

**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 )

To: The Commission

**COMMENTS OF  
TELECOMMUNICATIONS FOR THE DEAF AND HARD OF HEARING, INC.;;  
ASSOCIATION OF LATE-DEAFENED ADULTS, INC.;;  
NATIONAL ASSOCIATION OF THE DEAF;  
DEAF AND HARD OF HEARING CONSUMER ADVOCACY NETWORK;  
CALIFORNIA COALITION OF AGENCIES SERVING  
THE DEAF AND HARD OF HEARING; AND  
HEARING LOSS ASSOCIATION OF AMERICA**

Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), through undersigned counsel, Association of Late-Deafened Adults, Inc. (“ALDA”), National Association of the Deaf (“NAD”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”) and Hearing Loss Association of America (“HLAA”) (collectively, the “Consumer Groups”) hereby submit their comments in response to the Commission’s Further Notice of Proposed Rulemaking<sup>1</sup> (“Notice”), seeking comment on issues concerning compensation of providers of Telecommunications Relay Services (“TRS”) from the Interstate TRS Fund (“Fund”).

---

<sup>1</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, CC Doc. No. 03-123, FCC 06-106, (July 20, 2006) (“Notice”).

## I. Introduction

In its Notice released on July 20, 2006, the FCC sought comment on a broad range of issues related to compensation of providers from the TRS Fund.<sup>2</sup> In these opening Comments, the Consumer Groups are addressing whether the costs associated with marketing and outreach, executive compensation and other overhead, research and development, and legal and lobbying activities should be compensable from the Fund.

As a preliminary matter, the Consumer Groups note that in the NPRM, the Commission referred to TRS as “an *accommodation* under the ADA for persons with disabilities.”<sup>3</sup> This use of the word “accommodation” is incorrect because Section 225 of the Communications Act of 1934, as amended (the “Act”), requires the Commission to ensure the availability of Telecommunications Relay Services (“TRS”).<sup>4</sup> The Act defines TRS as telephone transmission services that provide the ability for people who are deaf or hard of hearing to communicate with hearing people “in a manner that is *functionally equivalent*” to the ability of hearing people to communicate with each other.<sup>5</sup> In other words, the Americans With Disabilities Act (“ADA”)<sup>6</sup>

---

<sup>2</sup> The Commission sought comment on the following issues: alternative cost recovery methodologies for interstate traditional TRS and Speech-to-Speech (“STS”), including Hamilton Relay, Inc.’s (“Hamilton”) proposed “MARS” plan (“Multi-state Average Rate Structure”), and also whether traditional TRS and STS should be compensated at the same rate; the appropriate cost recovery methodology for Video Relay Service (“VRS”) and the length of time the VRS rate should be in effect; the “reasonable” costs compensable under the present cost recovery methodology, including whether, and to what extent, marketing and outreach expenses, overhead costs, and executive compensation are compensable from the Fund; and ways to improve the management and administration of the Fund, including adopting measures for assessing the performance and efficiency of the Fund and to deter waste, fraud, and abuse.

<sup>3</sup> Notice at ¶ 8 (emphasis added).

<sup>4</sup> 47 U.S.C. § 225(b)(1).

<sup>5</sup> 47 U.S.C. § 225(a)(3) (emphasis added).

<sup>6</sup> PL 101-336, July 26, 1990, codified at 47 U.S.C. § 225.

requires a lot more than that TRS be an “accommodation.” It specifically requires that TRS be “functionally equivalent” to the telephone services used by hearing people. It is therefore the FCC’s statutory duty to ensure that the TRS industry has the funding necessary to provide functionally equivalent services to the deaf and hard of hearing communities.

The Consumer Groups believe all providers of TRS services for the deaf and hard of hearing communities should receive rates that fairly reimburse the providers for basic operational and properly allocated executive compensation and other overhead costs as well as reasonable costs associated with marketing and outreach. Fund support for each of these areas is critical to making these services available. Insufficient funding would do a disservice to members of the deaf and hard of hearing communities by reducing the visibility, reliability, and availability of the existing TRS services. Insufficient funding would also adversely impact members of the hearing community, many of whom rely on TRS services to communicate with deaf family members, friends, neighbors and business associates. On the other hand, the Consumer Groups are also concerned with preserving the integrity of the Interstate TRS Fund, and thus find a need to limit all expenses to reasonable levels and would oppose unlimited funding for the TRS providers.

The Consumer Groups find it particularly important for the FCC to ensure that TRS providers receive sufficient compensation to enable them to build the facilities and hire the staff necessary to meet the Commission’s speed of answer requirements.<sup>7</sup> If the speed of answer standards are not met, the service cannot be functionally equivalent.

---

<sup>7</sup> In the Notice, the Commission mentioned that the new speed of answer requirements for Video Relay Service (“VRS”) may have an impact on the cost of service. Notice at ¶¶ 27, 31. At this time, VRS and IP Relay providers must supply data to the Commission on compliance with the speed of answer rule. *Id.* At ¶ 48.

