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August 3, 2006

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington D.C. 20554

RECEIVED

AUG - 3 2006

Federal Communications Commission
Office of Secretary

**Re: AT&T's Response to Consumer & Governmental Affairs Bureau Letter Re:
AT&T's Compliance with the Speed of Answer Requirement and, In the
Alternative, Petition for Waiver; ECFS Confirmation Number:
006731337419; CG Docket No. 03-123**

Dear Ms. Dortch:

Please incorporate the redacted filing into the above referenced docket. If you have questions, please call me on 202-457-3050.

Sincerely,

David Grant

Attachment

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List A B C D E



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Monica Desai
Chief, Consumer & Governmental Affairs Bureau
Federal Communications Commission
The Portals
445 Twelfth Street, S. W.
Washington, DC 20554

Federal Communications Commission
Office of Secretary

**Re: AT&T's Response to Consumer & Governmental Affairs Bureau Letter Re:
AT&T's Compliance with the Speed of Answer Requirement and, In the
Alternative, Petition for Waiver; ECFS Confirmation Number: 2006731337419**

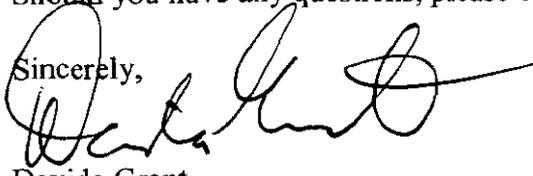
On Monday, July 31, 2006, AT&T filed its response to the Consumer & Governmental Affairs Bureau's Letter Re: AT&T's Compliance with the Speed of Answer Requirement of Section 64.604 of the Commission's rules (CG Docket No. 03-123). Therein, AT&T redacted certain confidential information by electronically blacking out the information, PDF'd the filing, and submitted the filing electronically through the ECFS system. AT&T also filed a confidential version along with a request for confidentiality with the Chief of the Consumer & Governmental Affairs Bureau.

AT&T has learned that the redacted information may be viewed in certain instances. Specifically, if a party copies any paragraph with redacted information and pastes it into a another document, the redacted information is visible. AT&T was not aware that this was a possibility. AT&T took reasonable steps to block the confidential information and had every reason to believe that the information could not be viewed by a third party, either directly on ECFS or by copying and pasting paragraphs in the filing into another document.

As AT&T demonstrated in its request for confidentiality, the information redacted is confidential and proprietary information. Specifically, the redacted information discloses or provides competitors information relating to AT&T's procedures for the provision of Telecommunications Relay Services ("TRS"), market share for TRS, and other TRS-related information which AT&T maintains on a confidential basis. Disclosure of such information, accordingly, could harm AT&T competitively.

AT&T requests that the Bureau accept the attached redacted comments as timely filed comments in this proceeding. AT&T has made no other changes to the content of its filing, other than to redact the same information previously redacted. Further, AT&T requests that the existing redacted version, which is posted on ECFS, be treated confidentially and that the attached redacted comments be posted on ECFS.

Should you have any questions, please contact Davida Grant at (202) 457-3045.

Sincerely,

Davida Grant

Attachment

CC: Bill Cline
Thomas Chandler

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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AUG - 3 2006

Compliance with the IP Relay
Speed of Answer Rule

)
)

CG Docket No.03-123

Federal Communications Commission
Office of Secretary

**AT&T INC.'S RESPONSE TO THE CONSUMER & GOVERNMENTAL AFFAIRS
BUREAU'S LETTER RE: SPEED OF ANSWER COMPLIANCE AND, IN THE
ALTERNATIVE, PETITION FOR WAIVER**

AT&T, Inc., on behalf of its affiliates, hereby responds to the Consumer & Governmental Affairs Bureau's ("Bureau") June 15, 2006 Letter re: AT&T's Compliance with Section 64.604(b)(2)(ii) of the Commission's rules,¹ which requires TRS providers to answer 85% of all TRS calls within 10 seconds (hereinafter, "speed of answer requirement" or "85/10 standard"). AT&T is operating in substantial compliance with the speed of answer requirement, thus pursuant to the Commission's articulated standard, AT&T is entitled to retain its TRS Fund reimbursement for the ■ days identified in the Bureau's Letter. To the extent the Bureau concludes otherwise, there are mitigating circumstances warranting a waiver of the speed of answer requirement.

