRS customers, despite the inability of this technology to be interoperable with the prevalent VRS technology, which then and now relies on the H.323 protocol.

On December 12, 2005, the FCC released an order amending its rules to allow common carriers to apply for certification to receive compensation from the NECA Interstate TRS Fund for the provision of VRS or IP relay services.⁷ At that time, the Commission made very clear that a provider could only become eligible for such compensation upon a showing that the provision of VRS or IP relay by that provider would, among other things, “meet or exceed all non-waived operational,

⁵ *Ex parte* letter filed by Snap Telecommunications, Inc., reporting on a meeting held with Lauren “Pete” Belvin, Legal Advisor to Commissioner Abernathy (June 7, 2005); *ex parte* letter filed by Snap Telecommunications, Inc., reporting on a meeting held with Commissioner Adelstein and his staff (June 7, 2005); *ex parte* letter filed by Snap Telecommunications, Inc., reporting on a meeting held on June 30, 2005 with Jessica Rosenworcel, Legal Advisor to Commissioner Copps, (July 1, 2005); *ex parte* letter filed by Snap Telecommunications, Inc., reporting on a meeting held on July 12, 2005, with Michelle Carey, Legal Advisor to Chairman Martin Abernathy (July 13, 2005).

⁶ *Ex parte* letter filed by Snap Telecommunications, Inc., reporting on a meeting held with CGB and DRO staff (July 22, 2005).

⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order on Reconsideration, CG Docket No. 03-123, FCC 05-203 (December 12, 2005).

technical, and functional mandatory minimum standards contained in the Commission's rules."⁸

On January 25, 2006, Snap submitted its application to become certified as a VRS provider. During the months that ensued, Snap made additional presentations to the FCC, some of which included discussions about the ability of Snap's proposed video technology to be interoperable with H.323 technology. Most notably, in an ex parte letter filed on March 31, 2006, Snap reported that it had indicated its strong support for achieving interoperability, even noting that it was willing to undertake "the expense and burden to assist the Commission in meeting its *near-term* interoperability goals." At that time, Snap laid out a proposed solution for interoperability, and estimated that this could be achieved within nine to twelve months. Accordingly, when, on May 8, 2006, the FCC approved Snap's request for certification, it made clear that such grant was conditioned upon the company's making its VRS equipment and service interoperable with VRS technologies used by existing VRS providers.⁹ At the time, the FCC understood full well that Snap's video Internet technology was not, without translation, interoperable with videophone devices used by other VRS providers, and explained that only upon achieving such interoperability could these services become eligible for TRS compensation:

⁸ *Id.* at ¶23.

⁹ *Notice of Certification of Snap Telecommunications, Inc. as a Provider of Video Relay Service Eligible for Compensation from the Interstate Telecommunications Relay Service Fund*, Public Notice, CG Docket No. 03-123, FCC 06-67 at 2 (May 8, 2006).

We also note, however, that Snap indicates that it plans to offer service only via a particular Internet protocol that, without translation, is not interoperable with videophone devices employed by other VRS providers. We note that the Commission has adopted a declaratory ruling requiring the interoperability of VRS equipment and service. We condition this grant of certification upon compliance with that order.¹⁰

As noted above, a day later, the FCC released its order on interoperability. That order described in detail the need to provide relay services which, as closely as possible, approximate dial tone service available to conventional voice telephone users. It rejected outright closed VRS systems in which consumers are forced to rely on a single provider, noting that the inability to complete calls through alternate providers, especially where those calls are urgent, denies functionally equivalent access mandated by the ADA.¹¹ It made clear that having to use multiple video phones to promptly make calls was both “impractical” and inappropriate, in that voice telephone users are not required to maintain various sets of equipment to access the telephone network.¹² And it concluded that a closed system “adversely affects” the ability of hearing people to make VRS calls because such individuals might have to go through several relay providers before being able to reach the one that is able to get through to the deaf and hard of hearing VRS user they are calling.¹³

¹⁰ *Id.* (footnotes omitted). The FCC cited the *Snap Application* at 6 and the company’s *ex parte* letter of March 31, 2006.

¹¹ Interoperability Order at ¶31.

¹² *Id.* at ¶32.

¹³ *Id.* at ¶33.

Snap’s petition attempts to argue that its technology will bring VRS closer to the goals of functional equivalence.¹⁴ While Snap’s efforts to provide enhanced VRS capabilities may be admirable, the FCC has already determined that functionally equivalent relay service dictates open network architecture that allows VRS users to access the services of any VRS provider. Although Snap attempts to argue that the harm to consumers of waiting just eight more months to enjoy interoperable VRS would be minimal,¹⁵ consumers have been waiting far too long to enjoy this right already. Having just consummated two years of a seemingly endless string of meetings and pleadings on the need for open access, it is nonsensical to expect that the Commission should execute an about-face from its brand new interoperability mandate by making an exception for a single provider.