Similarly, for VRS, the Consumer Groups recommend that the cost of Certified Deaf Interpreters (“CDIs”), as appropriately certified by Registry of Interpreters for the Deaf or state interpreter certification or licensing bodies, when such CDIs are necessary, should be a compensable cost. CDIs work with interpreters who are hearing to enable comprehension of certain people who are deaf where it is difficult to understand their signing. This may include people who were born in other countries and learned a form of sign language different from American Sign Language, use American Sign Language in an unconventional way, or have minimal or limited communication skills. Such people must not be left out of access to TRS, and if CDIs are essential to their having quality VRS conversations, then the functional equivalent requirement of the ADA mandates that CDIs be used and that the use of the CDIs be compensated.

In addition to funding these basic services, the Fund should also reimburse TRS providers for costs associated with research and development as well as legal and lobbying activities, provided such costs are reasonable and not excessive. Reasonable levels of support for each of these areas facilitates the development of new and improved TRS services, thereby improving communications among the deaf and hard of hearing communities as well as communications between those communities and the hearing community, all in furtherance of the goal of functional equivalency for TRS as required by the ADA

## **II. The Commission Should Reasonably Fund Marketing and Outreach, General Overhead, Research and Development, and Legal and Lobbying Activities.**

### **A. Marketing and Outreach**

The Commission invited Comment on whether there is a distinction between marketing and outreach, the extent to which marketing and outreach should continue to be compensated by

the Fund, and the types of expenses that should be reimbursed.<sup>8</sup> The Commission tentatively concluded that provider-specific “branded” marketing should not qualify for compensation from the Interstate TRS Fund, and that the Fund should not be used to promote one provider’s service over that of a competing provider, or to encourage customers to switch providers.<sup>9</sup>

The Consumer Groups disagree with the Commission’s tentative conclusion not to fund provider-branded marketing. It is well established that open, competitive markets result in higher levels of product innovation and dissemination of information to the public. By facilitating competition, reasonable levels of Interstate TRS Fund support for branded marketing provides the deaf and hard of hearing communities with the benefits of a competitive TRS market. Marketing is a critical component of providing service because it allows TRS providers to more effectively reach their target markets. The providers can use branded marketing to distinguish themselves and the services they provide. The development and marketing of competitive “differentiators” brings significant benefits to the deaf and hard of hearing communities. It is the ability to market their respective brands which gives the TRS provider the incentive to develop better quality and innovative services, because without branded marketing TRS providers would have no way of letting the consuming public know that they have something different, better or special to offer.

Branded marketing also increases the visibility of TRS providers to the deaf, hard of hearing, *and* hearing communities. Despite the growth of TRS, many people who are deaf and hard of hearing remain unaware of the services offered or how to access them. Further, the vast majority of hearing persons do not realize these services even exist. By covering the cost of

---

<sup>8</sup> *Notice* at ¶ 33.

<sup>9</sup> *Id.* at ¶ 36.

branded marketing through the Interstate TRS Fund at reasonable levels, the Commission is making productive use of a quality inherent to the competitive market--the need to advertise, because advertising increases the public's awareness of TRS services.

In other words, the Commission's tentative decision to categorically exclude all branded marketing from Interstate TRS Fund compensation would deny people who are deaf or hard of hearing the informational benefits of a competitive TRS market. Like all consumers, people who are deaf or hard of hearing rely in substantial part on advertisements when making purchasing decisions. Without branded marketing, the resulting deficit of information will make it more difficult for consumers to discern which services are best for them.

Nevertheless, like the Commission, the Consumer Groups are concerned about preserving the integrity of the Interstate TRS Fund and do not advocate handing the TRS providers a "blank check" to cover unlimited marketing expenses. Instead, the Consumer Groups encourage the Commission to limit marketing reimbursement to reasonable budgeted expenses. As part of the rate determination process, the Interstate TRS Fund Advisory Council, the Interstate TRS Fund Administrator and the FCC should review the proposed marketing and outreach expenses to ensure that they are reasonable.

In sum, reasonable levels of compensation from the Interstate TRS Fund for branded marketing is essential if TRS and related services are to fulfill their potential. A larger, more reliable, and more visible network of TRS service providers will benefit the deaf and hard of hearing as well as the hearing communities. However, without reasonable levels of support from the Interstate TRS Fund for branded marketing, many TRS providers simply cannot afford to advertise on their own, and will therefore have little incentive to go beyond the status quo when investing in their TRS service.

To also foster the benefits of competition, the Commission should not adopt a policy that limits the number of TRS providers or requires all TRS providers to be national as considered in the Notice.<sup>10</sup> By having a limited choice of TRS providers, the deaf and hard of hearing communities would lose the benefit of innovation and higher quality service that comes with a competitive marketplace.