I. BACKGROUND

AT&T received a letter from the Bureau advising that AT&T appears to have failed to comply with the daily speed of answer requirement for IP Relay calls. Specifically, Section 64.404(b)(2)(ii) of the Commission's rules require TRS providers to answer 85 percent of all TRS calls within 10 seconds, measured daily.² TRS providers are required to file data with NECA on a monthly basis demonstrating compliance with the speed of answer requirement.

¹ Consumer and Information Bureau, Compliance with the IP Relay Speed of Answer Rule (June 15, 2006).

² 47 CFR 64.604(b)(2)(ii).

Based on the Bureau's review of AT&T's compliance data, the Bureau advised that AT&T appears to have failed to meet the speed of answer requirement with respect to IP Relay service on █ days between May 2005 and April 2006.³ The Letter advised that TRS providers must offer service in compliance with the TRS rules to be reimbursed through the TRS Fund. Given the purported failures, the Bureau determined that AT&T potentially must reimburse the TRS Fund the monies paid on the █ days identified, approximately \$█. If AT&T agreed, the Letter directed AT&T to pay NECA the \$█. If not, AT&T was directed to file a petition for waiver of the speed of answer rule for the █ days identified and therein include the reasons the speed of answer requirement was not met and any mitigating circumstances.

II. DISCUSSION

As an initial matter, it is by no means clear that the Bureau has the authority to require AT&T to reimburse the TRS Fund. Neither the Commission's rules nor its implementing orders require TRS providers to reimburse the TRS Fund administrator in instances where a TRS provider fails to comply with a minimum standard. In fact, there is no mention of reimbursement whatsoever in the Commission's rules. To be sure, the Commission could initiate enforcement action against a TRS provider for failure to comply with a TRS requirement, but such action and any resulting penalty would not equate to reimbursement of TRS Fund payments.

In any event, as AT&T demonstrates below, it is operating in substantial compliance with the speed of answer requirement and therefore, consistent with Commission precedent, is entitled

³ There were a few inaccuracies regarding the █ days identified. Specifically, on █, 2005, the number of IP Relay minutes and compensation received should be █ and \$█ respectively, not █ and \$█. Thus, the total potential reimbursement would be \$█ not \$█. Also, AT&T missed the speed of answer requirement on █, 2006, not █, 2006 as reported. The speed of answer performance, minutes and compensation reported for █, 2006 are correct for █, 2006.

to reimbursement from the TRS Fund. To the extent the Commission concludes otherwise, AT&T, in the alternative, seeks a waiver of the speed of answer requirement.

A. AT&T has substantially complied with the speed of answer requirement.

1. TRS providers can receive reimbursement from the TRS Fund if they substantially comply with the mandatory minimum standards.

Section 64.604(c)(5)(E) of the Commission's rules is relevant here. Specifically, it states that "...the TRS Fund Administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in Section 64.604."⁴ That rule — nor any other TRS rule — however does not expound on whether TRS providers must meet the mandatory minimum standards in *all* instances to receive reimbursement.

The Commission, however, has addressed this issue and the applicable standard to apply where a TRS provider fails to strictly adhere to the mandatory minimum standards in at least two instances, and in both interpreted Section 64.604 to permit TRS providers to receive reimbursement from the TRS Fund if they "substantially comply" with the requirements of Section 64.604. In the first, the Commission issued an Order to Show Cause and Notice of Opportunity for Hearing against Public Network Corporation after determining that Publix appeared to have unlawfully obtained six million dollars in payments from the TRS Fund.⁵ Specifically, based on a random audit, it appeared that Publix had failed to comply with several of the mandatory minimum standards. In evaluating whether Publix was offering TRS pursuant to the TRS rules, the Commission recognized that

"...absolute compliance with each component of the rules may not always be necessary to fulfill the purposes of the statute and the policy objectives of the implementing rules, and that not every

⁴ 47 CFR 64.604 (c)(5)(E).

