

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the matter of	)	
	)	
Telecommunications Relay Service and Speech-to-Speech	)	CG Docket 03-123
Services for Individuals with Hearing and Speech	)	
Disabilities	)	
	)	

***COMMENTS ON FURTHER NOTICE  
OF PROPOSED RULEMAKING***

**HANDS ON VIDEO RELAY SERVICES, INC.**

George L. Lyon, Jr.  
Lukas, Nace, Gutierrez & Sachs, Chartered  
1650 Tysons Blvd., Suite 1500  
McLean, VA 22102  
(703) 584-8664

Kelby Brick  
Director, Legal & Regulatory Affairs  
2118 Stonewall Road  
Catonsville, MC 21228  
(877) 467-4877 x71849

October 30, 2006

## TABLE OF CONTENTS

Summary .....	iv
I. Introduction. ....	1
II. TRS is not simply an accommodation to deaf and hard of hearing persons. ....	2
III. Cost recovery for traditional TRS, STS and IP Relay. ....	4
A. <i>MARS plan.</i> .....	5
B. <i>Whether the same rate should apply for traditional interstate TRS and IP Relay.</i> .....	6
C. <i>Following state rates for traditional interstate TRS rates may increase administrative costs.</i> .....	7
D. <i>The MARS plan cannot apply to VRS.</i> .....	7
E. <i>A true up mechanism would promote inefficiency and penalize efficiency.</i> .....	9
F. <i>All rate periods for the various TRS services should be set for the same period.</i> .....	14
IV. Cost recovery for VRS. ....	14
A. <i>Initial observations.</i> .....	15
1. <b>The growth in VRS traffic is beginning to slow.</b> .....	16
2. <b>Marketplace and regulatory changes have hampered the ability to accurately predict demand.</b> .....	16
3. <b>Abrupt changes in FCC policy causes provider uncertainty.</b> .....	16
4. <b>The public has benefitted from competition in Internet relay services.</b> .....	19
5. <b>Market distortion is the principal cause of any provider over earning.</b> .....	19
6. <b>The VRS compensation methodology should encourage innovation and cost control.</b> .....	20

7.	VRS costs will largely be driven by the cost of video interpreters. . .	20
8.	VRS must keep up with advancements in technology for hearing persons. . . . .	21
9.	VRS is a national service. . . . .	22
	<i>a. Internet relay is inherently interstate. . . . .</i>	23
	<i>b. Adopting jurisdiction separations for Internet relay would deny consumers their choice of carriers. . . . .</i>	26
10.	Functional equivalence demands that deaf and hard of hearing persons have access to all functionalities hearing persons enjoy. . .	28
<i>B.</i>	<i>Evaluation of alternative VRS compensation methodologies. . . . .</i>	29
1.	Competitive bids would damage VRS competition. . . . .	29
2.	The existing NECA weighted average method is not unreasonable. . . . .	32
3.	A variant of NECA’s method using the median cost estimate is likewise a reasonable methodology. . . . .	36
4.	A price cap methodology would produce a reasonable rate with incentives to providers to reduce cost. . . . .	36
<i>C.</i>	<i>VRS rate period. . . . .</i>	37
<b>V.</b>	<b>Reasonable cost issues. . . . .</b>	37
<i>A.</i>	<i>Marketing and outreach expenditures serve the public and are essential to the TRS program. . . . .</i>	38
<i>B.</i>	<i>Overhead costs. . . . .</i>	46
<i>C.</i>	<i>Legal and lobbying expense. . . . .</i>	47
1.	Legal expense is a reasonable and necessary cost of providing relay. . . . .	47
2.	Lobbying expenses are reasonable. . . . .	49
<i>D.</i>	<i>Executive compensation is a necessary rate element. . . . .</i>	50
<i>E.</i>	<i>The FCC should make provider cost and demand data public. . . . .</i>	51
<i>F.</i>	<i>Research and development expense is necessary to provide functionally equivalent service and meet currently waived requirements. . . . .</i>	52

G.	<i>Certified deaf interpreters are necessary to achieve functional equivalence.</i>	58
VI.	<b>Management and administration of the TRS Fund.</b>	62
A.	<i>Fund administration.</i>	62
B.	<i>The base for the TRS Fund should include all interstate telecommunications providers, including ISPs.</i>	63
C.	<i>FCC needs to enforce TRS answer standards to ensure a level playing field.</i>	63
D.	<i>Reporting from and auditing of providers appears adequate.</i>	63
E.	<i>Deterring fraud, waste and abuse.</i>	64
VII.	<b>Conclusion.</b>	64
Exhibit 1.	<b>Monthly VRS Minutes (January 2002 to July 2006)</b>	
Exhibit 2.	<b>IP Minute Growth (April 2002 to August 2006)</b>	
Exhibit 3.	<b>Interstate TRS and Captioned Telephone VCO Minutes (January 2002 to June 2007)</b>	
Exhibit 4.	<b>RID White Paper, Use of Certified Deaf Interpreters</b>	
Exhibit 5.	<b>Ontario Interpreter Services Guidelines for Deaf Interpreters</b>	
Exhibit 6.	<b>Declaration Under Penalty of Perjury of Ronald E. Obray</b>	
Exhibit 7.	<b>ASL.info.com. Deaf Culture</b>	

## *Summary*

Hands On Video Relay Services, Inc. (“Hands On”) summarizes by topic below its comments on the Commission’s *Further Notice of Proposed Rule Making*, FCC 06-106 (July 20, 2006) (*FNPRM*), seeking comment on various Telecommunications Relay Service (“TRS”) cost recovery issues.

*Relay is not a mere accommodation.* Relay is emphatically not an accommodation to deaf, hard of hearing and speech disabled persons. The wording of Section 225 and its legislative history show the provision’s purpose is to ensure universal service to deaf, hard of hearing and speech disabled persons. The Commission cannot use the provisions of Titles I-III of the ADA, requiring “reasonable accommodation” to persons with disabilities to reduce the universal service mandate of Section 225 to a mere accommodation requirement. This would be contrary to the clear statutory mandate to make TRS available to the extent possible throughout the United States, to encourage the use of existing technologies and not discourage or impair development of improved technology.

*Traditional TRS and IP Relay cost recovery.* Hamilton’s MARS plan, based on an average of intrastate traditional TRS rates, would be a reasonable approach for interstate traditional TRS and IP Relay, but cannot be the basis for setting VRS rates. If the MARS plan is implemented, it should be done in a way which will minimize frequent changes in the rate. The rate should be set based on an initial determination of the average of the various state rates and should remain in effect for at least three years prior to adjustment.

Hands On opposes application of a state's intrastate rate to interstate TRS originating in that state because of the administrative burden on the TRS Fund administrator of having to keep track of and apply 50 plus state TRS rates.

*A true-up mechanism would reward inefficiency and penalize efficient operation.*

Whichever cost recovery scheme is employed, use of a true-up mechanism is a bad idea. The TRS cost recovery scheme should encourage efficiency and discourage inefficiency. A true-up, on the other hand, would reward a provider which losses money under the rate by making up the deficit and would penalize a provider which is able to made a profit.

The true-up also suffers from the disadvantage of requiring the FCC and/or the TRS Fund administrator to closely monitor actual expenditures and evaluate the reasonableness of each of those expenditures after the fact. The cost recovery methodology should limit as far as possible the need for detailed Commission or TRS Fund administrator oversight of providers, rather than increasing it. The likely result of a true-up approach would be to chill providers from making expenditures designed to improve their service to deaf and hard of hearing persons lest the Commission or NECA decide post hoc that the expenditure was not reasonable and impose a severe financial penalty on a provider. Not only would adoption of a true-up mechanism be unfair to providers and hinder service to deaf and hard of hearing persons, it would also increase substantially the Commission's workload.

The Interstate Common Line Support mechanism is not analogous to TRS. The cost recovery procedures established for universal service would be far more complicated,

unnecessarily so, if applied to TRS, compared to the per minute cost recovery scheme currently used for all TRS services.

*All TRS rates should be set for the same period.* The rate period for all TRS services, including VRS, should be set for the same period, which should be three years. A multiyear rate period allows better planning by providers, who will know with more certainty what their compensation will be per minute of TRS service, and is more conserving of scarce governmental and private resources.

*Observations on the state of the market for VRS.* VRS traffic appears to be growing at a slower rate than in previous years. Various changes in the marketplace and changes in regulation have increased the difficulty providers -- and NECA -- face in forecasting VRS demand. A principal cause of uncertainty providers face is the Commission's practice of suddenly changing the "rules" concerning the reasonableness of costs, changes which have appeared motivated primarily as a means of decreasing the VRS rate and slowing the increase in the size of the TRS Fund. Providers need to know the rules under which they will operate and need a stable regulatory environment from year to year adequately to plan and implement their business strategies. A related concern is the Commission's practice of setting policy by proxy by giving off-the-record instructions to NECA. This practice would appear to violate the requirements of the APA in that it constitutes the type of "file cabinet rule" the APA eschews. In addition, the off-the-record contacts between NECA and the Commission are questionable under the agency's ex parte rules.

The public interest has benefitted immensely from competition and the entry of new providers into VRS. Although price competition does not exist for VRS, the public has benefitted from VRS competition as a result of providers seeking to differentiate themselves from each other with either service enhancements or refinements which expand the availability and utility of VRS to the public. The issue of substantial over earning by one or more VRS providers largely resulted from market irregularities occurring as a byproduct of the lack until recently of an interoperability requirement and the lack also until recently of a VRS answer speed requirement. In choosing any VRS compensation methodology, the FCC should strive to encourage innovation and reward providers for keeping costs under control while facilitating the best practicable service to deaf and hard of hearing persons.

The cost of video interpreters is rising faster than inflation as the demand for interpreters outstrips their entry into the marketplace. To fulfill the ADA's mandate for functionally equivalent service for deaf and hard of hearing persons, the FCC needs to work with other entities, including the Department of Education, the various states and with Congress to encourage additional and expanded interpreter training programs.

To ensure comparable service, technology for deaf and hard of hearing persons must mirror development of technology for hearing persons. At this point, deaf and hard of hearing persons are behind the technology curve in many areas, the most obvious ones being the lack of enhanced 911 (E911) service and the lack of adequate portable service. The marketplace alone is unlikely to remedy these disparities.

VRS is undoubtedly a national service. As an Internet based service, it is interstate in nature. As such, primary responsibility for its regulation and compensation lies with the FCC and not with the states. Internet relay traffic is handled materially differently than traditional TRS traffic. IP Relay and VRS providers accept traffic on a nationwide basis because the traffic is routed over the Internet to the provider's web site. This process, which is integral to the Internet, is inherently interstate, involving multiple computers in multiple locations, across state boundaries.

Even if Internet relay were not predominately interstate in nature, a compelling reason to maintain Internet relay compensation at the federal level is the expected loss of choice that the Internet relay consumer would face if "intrastate" Internet relay cost recovery was imposed on the states. The choice of telecommunications service provider is now a key element of local phone service. Given that, functional equivalency for deaf, hard of hearing and speech disabled individuals demands that they have their choice of provider for local (or intrastate) and long distance (interstate) relay service, just as hearing persons have that choice for their telephone service.

The touchstone of TRS is the concept of functional equivalence. Functional equivalence is not whatever the Commission, in the exercise of discretion says it is. Functional equivalence is an objective standard. If hearing persons have it, deaf, hard of hearing and speech disabled persons are entitled to it, if it is feasible. It is up to this Commission to ensure that functional equivalence is provided to the extent possible. VRS cost recovery must be evaluated in light of how best to achieve this mandate.

*VRS cost recovery options.* A competitive bidding process would not serve the public interest because it would largely deny deaf and hard of hearing persons the benefits of VRS competition. A winner take all approach would destroy service competition altogether, while adoption of a scheme authorizing the two or three lower bidders would nevertheless permanently entrench these providers in the market. The situation with VRS differs markedly from the situation present with state traditional TRS contracts. The technology, the capital investment, and the labor pool for handling traditional TRS are all much simpler than for VRS. Moreover, there is an order of magnitude of difference in the scale of a national VRS market versus a single state traditional TRS contract which would make it impossible for new entrants under a competitive bidding scheme..

The existing NECA weighted average method, in and of itself, is not an unreasonable method for setting the VRS rate. The bulk of the criticism directed at recent VRS rate setting has not been the method itself, but the process by which that method is accomplished. In particular, providers and consumers have complained of the lack of transparency in the rate setting process, arbitrary exclusion of costs, and abrupt and unannounced changes in what is considered reasonable costs. However, the rate is subject to being skewed if anomalies are allowed to develop which impede an efficient market. Providers may need to be required to better justify their demand projections under a continued NECA weighted average rate setting scheme. A variant of the NECA method, using the median cost estimate, is a reasonable methodology for determining the VRS rate and is unlikely to be subject to skewing by market anomalies.

Hands On endorses the proposed price cap methodology for VRS and IP Relay. The primary merit in that methodology is that it encourages providers to limit costs and to improve efficiency while avoiding excessive expenditure of public and private resources in making rate determinations.

*Marketing and outreach expense.* Marketing and outreach are necessary expenses of providing TRS. Providing the public and consumers with information on services, product availability, and training on use is a necessary element of functional equivalency. Marketing and outreach efforts principally educate consumers as to the availability of service, service providers and service options. The hearing public has the benefit of the substantial marketing efforts of telecommunications providers. The hearing public benefits from these efforts because these efforts inform consumers of the availability of service and service options.

Marketing and outreach are necessary to allow relay consumers similarly to reap the benefits of competition. Without branded marketing there is no way new providers could ever make themselves known in the marketplace. Thus, the potential for additional competition and the benefits that competition offers consumers, would be stymied. The Commission has repeatedly stressed the importance of outreach to the deaf and hard of hearing community. It is hard to square the Commission's statements on outreach with excluding expenses for it. The fact that the Commission has declined to proscribe a national outreach program is not ground for refusing to compensate providers for their own outreach efforts. Neither the Commission, nor NECA, is the appropriate entity to conduct outreach.

Neither have any particular expertise in outreach, marketing or the deaf and hard of hearing community. Providers are the natural entities to conduct outreach since they are the experts in providing the service.

The *FNPRM* appears to suffer from several mistaken assumptions. The assumption that outreach and marketing costs are designed primarily to promote one provider's service over another is fallacious. The assumption that relay minutes will continue to grow at historic levels is likewise illogical if marketing and outreach are eliminated. It cannot be the FCC's intention to limit growth of the fund size by choking off the flow of information to consumers concerning the availability and features of relay. In addition, marketing and advertising are subsets of outreach, they are not two separate categories of expenditures. It is likewise fallacious to assume that it is possible to differentiate between "branded" and "non-branded" outreach and marketing. In fact there is no practicable means of differentiating between them. Finally, the assumption that marketing and outreach efforts do not serve to lower costs to the rate payers is inaccurate.

The inclusion of marketing and outreach as TRS rate elements are fully consistent with the FCC's Part 32 Rate of Return Methodology. Hands On supports NECA's suggestion of a fixed percentage of the rate allocated to marketing and outreach and suggests the appropriate number is five percent in order to avoid needless disputes over specific marketing and outreach programs.

*Other cost issues.* Indirect costs attributable to TRS should be compensated, whether based on a percentage of the employee's time devoted to VRS or on a percent of

company revenues. Legal costs are required to provide TRS and necessitated by its highly regulated nature. Lobbying expenses are like all other expenses: they have to be reasonable. Generally they are. Very often the staff's response to a provider's concern with respect to the TRS program is: "talk to Congress." Providers should be able to raise issues with Congress, which after has oversight responsibility for this agency and the TRS program. Executive compensation costs are another item that should be judged by the standard of reasonableness based on the nature of the duties performed as opposed to the job title.

It is time for the Commission to recognize that the cost of certified deaf interpreters ("CDI") is a legitimate and reasonable VRS cost. CDIs possess a skill set that is not available to hearing interpreters, native ASL fluency and deep immersion and appreciation of deaf culture. In those instances, where hearing interpreters need assistance to effectively and accurately interpret calls, CDIs are required by FCC Rule Section 64.604(a)(iv).

*Research and development expense.* A fundamental problem with TRS cost recovery is the FCC's mistaken view that providers are only entitled to compensation for providing relay at the minimum mandatory standards set forth in Section 64.604. The problem with this position is it mistakenly assumes the FCC has or should have a minimum mandatory standard for every aspect of relay service. It does not. The proper standard for judging TRS expenses for which there is no minimum standard is, once again, one of reasonableness, having proper regard for the cost to be incurred versus the benefit to be achieved.

A prime example of the need for a reasonableness standard is with respect to research and development expense. Research and development expense is necessary to meet

requirements that are waived and to improve service where no minimum standard is specified. Exclusion of research and development costs is contrary to precedent. Indeed, exclusion of research and development is particularly inappropriate given Congress's direction to the FCC that its regulations "not discourage or impair the development of improved [relay] technology."