#### **B. Executive Compensation and Other Overhead Costs**

The Commission sought comment on whether executive compensation and other general overhead costs should be compensable by the Interstate TRS Fund as part of the reasonable cost of providing TRS. The Consumer Groups believe it is important to compensate vendors of TRS services with rates sufficient to fund all reasonable operational costs, which would include all reasonable costs directly and indirectly linked to the provision of TRS services. For example, in addition to direct costs such as salaries, office rent, and equipment, TRS rates must compensate providers for the reasonable cost of training of communications assistants, interpreters and other TRS-related personnel, because training is essential to the provision of quality services. Other indirect costs such as those associated with employee health benefits and 401(k) plans should also be included in the compensation formula, provided that they are at reasonable levels, since employers are normally responsible for providing such benefits.

The Consumer Groups believe that other costs not directly related to the provision of TRS service, but which can be shown to benefit the service, such as reasonable levels of executive compensation should also be reimbursed. For general overhead costs, including executive compensation, where such costs may be only partially related to provision of TRS service, providers should be entitled to reimbursement for the percentage of the cost that

---

<sup>10</sup> Notice at ¶ 28.

corresponds to the percentage of the provider’s revenue received from TRS services. Because of the need to preserve the integrity of the Interstate TRS Fund, the Interstate TRS Fund Advisory Council, the Fund Administrator and the Commission should look carefully at executive compensation and other general overhead costs to make sure that the level of such compensation is reasonable and that the allocation to TRS services is also fair and reasonable.

### **C. Research and Development**

It is the Commission’s duty under the ADA to support research and development of new communications technologies that benefit the deaf and hard of hearing communities. Specifically, the Act requires that the Commission ensure that inter and intra state relay services are available “in the most efficient manner possible.”<sup>11</sup> The Commission is also required to “ensure the regulations prescribed to implement this section encourage . . . the use of existing technology and do not discourage or impair the development of improved technology.”<sup>12</sup>

The Commission therefore has a statutorily-defined role in promoting the development of new telecommunications technologies that assist people who are deaf or hard of hearing. Although the objective of the ADA is to provide the deaf and hard of hearing communities with “functional equivalency,” the Commission must be mindful that functionally equivalency is a standard that will always change over time as technologies should and do develop. At one point not so long ago, TTY service was the closest approximation to functional equivalency. Now, Internet-based technologies such as Video Relay Service (“VRS”) have set a higher bar for the achievement of functional equivalency. It is through funding of research and technology at reasonable levels from the Interstate TRS Fund that the Commission can support the

---

<sup>11</sup> 47 U.S.C. 225 § (b)(1).

<sup>12</sup> 47 U.S.C. 225 § (d)(2).

development and improvement of new technologies that achieve these higher levels of functional equivalency.

Nevertheless, like the Commission, the Consumer Groups are concerned about preserving the integrity of the Interstate TRS Fund and do not advocate handing the TRS providers a “blank check” to cover unlimited research and development expenses. Instead, the Consumer Groups encourage the Commission to limit research and development reimbursement to reasonable budgeted expenses. As part of the rate determination process, the Interstate TRS Fund Advisory Council, the Interstate TRS Fund Administrator and the FCC should review the proposed research and development expenses to ensure that they are reasonable.

**D. Legal and Lobbying Expenses**

The Consumer Groups support compensating TRS providers from the Interstate TRS Fund for legal and lobbying expense, to the extent such expense is reasonably necessary to facilitate the provision of TRS. Because TRS providers are compensated from the federal and state TRS Funds and are regulated at both the federal and state levels, they must use legal resources to both address regulatory issues and engage in the process of seeking compensation from the TRS Funds. When these legal costs can be justified as a necessary expense of doing business, it is only fair that the Interstate TRS Fund compensate the providers for reasonable legal costs associated with the provision of TRS services. When lobbying efforts can be demonstrated to be associated with these regulatory activities, reasonable lobbying costs associated with Interstate TRS services should similarly qualify for support from the Interstate TRS Fund. In addition, lobbying may be a means by which TRS providers educate the government about the availability of TRS services and how these services support the needs of the deaf and hard of hearing communities. Lastly, when travel and lodging can be demonstrated

to be reasonable, necessary and legitimate components of legal and lobbying expenses, the TRS providers should be compensated for such expenses.

As stated before, like the Commission, the Consumer Groups are concerned about preserving the integrity of the Interstate TRS Fund and do not advocate handing the TRS providers a “blank check” to cover unlimited legal and lobbying expenses. Instead, the Consumer Groups encourage the Commission to limit legal and lobbying reimbursement to reasonable budgeted expenses. As part of the rate determination process, the Interstate TRS Fund Advisory Council, the Interstate TRS Fund Administrator and the FCC should review the proposed legal and lobbying expenses to ensure that they are reasonable.

### **III. Conclusion.**

For the foregoing reasons, the Consumer Groups submit that that Interstate TRS Fund should reimburse TRS providers for expenses related to Certified Deaf Interpreters, marketing and outreach, executive compensation and other overhead, research and development, and legal and lobbying activities, subject to placing reasonable limits on such expenses through the budget review process by Interstate TRS Fund Advisory Council, the Interstate TRS Fund Administrator and the Commission.