Snap suggests that the denial of a waiver would result in “significant harm” to consumers because it would delay the introduction of its new technology.¹⁶ But Snap was well aware of the need to make its system interoperable for well over a year. As noted above, Snap first approached the Commission about becoming a VRS provider over a year ago, only a few months after the petition on interoperability had been filed. Snap’s suggestion “that VRS providers were given almost three months before the new interoperability requirement became effective,” but that “the same is not true for Snap”¹⁷ is somewhat disingenuous, in that Snap has known of the consumers’ strong interest in – and the FCC’s likely intent to mandate –

¹⁴ Snap Petition at 5. Snap’s arguments that it would introduce additional highly skilled interpreters to the VRS market are inapposite to the interoperability issue.

¹⁵ Snap Petition at 7.

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 64-65.

interoperability long before this. Indeed, the issue before the Commission is not, as Snap would have the Commission believe, whether SIP technology is superior, or whether its new service will add new qualified sign language interpreters to the personnel pool already employed by existing VRS providers. Rather, the main issue that the Commission needs to consider is whether Snap had sufficient notice of the need to make its technology interoperable over the past year. There is little question that the answer to this is indisputably “yes.” Through its meetings with the FCC over the past year, and filings made by both Snap and other parties to the relay docket, it is more than apparent that Snap knew full well – for more than a year – that the Internet technology it intended to employ would not be interoperable.¹⁸ Yet Snap chose to move ahead anyway and only after being granted certification now approaches the FCC at the 11th hour to request the right to provide non-interoperable service (albeit for a limited period of time), when all other providers must comply with the FCC’s interoperability order.¹⁹ Were the FCC to grant this waiver, the door would be open for the next provider with new VRS features incapable of meeting the minimum standards to demand similar treatment. As the FCC would be hard-pressed to deny that waiver as well, this

¹⁸ Snap cannot argue that it did not know that the Commission was intent on requiring interoperability over the past several months. When the company met with CGB on March 20, 2006, it tried to persuade the bureau not to deny its certification request based on a finding that SIP was not interoperable with H.323. See *ex parte* letter of Snap Telecommunications (March 22, 2006).

¹⁹ Snap may try to argue that it was unwilling to invest the time and resources into achieving interoperability until the FCC approved its petition, which was only two months ago. However, there was nothing to stop Snap from pursuing another means of providing VRS without obtaining certification. Snap could have done so through a state relay system or through a traditional common carrier, methods employed by other VRS providers.

pattern could continue until there were individual silos of VRS technologies, each requiring different video equipment and each incompatible with each other. This was exactly the result that the FCC was trying to avoid through its interoperability order. The Commission should not now reverse itself.

Snap claims that the Commission has tended to grant waivers where a temporary delay in compliance is likely to ultimately yield new services.²⁰ But the company has not made a sufficient showing that the denial of its waiver request in this instance would result in significantly delaying the introduction of SIP into the VRS industry. In any event, the Commission should not sacrifice VRS interoperability simply to move up the date – by only a few months – that SIP is introduced.

²⁰ Snap Petition at 59.

III. Snap’s solution for interoperability raises serious concerns.

CSD also has concerns about Snap’s proposed solution to achieve interoperability. Specifically, Snap indicates that it will add a media gateway server to its call center, which would translate incoming calls from SIP to H.323 and vice versa.²¹ The problem is that because the Ojo is not being redesigned to support H.323, if the Snap media gateway is off-line, at full capacity, subject to a network interruption, or not available for any other reason, a caller would not be able to access any other provider. Rather than support interoperability, this type of solution introduces another possible point of blockage that could prevent the user from being able to reach his or her VRS provider of choice. A far better solution would be to add H.323 support to the Ojo in addition to the current SIP support, to eliminate the need for the media gateway.

IV. Conclusion

Snap simply has not presented “unique or unusual factual circumstances;” nor has it been able to show that application of the interoperability rule to its service would be “inequitable, unduly burdensome or contrary to the public interest,” as is required to obtain a waiver from the Commission’s rules.²² Previous waivers of the FCC’s mandatory minimum relay standards have historically been industry wide; never has the agency granted a waiver for a single company while requiring all other companies

²¹ Snap Petition at 3, 25-27.

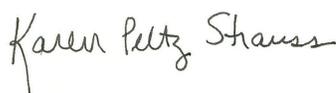
²² 47 C.F.R. §1.925(b)(3)(i). See Snap Petition at 32.

providing that type of relay service to comply with its rules.²³ Any other result in the instant case would, in fact, be inequitable and place an unfair burden on all other providers. Finally, any argument that Snap “has no reasonable alternative” is simply untrue. Snap was on full notice of the need to make its technology interoperable for more than a year, and rejected the “alternative” of working to achieve interoperability during that time.

Respectfully submitted,

/s/

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²³ For the most part, this was also the case for the waivers (to which Snap alludes in its petition), granted to digital wireless providers who were unable to make their services compatible with TTYs in the late 1990s. The individual waiver granted for TDMA carriers, to which Snap also alludes, was not opposed by consumers at the time because TDMA was being phased out and it would have been pointless to require these carriers to achieve compatibility with a technology that was migrating to CDMA and would continue to exist for only a brief period of time. Similarly, the waiver granted Cox Communications from the plug and play interoperability rules (referenced in the Snap Petition at 55) was granted because the FCC understood the need to avoid the short term costs required for an interim solution. The situation here is quite different, as H.323 is not in the process of being phased out any time in the near future.