Moreover, it is not the unwaived minimum standards that determine functional equivalence; rather, it is the minimum standards themselves, where they exist. Waivers do not change the definition of functional equivalence. The waivers that have been granted are generally not because they are unnecessary to achieve functional equivalence, but because they are not practicable, or because they are not currently feasible to implement. Research and development is needed to solve the barriers to achievement of the waived standards.

*Management and administration of the TRS Fund.* The key change necessary for effective fund administration is that FCC communications concerning TRS issues and Fund management issues should be on the record. Hands On also believes that the contribution base for TRS Fund should be increased to include ISPs. This is needed to fairly apportion the costs of service among all interstate telecommunications providers in accordance with Section 225's requirements. In addition, to create a level playing field among providers, the FCC needs to have a meaningful answer speed enforcement mechanism. Hands On is not aware of any other specific actions necessary to curb fraud, waste or abuse or improve the administration of the Interstate TRS Fund. Current levels of provider reporting and auditing appear adequate.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the matter of )  
 )  
Telecommunications Relay Service and Speech-to-Speech ) CG Docket 03-123  
Services for Individuals with Hearing and Speech Disabilities )

To: The Commission

***COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING***

Hands On Video Relay Services, Inc. (“Hands On”), by its attorneys and pursuant to FCC Rule Section 1.415 comments on the Commission’s July 20, 2006 Further Notice of Proposed Rulemaking, FCC 06-106 (“*FNPRM*”) and shows the following.

***I. Introduction.***

The *FNPRM* seeks comment on a broad range of issues concerning the compensation scheme for Telecommunications Relay Service (“TRS”). The *FNPRM* seeks comment on alternative compensation methodologies for text-based TRS<sup>1</sup> and Speech-to-Speech relay service (“STS”) compensated from the Interstate TRS Fund. Among the issues included under this category are whether TRS and STS should be compensated at the same rate and whether to adopt Hamilton Relay, Inc.’s proposed multi-state average rate structure (“MARS”). The *FNPRM* also seeks comment on the appropriate compensation methodology for Video Relay Service (“VRS”), including the length of time the VRS rate should remain in effect prior to adjustment. The *FNPRM* further seeks comment on issues

---

<sup>1</sup>This would include traditional TRS service provided over telephone lines using a TTY or similar device, as well as Internet Protocol Relay Service (“IP Relay”) which is a text based TRS service provided to deaf and hard of hearing persons via the Internet.

relating to the reasonable costs of relay service, including whether and to what extent the following costs should be compensated: marketing and outreach, overhead, and executive compensation costs. The *FNPRM* lastly seeks comment on ways to improve the management and administration of the TRS Fund, including ways to assess the performance and efficiency of the TRS Fund and to deter waste, fraud and abuse. Hands On responds to each of those issues and other relevant matters below.

***II. TRS is not simply an accommodation to deaf and hard of hearing persons.***

As a prelude to its discussion of various issues, the *FNPRM* (at para. 8)<sup>2</sup> suggests TRS is an "accommodation" under the ADA, and that providers of TRS are therefore not entitled to reimbursement for certain costs incurred in the provision of TRS. Both the premise and the reasoning are wrong, however: TRS is not an "accommodation." Even if it were, that would not preclude providers from receiving full and fair compensation.

The ADA's purpose is to eliminate discrimination against individuals with disabilities in four distinct areas, each of which is addressed in a separate statutory title: employment (Title I),<sup>3</sup> public services (Title II),<sup>4</sup> public accommodations (Title III),<sup>5</sup> and telecommunications (Title IV).<sup>6</sup> Although Titles I - III mandate certain "accommodations,"<sup>7</sup>

---

<sup>2</sup>("[W]e are mindful of the role of TRS as an accommodation under the ADA for people with disabilities"). *See also id.* at para. 28.

<sup>3</sup>42 U.S.C. Sections 12111-117.

<sup>4</sup>42 U.S.C. Sections 12131-65.

<sup>5</sup>42 U.S.C. Sections 12162-65.

<sup>6</sup>47 U.S.C. § 225. A fifth title of the ADA assembles various "miscellaneous" provisions.

<sup>7</sup>Titles I and II require private and public entities, respectively, to make "reasonable accommodations" with respect to their employees. *See A Guide for People with Disabilities Seeking*

Title IV does not. In fact, the word "accommodation" does not even appear in Title IV, even though it is used dozens of times in the preceding titles.

Both the wording of Section 225 and its legislative history confirm that the purpose of Title IV (and hence TRS) is not to provide an "accommodation." Rather, as clearly stated in the House Report, the provision's purpose is "to ensure universal service to the hearing and speech-impaired community."<sup>8</sup> Thus, Section 225 is more analogous to Sections 1 and 254 of the Communications Act than to Titles I-III of the ADA.<sup>9</sup> Although Congress intended Section 225 and other provisions of Title IV to be consistent with the goals enshrined in Titles I-III,<sup>10</sup> it did not intend for the Commission's central duty under Title IV – ensuring that deaf, hard-of-hearing, and speech-disabled individuals have universal access to communications services – to be diluted by or confused with provisions set forth in other Titles of the ADA.<sup>11</sup> The Commission therefore may not use provisions in Titles I - III to reduce the universal access mandate of Section 225 to a mere "accommodation" requirement. Indeed, TRS involves the creation of entirely new services, many of which

---

*Employment*, available at <http://www.usdoj.gov/crt/ada/workta.htm> (last visited October 26, 2006); DOJ Title II Manual II-4.3200 (Title II). As noted, Title III regulates public "accommodations" in various ways.

<sup>8</sup>H.R. Rep. No. 101-485, pt. 2, at 90 (1990). *See also* 47 U.S.C. § 225(b)(1) (incorporating by reference the universal service mandate of section 1 of the Act).

<sup>9</sup>Indeed, as noted, section 1 is explicitly incorporated by reference into section 225.

<sup>10</sup>*See Id.* ("By requiring telecommunications relay services to be provided throughout the United States, this section [Title IV] takes a major step towards enabling individuals with hearing and speech impairments to achieve the level of independence in employment, public accommodations and public service sought by other sections of the Americans with Disabilities Act.").

<sup>11</sup>*Compare* 42 U.S.C. §§ 12131-65, 12111-12117 (focusing accommodation), *with* 47 U.S.C. § 225 (focusing on universal service).

have been developed using new technologies. The FCC's mandate under Section 225 is to ensure there is universal access to these new and innovative services. This is not inconsistent with compensating providers for improved service, nor even allowing them to make a reasonable profit.

Even if the *FNPRM* were correct in labeling TRS as an "accommodation" – and it is not – there would be neither legal nor logical support for the denial of all reasonable expenses to TRS providers. In fact, this would create disincentives for new providers to enter the TRS business or for existing providers to stay in the business, let alone innovate or expand the availability of service to additional users. This result would be contrary to the clear statutory mandate to make TRS available "to the extent possible" throughout the country and to encourage the use of existing technologies and "not discourage or impair the development of improved technology."<sup>12</sup>

### ***III. Cost recovery for traditional TRS, STS and IP Relay.***

The *FNPRM* requests comment on a number of issues concerning traditional TRS, IP Relay and STS, including: the applicability of Hamilton's MARS plan: whether the three services should be compensated at the same rate: whether state TRS rates should be applicable to interstate TRS: whether there should be a true-up; and whether the rate should run for more than a single year. *See FNPRM* at paras. 9-23.

---

<sup>12</sup> 47 U.S.C. Section 225(b)(1) & (d)(2). Under the analogous universal service mandate of Section 254 of the Act, for example, the Commission has permitted providers of supported services to earn a reasonable profit.

Hands On does not now provide any of the three services at issue here, traditional TRS, IP Relay or STS.<sup>13</sup> Accordingly, Hands On lacks the benefit of experience in responding to these issues. Therefore, its response will be relatively limited except where a matter raised concerning one or more of these services also applies to the provision of VRS.

*A. MARS plan.*

Hamilton's MARS plan would set the traditional interstate TRS rate based on a weighted average of intrastate state TRS rates, most of which are based on competitive bids. *FNPRM* at para. 9. Implicit in the MARS plan is the assumption that intrastate costs for traditional TRS approximate interstate costs. That would appear to be a reasonable and logical assumption, but Hands On has no data that would confirm or disprove that assumption. Certainly it is logical that traditional TRS intrastate and interstate costs should be similar and Hands On can think of no reasonable basis to oppose use of the MARS plan for traditional interstate TRS.

A more interesting question is whether the MARS plan would be an appropriate means of determining the rate for IP Relay service. IP Relay costs may differ from traditional TRS costs due to the more extensive computer equipment required and the requirement that IP Relay service providers complete interexchange calls at no charge if

---

<sup>13</sup>Hands On does have pending an application for FCC certification to provide both VRS and IP Relay. *See* Application For Certification as an Eligible VRS And IP Relay Provider, CGB Docket 03-123 (September 22, 2006).

consumers are not provided equal access to interexchange carriers. However, Hands On believes that other cost factors such as the lower telecommunications costs and network efficiencies of IP Relay may serve to offset the cost of providing free completion of interexchange calls absent consumer choice of interexchange carrier. Therefore, at this time, Hands On tentatively believes that if the MARS plan were adopted it would be appropriate to apply it to both traditional TRS and IP Relay.

One question that arises concerning the MARS plan is how often it should be adjusted. State TRS contracts and rates change over time and not all at once. Adjusting the MARS rate each time a state rate changes would be administratively cumbersome and impede the goal of putting stability in the rate setting process. Therefore any implementation of the MARS plan should be as a means of setting an initial rate which will remain in effect for a set time period.

***B. Whether the same rate should apply for traditional interstate TRS and IP Relay.***

For the same reasons as discussed with respect to the MARS plan, Hands On tentatively believes it would be appropriate to apply the same rate to traditional interstate TRS as to IP Relay. However, Hands On would defer to providers having actual experience in providing the two services. Hands On takes no position on STS. Moreover, Hands On questions whether there is sufficient data to make a determination that STS costs are substantially equivalent to TRS costs. There is very little STS traffic, and very few providers of the service. The STS rate has also varied substantially over the years. Under

the circumstances further data are required prior to concluding that the traditional TRS rate should be applicable to STS.

***C. Following state rates for traditional interstate TRS rates may increase administrative costs.***

Pegging the interstate traditional TRS rate to the intrastate rate set by the state where the call originates is not on its face an unreasonable means of determining the interstate traditional TRS rate. However, Hands On questions whether this is a good idea from an administrative standpoint. It would appear that adoption of this methodology may serve to increase the overall administrative costs to the Interstate TRS Fund due to the need to track 50 plus state TRS rates, rather than the singular interstate TRS rate. The additional bookkeeping costs would likely outweigh any cost savings that might otherwise be achieved both on the part of providers and on the part of the Interstate TRS Fund. In any event, this approach appears of limited value given that it would not apply to the rate for IP Relay.

***D. The MARS plan cannot apply to VRS.***

It is plainly evident that the MARS plan cannot apply to VRS because there are no state VRS rates that can be averaged to formulate a MARS VRS rate. Even assuming that sometime in the future the states take responsibility for “intrastate VRS,”<sup>14</sup> there would still

---

<sup>14</sup>As discussed in more detail below, the very concept of “intrastate VRS” is troubling for a variety of reasons. First, VRS is accessed via the world-wide web. Calls could be routed through a variety of states even for callers right next door to one another. This is very much unlike the situation with traditional TRS which is routed over local phone lines to one or more in-state TRS call center(s) and then routed over the public switched telephone network either to an in-state telephone number or interstate via an interexchange carrier to a party called in another state. Due to network efficiency requirements, VRS calls can be routed to any call center maintained by the

be problems in adopting a MARS system for interstate VRS compensation. Unlike text relay, it takes years of training to be a sign language interpreter. Labor costs for video interpreters reflect this fact and are high. Furthermore, the supply of video interpreters is limited. Because of the scarcity of video interpreters, VRS call centers are generally located in the larger urban areas. This is because these areas have a greater number of sign language interpreters residing therein from which VRS providers may recruit compared to more rural areas. The labor costs for video interpreters also varies considerably by locale. Costs are quite high in states like California, New York and Massachusetts, but lower in states like Iowa, Alabama and Idaho. This make a rate determined by average state rates an unreliable means to compensate VRS costs nationwide. The rate a state like Idaho or Iowa might set for intrastate VRS is likely to bear little relation to the cost of providing VRS from a call center located in New York City, San Francisco or Boston. An “average” rate for VRS under the MARS plan would therefore likely under compensate a provider located in California or New York while overcompensating providers serving lower cost states.

---

chosen provider. Thus, for example, a call made from a Jacksonville, Florida VRS user to a Miami local telephone subscriber could be routed through Hands On’s Florida call center, but it is just as likely to be routed through one of its three California centers, its Vancouver, WA call center, or its Puerto Rico call center. Indeed, this is a principal reason why VRS is inherently an interstate communications service. Even assuming it was technically possible to restrict an in-state VRS call to an in-state VRS call center, and assuming there were sufficient video interpreters to staff all these in-state only call centers, it would be an exceedingly bad idea. This is because the loss of network efficiency would substantially increase providers’ cost of service, and thereby the burden on ratepayers.

By contrast, it is relatively easy to train text-based communications assistants. The essential skill sets are the ability to type sufficiently fast and accurately, and to clearly voice incoming text. The supply of persons with these skill sets are relatively high and the necessary training to be a TRS communications assistant is relatively limited. Compensation for these positions does not vary appreciably from state to state. An average of state rates for text-based TRS would thus be a fair way to determine the compensation levels for interstate text-based relay, but not for VRS

*E. A true up mechanism would promote inefficiency and penalize efficiency.*

The Commission requests comments on the use of a true-up mechanism where providers would be required to reimburse the TRS Fund at the end of the true-up period for any amounts paid beyond the provider's reasonable costs. *FNPRM* at paras. 22& 29. It is not clear from the *FNPRM*'s description if the contemplated true-up would include additional payments at the end of the true-up period to providers to cover reasonable costs that had not been covered by prior payments. *See Id.* Surely fairness would dictate the necessity to do so. In any event, Hands On opposes a true-up.

The TRS cost recovery scheme should encourage efficiency and discourage inefficiency. A true-up, on the other hand, would reward a provider who losses money under the rate by making up the deficit and would penalize a provider who was able to made a profit. The true-up also suffers from the disadvantage of requiring the Commission or the TRS Fund administrator to closely monitor actual expenditures and evaluate the

reasonableness of each of those expenditures. As the *FNPRM* appears to acknowledge, issues of reasonableness have been most trying over the last several years. *FNPRM* at para. 7. The cost recovery methodology should limit as far as possible the need for detailed Commission or TRS Fund administrator oversight of providers, rather than increasing it.

In the VRS context in particular the Commission seems concerned that one or more providers has earned well in excess of their costs. *FNPRM* at para. 29. It is problematic in responding to this statement because the Commission has not chosen to release either provider cost projections or actual financial data. Therefore, Hands On can only speculate as to the cause. It is well known, however, that one VRS provider has enjoyed a near monopoly of the VRS market likely as a result of business practices limiting consumer choices and deliberately interfering with consumer calls made through other providers, in effect creating a captive market.

In addition, prior to January 1, 2006, the Commission lacked an answer speed requirement for VRS and this same provider's service reportedly often forced consumers to endure long wait times to place VRS calls without the ability to place calls through other providers having shorter wait times. This situation resulted in an unlevel playing field where this one provider's costs were artificially low, and other providers' costs were substantially higher. The Commission recognized this fact in June of 2005 when it set the VRS rate at the median rate of \$6.644. See *Telecommunications Relay Services*, 20 FCC Rcd 12237, 12246-48 (2005) ("*2005 Rate Order*"). The situation has supposedly changed. Now the

FCC has adopted a minimum answer speed for VRS<sup>15</sup> and the FCC has ruled that providers cannot distribute equipment that is inoperable with the service of other providers.<sup>16</sup> As the market begins to go through a period of self-correction as a result of the Commission's recent rulings, consumers will soon be able to freely shop VRS providers. When this happens, the likelihood of any one provider enjoying excessive earnings from VRS is reduced.

Moreover, the nature of the true-up would require the Commission and/or NECA to engage in a post hoc examination of the reasonableness of costs. In other words, providers' expenditures would be examined for reasonableness *after* having been made. That procedure would be a recipe for disaster. At least under the current scheme, the review of the reasonableness of costs is accomplished *prior* to incurring those costs. Providers can, under the current scheme, know in advance whether a proposed expenditure will be deemed reasonable and decide whether or not to make it. Under a true-up mechanism, however, providers could be left in the dark as to the reasonableness of an expenditure until well after it is made. This would apply not only to a class of expenditures, but also to amounts. Such

---

<sup>15</sup>*Telecommunications Relay Services*, 20 FCC Rcd 13165 (2005).

