

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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| In the Matter of |) | |
| |) | |
| Telecommunications Relay Services and |) | |
| Speech-to-Speech Services for Individuals |) | CG Docket No. 03-123 |
| with Hearing and Speech Disabilities |) | |
| Petition for Declaratory Ruling on Video Relay |) | |
| Service Interoperability |) | |

REPLY COMMENTS OF SNAP TELECOMMUNICATIONS, INC.

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Snap Telecommunications, Inc. (“Snap”), by its attorneys, hereby files its reply comments on the Further Notice of Proposed Rulemaking (“FNPRM”) in the above captioned proceeding.¹

I. COMMENTERS EXPRESSED NEAR UNANIMOUS OPPOSITION TO FCC-IMPOSED VRS PROTOCOLS.

Commenters overwhelmingly opposed FCC-mandated VRS protocols.² As Snap and others explained, such action is unnecessary given the interoperability, backward compatibility, and non-degradation requirements already imposed by the Commission in the Interoperability

¹ See *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442 (2006) (“*Interoperability Order*”).

² See Sorenson Comments at 7; Hands On Video Relay Services, Inc. Comments at 15; Verizon Comments at 5; Sprint Nextel Comments at 4. See also Communication Service for the Deaf, Inc. (“CSD”) Comments at 9 (noting that the *Interoperability Order* “directed new VRS providers entering the market to ensure that their service is interoperable with the VRS services being offered by existing providers [and that] this directive [is] the only one that is fair under the circumstances.”).

Order.³ By enforcing these existing requirements, the Commission can achieve the desired benefits and, at the same time, encourage innovation and promote functional equivalency in a more flexible, efficient, market-driven way.⁴

Although Telecommunications for the Deaf and Hard of Hearing, Inc. and other consumer advocacy groups (“Consumer Groups”) -- filing jointly -- declined to directly address the issue of mandatory VRS protocols in the initial round of comments, the widely supported approach noted above is the best approach toward achieving the central objectives described by the Consumer Groups:

[T]here needs to be strong and forward-looking rules requiring relay products and services to be interoperable and compatible. ... Technological innovations are constantly evolving. The Commission needs to encourage innovation within established parameters.⁵

Snap agrees fully with the Consumer Groups and respectfully submits that, given the existing requirements already adopted in the Interoperability Order and the overwhelming record opposition to Commission-mandated VRS protocols, the Commission should adhere to its and Congress’ clear preference for market-driven standards (particularly in highly dynamic areas) and decline to mandate specific protocols for the provision of VRS.

Contrary to the overwhelming opposition of commenters, AT&T proposed that the Commission should adopt a particular standard for VRS. Specifically, AT&T argued that, “[a]lthough SIP is the emerging standard for Next Generation Networks, the widespread use of

³ See, e.g., Snap Comments at 20; Sorenson Comments at 9 (“The better course is for the Commission to continue to require interoperability, but leave it to providers and equipment manufacturers to determine the best means of achieving that interoperability.”).

⁴ Snap Comments at 19-22.

⁵ Joint 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 at 8.

H.323 terminals by VRS users warrants adoption of the H.323 protocol as a minimum standard to be used by all VRS providers.”⁶ Snap agrees that SIP is increasingly being embraced as the standard of choice in the video phone, VoIP, and other arenas across the communications industry.⁷ However, widespread use of the legacy H.323 (or any other) protocol in the VRS industry does not mean that it is necessary or even desirable for the Commission to mandate such protocol in its rules. As Snap and others have shown, the Commission’s existing interoperability requirements are more than adequate to protect legacy user equipment and platforms until such time as all VRS providers upgrade to more advanced technologies.⁸ Consequently, Snap disagrees with AT&T’s conclusion that “if VRS providers are permitted the option of using SIP or other protocols exclusively, the Commission’s objective in ensuring that VRS users can make calls to and receive calls from any VRS provider will not be achievable.”⁹ This statement is based on a false premise. Neither Snap nor any other VRS provider can rely “exclusively” on SIP or any other advanced protocol, since the Commission’s interoperability rules already require their networks to be interoperable with existing VRS providers, all of which use H.323. In short, “the Commission’s objective in ensuring that VRS users can make calls to and receive calls from any VRS provider” *will be* achievable, even without the need to mandate H.323 as a minimum protocol.

