Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
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	)	
Telecommunications Relay Services	)	
And Speech-to-Speech Services for	)	CG Docket No.03-123
Individuals with Hearing and Speech	)	
Disabilities	)	
	)	

REPLY COMMENTS OF AT&T INC.

AT&T Inc. ("AT&T"), on behalf of its telephone companies, hereby files these reply comments in response to the Further Notice of Proposed Rulemaking ("FNPRM")[1] in the foregoing docket.

AT&T supports the Commission's decision to examine its existing methodology for compensating providers of telecommunications relay services ("TRS") from the TRS Fund. As the record clearly reflects, most providers agree that the existing cost recovery methodology is inadequate in many respects, and that a new compensation regime is warranted. In particular, AT&T agrees with Verizon and other commenters that the existing cost recovery regime does not afford many providers a reasonable opportunity to fully recover their reasonable costs in providing TRS, and is burdensome for both providers and NECA.

Commenters diverge with respect to the specific actions the Commission should take to ensure the continued provision of high quality TRS, while ensuring that providers are appropriately compensated for their provision of such services. In examining the various

[1] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, CG Docket No. 03-123 (July 20, 2006).

proposals and suggestions, the Commission should ensure that any new compensation regime encourages provider efficiency, affords providers a reasonable opportunity to fully recover their costs in providing traditional and new TRS services, and minimizes the burdens on providers, NECA and the Commission. Further, the Commission should ensure that any new rules are clear and properly administered by NECA.

Applying these principles, AT&T agrees with those commenters that support the Multi-state Average Rate Structure ("MARS") proposal for traditional TRS, with some modifications. AT&T opposes Sorenson's price cap compensation model, but generally supports Verizon's proposed compensation methodology for video relay service ("VRS"), speech-to-speech ("STS") and IP Relay. Further, AT&T agrees that the Commission should clearly define the categories of reimbursable costs and NECA's role in administering its rules.

1. MARS Plan

AT&T supports adoption of the MARS Plan for traditional TRS. First, as Verizon, Hands On, Sorenson and others demonstrated, the MARS Plan relies on market-based intrastate rates derived from competitive bidding for the provision of intrastate traditional TRS services. The competitive bidding process necessarily encourages providers to minimize costs and increase productivity. As the record shows, a number of providers participate in the bidding process in the overwhelming majority of states. Because the states ultimately select the most efficient provider to provision intrastate traditional TRS services, concerns that interstate providers may pad their costs for traditional TRS services would be squarely addressed. Second, the MARS Plan would eliminate significant burdens on providers, the Commission and NECA, who currently have to spend significant time and resources preparing or reviewing projected TRS cost and demand data annually to determine the traditional TRS rate.

AT&T agrees with Verizon that certain refinements to the MARS Plan would be required. Specifically, the Commission should update the MARS rate annually to reflect the most current intrastate traditional TRS rates. This would ensure that the rate remains market-based. The MARS rate should also be calculated using a weighted average of the state rates to account for those states with high rates and low minutes, or conversely states with unusually low rates and high minutes. Further, the MARS rate should be calculated using session minutes rather than conversation minutes because the majority of states currently use session minutes.

The record is divergent on whether the Commission should adopt the MARS Plan for just traditional TRS or for additional relay services. AT&T could support the MARS Plan for IP Relay services. AT&T uses the same communications assistants ("CAs") and equipment to provide IP Relay and traditional TRS, thus its cost in providing these two services is not materially different.

2. Compensation Methodology for VRS, STS and IP Relay

The record proposes two primary compensation methodologies for VRS, STS and IP Relay. The first, proposed by Sorenson, Sprint and a handful of other commenters, is modeled on the price cap regime currently applicable to incumbent local exchange carriers. This proposed methodology would cap the rates for VRS and IP Relay for at least three years, during which the rates would be adjusted annually to account for inflation and efficiency gains, ultimately resulting in a .005 reduction in the capped rate year over year. This proposal would also afford providers the opportunity to individually seek exogenous adjustments to account for costs beyond their control.