<sup>16</sup>*Telecommunications Relay Services*, 21 FCC Rcd 5442 (2006). It is noted that it took the Commission approximately 15 months to issue this declaratory ruling aptly illustrating the point made below concerning the limited utility of the declaratory ruling process due to the time necessary for the Commission to consider a matter. *See* Petition of California Coalition of Agencies Serving the Deaf and Hard of Hearing, Docket 03-123 (February 15, 2005). In the 15 months it took the Commission to consider this petition, consumers were denied their choice of VRS provider and the provider in question could have earned excessive profits owing to the tie-in between the free videophone and VRS service.

a scheme would therefore be grossly unfair to providers who should not have to guess whether the Commission or NECA would consider an expenditure reasonable before they make it.

The likely result of this true-up approach would be to chill providers from making expenditures designed to improve their service to the deaf and hard of hearing community lest the Commission or NECA decide post hoc that the expenditure was not reasonable and impose a serious financial penalty on the provider. This would plainly hamper achieving the goal of fostering and maintaining functionally equivalent service to deaf and hard of hearing persons. A reasonable, risk adverse provider would be unwilling to make an expenditure unless that provider had assurance it would receive compensation for it. Innovation would likely be stifled and the benefits of competition largely would be rendered nugatory.

Not only would adoption of a true-up mechanism be unfair to providers and hinder service to the deaf and hard of hearing (and the hearing) community, it would also serve to increase substantially the Commission's workload. Not only would the Commission have to spend substantial time flyspecking the books of providers, it would also have to resolve innumerable issues of the reasonableness of expenditures with corresponding petitions for reconsideration, applications for review and potential court challenges. It would likely also

be bombarded with requests for declaratory rulings as to the reasonableness of proposed expenditures.<sup>17</sup>

Although the *FNPRM* cites to the Interstate Common Line Support mechanism as a potential cost recovery model, *see FNPRM* at para. 236 n. 662, Hands On fails to see how that program is analogous to TRS. That program is a funding mechanism for universal service, i.e., a subsidy program for high cost *lines*, and is compensated on a *per line* basis. TRS is a telecommunications *service* to provide deaf, hard of hearing and speech disabled persons access to the telephone network, the costs of which are dependant principally on the number of minutes of use, which serves as the basis of compensation.

The cost recovery procedures established for universal service would be far more complicated, unnecessarily so, if applied to TRS, compared to the per minute cost recovery scheme currently used for all TRS services. This is a critical distinction between TRS and the process for Interstate Common Line Support payments. The nature of the Interstate Common Line Support mechanism is such that the calculation methodology and cost elements are set forth specifically in the rules; the mechanism is designed to compensate for a very specific class of costs; and the mechanism does not involve either the FCC or the

---

<sup>17</sup>The availability of declaratory ruling relief does not resolve the problems with a true-up. Declaratory ruling proceedings are costly in terms of legal fees. Moreover, declaratory rulings do not emanate from this agency at lightning speed. *See* note 16, *supra*. Providers need the flexibility to implement business decisions quickly and should not have to wait months or years for the Commission to decide whether an expenditure is reasonable or not. At least under the current procedures the Commission must act in the first instance on rate issues teed up in NECA rate proposal prior to the July 1 of each year.

universal services administrator in questions of reasonableness of expenditures. *See generally* FCC Rule Sections 54.901-54.904. Accordingly, the true up payment is easily calculated based simply on LEC and CLEC lines counts without detailed review of the myriad of cost elements or evaluation of the reasonableness of expenses. *See generally Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent LECs and IXC's*, 16 FCC Rcd 19613, 19665-89 (2001); FCC Rule Section 54.903(a)(3).

In sum, even though a true-up might sound good on first impression, on analysis it is clear that it is impracticable in practice.

***F. All rate periods for the various TRS services should be set for the same period.***

The Commission asks whether rate periods for interstate traditional TRS, STS and IP Relay should continue to be set yearly or whether they should be set for a longer or shorter period of time. *FNPRM* at para. 23. Hands On believes that the rate period for all TRS services, including VRS, should run concurrently and the rate period should be in excess of one year. Rate periods should run concurrently because issues raised concerning one TRS service are likely to be applicable to other TRS services as well. As for the length of the rate period, providers need greater continuity than is present under the current practice of setting rates on a yearly basis. A two, three or four year rate structure allows better planning by providers, who will know with more certainty what their compensation will be per minute of TRS service. A longer rate period also is more conserving of scarce

governmental and private resources. Hands On favors a three year period as long enough to allow providers to plan and implement long term strategies, while short enough to allow the Commission to address any changes that may develop in the marketplace requiring adjustment of rates.

***IV. Cost recovery for VRS.***

***A. Initial observations.***

The *FNPRM* (at paras. 24-31) raises a host of issues concerning VRS cost recovery. Prior to discussion of these issues, some initial observations on the state of the market for VRS will help set a perspective for examination of VRS cost recovery issues.

***1. The growth in VRS traffic is beginning to slow.***

First, although VRS traffic has grown tremendously since the service's introduction in 2000, and although usage should continue to grow for some time into the future as broadband penetration rates increase, VRS traffic nevertheless now appears to be growing at a slower rate than in previous years. Based on NECA's monthly TRS Fund reports from 2003 to July of 2006, VRS in 2003 and 2004 grew at a rate of approximately 12 percent a month. By 2005, however, that growth rate was down to approximately seven percent per month. For the first seven months of 2006, that growth rate has leveled off to approximately three percent per month. *See* Exhibit 1. Concurrently traditional TRS and IP Relay should

be expected to be stable or slightly decline as more and more deaf and hard of hearing persons switch to VRS.<sup>18</sup>

**2. *Marketplace and regulatory changes have hampered the ability to accurately predict demand.***

Second, various changes in the marketplace and changes in regulation have increased the difficulty providers -- and NECA -- face in forecasting VRS demand. These changes include the FCC's certification of new providers and the entry of these providers into the marketplace, the FCC's decision to allow Spanish language to ASL VRS, the adoption of the VRS speed of answer requirement, and the FCC's mandate that VRS equipment be interoperable. With stability of FCC regulation, and the maturity of the industry, the Commission should expect providers and NECA will be in a better position to estimate demand than has more recently been the case.

**3. *Abrupt changes in FCC policy causes provider uncertainty.***

Third, a principal cause of uncertainty providers face is the Commission's practice of suddenly changing the "rules" concerning the reasonableness of costs, changes which have appeared motivated primarily as a means of decreasing the VRS rate and the increase in the size of the TRS Fund. Providers need to know the rules under which they will operate and need a stable regulatory environment from year to year in order adequately to plan and

---

<sup>18</sup>This trend of moderating growth of relay service appears to be occurring with respect to IP Relay as well. See Exhibit 2. Traditional interstate TRS has been in a downtrend for some time, apparently reflecting deaf and hard of hearing persons abandoning their TTYs for IP Relay and VRS service. See Exhibit 3.

implement their business strategies. Abrupt changes in what is considered reasonable costs disrupt providers in several ways. They cannot do long term planning when they do not have any assurance that classes of expenditure deemed reasonable in one year will not suddenly be deemed unreasonable. Moreover, their ability to hire quality employees is hampered due to their inability to assure continuity of employment. Finally, these abrupt changes in policy result in diverting resources to petitions, ex parte presentations and pleading with this agency, resources which can better be spent in providing top quality service to the deaf, hard of hearing and speech disabled persons designed to benefit from relay.

A related concern is the Commission's practice of setting policy by proxy by giving off-the-record instructions to NECA. This practice would appear to violate the requirements of the APA in that it constitutes the type of "file cabinet rule" the APA eschews. *See Robert L. Mohr*, 21 F.C.C.2d 239, 18 Rad. Reg. 2d (P&F) 215 (1970). *See also Linoz v. Heckler*, 800 F.2d 871, 876-878 (9<sup>th</sup> Cir. 1986). In addition, the off-the-record contacts between NECA and the Commission are questionable under the agency's ex parte rules. Hands On acknowledges that FCC Rule Section 1.1204(a)(12)(i) exempts communications between the Commission and the TRS Fund administrator concerning administration of the TRS Fund; however, that narrow allowance is not sanction for the FCC to set policy using NECA as its proxy. Even if it were, its bad practice because it contributes to a lack of

transparency in TRS rate setting and does not allow for adequate review and scrutiny of the agency's actions.

Examples of the mischief of this practice abound from recent history. For example, in 2003 NECA, apparently following off-the-record instructions from the Commission, looked not only at providers' costs but at underlying subcontractor costs and refused to credit subcontractor costs that went into competitively bid contracts with TRS providers. No legal basis existed for NECA to call for such data, even though all subcontractors voluntarily complied with the request. Moreover, there was and is absolutely no FCC authority to police subcontractor costs, other than the general requirement that *provider* costs be reasonable. An examination of subcontractor costs has therefore grown up out of this practice which is neither supported by Commission rule or published policy, but rather by an unannounced, unpublished instruction from the agency to the TRS Fund Administrator.

Similarly for the first time, in 2006, the TRS Fund Administrator, again following apparent off-the-record FCC instructions, proposed to disallow all costs providers submitted under the category of "marketing costs." This set off a howl of protests from providers and consumers which helped to prompt this proceeding. Providers need predictability. They obviously do not have it when the "rules" they are to follow change on an ad hoc unannounced basis.

***4. The public has benefitted from competition in Internet relay services.***

Fourth, the public interest has benefitted immensely from competition and the entry of new providers into VRS. Although price competition does not exist for VRS, the public has benefitted from VRS competition as a result of providers seeking to differentiate themselves from each other with either service enhancements or refinements which expand the availability and utility of VRS to the public. For example, the Sorenson and the Dlink videophones have allowed those persons who lack computer literacy to access VRS through their television sets. Hands On's custom software PC software VideoSign<sup>R</sup> and Apple MacIntosh's iChat offer much improved video-conferencing tools over the no longer supported Microsoft Net Meeting. SNAP's SIP videophone, assuming it remedies its lack of interoperability problem, represents VRS's evolution to the next generation video conferencing standard. The development of video mail has brought deaf and hard of hearing persons one more step forward toward full comparability with the telephone service hearing persons enjoy. All of these advancements and more have resulted from the competitive VRS environment. Any VRS cost recovery mechanism must promote the continued development of VRS competition and not impede it if deaf and hard of hearing persons are to truly enjoy the ADA's goal of functionally equivalent telephone service.

***5. Market distortion is the principal cause of any provider over earning.***

Fifth, as discussed above in connection with the issue of a true-up, the issue of substantial overearning by one or more VRS providers is largely a result of market

irregularities occurring as a byproduct of the lack until recently of an interoperability requirement and the lack also until recently of a VRS speed of answer requirement. As the market corrects from those distortions, providers' cost will tend to revert to the mean as the public rewards superior VRS service with higher demand and penalizes poor service with lower demand. Providers' costs will therefore be more closely related to service quality. Providers giving the public lower service are likely to find their services are not demanded by the deaf and hard of hearing public.

**6. *The VRS compensation methodology should encourage innovation and cost control.***

Sixth, in choosing any VRS compensation methodology, the FCC should strive to encourage innovation and reward providers for keeping costs under control while facilitating the best practicable service to the deaf and hard of hearing community. Areas where innovation are required include implementation of E911 for VRS; achievement of an appropriate portable solution for VRS; and keeping pace with improvements in service to the hearing community.<sup>19</sup>

**7. *VRS costs will largely be driven by the cost of video interpreters.***

Seventh, although economic theory would suggest that VRS costs adjusted for inflation may continue to decrease somewhat as more minutes of use are spread among fixed and semi-variable costs, at the same time it is necessary to recognize that the cost of

---

<sup>19</sup>In addition, substantial work remains to be done to facilitate hearing initiated calls through VRS.

video interpreters is rising faster than inflation as the demand for interpreters outstrips their entry into the marketplace. To fulfill the ADA's mandate for functionally equivalent service for deaf and hard of hearing persons, the FCC needs to work with other entities, including the Department of Education, the various states and with Congress to seek ways to encourage additional and expanded interpreter training programs. This is important not only because future VRS rates will to a large degree be driven by interpreter labor costs, but also because VRS cannot and was never designed to take the place of community interpreting. The supply of available interpreters for community interpreting is diminishing as they are drawn a more stable employment environment by working in VRS call centers. An integrated approach to interpreter training is necessary to ensure sufficient numbers of interpreters for both VRS and community interpreting.

**8. *VRS must keep up with advancements in technology for hearing persons.***

Eighth, telecommunications technology continues to evolve for hearing persons. To ensure comparable service, technology for deaf and hard of hearing persons must mirror development of technology for hearing persons. At this point, deaf and hard of hearing persons are behind the technology curve in many areas, the most obvious one being the lack of enhanced 911 (E911) service, i.e., the transmission of location information directly to the appropriate public safety answering point. As the Commission has recognized, this is a serious safety of life and property issue. *See generally Telecommunications Relay Services*, 20 FCC Rcd 19476 (2005). Another obvious disparity is the lack of adequate portable

telecommunications service. Present portable solutions for deaf and hard of hearing persons are woefully inaccurate, essentially requiring use of a camera equipped laptop computer with broadband Internet access. To achieve the functionally equivalent service the ADA requires, deaf and hard of hearing persons must have available the benefits of E911 and the convenient means to make portable calls just like hearing persons.

The FCC must recognize that the marketplace alone is unlikely to remedy these disparities between deaf and hard of hearing persons and hearing persons. It was specifically the intent of the ADA to remedy such disparities, however. *See* 42 U.S.C. Section 12101. Whatever VRS rate methodology the Commission adopts should include the specific intent of remedying these disparities.

**9. *VRS is a national service.***

Ninth, VRS is undoubtedly a national service. As an Internet based service, it is interstate in nature. As such, primary responsibility for its regulation and compensation lies with the FCC and not with the states. The states have no substantial role in regulating Internet services. The Internet is an instrumentality of interstate commerce and as such authority for regulation lies solely within the purview of the federal government. *See, e.g., United States v. Macewan*, No. 05-1421 (3rd Cir. March 9, 2006) ("We therefore hold that the Internet is both a channel and instrumentality of interstate commerce..."); *Internet over Cable Declaratory Ruling*, 26 Comm. Reg. (P&F) 201, 227-28 (2002). *Intercarrier Compensation for ISP-Bound Traffic*, 23 Comm. Reg. (P&F) 678, 697 (2001). As such it

would be inappropriate to turn VRS (or IP Relay) over to the states for payment of supposed “intrastate” calls.

*a. Internet relay is inherently interstate.*

The Commission should hold, in line with the consistent precedent discussed herein, that Internet based relay is inherently interstate in nature. The Commission has previously determined that Internet access is interstate in nature. *See, e.g., Internet over Cable Declaratory Ruling*, 26 Comm. Reg. (P&F) at 227-28. In *Intercarrier Compensation for ISP-Bound Traffic*, 23 Comm. Reg. (P&F) at 697, the Commission explained the basic difference between Internet traffic and traditional local telephone traffic:

The Internet communication is not analogous to traditional telephone exchange services. Local calls set up communication between two parties that reside in the same local calling area. Prior to the introduction of local competition, that call would never leave the network of the incumbent LEC. As other carriers were permitted to enter the local market, a call might cross two or more carriers’ networks simply because the two parties to the communications subscribed to two different local carriers. The two parties intending to communicate, however, remained squarely within the local calling area. An Internet communication is not simply a local call from a consumer to a machine that is lopsided, that is, a local call where one party does most of the calling, or most of the talking. ISP’s are service providers that technically modify and translate communications so that their customers will be able to interact with computers across the global Internet.

That basic difference in how traffic is handled, is manifest in how IP Relay and VRS providers process traffic, even where the calling party and the called party are located in the same state. When a traditional relay call is made, the caller dials 711 and is connected to

one of his or her state's TRS relay centers. So if he makes an intrastate call, the center naturally and easily may bill the call to the state program.

Internet relay traffic is handled materially differently. IP Relay and VRS providers accept traffic on a nationwide basis because the traffic is routed over the Internet to the provider's web site. In an Internet relay call, the deaf, hard of hearing or speech disabled person first accesses his Internet service provider, and then accesses the Internet relay provider's central server.<sup>20</sup> That server is unlikely to be in the home state of the calling party.

In Hands On's case, for example, its central server is located at its Rocklin, CA call center. The actual Internet call, represented by millions of digital packets, likely would have been routed through various servers scattered around the nation before it actually gets to the Hands On central server. From the Internet relay provider's central server, the call is then routed to the next available communications assistant or video interpreter. That communications assistant or video interpreter could be located in any number of call centers.<sup>21</sup> In Hands On's case, the call could go to one of six call centers located within

---

<sup>20</sup>For redundancy purposes, there may be more than one server which may be located in the same state or in different states.