⁵ *Publix Network Corporation*, 17 FCC Rcd 11487 (2002).

minor deviation would justify withholding funding from a legitimate TRS provider.”⁶

The Commission went on to hold that

“...a TRS provider is eligible for TRS Fund reimbursement if it has substantially complied with Section 64.604. This approach will allow a finding that an insignificant violation of the requirements of the implementing regulations does not render the Publix Companies ineligible so long as the Publix Companies have satisfied the underlying purposes of those requirements.”⁷

In determining whether Publix substantially complied with Section 64.604, the Commission directed the ALJ to consider the following: (1) the statutory purpose of TRS, which is to provide telecommunications services to the hearing and speech disabled individuals that are the functional equivalent of services provided to non-disabled individuals, (2) the policies underlying the TRS regulation at issue, and (3) the practical effect of any violation in question on the achievement of these goals.⁸ Ultimately, Publix entered into a Consent Decree with the Enforcement Bureau to resolve the issue. That decision however set the standard for determining whether a TRS provider should remain eligible to receive compensation from the TRS Fund in instances where it does not fully comply with one or more of the mandatory minimum standards required under Section 64.604.

In the second, Sprint filed a Petition for Reconsideration of the Commission’s IP Relay Reconsider Order, wherein the Commission denied Sprint’s request to receive compensation

⁶ *Id.* ¶19.

⁷ *Id.*

⁸ *Id.* ¶20.

from the TRS Fund for a nine month period.⁹ Specifically, Sprint failed to offer certain mandatory TRS services as required under the rules. On reconsideration, the Commission reversed its decision, finding that the requirements were unclear and that Sprint had offered its TRS services based on its understanding (albeit mistaken understanding) of the TRS rules. In reaching its finding, the Commission acknowledged the standard set forth in the *Publix* case. While the Commission noted that it expects providers to comply with all the mandatory minimum standards to receive reimbursement, it recognized that providers need only substantially comply with Section 64.604 to receive reimbursement from the TRS Fund.¹⁰ Because of the ambiguity in the rules, the Commission did not have to apply that standard to determine if Sprint was indeed eligible for reimbursement.

2. AT&T has substantially complied with the speed of answer requirement.

The underlying purpose of the speed of answer requirement is to ensure that TRS users can place calls without any undue delay, thereby making their communications service functionally equivalent to the communications services provided to non-impaired individuals.

By any measure, AT&T has complied with this requirement. Specifically, AT&T has implemented processes and procedures — both on the front and back end — to ensure that it can meet the daily speed of answer requirement. On the front end,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁹ *Provision Of Improved Telecommunications Relay Services And Speech-To-Speech Services For Individuals With Hearing And Speech Disabilities*, Order on Reconsideration, 20 FCC Rcd 5433 (2005).

¹⁰ *Id.* ¶ 31.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On the back end, AT&T

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

By and large these procedures have worked. Between May 2005 and April 2006, AT&T met the speed of answer requirement

[REDACTED] Per month during that period, AT&T [REDACTED]

And even on the [REDACTED] days identified, AT&T met the standard during most quarter hours (averaged over [REDACTED] per quarter hour). AT&T accordingly is providing IP Relay services to TRS users without undue delay – the very purpose of the speed of answer rule.

¹¹ Specifically, AT&T examines the day-over-day call volumes (e.g. call volumes for the last three Mondays), week-over-week call volumes, average call-handle times, whether a given week has a holiday, and the time of year to determine how many CAs and other staff should be scheduled on a given day.

¹² While it could be argued that AT&T should schedule staffing to handle, over the course of a 24-hour period, the maximum potential call volume, such a practice would be inefficient and costly. Labor costs, in particular, are significant and must be balanced against anticipated needs. Otherwise, overall industry costs for TRS would be inflated and ultimately would result in higher rates for consumers (AT&T for example does not recover all of its TRS costs from the TRS Fund and must recover the remaining costs through its rates). AT&T's approach appropriately balances these competing interests.

Where AT&T did not meet the 85/10 standard, there were contributing factors. On [REDACTED] days AT&T experienced extremely high call volumes during certain quarter hours of the day that were significantly higher than prior periods, or call volumes over prior hours. For example, the volumes experienced on [REDACTED] 2006 were on average 26% higher than the volumes experienced on the same day during the prior two weeks.

On [REDACTED] days a significant number of CAs took unscheduled leave from work and AT&T was unable to secure sufficient replacement staffing to handle call volumes during certain quarter hours. On [REDACTED] days, AT&T experienced abnormal call volumes and a shortage of CAs as a result of Hurricanes Katrina and Rita and other inclement weather.

On another [REDACTED] days, AT&T experienced a high volume of radio-induced prank calls. Specifically, in May 2005, Howard Stern, during his radio show, highlighted AT&T's Relay services and advised his listeners that they could call AT&T and get the CAs to say anything they wanted to a called party.