⁶ AT&T Comments at 4.

⁷ See Snap Comments at 13-15 (noting broad industry adoption of SIP and including extensive lists of supporters).

⁸ See, e.g., *id.* at 21-22 (noting that Snap’s interoperability solution will ensure backward compatibility with H.323, *even though this solution was developed under the current rules, and not as a result of any Commission-mandated VRS protocols*).

⁹ AT&T Comments at 5.

Equally important, achieving these results via enforcement of existing interoperability requirements, as opposed to the adoption of mandatory VRS protocols, will also avoid significant potential costs and problems associated with government-mandated standards.¹⁰

II. REIMBURSEMENT FOR REASONABLE COSTS INCURRED TO COMPLY WITH THE COMMISSION’S INTEROPERABILITY REQUIREMENTS IS LEGALLY REQUIRED AND NECESSARY TO PROMOTE INNOVATION AND FUNCTIONAL EQUIVALENCY.

In its Comments, Snap urged the Commission to confirm that VRS costs incurred to comply with the Commission’s interoperability requirements (*regardless* of whether VRS protocols are mandated) are reimbursable from the Interstate TRS Fund. Snap explained that such costs qualify under the Commission’s legal standard for reimbursement and that reimbursement is necessary to promote innovative and functionally equivalent VRS equipment and services.¹¹

Only one other commenter addressed the cost reimbursement issue raised in the FNPRM -- namely, Communication Service for the Deaf, Inc. (“CSD”). CSD agrees that interoperability costs associated with incorporating a new technology into a VRS platform should be reimbursable, but only after the technology is “approved and adopted by the FCC, and made applicable to all VRS providers by an agreed upon date.”¹² Like CSD, Snap is sensitive to ensuring the most efficient use of the ratepayer-subsidized Interstate TRS Fund. However, CSD’s proposal creates a new legal standard for reimbursement that is inconsistent with the current Commission standard. As Snap’s Comments showed, the Commission’s rules and

¹⁰ See, e.g., Snap Comments at 25-26 (noting potential innovation-stifling effects, time delays, and additional costs that could result from the codification of mandatory VRS protocols into the Commission’s rules).

¹¹ *Id.* at 32-37.

¹² CSD Comments at 10.

precedent provide that VRS costs will be reimbursed to the extent they: (1) are directed at compliance with a non-waived mandatory minimum VRS standard; and (2) are reasonable.¹³

The Commission provided further insight into the application of these criteria in two recent Orders discussing reimbursement for specific TRS/VRS costs. The Commission explained that “TRS providers are obligated to provide functionally equivalent service, and that functionality is defined by the applicable mandatory minimum standards. When ‘a provider offers eligible services that meet these standards it may recover its costs of doing so from the Interstate TRS Fund.’”¹⁴ In applying these principles, the Commission excluded certain E-911-related costs because the E-911 requirement is currently a *waived* standard.¹⁵ By contrast, the Commission explained that costs incurred by VRS providers to comply with the *non-waived* mandatory speed-of-answer and 24/7 requirements *are* eligible for reimbursement from the Interstate TRS Fund.¹⁶ And, importantly, today when a VRS provider implements a new technology within its network -- for example, to ensure better compliance with the speed-of-answer requirement, to comply with the 24/7 requirement, or even to upgrade to a new model of H.323 video phones to replace obsolete equipment in its call center or provide better service to its users -- the reimbursement of the costs incurred by the VRS provider is *not* predicated on the

¹³ See Snap Comments at 32-33.