<sup>21</sup>The ability to switch calls among various call centers helps in achieving overall network efficiency in two ways. First, it allows a measure of trunking efficiency so that all communications assistants or video interpreters on duty throughout the nation for the provider are available to handle each call. Second, during off-peak hours, traffic can be consolidated in one or more call centers, allowing other call centers to close, thereby saving on lighting, HVAC, off hour labor costs, and other operating costs. Traditional relay, employing separate in state call centers does not allow for these efficiencies.

three states and the Commonwealth of Puerto Rico. From whatever call center which actually handles the call, the video interpreter then completes the call, in most cases by engaging an interexchange carrier to deliver the call to the intended party..

The above described process, which is integral to the Internet, is inherently interstate, involving multiple computers in multiple locations, across state boundaries. *See Intercarrier Compensation for ISP-Bound Traffic*, 23 Comm. Reg. (P&F) at 696 n.115. That is why the Commission has determined that ISP service is analogous, though not identical, to long distance calling service, not to local exchange service. *Id.* at 696-97.

There are no analogous interstate elements to an intrastate traditional relay call. The relay user calls 711, is connected to one of his state's relay call centers, and the call is then placed to the in-state called party. The transmission never leaves the state. There are no elements of interstate traffic to the call. There are no jurisdictional ambiguities. With Internet relay the relay center is accessed over the worldwide web; the transmission likely crosses state boundaries, the call center handling the call is likely located in a different state from where the call originates, and the call is likely to be completed by the making of an interstate interexchange call.

Thus, it is readily apparent, in line with Commission precedent, that Internet relay calls are and should be considered interstate. This is by no means inconsistent with Section 225's wording or intent. Section 225(3)(B) of the Act provides that the Commission shall promulgate regulations which "shall generally provide that costs caused by interstate

telecommunications relay services shall be recovered from all subscribers for every telecommunications service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.” Since Commission precedent plainly supports the conclusion that Internet relay services are by their very nature interstate communications, there is no conflict with Section 225 of the Act.

Likewise, even were Internet relay services not predominately interstate in nature under the Commission’s precedent, Section 225 of the Act does not by its terms mandate cost recovery at the state level for Internet relay services. Section 225(3)(B) of the Act only “generally” requires intrastate relay to be recovered from the intrastate jurisdiction. Where the Commission has good reason not to follow the “general” requirement, the statute allows it to do so. Certainly, the predominate characteristic of the Internet as interstate is one such reason. Another such reason is the difficulty of determining with any degree of certainty the origin or in some cases the termination of Internet relay calls.<sup>22</sup>

***b. Adopting jurisdiction separations for Internet relay would deny consumers their choice of carriers.***

Still another reason to maintain Internet relay compensation at the federal level is the expected loss of choice that the Internet relay consumer would face if “intrastate” Internet relay cost recovery was imposed on the states. The past 30 years of communications policy

---

<sup>22</sup>Another such reason is the difficulty of determining with any degree of certainty the origin or in some cases the termination of Internet relay calls. For example, where a call is made to a person with VoIP service, whether with DSL, cable or some other medium, the provider likely will not be capable of determining the terminating location.

as enacted by Congress and implemented by this Commission has been to encourage competition in all aspects of the telecommunications industry. This may have started with interexchange traffic, but the policy is now well established in favor of local competition as well, as evidenced by the 1996 amendments to the Act. *See, e.g.*, 47 U.S.C. Sections 251-53, 256-57, 259. It is fair to say that choice of service provider is now a key element of local phone service. Given that, functional equivalency for deaf, hard of hearing and speech disabled individuals demands that they have a choice of provider for local (or intrastate) and long distance (interstate) relay service, just as hearing persons have that choice for their telephone service.

Although IP Relay and VRS consumers currently have a choice of service providers, turning IP Relay or VRS over to the states for funding of supposed “intrastate” service would likely result in denying most consumers their choice of provider. States generally contract with one provider for traditional TRS service.<sup>23</sup> They would likely tend to follow that same approach if the FCC were to impose jurisdictional separation on Internet based relay. Unless each VRS or IP Relay provider had a contract with each of the various states or territories, providers would be in the position of having to block some callers seeking to make supposed “intrastate” calls. Consumers would therefore be denied their choice of service provider and the benefits of competition by imposition of a scheme of jurisdictional

---

<sup>23</sup>*But see* [http://www.ddtp.org/california\\_relay\\_service/711\\_choice\\_form/default.asp](http://www.ddtp.org/california_relay_service/711_choice_form/default.asp), last visited October 23, 2006 (state of California provides choice of three carriers, MCI, Nordia or Sprint for traditional relay).

separations for Internet relay. That result, that consumers will be denied their provider of choice, is plainly at odds with Congress's and this Commission's policy of competition and choice in the telecommunications marketplace. *See, e.g.*, 47 U.S.C. Sections 251 et seq.; FCC Rule Sections 51.1 et seq.

In addition, with specific respect to VRS, some states may not be willing to fund the service because of cost considerations. This could result in some state programs being decertified. Pursuant to Section 225(f)(4) of the Act, if a state program is decertified or suspended, the obligation falls on the Commission to ensure continuity of relay services. This would undoubtedly require the Interstate TRS Fund to pick back up the cost of VRS. For all of these reasons, Internet relay compensation should be maintained at the federal level.

***10. Functional equivalence demands that deaf and hard of hearing persons have access to all functionalities hearing persons enjoy.***

Tenth, the touchstone of TRS is the concept of functional equivalence. Functional equivalence is not whatever the Commission, in the exercise of discretion says it is. Functional equivalence is an objective standard. If hearing persons have it, deaf, hard of hearing and speech disabled persons are entitled to it, if it is feasible to provide it to them, and it is up to this Commission to ensure that functional equivalence is provided to the extent possible. *See* Section 225(a) of the Act. This discussion is a necessary backdrop to any discussion of VRS cost recovery, because VRS providers must be compensated

sufficiently for providing functionally equivalent service to their deaf, hard of hearing and speech disabled users.

***B. Evaluation of alternative VRS compensation methodologies.***

With these observations in mind, we turn to specific issues relevant to VRS compensation.

***1. Competitive bids would damage VRS competition.***

The *FNPRM* seeks comment whether the Commission should seek competitive bids for VRS service and thereby permit the two or three lower bidders to provide service at the lowest bid rate, or set compensation based on the lowest bid, with some sort of incentive or disincentive built into the auction process to ensure competitive bidding without limiting the number of ultimate providers at that rate. *FNPRM* at paras. 30-31. The Commission notes that many states award TRS contracts to a single provider through a competitive bidding process. *Id.*

A competitive bidding process would not serve the public interest because it would largely deny deaf and hard of hearing persons the benefits of competition. As discussed above, the deaf and hard of hearing public has benefitted immensely from VRS competition. The Commission itself recognized this fact when it adopted certification procedures for VRS and IP Relay providers. *Telecommunications Relay Services*, 37 Comm. Reg. 643, 651, FCC 05-203, para. 21. There it noted that VRS and IP Relay competition gives consumers greater choice and “will bring innovation to the provision of VRS and IP Relay, both with

new equipment and new service features.” *Id.* The Commission further noted that new VRS providers may stimulate greater broadband deployment. *Id.* at n.81, citing *Telecommunications Relay Services*, 19 FCC Rcd 12475, 12568 (2004). Although the Commission’s proposal recognizes the desirability of competition, the competitive bidding proposal is not likely to achieve it. Instead the likely result would be to entrench only one or two providers who would likely offer only the most minimal of service. Moreover, the ability of new VRS providers to enter the marketplace would be all but eliminated.

Although there would appear to be several ways that a competitive bidding system could be organized, Hands On cannot envision any way a competitive bidding scheme would serve the public interest. The three principal ways the scheme could be organized are: (1) winner take all; (2) the two or three lower bidders are authorized; or (3) all providers are allowed to offer the service at the lowest rate.

The winner take all approach would destroy service competition. And apparently in recognition of this fact, the *FNPRM* does not even propose such an approach. However, competition would be harmed almost as badly by any approach which only authorized the two or three lower bidding providers to offer service. Adoption of this approach would permanently entrench these two or three winning bidders in the market. This is because creation of a new VRS service requires considerable startup capital and planning. Especially time consuming is the task of recruiting and training sufficient numbers of video interpreters to handle VRS traffic. Hands On spent two years planning its service before becoming

operational and it had the advantage of a core of experienced sign language interpreters upon which to draw. Other providers have spent similar amounts of time and effort in preparation to enter the market. No rationale business person would spend the time and money necessary to prepare to enter a market without assurance that it would in fact be able to enter the market. In a competitive bidding process where only the two or three lower bidders would be entitled to provide service, there is not the sufficient assurance that would lead a rational business person to even attempt to enter the market. The result will be that once the first round of bidding is completed and contracts awarded, the winners will be the permanent VRS providers.

The situation with VRS differs markedly from the situation present with state traditional TRS contracts. The technology, the capital investment, and the labor pool for handling traditional TRS are all much simpler than for VRS. Moreover, there is an order of magnitude of difference in the scale of a national VRS market versus a single state traditional TRS contract. The effort to equip and staff a traditional TRS call center in any one state palls in comparison to that required to roll out a national VRS service. Even in the case of state traditional TRS contracts it is noteworthy that only one new provider has come forward to offer service in the recent past, that company being Nordia, and Nordia's entry into traditional relay came about as a result of California's multivendoring policy. See [http://www.ddtp.org/california\\_relay\\_service/Default.asp#choice](http://www.ddtp.org/california_relay_service/Default.asp#choice) (last visited October 23, 2006).

The *FNPRM* again seems implicitly to understand that limiting service to only a few providers under a competitive bidding arrangement is not in the public interest and suggests the potential to allow open entry into the market. *FNPRM* at para. 28. The obvious problem with this approach is that under such a scheme, bidders have no incentive to bid low to get the contract. Rather they have an incentive to inflate their bids to maximize profits or not bid at all. Again, the *FNPRM* appears to recognize this problem and suggests some sort of incentive or disincentive to ensure competitive bids. *Id.* Hands On cannot imagine what type of incentive or disincentive would be appropriate or effective. The Commission has not suggested any specific type of incentive or disincentive and Hands On believes no such thing should be adopted without further comment on a specific proposal. Were the Commission to somehow guarantee a minimum number of minutes, or to limit the maximum amount of traffic a provider could handle, it would deny consumers their free choice of providers and thus deny consumers the benefits of service competition.<sup>24</sup> A financial incentive would be interesting, but would tend to be contrary to the concept of the competitive bid itself.

**2. *The existing NECA weighted average method is not unreasonable.***

The existing NECA weighted average method in and of itself, is not an unreasonable method for setting the VRS rate. The bulk of the criticism directed at recent VRS rate

---

<sup>24</sup>It is even difficult to understand how the FCC could technically do this since consumers are free to access the web sites of their provider of choice. Possibly the Commission could place a cap on the number of minutes for which a provider could seek payment. But this seems a Draconian and anti-utilitarian measure.

setting has not been the method itself, but the process by which that method is accomplished.<sup>25</sup> In particular, providers and consumers have complained of the lack of transparency in the rate setting process, arbitrary exclusion of costs, and abrupt and unannounced changes in what is considered reasonable costs. *See generally* the comments cited at *FNPRM* at n.35; Hands On's Comments on Further Notice of Proposed Rule Making, Docket 03-123, at 27-41 (October 15, 2004); Hands On's Petition for Partial Reconsideration, Dockets 90-571, 98-67, 03-123 (October 1, 2004).

However, the rate is subject to being skewed if anomalies are allowed to develop which impede an efficient market. One such anomaly was the tie-in arrangement one provider used with equipment and service – i.e., blocking consumer access to competing VRS providers on equipment that provider provided free of charge to consumers. This resulted in this provider obtaining a near monopoly of the VRS market even while providing inferior answer performance compared to other VRS providers. Because of the combination of poor answer performance and the economy of scale that resulted from providing the majority of minutes of VRS service, the cost per minute of this provider was substantially below other providers. Use of the NECA weighted average methodology under those circumstances would have further entrenched the majority provider and possibly forced all other VRS providers out of business. Hands On believes the NECA weighted

---

<sup>25</sup>The one exception is the case of the 2005-06 rate cycle where one provider's share of the market resulting from its tie-in arrangement with free non-interoperable video equipment and its poor answer speed served to skew the rate. *See 2005 Rate Order*, 20 FCC Rcd at 12246-48.

average rate setting process can work for VRS if the basic rules are set and not subject to constant FCC modifications and if the requirement of interoperability has eliminated market irregularities.

One concern the FCC appears to have is that provider demand figures have not in the past been accurate. Specifically, the Commission seems concerned that providers have underestimated their demand with the result that the rate calculated under the weighted average methodology is higher than it would otherwise be. *See FNPRM* at 14. Hands On's experience has been just the opposite as it has generally overestimated the demand it would obtain for the coming rate year. Moreover, past commenters have suggested that demand figures used to calculate the carrier contribution level have been inflated. *See 2005 Rate Order*, 20 FCC Rcd at 12248 n.100 and accompanying text, citing AT&T Comments at 2-5 ("AT&T asserts that NECA has overstated the Fund size by inflating demand projections).

Nevertheless it is true that providers and NECA have generally underestimated VRS demand, at least since 2003. Part of the problem is the difficulty of projecting demand out for the two year period (from January of one year through December of the next year). This is especially difficult given that providers do not know from year to year what the VRS rate will be and thus cannot engage in meaningful long term planning. Moreover, as discussed above, providers cannot anticipate the timing or substance of changes in regulation which can serve to affect demand for service.

Hands On does believe that providers may need to be required to better justify their demand projections under a continued NECA weighted average rate setting scheme. Plainly, NECA has the authority to request from providers sufficient information to substantiate the basis for their demand estimates. Hands On notes that in its 2006-07 rate filing, NECA adjusted up the demand figures supplied by providers. A review of NECA's adjusted demand figures against 2006 actual VRS minutes shows a close degree of correlation. *See, e.g.,* <http://www.neca.org/media/0806AugustdataTRSSStatus.pdf> (last visited October 23, 2006) (NECA TRS Fund Report of July minutes, showing a difference of 1.2 percent of actual versus projected VRS minutes); <http://www.neca.org/media/0706JUNEdataTRSSStatusFINAL.pdf> (last visited October 23, 2006) (NECA TRS Fund Report of June minutes, showing a difference of .69 percent of actual versus projected VRS minutes). In that same rate filing, NECA made an adjustment in cost estimates in an attempt to account for the effect on the VRS rate resulting from its upward adjustment in projected VRS minutes.<sup>26</sup> Although Hands On had concerns with respect to NECA's exact methodology in making the cost adjustment,<sup>27</sup> Hands On did not oppose use of NECA's proposed cost adjustment methodology based on Hands On's

---

<sup>26</sup>NECA increased pro rata the costs estimated by providers in the relay center (Category B) and indirect (Category C) cost categories, rather than effecting a pro rata adjustment to total VRS costs. *See* Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, FCC Docket 03-123 (May 1, 2006) ("2006-07 Fund Filing") at 19.

<sup>27</sup>In its presentation to the TRS Advisory Council, NECA proposed only to increase Category B costs proportionate to its increase in expected demand. Hands On objected to that approach in informal discussions with NECA personnel and in presentations to the FCC.

analysis that the adjustment did not reach an unreasonable result. *See* Hands On Comments on Proposed Fund Size and TRS Rates, FCC Docket 03-123, at 5 (May 17, 2006) (noting adjustment but not opposing its use).

**3. *A variant of NECA's method using the median cost estimate is likewise a reasonable methodology.***

As the Commission recognized in its 2005-06 rate order, a variant of the NECA method using the median cost estimate, is a reasonable methodology for determining the VRS rate. There the Commission found that methodology to produce a result that was closest to a majority of the providers' proposed rates, and which (by definition) resulted in the same number of providers having costs above the rate as below the rate. *2005 Rate Order*, 20 FCC Rcd at 12247-48. In Hands On's view continued use of the methodology would result in a reasonable VRS rate.

**4. *A price cap methodology would produce a reasonable rate with incentives to providers to reduce cost.***

Submitted concurrently herewith are joint comments of a majority of VRS providers, including Hands On, endorsing a price cap methodology for VRS and IP Relay.<sup>28</sup> Hands On will not reargue the price cap methodology here, other than to note that the primary merit in that methodology is that it encourages providers to limit costs and to improve efficiency while avoiding excessive expenditure of public and private resources in making rate

---

<sup>28</sup> *See* Joint Comments of Communication Access Center for the Deaf and Hard of Hearing, Communication Service for the Deaf, Inc., Go America, Inc., Hands On Video Relay Services, Inc., Snap Telecommunications, Inc., Sorenson Communications, Inc., and Sprint Nextel Corporation, FCC Docket 03-123 (October 30, 2006) ("Joint Comments").

determinations. For this and the other reasons stated in the Joint Comments, Hands On endorses this approach.