Additionally, [REDACTED] days, AT&T determined that another IP Relay provider's service was down. In AT&T's experience, when another IP Relay provider experiences a service outage longer than 15 minutes, its call volumes increase significantly during that outage period. IP Relay providers are not required to report service outages or to notify other providers, thus it is difficult for AT&T to determine whether an increase in call volumes is attributable primarily to one of the factors previously described, a service outage, or a combination of these factors.

AT&T is fully committed to complying with the speed of answer requirement, and even despite these minor deviations, AT&T did largely comply with the 85/10 standard over the period May 2005 to April 2006, and during most quarter hours on the [REDACTED] days identified. AT&T

therefore urges the Bureau to find that AT&T is operating in substantial compliance with the speed of answer requirement and thus is entitled to retain its TRS Fund reimbursement.

B. In the alternative, the Bureau should grant AT&T a waiver of the speed of answer requirement.

To the extent the Commission concludes that AT&T is not operating in substantial compliance with the speed of answer requirement, AT&T, in the alternative, requests a waiver of the speed of the answer requirement for the ■ days identified. The Commission may waive its rules if special circumstances warrant a deviation from those rules and such deviation would better serve the public interest than would strict adherence to the rules.¹³

There are special circumstances that exist that warrant a deviation from the speed of answer rule. First, there are critical distinctions between traditional TRS and IP Relay that make it more difficult for IP Relay providers to ensure compliance with the 85/10 standard than traditional TRS providers. In particular, with traditional TRS services, there is one certified provider per state and that provider typically only handles TRS calls initiated by or to hearing and speech-impaired consumers in that state. Using available state data, traditional TRS providers can reasonably estimate the number of TRS users in each state, and using historical call volumes, can reasonably forecast call volumes day-to-day. The same is not true for IP Relay service. Unlike traditional TRS providers, IP Relay providers not only handle IP Relay calls initiated by TRS users in a given state, but calls initiated by TRS users throughout the United States *and the world*. Said another way, the maximum number of potential customers for a traditional TRS provider is the maximum number of hearing and speech-impaired customers in a state, while the maximum base of potential customers for an IP Relay provider is *all* TRS users

¹³ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) *citing WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). 47 C. F.R. § 0.91.

in and outside of the United States. Given the large base of potential users for IP Relay, it is extremely difficult for IP Relay providers to reasonably forecast call volumes day over day. While AT&T has, as discussed above, implemented procedures [REDACTED], and back end procedures to immediately address [REDACTED], significant fluctuations in call volumes in any period on a given day could significantly affect an IP Relay provider's ability to meet the daily speed of answer requirement.

Second, the use of IP Relay for fraudulent purposes continues and impacts IP Relay call volumes and call handling times. While AT&T has implemented procedures to identify and block fraudulent IP Relay calls, these calls remain a challenge for AT&T and a contributing factor to its inability to meet the speed of answer requirement in some instances.

Third, there is a dearth of available CAs in the industry. And where a number of CAs coincidentally take unscheduled leave on a given day, it is impossible in some instances for a provider to secure sufficient additional staffing to handle anticipated or unanticipated call volumes. Finally, significant inclement weather, such as Hurricanes Katrina and Rita, and radio-induced prank calls necessarily will affect staffing levels and call volumes at TRS centers. Given these unique circumstances, a waiver of the speed of answer requirement is warranted.

Moreover, a grant of AT&T's request would be in the public interest. Such a grant would recognize that IP Relay providers, unlike traditional TRS providers, may have more difficulty meeting the 85/10 standard. Thus, where IP Relay providers, such as AT&T, can demonstrate that they have implemented procedures to account for the unpredictability of IP Relay traffic, and in fact comply with and exceed the 85/10 standard in the overwhelming majority of instances, they should not be penalized. Further, it would ensure that IP Relay providers remain

cost efficient, and do not inflate staffing needs to ensure compliance, which would translate into higher costs for the industry and ultimately higher rates for consumers.

III. CONCLUSION

For the foregoing reasons, AT&T requests that the Bureau find that AT&T has substantially complied with the speed of answer requirement and therefore is entitled to retain monies paid from the TRS Fund. In the alternative, AT&T requests that the Bureau grant it a waiver of the speed of answer requirement.

Respectfully Submitted,

/s/ Davida Grant
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Paul K. Mancini

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Its Attorneys

July 31, 2006