Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)))))	CG Docket No. 03-123

REPLY COMMENTS OF VERIZON

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EXECUTIVE SUMMARY

To secure the continued availability of high quality Telecommunications Relay Service ("TRS") – including traditional TRS and newer services such as Speech-To-Speech ("STS"), IP-Relay, and Video Relay Service ("VRS"), the Commission must make several key changes to its TRS ratemaking methodology. Commenters generally support the objectives of the rate setting formulas Verizon proposes for the various forms of TRS – including increasing the stability of rates to promote investment in and more widespread deployment of the various forms of TRS and simplifying the rate setting process for providers, NECA, and the FCC. While some commenters differ with Verizon on particular aspects of the ratemaking formula, none provide a superior alternative.

Verizon's modified cost-of-service proposal for STS, IP-Relay, and VRS more closely reflects the manner in which providers incur costs in these services than the Joint Commenters' price cap scheme. Specifically, the Joint Commenters' price cap proposal overstates the potential for efficiencies in the provision of these services and recommends the use of a productivity factor, a proposal that does not reflect the labor intensive nature of these services. In addition, the Joint Commenters' proposal to use the current $6.644 VRS rate as the base rate for this service is not appropriate, as that rate does not reflect the current cost to provide VRS. The Commission should instead adopt the $7.01 rate based on the 2006-2007 cost and demand submissions of providers, or should request updated data from providers in order to formulate a more accurate rate.

Similarly, the Commission should adopt Verizon's approach for STS and IP-Relay as opposed to Hamilton's proposal to adopt the MARS plan for these services. Because the MARS proposal uses intrastate TRS rates to formulate an interstate rate,

Hamilton's proposal is problematic because there are insufficient intrastate IP-Relay and STS rates to serve as inputs for a MARS calculation for these services. Verizon's proposal to use a streamlined cost submission to set base rates every three years, with annual adjustments for inflation and exogenous costs, would result in a more accurate rate that reflects the different cost structures of these services.

Additionally, the Commission should avoid unintended – and adverse – consequences that might arise from some proposed changes to the TRS ratemaking process. In particular, the Commission should reject proposals to expand the contribution base to include Internet service providers and, instead, continue the successful "hands off" policy with respect to the Internet. In the same vein, to preserve the providers' incentives to disclose proprietary information that is critical to the ratemaking process, the Commission should reject proposals to release this competitively sensitive data on a provider-specific basis and maintain the current practice of only releasing such information in aggregate form. Finally, the Commission should give providers sufficient latitude to respond to and address the fraudulent use of IP-Relay because fraudulent calls significantly drive up costs and, therefore, the size of the Interstate TRS Fund.

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REPLY COMMENTS OF VERIZON

The Commission should reject several components of the price cap scheme that the Joint Commenters proposed as a means for calculating reimbursement rates for IP-Relay and VRS. Specifically, the Commission should not use a productivity factor or consumer productivity dividend when calculating reimbursement rates. Moreover, the Commission should not adopt the MARS proposal for IP-Relay or STS. Instead, the Commission should adopt Verizon's proposal to set rates every three years based on streamlined cost and demand submissions from providers, with an annual adjustment for inflation and exogenous costs. Additionally, the Commission should not expand the contribution base to include Internet service providers, nor should it release competitively sensitive cost and demand data on a provider-specific basis. Finally, the Commission should provide carriers latitude to focus on fraud control, so that any growth in the Fund will be the direct result of increases in demand and costs for the provision of IP-Relay to legitimately speech- and hearing-disabled individuals.

I. THE JOINT COMMENTERS' PRICE CAP PROPOSAL IS DEFICIENT AS A COST RECOVERY MECHANISM FOR MULTIPLE REASONS.

The Commission should reject several components of the price cap scheme that the Joint Commenters proposed as a means for calculating reimbursement rates for IP-Relay and VRS. First, the Commission should not use a productivity factor when calculating reimbursement rates because IP-Relay and VRS are labor intensive services that provide little or no opportunity for the types of productivity gains to which the productivity factor normally applies. Second, the Commission should adopt a $7.01 per minute base rate for VRS reimbursement instead of the $6.644 rate proposed by the Joint Commenters because the $7.01 rate is based on current data and more accurately reflects costs.

A. The Commission Should Not Use a Productivity Factor When Calculating the IP-Relay and VRS Reimbursement Rates.

The Joint Commenters' recommendation to include a productivity factor and consumer productivity dividend in the reimbursement rate formula for IP-Relay and VRS is inappropriate for these services.[1] As Verizon noted in its comments, due to the labor intensive nature of the services, productivity improvements within these services are minimal and will not result in significant economies of scale.