*C. VRS rate period.*

As discussed above in connection with IP Relay, Hands On endorses a multi-year rate. Adoption of any method other than the price cap methodology should provide for a multi-year rate period so providers can adequately plan and budget. Similarly, whatever its decision on a rate methodology, the FCC needs to make its decisions timely so providers are not presented with a new rate on short notice. In the past, rate decisions have been issued on notice as short as less than one day. The price cap method, with annual adjustments of a starting rate for inflation, productivity (and potentially exogenous costs) achieves the desired consistency VRS providers need even though the actual rate could be subject to change on a year to year basis.

*V. Reasonable cost issues.*

The *FNPRM* seeks comment on several issues bearing on the reasonableness of certain cost items. These include marketing and outreach, legal expenses, overhead costs, and executive compensation. Hands On addresses each of these issues below as well as the issue of whether the costs of certified deaf interpreters and research and development expense are reasonable TRS expenses.

***A. Marketing and outreach expenditures serve the public and are essential to the TRS program.***

The *FNPRM* (at para. 33) seeks comment on a variety of issues relating to the extent to which marketing and outreach costs should continue to be compensated by the TRS Fund. The *FNPRM* acknowledges that TRS providers are required to engage in outreach activities, but also notes that the Commission in 2004 declined to authorize a national outreach program. *Id.* at para. 34, citing *Telecommunications Relay Services*, 19 FCC Rcd at 12512-13. The *FNPRM* seeks comment on the nature of marketing and outreach that should properly be compensated from the TRS Fund. *Id.* at para. 36. It tentatively concludes that branded outreach and marketing efforts should not be compensated and seeks comments on what benefits consumers receive from these efforts and why the public should pay for these efforts assuming they do not result in lower costs. *Id.* The *FNPRM* also seeks comments on whether individual provider outreach efforts are duplicative, whether outreach should be limited to efforts to educate the hearing public not to hang up on relay calls, and whether to adopt NECA's suggestion that marketing and outreach expenses should be covered by a fixed percentage of the rate similar to the compensation for working capital. *Id.* at paras. 36-37.

Marketing and outreach expenses are a necessary expense of providing TRS. Providing the public and consumers with information on services, product availability, and training on use is a necessary element of functional equivalency. Marketing and outreach efforts principally educate consumers as to the availability of service, service providers and

service options. The hearing public has the benefit of the substantial marketing efforts of telecommunications providers. The public benefits from these efforts because these efforts inform the hearing public of the availability of service and service options.

In *Fear of Persuasion*, American Enterprise Institute economist John Calfee points out that advertising has had enormous benefits for consumers.<sup>29</sup> It has lowered prices for many goods, such as eyeglasses and prescription drugs, and improved the welfare of consumers by providing them with information about new products and new uses for existing products.<sup>30</sup> Other scholars have echoed Mr. Calfee's findings.<sup>31</sup> Indeed, the Federal Trade Commission consistently defends advertising as essential to help consumers make informed choices. *See, e.g.*, FTC 1992 Annual Report at 16 & 51 available on line at <http://www.ftc.gov/os/annualreports/ar1992.pdf> (discussing efforts to enjoin industry bans

---

<sup>29</sup>*See* Calfee, *Fear of Persuasion: A New Perspective on Advertising and Regulation* (AEI Press March 1998).

<sup>30</sup>Mr. Calfee argues that advertising spreads information, encourages competition, and benefits consumers and the economy as a whole. Various examples include the fact that: (1) consumers in states which restricted advertisement for eyeglasses paid about 25 percent more for their glasses, and the least-educated class of consumers paid the most; (2) before cigarette advertising was heavily regulated, brands tried to compete with one another by claiming they were healthier because of lower tar or nicotine -- thus alerting the public to the health risks involved in smoking; (3) when a National Cancer Institute campaign to promote inclusion of fiber in people's diets fizzled, it teamed up with Kellogg Corporation to tout the benefits of the company's All-Bran cereal -- and within two years one-third of people surveyed were able to name fiber as a means of cutting cancer risks. Mr. Calfee further found that although about 70 percent of people say they do not believe all the claims made by advertisers, at the same time, 70 percent say they find useful information in advertisements.

<sup>31</sup>*See, e.g.*, Interview with John Hood, Friday Interview: Advertising's Benefits, John Hood discusses the societal benefits of advertising, *Carolina Journal Online*, available at [http://www.carolinajournal.com/exclusives/display\\_exclusive.html?id=3143](http://www.carolinajournal.com/exclusives/display_exclusive.html?id=3143) (last visited October 23, 2006).

on infant formula and chiropractic service advertising). Functional equivalency requires that deaf and hard of hearing and speech disabled persons likewise enjoy the benefit of provider marketing efforts.

Marketing and outreach<sup>32</sup> efforts plainly benefit the consumers of TRS services. First, these expenditures advise consumers of the services which are available and of the specific features available from various providers. Marketing and outreach efforts are necessary to allow consumers to reap the benefits of competition. Consumers need to know that Hands On serves MacIntosh computer users. Consumers need to know that Hands On's Video Sign software provides better video quality than Microsoft's Net Meeting. Consumers need to know that they can obtain a videophone from Sorenson. Consumers need to know that they can use their Sorenson videophone with any VRS provider. Second, without branded marketing there is no way new providers could ever make themselves known in the marketplace. Thus, the potential for additional competition and the benefits that competition offers consumers, would be stymied.

The Commission recognizes the public interest benefits of consumer access to information by requiring providers to conduct outreach. In fact, the Commission has repeatedly stressed the importance of outreach to the deaf and hard of hearing community

---

<sup>32</sup>Although currently two separate categories in the annual data collection form, marketing and outreach are really one and same thing as illustrated by the similar definition in NECA's data collection form *See, e.g.*, Relay Services Data Request Instructions at 4.

in realizing the goals of the relay program.<sup>33</sup> It is hard to square the Commission's statements on outreach with excluding expenses for it. The fact that the Commission has declined to proscribe a national outreach program is not ground for refusing to compensate providers for their own outreach efforts. Neither the Commission, nor NECA, is the appropriate entity to conduct outreach. Neither have any particular expertise in outreach, marketing or the deaf and hard of hearing community. Providers are the natural entities to conduct outreach since they are the experts in providing the service.

The role of outreach is not merely educating the hearing public to not hang up on relay calls. Surely that is part of outreach and a very necessary part; but an outreach program that ignores the very persons sought to be benefitted by the TRS program would be irrational. The purpose of outreach and marketing which most comports with the intent of the ADA is to educate deaf and hard of hearing and speech disabled persons of the availability and features of TRS. Likewise assisting consumers with installation services and working with broadband providers to facilitate service are also necessary and reasonable costs of making TRS available to the public.

The *FNPRM* suffers from making several unwarranted assumptions with respect to marketing and outreach. Most pointedly, the assumption that outreach and marketing costs are designed primarily to promote one provider's service over another, is a false and illogical assumption. Hands On's experience is that most providers have been concentrating on

---

<sup>33</sup>See Ex Parte Notice of Various Relay Service Providers, CGB Docket 03-123 (May 11, 2006) (discussing authorities).

bringing additional users on board, not on churning users from one provider to another. Far from being a static market, VRS and other TRS services are rapidly growing. They cannot logically be growing by providers enticing each other's users away; rather the services they are growing because more and more deaf and hard of hearing consumers are using the service.

That increased usage of IP Relay and especially VRS is plainly the result of providers' marketing and outreach efforts. CGB Docket No. 03-123 contains substantial evidence that VRS penetration among deaf and hard of hearing persons literate in sign language is relatively low. *See, e.g.*, Comments of Sorenson Communications, Inc. at 17 (May 17, 2006). Given this, it defies logic to assume that providers' marketing and outreach efforts are geared more to promoting their specific service instead of VRS use in general. However, the following point is critical for the FCC to understand. If providers are not allowed to promote their own service in their marketing and outreach efforts, then they are going to have little incentive to engage in marketing or outreach at all and the goal of the TRS program to provide all deaf and hard of hearing persons with functionally equivalent telephone service will be stymied.

A second related assumption, that VRS minutes will continue to grow, is likewise illogical if marketing and outreach expenses are eliminated. Growth of VRS minutes has been largely fueled by the marketing and outreach efforts of the various providers. If marketing and outreach are not compensated, growth in relay usage will be minimal.

Although the staff has suggested its concern with the TRS Fund size, it cannot be the FCC's intention to limit growth of the fund size by choking off the flow of information to consumers concerning the availability and features of relay. That would be directly contrary to Congress's intent to promote universal service to deaf, hard of hearing and speech disabled persons.

A third questionable assumption is that there is some difference between outreach and marketing. Logically, marketing/advertising is a subset of outreach, if the two are not substantially indistinguishable sets of expenditures. This is confirmed by the virtually indistinguishable definitions NECA has employed with respect to the two terms.<sup>34</sup>

A fourth false assumption is that it is possible to differentiate between "branded" and "non-branded" outreach and marketing. In fact there is no practicable means of differentiating between non-branded and branded outreach and marketing. For example, how can Hands On promote VRS service to MacIntosh computer users without informing those users that Hands On is one of only two VRS providers which serves MacIntosh computer users? Similarly, how is CapTel to promote captioned telephone service without promoting itself. Or if CSD has a community meeting in Keokuk, Iowa, to promote TRS, is it supposed to refrain from mentioning who they are, and where their TRS web site can be found. These examples illustrate the difficulty of any branded/non-branded distinction. Trying to implement such a distinction would only further embroil this agency and NECA

---

<sup>34</sup>See *Telecommunications Relay Services*, 21 FCC Rcd 7018, \_\_\_\_, FCC 06-1345, para. 22.

in micro-managing relay. The goal should be to adopt a compensation mechanism that minimizes agency and NECA intrusion into relay, not that increases it. There is thus no basis to suggest that brand identification is not a reasonable cost item.

Fifth, Hands On notes that the assumption that marketing and outreach efforts do not serve to lower costs to the rate payers is inaccurate. These expenses, which increase the number of deaf, hard of hearing and speech disabled persons using relay service, helps to lower the per minute cost of TRS service. As minutes increase, fixed costs are spread over a larger variable cost base.

Furthermore, the inclusion of marketing and outreach as TRS rate elements are fully consistent with the FCC's Part 32 Rate of Return Methodology. FCC Rule Section 64.604(c)(5)(C) requires that the TRS administrator obtain and providers provide information in general accordance with Part 32. FCC Rule Section 32.6610 is the Part 32 account for marketing.<sup>35</sup> FCC Rule Section 32.6611 is the Part 32 account for product management and sales.<sup>36</sup> FCC Rule Section 32.6613 is the Part 32 account for product

---

<sup>35</sup>Account 32.6610 is to be used by Class B telephone companies for the expenses listed in Accounts 6611 through 6613 by Class A telephone companies. Class A and B telephone companies are defined in FCC Rule Section 32.11.

<sup>36</sup>Account 6611, includes "(a) Costs incurred in performing administrative activities related to marketing products and services. This includes competitive analysis, product and service identification and specification, test market planning, demand forecasting, product life cycle analysis, pricing analysis, and identification and establishment of distribution channels;" and "(b) Costs incurred in selling products and services. This includes determination of individual customer needs, development and presentation of customer proposals, sales order preparation and handling, and preparation of sales records." FCC Rule Section 32.6611.

advertising.<sup>37</sup> Similarly, Part 36's rate of return regulations allow these expenses in the rate of return calculation for carriers. *See* FCC Rule Section 36.372.

For all of these reasons, marketing and outreach expenses are reasonable costs and should be fully compensated.

Finally, Hands On endorses NECA's proposal for a percentage allocation for marketing and outreach expense. Hands On does not dispute the validity of Sorenson's position that VRS needs robust funding for outreach in order to achieve acceptable penetration levels. *See FNPRM* at para. 37 n.107. However, Hands On recognizes that there has to be some reasonable limit on funds available to promote the use of TRS. Use of the percentage method fairly and equally treats all providers. It avoids the need for NECA and Commission scrutiny of provider's marketing and outreach programs. And it recognizes that providers are in the best position to judge how, where and when to best spend their marketing and outreach dollars.

In Hands On's view a five percent allocation for marketing and outreach is reasonable. From informal discussions with NECA personnel it would appear that percentage is approximately equal to historical levels of marketing and outreach expenses. This percentage is certainly reasonable given that there are still scores of thousands of deaf and hard of hearing persons who do not yet use VRS and hundreds of thousands of deaf and

---

<sup>37</sup>Account 6613 includes "costs incurred in developing and implementing promotional strategies to stimulate the purchase of products and services. This excludes non product-related advertising, such as corporate image, stock and bond issue and employment advertisements, which shall be included in the appropriate functional accounts." FCC Rule Section 32.6613.

hard of hearing persons who do not use IP Relay or traditional TRS. If year over year results begin to show a leveling off of growth, it would indicate that the allowable percentage for marketing and outreach might be decreased in light of a mature well-developed market. As of now, we are not close to that stage.

This is especially true given the state of broadband deployment. Pew Charitable Trust states that less than half of Americans have broadband service at home. See [http://www.pewinternet.org/pdfs/PIP\\_Internet\\_Impact.pdf](http://www.pewinternet.org/pdfs/PIP_Internet_Impact.pdf). GAO pegs that number as 28 percent as of 2005. See GAO Report to Congressional Committee, *Telecommunications, Broadband Deployment Is Extension throughout the United States, but It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas* (May 2006) (available at <http://www.gao.gov/new.items/d06426.pdf> (last visited on October 27, 2006)). VRS providers need to accelerate efforts to make broadband accessible and affordable to all those who cannot use VRS and should be able to do so.<sup>38</sup>

**B. Overhead costs.**

The *FNPRM* at para. 38 seeks comment on whether general overhead costs – which it defines as indirect cost which are neither cost causative nor definable – should be compensable from the TRS Fund as a reasonable cost of providing TRS. Indirect costs

---

<sup>38</sup>It is the intention of Section 225 of the Act that deaf and hard of hearing persons should pay no more for TRS service than do hearing persons. However, cost of a high speed Internet line is considerably above the cost of a residential telephone line. The result is that deaf and hard of hearing persons using VRS do in fact pay more than hearing persons for basic telephone service. The Commission has not addressed this disparity.

attributable to TRS should be compensated, whether based on a percentage of the employee's time devoted to VRS or based on a percent of company revenues. This issue appears, however, directed principally to the larger telephone companies providing TRS more so than to stand-alone providers such as Hands On. Hands On claims only expenses related to provision of VRS, although some cost items shared with its sister interpreting company are allocated based on a division of revenues when it is not possible to allocate based on some other more appropriate measure, such as percent of time an employee devotes to VRS or number of square feet of building space devoted to VRS. It is assumed that the general corporate expenses at issue in the *FNPRM* are in effect corporate management expense (other than compensation) above the TRS division level. Those expenses are legitimate TRS expenses since senior management is tasked with supervision of TRS operations as well as other corporate operations.

*C. Legal and lobbying expense.*

*1. Legal expense is a reasonable and necessary cost of providing relay.*

The *FNPRM* at para. 40 seeks comment on the nature and amount of legal and lobbying expenses compensable as reasonable expense of providing TRS. TRS is highly regulated with numerous regulatory proceedings ongoing at any one time before the FCC. The FCC regularly calls for comments on TRS issues, requires regular reports on complaints, waived requirements and other matters, and engages in ongoing dialog with providers. Regulatory legal expense is therefore necessary to provide TRS. Interpreting

FCC regulations, public notices and policy statements, which are not always paragons of clarity, is also a necessary element of providing TRS, including answering complaints from the public or petitions of competitors questioning provider practices. Providers must contract for services, defend workman's compensation and discrimination complaints, and address a myriad of state and local regulations on business matters. Providers also have general corporate legal expenses. Thus there can be no question that legal expense is a necessary and reasonable TRS expense.

The *FNPRM* specifically inquires concerning petitioning for rule changes. *Id.* That is also an entirely legitimate, reasonable and desirable activity. The fact is there have been few instances of petitions for rule *changes* with respect to TRS, most notably petitions which resulted in the establishment of IP Relay and VRS, and which resulted in the adoption of a VRS speed of answer requirement. These petitions have served the public interest well as is evident by the consumer response to IP Relay and VRS. There have, however, been quite a few petitions for clarification of the TRS rules. These have undoubtedly also benefitted the public, for example, by establishing CapTel, allowing providers to offer video mail, confirming that Spanish to ASL is legitimate TRS, and ending the anti-consumer practice of blocking access to the service of competitors. Costs associated with petitions for rulemaking, petitions for clarification, petitions for waiver are all necessary to provide TRS which is responsive to consumer needs.