¹⁴ See *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration, FCC 06-87, ¶ 15 (rel. July 12, 2006) (citations omitted).

¹⁵ See *id.* ¶¶ 14-17.

¹⁶ See *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Memorandum Opinion and Order, FCC 06-88, ¶¶ 14-16 (rel. July 12, 2006).

Commission's prior review and approval of such technology decisions.¹⁷ Rather, these costs are reimbursable because they are targeted at compliance with non-waived mandatory minimum VRS requirements, subject, of course, to the right of the Commission and NECA to review and, if necessary, adjust such costs pursuant to the existing "reasonableness" standard noted above.¹⁸

Accordingly, just as the costs incurred to comply with the Commission's speed-of-answer and 24/7 mandates are eligible for reimbursement from the Interstate TRS Fund *regardless* of what specific technologies a VRS provider uses to achieve such compliance and without the need for prior Commission approval, so too should the reasonable costs incurred by VRS providers to comply with the Commission's existing mandatory minimum interoperability requirements be compensable from the Fund, *regardless* of whether or not the Commission mandates particular VRS protocols and without the need for the Commission to review and pre-approve new technologies used by particular VRS providers.

Finally, requiring all new technologies to be approved by the Commission and made applicable to all VRS providers by an agreed-upon date in order to be eligible for reimbursement is not only contrary to the existing legal standard for TRS/VRS reimbursement, but it would also be counterproductive as a public policy matter. CSD suggests that conditioning reimbursement in this way "would still encourage the development of new technology that can enhance communication access for VRS end users."¹⁹ Snap respectfully disagrees. On the contrary,

¹⁷ And reimbursement is certainly not tied, as CSD suggests, to whether the Commission-approved technology is "made applicable to *all* VRS providers by an agreed upon date." CSD Comments at 10 (emphasis added).

¹⁸ Such ability of the Commission and NECA to review reimbursable costs for reasonableness addresses any concerns about unnecessary withdrawals from the Interstate TRS Fund and is a much more sensible method of dealing with this issue than erecting unprecedented and unjustified barriers for reimbursability.

¹⁹ CSD Comments at 10.

adoption of this proposal would have a considerable stifling effect on innovation, as VRS providers would be much more reluctant to develop and implement new technologies -- even if such technologies would provide a more efficient, fully cost-justified, and more functionally equivalent service to users -- due to the possibility that these new technologies would not ultimately be approved by the Commission and that consequently *none* of their costs of incorporating such technologies into their VRS platform and/or for maintaining backward compatibility with legacy technologies would be reimbursed. In short, adoption of such a proposal could actually further entrench legacy VRS technology, contrary to the pro-innovation and functional equivalency mandates of the ADA.²⁰

²⁰ See *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Notice of Proposed Rulemaking, 13 FCC Rcd 14187, ¶ 8 & nn.11-13 (1998) (“As Congress stated: “[T]his legislation is not intended to discourage innovation regarding telecommunications services to individuals with hearing and speech impairments. [T]he hearing and speech-impaired communities should be allowed to benefit from advancing technology. As such, the provisions of the Section do not seek to entrench current technology, but rather to allow for new, more efficient and more advanced technology. The Commission's NOI was released in this spirit. This Notice represents our continuation of the implementation of the statutory directive that the Commission ensure that our TRS regulations do not artificially suppress or impair the development of TRS in a changing, dynamic telecommunications landscape.” (*citing* 47 U.S.C. § 225(d)(2); H.R. Rep. No. 101-485(II), 101st Cong., 2d Sess. 130 (1990)); *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, ¶ 4 (2000) (“Functional equivalence is, by nature, a continuing goal that requires periodic assessment.”).

III. CONCLUSION

Based on the foregoing, Snap respectfully urges the Commission to adopt rules in this proceeding consistent with Snap's comments and these reply comments.

Respectfully submitted,

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