AT&T strongly opposes this approach because it relies on incorrect and unsupported assumptions regarding a provider's ability to achieve productivity gains. Developing an

economically correct and relevant productivity factor is a practically insurmountable challenge. Regulators have struggled with this challenge in various industries, because it is difficult to measure historical productivity and trends with any degree of accuracy, and even more difficult to make rational predictions about future productivity. The Commission in particular has struggled with setting an accurate productivity factor for years.[2] In 1999, for example, the D.C. Circuit decisively rejected the Commission's effort to establish a productivity factor for access services as arbitrary, specifically questioning the Commission's basis for measuring past productivity and its assumption that there would be a continuing trend of productivity improvements.[3]

Setting a productivity factor in this context – even a small one (.005) – would be equally challenging. The proponents have failed to proffer any data demonstrating that labor-related costs, which make up the majority of the costs for VRS and IP Relay and other TRS, have been on the decline or will decline in the near future. For AT&T in particular, its TRS labor-related costs continue to increase year over year, which is in lock-step with AT&T's overall labor costs which have increased significantly in the past few years. Health care costs in particular are on the rise and factor heavily into a providers' labor-related costs. And if AT&T has to recruit and train individuals to be interpreters, as suggested by the proponents, AT&T anticipates even higher labor costs. It is therefore by no means clear to AT&T that it or any other provider could exercise sufficient control over these costs to realize the efficiencies contemplated by the proponents.

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[2] See *Bell Atlantic Tel. Cos. V. FCC*, 79 F.3d 1195, 1198-1204 (D.C. Cir. 1996) (detailing history of FCC efforts).

[3] See *United States Tel. Ass'n v. FCC*, 188 F.3d 521 (D.C. Cir. 1999).

Further, the exogenous component will do little, if anything, to help providers recover their costs. The Commission, in practice, has been reluctant to grant carriers exogenous relief. AT&T has no reason to believe that the Commission would be willing to grant such relief in this context for labor-related costs, again the primary costs providers incur in provisioning TRS.

The second methodology – proposed by Verizon – is a more reasoned approach. That methodology would establish a service-specific base rate for VRS, STS and IP Relay for three years and then make upward adjustments for inflation and any exogenous costs annually. While this methodology is not perfect, Verizon's proposal appropriately recognizes that yearly inflation should be factored in any compensation methodology to allow providers to recover their ever-increasing labor costs. It recognizes that TRS providers may incur exogenous costs in providing these services and should, in such instances, have a reasonable opportunity to recover such costs. Further, it correctly recognizes that application of a productivity factor to services that have primarily labor-driven costs is inappropriate.

The Commission may be hesitant to adopt a methodology that would increase, rather than decrease, VRS and IP Relay compensation rates because it may discourage providers from becoming more efficient. However, the fact is, many providers today are under compensated for their provision of these services, and this reality must be taken into account. AT&T, in particular, does not recover its TRS costs year after year, despite efforts to streamline its costs and produce other efficiencies. While Verizon's proposal likely will not alter this reality for AT&T, even with the inflation and exogenous adjustments,[4] it would, at a minimum, provide AT&T and similarly situated customers a better opportunity to recover their costs, and as a

[4] The inflation adjustment would not account for existing unrecoverable costs, assuming the trend in rising labor and health costs continues. While Verizon's methodology includes a factor for exogenous costs, AT&T recognizes that the Commission, in practice, generally does not grant carriers exogenous treatment of their costs.

consequence, encourage these providers to continue to take steps to become more efficient to minimize their unrecoverable costs.

3. Reimbursable Costs and Role of NECA

Commenters generally agree that the Commission should take this opportunity to clarify the categories of costs reimbursable from the TRS Fund. AT&T agrees with commenters that there is a great deal of uncertainty and confusion in the industry regarding which costs are or should be recovered from the TRS Fund. Clarification here would significantly minimize disputes regarding recoverable costs.

AT&T also agrees with commenters that outreach and marketing expenses should be recoverable from the TRS Fund. Because the Commission's TRS rules require providers to engage in outreach efforts to educate the public about TRS, TRS providers should be entitled to recoup reasonable outreach and marketing costs related thereto.

AT&T also urges the Commission to take this opportunity to clarify NECA's role. Under today's regime, NECA has discretion to determine whether certain costs are reimbursable. AT&T agrees with Verizon that such discretion is not conferred by the TRS rules. NECA is a third party administrator and as such should merely be an implementer. NECA should under no circumstances have the authority to make policy or discretionary decisions regarding reimbursable costs or other TRS matters. To the extent the Commission's TRS rules or implementing orders are ambiguous, the Commission should direct NECA to seek formal clarification from the Commission.

CONCLUSION

For the foregoing reasons, AT&T urges the Commission to follow its recommendations as outlined above.

Respectfully Submitted,

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