Lastly we note that when providers discuss a new or novel service or option with Commission staff, the response most often given is, “file a petition on it.” The Commission can hardly suggest such petitions are not reasonable costs when the staff regularly suggests their filing.<sup>39</sup>

## 2. *Lobbying expenses are reasonable.*

Lobbying expenses should be like all other expenses: they have to be reasonable. Generally they are. Very often the staff’s response to a provider concern with respect to the TRS program is: “talk to Congress.” Providers should be able to raise issues with Congress, which does after all have oversight responsibility for this agency and the TRS program.

A concern of the *FNPRM* (at para. 40) seems to be whether lobbying for an increased VRS rate is a reasonable expense. Obtaining compensable rates and a logical process for setting TRS rates serves consumer interests. Providers cannot achieve and maintain functionally equivalent service if the rate paid for the service is not compensable. Past efforts by providers, both at the FCC, before Congress and with consumers, on TRS rates have been directly proportionate to the issues raised in the rate proceedings and the severity of the impact of Commission action upon operations. Although the FCC may not always appreciate Congressional input, it is often necessary for the FCC to fully appreciate the depth of consumer interest and feeling on an issue. Providers have an obligation to keep

---

<sup>39</sup>The *FNPRM* (at para. 41) also asks for the proper treatment of startup legal costs in light of the several IP Relay and VRS providers. Given the benefits of relay competition, startup costs, including legal costs, are reasonable and should be compensated. However, as startup costs, they are properly accounted for by amortization over a reasonable period of time such as five years.

consumers and Congress informed of issues which vitally affect TRS and it is completely appropriate for providers to urge consumers to contact the FCC and Congress on issues affecting TRS.

Furthermore, there are weighty issues outstanding concerning the TRS program. Technology has changed considerably since the initial adoption of the ADA in 1990. At that time, the Internet was not the robust communications medium it is now. At that time the only TRS service was the traditional service using TTYs. At that time, competition in the telecommunications market was in its infancy. Congress needs to address issues such as whether the current statutory scheme contemplating jurisdictional separation of interstate and intrastate traffic is or should be applicable to Internet based TRS and what efforts at the federal level should be made to enhance the available pool of sign language interpreters. Involvement by providers in such issues benefits both the TRS program and consumers. The cost of such involvement is a legitimate and reasonable expense of providing TRS and should be compensated.<sup>40</sup>

***D. Executive compensation is a necessary rate element.***

In Hands On's view, executive compensation costs are another item that should be considered just like any other costs: again the test is reasonableness. Any relay enterprise needs persons heading operations, finance and accounting, human resources, engineering, and outreach and marketing. In addition, any relay enterprise needs a chief executive

---

<sup>40</sup>Special reporting of lobbying efforts is largely unnecessary unless the sheer size of a proposed expenditure raises an issue as to its reasonableness.

officer. Depending on the scope of the operation, other executive positions may be necessary. Relay providers range from small non-profit entities to the largest telephone company in the nation. Executive costs are going to vary depending on what is the person's duty in relation to VRS and other duties not related to VRS. A certain executive corp is necessary even for a startup company, but the universe of relay providers differ. Hands On is largely dedicated solely to providing VRS, while Sprint is a major corporation with relay being only a very small part of its overall operation, which relies on a subcontractor to provide its relay service. Each company has to be looked at on its own. A company with one call center will likely need fewer executive personnel than one with six or one with 30 call centers.

It is also important to understand that job function is a more important indicator of whether a position is needed or reasonable than job title. One company may label a person as a "benefits director" when another would simply classify that person as a human resources professional. The question is not what the position is called, but whether the compensation for the position is reasonable in light of the duties performed.

***E. The FCC should make provider cost and demand data public.***

The *FNPRM* (at paras. 43-44) inquires whether provider cost and demand data should be public. Hands On has long favored the public release of demand and cost data projections. It is the only way providers and the public can meaningfully comment on the reasonableness of NECA and FCC review of that data. There is no competitive damage in

making this data public. After all, it is merely projections, not operational data.<sup>41</sup> Indeed, Hands On has in the past openly discussed on the public record adjustments and exclusions made to its cost and demand data and is aware of no competitive disadvantage resulting from its doing so. *See, e.g.*, Application for Review, CC Docket 98-67 (July 20, 2004). There is no public interest advantage in keeping this type of data off the record, while there is sizable public harm in the system that exists today which lacks transparency. To bring transparency to the process, provider demand and cost projections should be made on the public record as should any NECA or FCC exclusions or adjustments to such data.

***F. Research and development expense is necessary to provide functionally equivalent service and meet currently waived requirements.***

A fundamental problem with TRS cost recovery is the Commission's mistaken position that providers are only entitled to compensation for providing relay at the minimum mandatory standards set forth in Section 64.604. *See, e.g., Telecommunications Relay Services*, 19 FCC Rcd 12475, 12547-48 (2004) (2004 FNPRM). A corollary of this mistaken position is that research and development expense is not compensable beyond that which is necessary to meet unwaived minimum mandatory standards. The problem with this position is that it falsely assumes that the Commission has or should have a minimum

---

<sup>41</sup>However, Hands On also favors the public release of provider performance data, including minute volume and answer speed. Ratepayers, who are paying for the service, should know what they are getting for their money, and consumers, who are using the service, should be in a position to know the quality of service they can expect from TRS providers.

mandatory standard for every aspect of relay service. The Commission does not have such standards and should not be in the business of micro-managing relay operations.

Simply stated, the “minimum mandatory standard” test is insufficient to evaluate the entire set of relay expenses. This is most significant in the area of engineering and technical expenses. For example, there is no minimum FCC standard with respect to computer platforms for which VRS must be compatible. There is no standard that VRS must be compatible with Microsoft Windows. There is no standard that VRS must be compatible with any video phone device. There is no standard that VRS must be compatible with an Apple MacIntosh computer. There is no standard that VRS must be compatible with any particular computer or video system, although the Commission has clarified that equipment providers distribute must be backwards compatible with the systems of other providers. Yet, unless a provider’s VRS is compatible with at least one computer or video system, it cannot provide VRS at all, and if not compatible with each of them, a provider’s service would be inaccessible to large numbers of potential VRS users. That would be plainly inconsistent with the intent of Section 225 of the Act that relay service be made widely available to persons needing it.

Similar is the issue of frames per second of VRS transmission. The FCC has no minimum standard for VRS frames per second. Does this mean the Commission will allow engineering costs to achieve only one frame per second, which is clearly insufficient to provide VRS, or will allow the full 30 frames per second video which is the equivalent of

full motion television?<sup>42</sup> The “mandatory minimum standard” approach cannot answer that question for the simple reason that the Commission has no mandatory minimum standard for video quality. Yet, plainly some degree of video quality is necessary to provide VRS and to visually read finger spelling at normal conversation speed.<sup>43</sup> A standard which would disallow engineering expenses beyond that necessary to meet “minimum mandatory standards” is simply insufficient to evaluate rationally all VRS costs, engineering or otherwise.

What is then the appropriate standard for TRS cost recovery? Hands On suggest that the proper standard for judging TRS expenses for which there is no minimum standard, is once again one of reasonableness, having proper regard for the cost to be incurred versus the benefit to be achieved. To hold otherwise would impede the technical development of TRS service in defiance of the express requirement of Section 225 of the Act, and impose a standard the FCC simply is not and cannot apply without micro-managing every facet of the service.

Section 225 of the Act requires providers to be reimbursed their *reasonable* costs of providing service. Moreover, Section 225 requires the Commission in formulating its regulations for TRS not to discourage technical innovation. Hands On fully agrees with the

---

<sup>42</sup>See *Closed Captioning and Video Description of Video Programming Implementation of Section 305 of the Telecommunications Act of 1996 Video Programming Accessibility*, 11 FCC Rcd 19214 (1996).

<sup>43</sup>Hearing persons after all do not have to alter the speed of their conversations when using any phone service so why should deaf or hard of hearing persons have to alter the speed of their normal conversations?

Commission that Congress's exhortation is not a license to tap the Interstate TRS Fund to provide relay service to deaf, hard of hearing and speech disabled persons beyond that which is functionally equivalent to the telephone service available to hearing persons. But by the same token functional equivalence is not a bare minimal lifeline service. *See 2004 FNPRM* 19 FCC Rcd at 12550-52.

This is aptly illustrated by the FCC's decision not to specify any minimum standard for IP Relay security. As the Commission explained, "We will not require ... that providers adopt any particular technology in this regard. We will allow TRS providers to determine for themselves the level of security they will offer consumers, and the means by which they will protect the privacy of the Internet-based TRS callers and their personal identification information, so that no aspect of a relayed conversation is retrievable in any form." *2004 FNPRM* at para. 51. Since the FCC is not setting a mandatory minimum standard for call security, how is the FCC to evaluate provider costs incurred in ensuring call security? The answer again is the reasonableness standard set forth in Section 225. That standard plainly requires the Commission to evaluate cost versus benefit with due regard for the service the deaf, hard of hearing and speech disabled community receives.

A prime example of the need for a reasonableness standard is with respect to research and development expense. In the *Report and Order* portion of the *2004 FNPRM*, the Commission held that the reasonable costs for which TRS providers will be compensated must relate to the provision of the service in compliance with the applicable non-waived

mandatory minimum standards. *2004 FNPRM* at para. 199. Apparently the logic behind this holding was that functional equivalence is determined by the rules' minimum standards that are not waived. *Id.* As discussed above, however, the major flaw of this position is that functional equivalence is determined by the minimum standards only *where there are such standards*. Moreover, it is not the unwaived minimum standards that determine functional equivalence it is the minimum standards themselves.

By definition, the mandatory minimum standards are those items the Commission considers essential to achieve functional equivalence with the telephone service available to hearing persons. The waivers in question do not change the definition of functional equivalence. The waivers that have been granted, for example, for automatic routing of emergency calls, have been granted not because they are unnecessary to achieve functional equivalence, but because they are not practicable, or because they are not feasible to implement at this time. *See 2004 FNPRM*, 19 FCC Rcd at 12521-22, 12524-27. Thus, research and development expenses which are designed to meet waived standards are in fact necessary to achieve functionally equivalent VRS. It cannot be the Commission's intention that no research and development expense is allowed for these items which are essential to the provision of TRS to the greatest number of persons needing the service. Those expenses should, therefore, be included in the rate calculation to the extent they are otherwise reasonable.

The exclusion of such research and development costs is contrary to precedent. The Commission has held that research and development is an appropriate element of a rate when it is for the benefit of the consuming public. *Communications Satellite Corporation*, 90 F.C.C.2d 1159 (1982). *See also Public Service Company of New Mexico v. FERC*, 832 F.2d 1201, 1214-15 (10<sup>th</sup> Cir. 1987); Satrom, *Office of Consumers' Counsel v. FERC*, 2 Energy Law Journal 119 (1981); Comments of Ed Bosson in CC Docket 98-67 (May 21, 2004).<sup>44</sup> Where research and development stand to benefit deaf, hard of hearing, and speech disabled consumers, those expenses are manifestly appropriate cost elements to TRS rates.

Indeed, exclusion of research and development is particularly inappropriate given Congress's direction to the FCC that its regulations "not discourage or impair the development of improved [relay] technology." 47 U.S.C. Section 225(d)(2). Moreover, the Commission's waiver orders, plainly require providers to discuss their research and development efforts designed to meet the waived requirements. *See, e.g., Telecommunications Relay Service*, 18 FCC Rcd 12379 (2003). The clear implication of the requirement to report on research and development efforts is that the Commission expects providers to conduct research and development to meet waived standards. Otherwise, why require the report? This is especially the case given that these waivers are not indefinite.<sup>45</sup> Rather, each waiver is time limited. How can the Commission expect

---

<sup>44</sup>Mr. Bosson, Texas Relay Administrator, has aptly been described as the father of VRS.

<sup>45</sup> Were a minimum standard to be permanently waived for any TRS service because the Commission finds that meeting the waiver is not necessary to functional equivalency, it would then be completely reasonable to exclude research and development for such a standard. Such an

providers ever to meet these waived standards if they cannot build the cost of meeting these standard into the TRS rates? The Commission should not blithely dismiss this Catch 22. Research and development expense should be authorized to meet not only current mandates, but upcoming requirements as well.

Furthermore, the Commission has previously urged providers to work diligently to meet the needs of callers and suggested that competition among VRS providers will achieve that result. *See, e.g., 2004 FNPRM*, 19 FCC Rcd at 12523. The problem with that exhortation, however, is that providers have no financial incentive to spend money to meet waived standards if the Commission limits them only to their costs of providing VRS at the minimum unwaived standard and does not allow them to include the research and development costs of meeting the waived standard in the VRS rate. Given that the Commission expects research and development to meet waived requirements, reasonable research and development expense must be included in the TRS rates.

***G. Certified deaf interpreters are necessary to achieve functional equivalence.***

Although the *FNPRM* does not specifically raise the issue, the issue of expense for certified deaf interpreters (“CDI”) arose both in the 2005-06 and the 2006-07 rate proceedings. CC Docket 98-67, *2005 NECA Rate Filing* at 16; CGB Docket 03-123, *2006 NECA Rate Filing* at 18. It is time for the FCC to acknowledge that reasonable use of CDIs is a legitimate cost of VRS.

---

example would be the 60 wpm typing standard for VRS interpreters, since that standard is plainly inapplicable to VRS.

FCC Rule Section 64.604(a)(iv) requires that VRS providers must supply qualified interpreters. The regulation defines a qualified interpreter as “able to interpret effectively, accurately, and impartially, both receptively and expressively, using any specialized vocabulary.” On its face this is a stringent requirement. The fact is that not all video interpreters possess the ability to interpret effectively and accurately for all deaf persons who use sign language. The reason is that the language skills and backgrounds of deaf persons vary considerably, just as with hearing persons. Foreign born persons, young children, persons from very rural or isolated areas using “home” signs, persons who are severely physically or mentally ill, deaf persons who are uncomfortable with hearing persons, and persons with non-standard language skills tend to have lower language skills than the average deaf person.

In circumstances such as these, hearing interpreters may not possess sufficient skills to communicate effectively and accurately. In these circumstances effective communication can be achieved only by using CDIs. CDIs have native fluency in American Sign Language, understanding non-standard signing, and possess extensive knowledge and experience in deaf culture with specialized training in gesture, mime and other communications strategies to facilitate communication between deaf consumers, hearing consumers and hearing interpreters. *See* Exhibit 4, RID White Paper on Use of Certified Deaf Interpreters; Exhibit 5, Ontario Interpreter Services Guidelines for Deaf Interpreters; Exhibit 6, Declaration of Ronald E. Obray.

As RID explains, the CDI “can bring added expertise into both routine and uniquely difficult interpreting situations.” *See* Exhibit 4. As RID’s White Paper makes clear, the use of CDIs is well established in the interpreting industry. Although the vast majority of VRS calls do not require a CDI for effective and accurate interpreting, some calls undoubtedly do. In some instances, use of a CDI is the only way to achieve effective and accurate communication. *Id.*

The question for the FCC is whether it is reasonable or unreasonable to include the cost of CDIs to provide VRS. As RID and Mr. Obray make clear, CDIs possess a skill set that is not available to hearing interpreters. That is native ASL fluency and deep immersion and appreciation of deaf culture. Hearing interpreters, no matter how skilled, just do not have this unique skill set to the degree of CDIs. The persons coming closest to having this skill set would be hearing children of deaf parents, sometimes called children of deaf adults (“CODA”). These persons, like Hands On President Mr. Obray, grew up with deaf parents and learned ASL at an early age to communicate with their deaf parents and other deaf persons. Moreover, they have early and extensive exposure to deaf culture. However, as Mr. Obray explains in his attached Declaration, ASL is not the sole language of CODAs. CODAs do not go to a K-12 deaf school. And their immersion in deaf culture may be significant, but should not be compared to a person who is deaf and uses sign language as a necessity in his or her daily life as the sole means to communicate.

Understanding of deaf culture is a key to effective communication with deaf and hard of hearing persons. Hearing persons cannot know what it is like to be deaf. A CDI shares with other deaf persons the fact that his or her primary means of relating to the world is visual. A CDI shares with other deaf persons a language that is visually received and gesturally produced. *See* Exhibit 7 (ASLinfo.com, Discussion of Deaf Culture). CDIs generally attend residential deaf schools that provide a vital link in the transmission of deaf culture and language. *Id.* Children are able to communicate in a language readily understood by each other. *Id.* They are able to partake in social clubs, sports and be surrounded by deaf role models. *Id.* This is not to take anything away from CODAs and other hearing interpreters, but they do not possess this shared experience and hence may be limited in their ability to communicate effectively and accurately compared to CDIs in some circumstances.

The availability of CDIs is particularly important in stressful situations or emergencies where effective and accurate communication is imperative and yet may suffer. *See* Exhibit 6. In an emergency, the deaf caller will be under tremendous time pressure to communicate. Communications will likely be rapid and emphatic. The potential for frustration is high. Moreover, the caller may be injured, agitated or flustered. *Id.* In such a situation, providers should have available the most effective means for interpretation. That is undoubtedly a CDI.

In sum, the use of CDIs for VRS interpreting when necessary for effective and accurate communication is not unreasonable. To the contrary, VRS providers are required to provide effective and accurate interpreting. In those instances, where hearing interpreters need assistance to effectively and accurately interpret calls, CDIs are required by FCC Rule Section 64.604(a)(iv).

***VI. Management and administration of the TRS Fund.***

The Commission seeks comment on the management and administration of the TRS Fund. *FNPRM* at paras. 45-49. Specific areas for which comment is requested are with respect to the fund administrator (*Id.* at 45-46), oversight of providers (*Id.* at 47) and methods for deterring waste, fraud and abuse (*Id.* at 48).

***A. Fund administration.***

As discussed above, the key change necessary for effective fund administration is that FCC communications concerning TRS issues and Fund management issues should be on the record. The FCC and/or NECA have been making policy through off-the-record communications. This violates the APA and is inimical to a transparent process. Communications between the FCC and NECA concerning fund administration should be on the record or at the very least subject to the ex parte rules. Except in the case where NECA communicates with the agency concerning possible statutory or rule violations, there is no basis for communications between the administrator and the Commission to be withheld from public knowledge.

***B. The base for the TRS Fund should include all interstate telecommunications providers, including ISPs.***

Currently, the base for contribution to the TRS Fund is composed of carriers providing interstate telecommunications services. FCC Rule Section 64.604(c)(5)(iii)(A). The nature of interstate telecommunications has changed with the introduction of the Internet, which is defined as an interstate communications medium. Yet, Internet service providers (“ISP”), with the exception of voice over Internet protocol (“VoIP”) providers do not contribute to the TRS Fund. Hands On believes that the contribution base for TRS Fund should therefore be increased to include ISPs. This is needed to fairly apportion the costs of service in accordance with Section 225's requirements among all interstate telecommunications providers.

***C. FCC needs to enforce TRS answer standards to ensure a level playing field.***

To create a level playing field among providers, the FCC needs to have a meaningful answer speed enforcement mechanism. This is necessary so that comparisons of provider rates is based on comparable levels of service. Otherwise it would be an apples and oranges comparison. The enforcement mechanism need not and should not be Draconian, but it must have sufficient teeth so that providers’ costs do not differ based on levels of service.

***D. Reporting from and auditing of providers appears adequate.***

The current level of provider reporting and auditing appears adequate. Providers report their minutes of use and have available back-up data to support their reports. Other

than the Publix Companies matter,<sup>46</sup> which apparently arose as a result of an audit, Hands On is not aware of any substantial issues which have arisen based on provider reports or audits. Nor is Hands On aware of any matter which has escaped the report and audit process. Although reports and audits are plainly necessary, the existing scheme seems sufficient to provide adequate oversight. The only suggestion Hands On has in this regard is that newly certified providers should likely be subject to more frequent audits until their track record is established.

*E. Deterring fraud, waste and abuse.*

Hands On is not aware of any specific actions necessary to curb fraud, waste or abuse. What is needed is for the FCC to promptly respond to complaints or requests for clarification of its decisions so that potentially abusive situations are promptly addressed.

*VII. Conclusion.*

Far from being merely an accommodation, Congress intended TRS to be an essential element of universal service. Congress's mandate was that TRS was to afford deaf and hard of hearing and speech disabled persons service functionally equivalent to that provided to hearing persons. Cost recovery for TRS must reflect this fact and be evaluated on the basis of the degree to which it promotes this Congressional mandate of universal service.

The Commission needs to bring stability and transparency to the TRS and VRS rate setting mechanisms. Abrupt changes in FCC policy disrupt the stability of the marketplace

---

<sup>46</sup>*Publix Network Corporation*, 17 FCC Rcd 11487, 11490 (2002).

and off-the record policy making through NECA denies providers and consumers a transparent rate setting process. Transparency would be further improved by making provider demand and cost estimates public. The Commission is right to an extent to be concerned with the increasing size of the TRS Fund. However, that is no basis either to discourage use or fail to pay the reasonable costs of TRS and VRS service. Significantly, growth in VRS minutes is slowing, but many deaf and hard of hearing persons are still not taking advantage of the TRS program either because they are not fully aware of the program or because they do not have access to or cannot afford broadband Internet service. Cutting marketing and outreach as a means of limiting the growth of the TRS Fund size would injure TRS and VRS consumers by denying them the benefits of vigorous competition among the providers and serve to perpetuate lack of service to the many potential users of TRS and VRS who would benefit from the service. Use of a percentage figure for marketing and outreach would serve to eliminate disputes over this class of expenditures while affording providers a reasonable but limited pool of funds to conduct outreach efforts.

Legal and lobbying costs, executive compensation costs, overhead costs, research and development costs and costs for certified deaf interpreters all should be included in the rate setting process and judged by the reasonableness standard.

Use of a true up mechanism with either text based TRS or VRS would be a mistake. It would promote inefficiency while penalizing efficient operations. It would also place the Commission in the position of fly-specking the reasonableness of providers' expenditures

after the fact. This would both chill provider innovation and needlessly increase cost recovery disputes. Concerns that some providers have earned well in excess of their costs are of course legitimate, but without transparency in the process there is no way for consumers and providers to make that determination. In any event, this situation appears to have arisen due to one provider's use of an anticompetitive tie-in arrangement, which the Commission has now clarified to be inappropriate for the relay industry. Once the anticompetitive effects of that arrangement dissipate from the marketplace, significant instances of over earning will be unlikely.

With respect to the specific TRS services, Hamilton's MARS plan would be a reasonable cost recovery scheme for interstate traditional TRS and also for IP Relay service, but not for VRS, as it is based on an average of accepted state bid rates for text based relay. Hands On questions whether simply applying a state's intrastate rate to its interstate traffic would create administrative difficulties. Moreover, such an approach seems limited since it could not be applied to IP Relay calls.

The best approach for VRS compensation is the price cap proposal being submitted by most of the VRS providers. This proposal will result in a stable, albeit decreasing rate, which will encourage competition and cost savings. Alternatively, a rate structure based on the NECA weighted average methodology could result in creation of reasonable rates once the distortion of the market resulting from lack of interoperable equipment has left the marketplace. Continuation of the median provider estimate methodology would also result

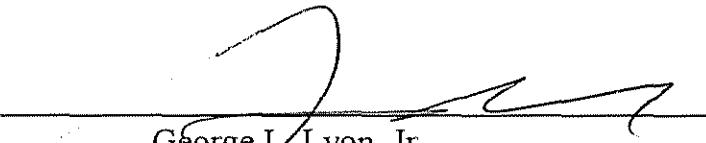
in a reasonable VRS rate. A competitive bidding rate setting scheme could not serve the public interest well as it would serve to damage competition and entrench one or more entities as the permanent VRS providers.

Adoption of the recommendations set forth in these comments will bring transparency to the rate setting process, minimize disputes, and facilitate the provision of functionally equivalent service to deaf, hard of hearing and speech disabled Americans. Hands On therefore urges adoption of its recommendations.

Respectfully submitted,

**HANDS ON VIDEO RELAY SERVICES, INC.**

By \_\_\_\_\_

  
George L. Lyon, Jr.  
Its Counsel

Lukas, Nace, Gutierrez & Sachs, Chartered  
1650 Tysons Blvd., Suite 1500  
McLean, VA 22102  
(703) 584-8664  
October 30, 2006

Kelby Brick  
Director, Legal & Regulatory Affairs  
2118 Stonewall Road  
Catonsville, MC 21228  
(877) 467-4877 x71849

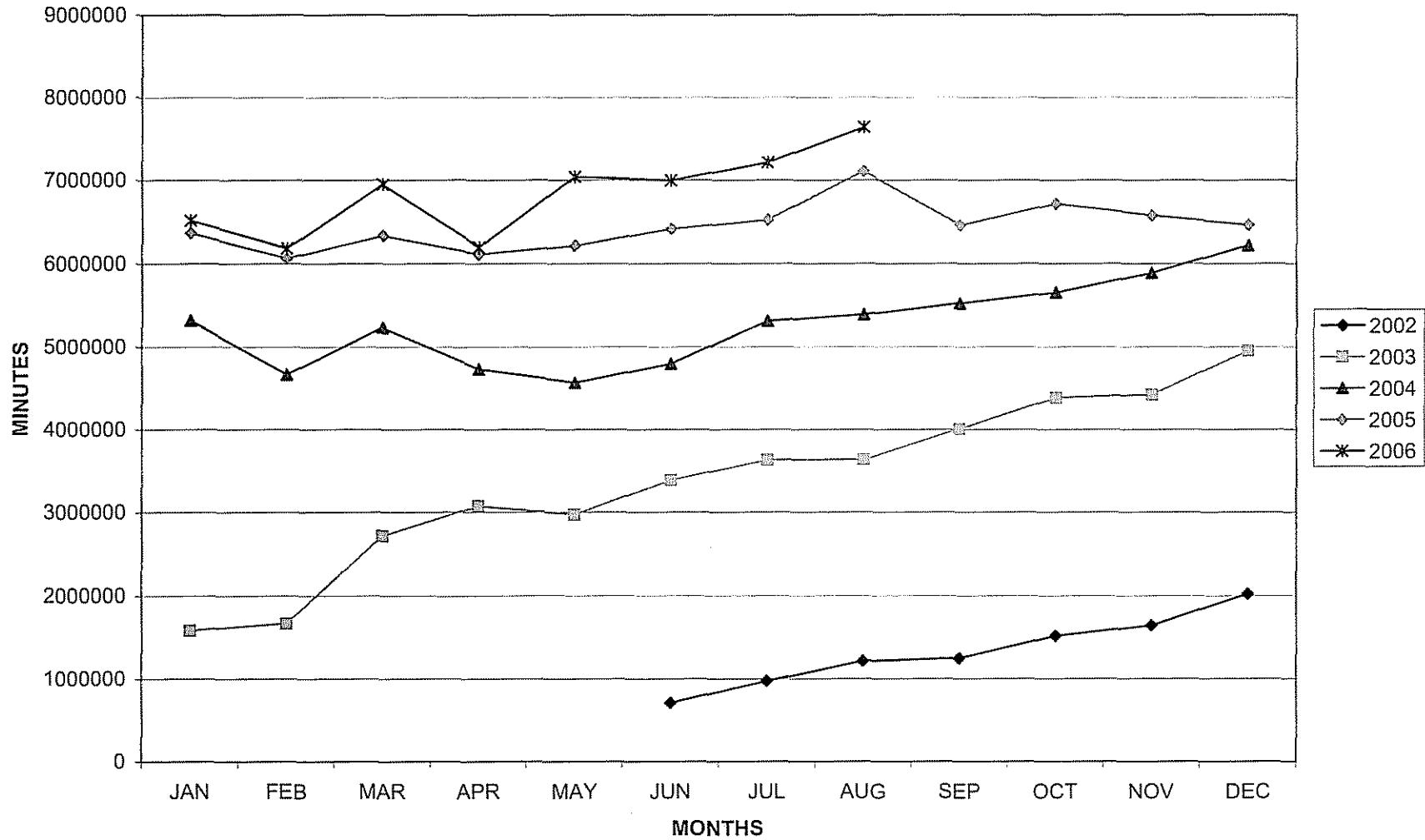
# **Exhibit 1**

Monthly industry VRS minutes (1/2002 to 7/2006)

Month	VRS Min.	Delta	Week-					Min/Adj	Delta
			Tot. Days	Holid ays	Week- days	end days	Weekd ay		
January02	7,215	NM	31	2	21	8	26 00	278	NM
February	12,844	1 78	28	1	19	8	23 50	547	1 97
March	24,879	1 94	31	0	22	9	26 50	939	1 72
April	27,539	1 11	30	0	22	8	26 00	1059	1 13
May	33,314	1 21	31	1	22	8	26 50	1257	1 19
June	35,433	1 06	30	0	20	10	25 00	1417	1 13
July	59,028	1 67	31	1	23	8	27 50	2146	1 51
August	62,642	1 06	31	0	22	9	26 50	2364	1 10
September	80,201	1 28	30	1	21	9	26 00	3085	1 30
October	92,147	1 15	31	1	22	8	26 50	3477	1 13
November	94,811	1 03	30	3	18	9	24 00	3950	1 14
December	102,768	1 08	31	2	20	9	25 50	4030	1 02
January03	128,114	1 25	31	2	21	8	26 00	4927	1 22
February	133,985	1 05	28	1	19	8	23 50	5701	1 16
March	160,651	1 20	31	0	21	10	26 00	6179	1 08
April	170,416	1 06	30	0	22	8	26 00	6554	1 06
May	188,287	1 10	31	1	21	9	26 00	7242	1 10
June	208,980	1 11	30	0	21	9	25 50	8195	1 13
July	236,431	1 13	31	1	22	8	26 50	8922	1 09
August	242,590	1 03	31	0	21	10	26 00	9330	1 05
September	283,637	1 17	30	1	21	8	25 50	11123	1 19
October	349,677	1 23	31	1	22	8	26 50	13195	1 19
November	327,652	0 94	30	3	17	10	23 50	13943	1 06
December	381,783	1 17	31	2	21	8	26 00	14684	1 05
January04	477,538	1 25	31	2	20	9	25 50	18727	1 28
February	534,536	1 12	29	1	20	8	24 50	21818	1 17
March	709,717	1 33	31	0	23	8	27 00	26286	1 20
April	722,863	1 02	30	0	22	8	26 00	27802	1 06
May	733,040	1 01	31	1	20	10	25 50	28747	1 03
June	869,603	1 19	30	0	22	8	26 00	33446	1 16
July	943,747	1 09	31	1	21	9	26 00	36298	1 09
August	1,080,983	1 15	31	0	22	9	26 50	40792	1 12
September	1,150,935	1 06	30	1	21	8	25 50	45135	1 11
October	1,198,322	1 04	31	1	20	10	25 50	46993	1 04
November	1,290,522	1 08	30	2	20	8	25 00	51621	1 10
December	1,424,155	1 10	31	2	21	8	26 00	54775	1 06
January05	1,634,316	1 15	31	1	20	10	25 50	64091	1 17
February	1,574,378	0 96	28	1	19	8	23 50	66995	1 05
March	1,813,388	1 15	31	0	23	8	27 00	67163	1 00
April	1,779,485	0 98	30	0	21	9	25 50	69784	1 04
May	1,944,210	1 09	31	1	21	9	26 00	74777	1 07
June	2,136,657	1 10	30	0	22	8	26 00	82179	1 10
July	2,224,779	1 04	31	1	20	10	25 50	87246	1 06
August	2,669,274	1 20	31	0	23	8	27 00	98862	1 13
September	2,649,731	0 99	30	1	21	8	25 50	103911	1 05
October	2,820,296	1 06	31	1	20	10	25 50	110600	1 06
November	2,916,090	1 03	30	2	20	8	25 00	116644	1 05
December	3,056,254	1 05	31	1	21	9	26 00	117548	1 01
January06	3,267,345	1 07	31	2	20	9	25 50	128131	1 09
February	2,972,911	0 91	28	1	19	8	23 50	126507	0 99
March	3,461,519	1 16	31	0	23	8	27 00	128204	1 01
April	3,221,062	0 93	30	1	19	10	24 50	131472	1 03
May	3,667,661	1 14	31	1	22	8	26 50	138402	1 05
June	3,651,199	1 00	30	0	22	8	26 00	140431	1 01
July	3,655,871	1 00	31	1	20	10	25 50	143367	1 02

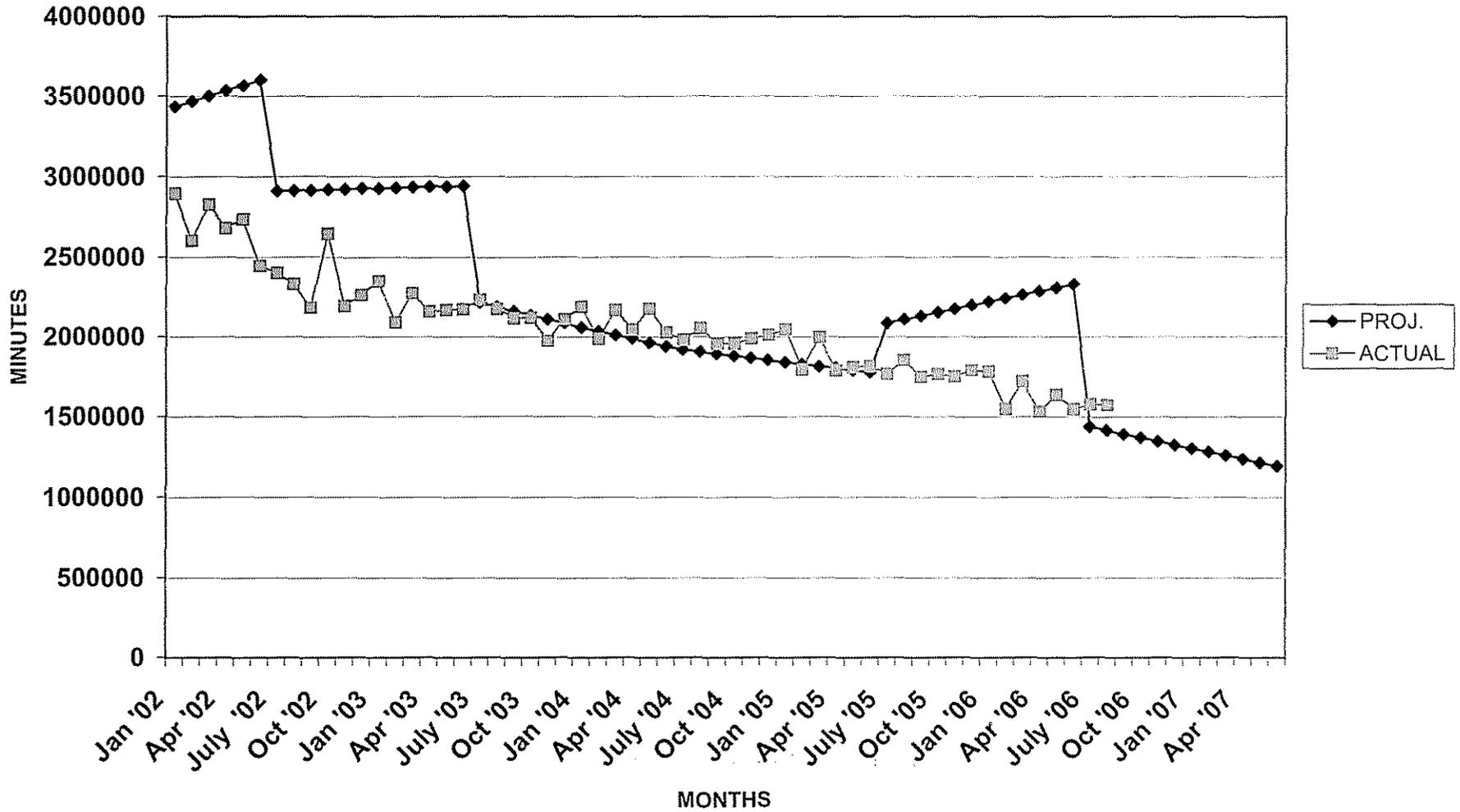
# **Exhibit 2**

# IP MINUTE GROWTH APRIL 2002 - AUGUST 2006



# **Exhibit 3**

## INTERSTATE TRS AND CAPTIONED TEL. VCO MINUTES JANUARY 2002 - JUNE 2007



Captioned telephone VCO minutes are included beginning in August 2004.

# **Exhibit 4**

# USE OF CERTIFIED DEAF INTERPRETERS

## CODE OF ETHICS

In an effort to protect and guide interpreters transliterators, and consumers, Registry of Interpreters for the Deaf ("RID") members established principles of ethical behavior. The organization enforces this Code of Ethics through its national Ethical Practices System. Underlying these principles is the desire to ensure for all the right to communicate.

This Code of Ethics applies to all members of the Registry of Interpreters for the Deaf, Inc. and to all certified non-members.

1. Interpreters/transliterator shall keep all assignment-related information strictly confidential.
2. Interpreters/transliterator shall render the message faithfully, always conveying the content and spirit of the speaker using language most readily understood by the person(s) whom they serve.
3. Interpreters/transliterator shall not counsel, advise or interject personal opinions.
4. Interpreters/transliterator shall accept assignments using discretion with regard to skill, setting, and the consumers involved.
5. Interpreters/transliterator shall request compensation for services in a professional and judicious manner.
6. Interpreters/transliterator shall function in a manner appropriate to the situation.
7. Interpreters/transliterator shall strive to further knowledge and skills through participation in workshops, professional meetings, interaction with professional colleagues, and reading of current literature in the field.
8. Interpreters/transliterator, by virtue of membership in or certification by RID, Inc., shall strive to maintain high professional standards in compliance with the Code of Ethics.

### **Benefits of Using a Certified Deaf Interpreter are:**

- Optimal understanding by all parties
- Efficient use of time and resources
- Clarification of linguistic and/or cultural confusion and misunderstanding(s)
- Arrival at a clear conclusion in the interpreting situation.

Registry of Interpreters for the Deaf  
8630 Fenton Street, Suite e324  
Silver Spring, MD 20910  
301-608-0050 (v/tty) / 301-608-0562 (tty) / 301-608-0508 (fax)

© 1997 the Registry of Interpreters for the Deaf  
Written by Professional Standards Committee, 1995-1997 REV8/97

# **Exhibit 5**



## Ontario Interpreter Services Guidelines for Deaf Interpreters

### Role of the Deaf Interpreter

A Deaf interpreter (DI) uses American Sign Language (ASL), gesture, mime and/or other communication strategies to facilitate communication between a Deaf consumer, a hearing consumer and a hearing interpreter. A Deaf interpreter is a Deaf individual who has native or near-native fluency in American Sign Language, who has interpreting experience and who has taken specialized training.

A Deaf interpreter will function as a member of the interpreting team. This may be needed if a Deaf person uses signs that are: particular to a region or age group, has minimal or limited communication skills, has had their communication hindered or altered because of sickness or injury, or uses non-standard ASL or gestures. A Deaf interpreter may be called upon when it is determined that a Deaf person is likely to be able to present concepts in a more comprehensible way because of shared culture and life experience. In some cases this is not always possible for hearing ASL-English interpreters.

The AVLIC Code of Ethics and Guidelines for Professional Conduct will guide the Deaf interpreter. The role of the Deaf interpreter is not to provide counselling or advocacy. The Deaf interpreter will ensure that the interpretation provided will be accurate and faithful to the intent of the participants in the conversation.

### Interpreting Process – A Team Model

In the interpreting process, interpreters receive the message in one language, process it, taking linguistic and cultural information into account, and then produce the interpreted message into the other language. A time lag will be experienced as the message is passed between the parties involved.

An OIS registered Deaf interpreter will work with an OIS registered hearing interpreter in a team model. The hearing interpreter will interpret from spoken English to ASL. The Deaf interpreter will then interpret from ASL to an appropriate level of ASL and/or will incorporate different communication strategies to convey the message to the Deaf consumer. The Deaf interpreter will interpret the Deaf consumer's remarks into ASL. The hearing interpreter will then interpret from ASL into spoken English. The Deaf and hearing interpreters may consult with each other in order to arrive at the best interpretation.

Consumers will be encouraged to address each other directly and not to address the interpreters. Hearing consumers should maintain eye contact with the Deaf consumer, not the interpreters.

The interpreters will advise the participants on how best to work with the team. This may include: allowing more time for the interpreting process, requiring the speaker to moderate the pace of their speech, appropriate seating arrangements, etc.

A Deaf/hearing interpreter team often can communicate more effectively than a hearing interpreter alone, or than a team of two hearing interpreters, or than a Deaf interpreter working alone.

When there are two hearing interpreters, two Deaf interpreters are required.

#### **Benefits of using a Deaf Interpreter:**

- Optimal understanding by all parties
- Efficient use of time and resources
- Clarification of linguistic and/or cultural information to reduce misunderstanding(s)

#### **Deaf consumers who may require a Deaf interpreter:**

- Deaf immigrants
- Deaf persons who have been socially isolated (ie. From rural areas, inmates of mental facilities or prisons)
- Deaf Plus (mentally ill, developmentally delayed, educationally deprived)
- A Deaf person who is not comfortable with hearing people
- A Deaf person who is seriously ill, injured or dying (the Deaf person's ability to produce signs clearly or use both arms when signing may be affected)
- Deaf children who have not been exposed or who may have had limited exposure to English and/or ASL

A Deaf interpreter is highly recommended in situations where misunderstandings can result in especially serious outcomes. Deaf interpreter services should be used in the courts, where a person could be wrongly convicted, by the police when interviewing victims, witnesses or suspects who are Deaf, or in mental health settings where clear and accurate communication assists professionals in determining correct medication or other interventions. Children's Aid Society workers may need to use the services of a Deaf interpreter to ensure children are thoroughly protected.

If a hearing interpreter or a Deaf consumer requests the services of a Deaf interpreter, every effort will be made to provide this service.

#### **OIS Registration**

Deaf Interpreters wishing to register with OIS must have the following qualifications:

- *Sociolinguistics of ASL* (to know/understand ASL)  
i.e., courses can be taken through Ontario Cultural Society of the Deaf (OCSD)  
or The Canadian Hearing Society (CHS)
- *Indepth knowledge of Deaf culture*
- *Knowledge of the Role of the Deaf interpreter*  
Adherence to the AVLIC Code of Ethics and Guidelines for Professional  
Conduct  
  
Understand the process of teaming with a hearing interpreter
- *Experience*  
Experience working as a professional Deaf interpreter and/or training as a Deaf  
interpreter through courses or workshops
- *Successful completion of an OIS knowledge and Attitude Interviews*  
Understanding of the interpreting process. Knowledge of AVLIC Code of Ethics  
and Guidelines for Professional Conduct
- *English as a second language*

Candidates wishing to work as Deaf interpreters will be interviewed in the region in which they will work by the Regional Director (RD) or manager and a committee comprised of a minimum of 2 Deaf community representatives and the staff interpreter.

Candidates will provide the Regional Director with a resume and references.

On successful completion of the interview an OIS Freelance Interpreter contract will be signed and ID card will be issued by the Provincial OIS office.

The registration process will be conducted once every 3 years.

# **Exhibit 6**

## DECLARATION UNDER PENALTY OF PERJURY OF RONALD E. OBRAY

Ronald E. Obray, having been duly sworn deposes and states as follows:

1. My name is Ronald E. Obray. I am President of Hands On Video Relay Services, Inc. ("Hands On"). I am making this declaration for submission to the Federal Communications Commission to explain the significance of Certified Deaf Interpreters ("CDI").

2. I am a nationally certified sign language interpreter, holding NAD Level IV and RID - CI -CT certifications. Both of my parents are deaf and as a result I have been active in the deaf culture since childhood. I have worked as a professional interpreter since 1985. Since 1992, my wife, Denise, and I have operated a sign language interpreting company, originally under the name of Hands On Services, and now under the name of Hands On Sign Language Services, Inc

3. In 2002, I established Hands On Video Relay Services, Inc. Since June of 2002, Hands On has provided Video Relay Service ("VRS"), first in a beta test mode, then in November of 2002 as a contract provider for AT&T, shortly thereafter as a contract provider for MCI, and now as a certified provider under the State of Washington's TRS program.

4. Hands On currently operates three call centers in the State of California, and one each in Washington and Florida, providing 24/7 VRS in English and Spanish.

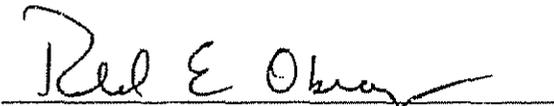
5. As discussed above, both of my parents are deaf. I have, therefore, grown up using sign language to communicate with my parents and their and my deaf friends. Children of deaf parents are sometimes referred to as CODAs, standing for Children of Deaf Adults. Having grown up in a deaf household, CODAs tend to have a high fluency with ASL and knowledge of deaf culture, more so than a standard interpreter who learns sign language at a later age. However, I quickly learned both as a CODA and as an interpreter of the limits of a hearing interpreter, CODA or not, in communicating in ASL. That is because hearing interpreters, even CODA interpreters, may learn ASL as their first language, but they are not forced to use it as their only means of communicating. They can still relate to the hearing world and the hearing culture. Deaf persons relate to the world visually out of necessity and to a distinct deaf culture. ASL is a visual language and deaf persons who use ASL have a similar fluency in sign language that native born English speakers have to that language. Almost all hearing interpreters – no matter how skilled or what their background may be – have less ASL fluency than CDIs, especially in dealing with persons with non-standard visual language skills, nor generally the depth of knowledge of deaf culture that someone who is deaf possesses.

6. This distinction is important to understand why CDIs are needed to effectively and accurately interpret certain calls. CDIs are deaf persons trained to assist in the interpreting from deaf and hard of hearing to hearing persons and vice versa. The CDI's native fluency in all ranges of sign language and thorough knowledge of deaf visual language variations allows him or her to interpret in situations where a normal hearing interpreter cannot adequately function. These situations are typically where the deaf person has very low non-standard language skills, is sick or

injured, has a mental disability, is foreign born, or a young child. Other situations would include high stress situations and situations where accuracy is particularly important, such as in the medical and legal areas. For these reasons, the use of CDIs is well established in community interpreting. In the VRS context, in addition to the situations discussed above, 911 calls in particular may require the use of CDIs. A situation requiring a call to 911 is a stressful situation even for a hearing person. It is equally, if not more so for a deaf person. 911 callers may be sick or injured, agitated, confused, or flustered. This is a situation calling for the most effective communication. In the VRS context, it will often require a CDI to achieve effective and accurate communication.

7. Our experience, both at Hands On VRS and at Hands On Services is that hearing interpreters can handle the overwhelming majority of calls and interpreting situations. However, there are those circumstances, such as those outlined above, that sometimes require CDIs to achieve effective, accurate and efficient interpretation. These are not situations that can be handled effectively by a supervisor, unless that supervisor is also a CDI, because supervisors lack the in-depth native signing ability and the depth of deaf culture experience of the CDI that even most of the CODAs don't possess. For these reasons Hands On's proposed VRS costs include costs for CDIs for 2006-07.

The above statement given under penalty of perjury is true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Ronald E. Obray

Dated: May 17, 2006

# **Exhibit 7**



Information and resources related to American Sign Language (ASL), Interpreting and Deaf Culture

---

URL: <http://www.ASLinfo.com/deafculture.cfm>

## Deaf Culture

◀◀ [Return to previous page](#)

Carol Padden has defined Culture as a set of learned behaviors of a group of people who have their own language, values, rules of behavior, and traditions. (1988)

Culture results from a group of people coming together to form a community around shared experience, common interests, shared norms of behavior, and shared survival techniques. Such groups as the deaf, seek each other out for social interaction and emotional support.

The essential link to Deaf Culture among the American deaf community is American Sign Language. This community shares a common sense of pride in their Culture and language. There exists a rich heritage and pride in the ability to overcome adversity as individuals and as a group. Deaf power hit the World in 1988 at Gallaudet University, an event known as the "**Deaf President Now**" (DPN) Movement. The protest has made a mark in history and proves that Deaf Culture is Pride and that Pride is Power.

Mastery of ASL and skillful storytelling are highly valued in Deaf Culture. Through ASL Literature, one generation passes on to the next its wisdom, values, and its pride and thus reinforces the bonds that unite the younger generation.

Another feature of this Culture is the role of marriage. It is estimated that 9 out of 10 members of the American Deaf community marry other members of their cultural group. Many D/deaf couples also wish for a deaf child so that they may pass on their heritage and Culture, it is not just the language but the values, the same values that hearing parents want to instill in their children.

Carol Padden says Deaf identity itself is highly valued; members of the deaf community seem to agree that hearing individuals can never fully acquire that identity and become a full-fledged member of the deaf community. Even with deaf parents and a native command of ASL the hearing person will have missed the experience of growing up deaf, including residential school. For many members of the deaf community, speech and thinking like a hearing person are negatively valued in Deaf Culture.

As Harlan Lane states in his book **Mask of Benevolence**, there is a fierce group loyalty, and this may extend to protectively withholding information about the community's language and Culture.

Going back to residential schools, these schools provide a vital link in the transmission of Deaf Culture and Language. Children here are able to communicate in a language readily understood by each other. Deaf children are able to partake in social clubs, sports and importantly enough, to be around deaf role models. It is important for deaf children to be encouraged to further their education and to learn that deafness does not mean you cannot grow up to be successful and happy (success of course being at each person's own perspective on what success and happiness means to them individually). This is not to say that mainstream education is iniquitous for deaf children, but we must keep in mind that socialization is essential to a child's growth and without a common language

socialization is limited.

---

Printed from <http://www.ASLinfo.com>  
© Copyright 1996-2006, All rights reserved.