The main opportunities for efficiency in these businesses come from personnel management, specifically improved attendance and adherence to the daily schedule (*i.e.* amount of time on break versus time on calls). However, once excellent results are achieved in attendance and adherence, there are few other major productivity

[1] *See* Joint Comments of Communication Access Center for the Deaf and Hard of Hearing, Communication Service for the Deaf, Inc., Go America, Inc., and Sprint Nextel Corporation, CG Dkt. No. 03-123 (October 30, 2006) ("Joint Comments") at 7-9.

improvements in these labor intensive businesses. This will be especially true because, as these services become more popular and demand increases, providers will have to spend significant resources to hire and train Communications Assistants to provide these unique services. In sum, the Joint Commenters vastly overstate the potential for productivity gains.

A productivity factor also would be costly and time-consuming for the Commission to establish. Historical attempts by the Commission to establish a productivity factor for access charges resulted in legal challenges that overturned the Commission's adopted rate and led to further protracted proceedings to reevaluate and establish an appropriate productivity factor.[2] The Commission should not make a similar mistake here by adopting a productivity factor on the insufficient record before it. No party has evidenced that any such factor is appropriate for these services, much less that a specific percentage productivity factor is accurate.

The Commission also should not adopt a productivity factor because productivity gains will already be taken into account when the Commission resets base rates for these services every three years. Under Verizon's proposal, providers would make streamlined cost and demand submissions every three years and NECA and the Commission would

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[2] *See* Tex. Office of Pub. Util. Counsel v. FCC, 265 F.3d 313, 329 (5th Cir. 2001) (finding that the Commission's adoption of 6.5% X-factor was arbitrary and capricious); *United States Tel. Ass'n v. FCC*, 188 F3d 521, 531(D.C. Cir. 1999) (prior reversal and remand for further explanation of the Commission's adoption of a six percent productivity X-factor and a .5% customer productivity divided for access charges); *see also Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board On Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000).

use these submissions to establish appropriate base rates. Because providers' submissions would be based on actual costs to provide service, any productivity gains that are realized for these services will be reflected in the submitted cost data. Therefore, a specific productivity factor is unnecessary to account for potential efficiencies.

B. The Proposed $6.644 Per Minute Base Rate for VRS Reimbursement Is Not Sufficient and the $7.01 Rate Should Be Adopted Instead.

The Commission should not adopt the $6.644 per minute VRS base rate proposed by the Joint Commenters because that rate is not an accurate measurement of the current costs and user demand VRS providers face. The $6.644 compensation rate is 17 months old and no longer reflects provider costs in this dynamic market. Instead, the Commission should use a rate calculated using the more current VRS provider cost submissions for the 2006-2007 rate year: $7.01 per minute.[3] Alternatively, if the $7.01 rate is not adopted, the Commission could request updated provider demand and cost submissions, and then calculate a current VRS base rate using this data. Either of these rates would better reflect current market conditions and the costs associated with rolling out this new service to meet consumer demand.

Moreover, other commenters in this proceeding acknowledge that a $6.644 base rate for VRS would not reflect the most current costs and demand faced by providers. Even Sorenson Communications, Inc., one of the Joint Commenters, filed an individual comment in this proceeding in which it recognized that $7.01 should be the VRS base

[3] Verizon calculated the $7.01 VRS rate by following NECA's traditional method of rate calculation: Reimbursement Rate = (Provider Costs / User Demand) x (NECA's Working Capital Allowance of 1.4%). By inputting into this equation the 2006/2007 Provider Cost and Demand data collected by NECA, $508,189,061 and $73,492,796 respectively, Verizon calculated a VRS reimbursement rate of $7.01 per minute. *See* National Exchange Carrier Association, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Dkt. No. 03-123, Exh. 1D, at 11 n.24 (released May 1, 2006).

rate if the Commission uses current data reflecting 2006-2007 provider costs and demand.[4]

II. THE COMMISSION SHOULD NOT APPLY THE MARS PROPOSAL TO IP-RELAY, SPEECH-TO-SPEECH, OR VIDEO RELAY SERVICE.

The Commission should not adopt the MARS proposal for IP-Relay or STS, but should instead adopt Verizon's proposal to set rates every three years based on streamlined cost and demand submissions from providers, with an annual adjustment for inflation and exogenous costs.

No party provided sufficient evidence that the MARS plan is superior to Verizon's proposal to set the rates for STS and IP-Relay. The MARS plan uses the competitive rates set in the state bidding processes for traditional TRS to calculate a competitive rate for interstate traditional TRS. Some, but not all, states also use the traditional TRS rate as the rate for STS, while no states use this mechanism for IP-Relay service. However, since the MARS plan requires sufficient intrastate data in order to calculate a competitive interstate rate and there is not enough data available for these services, rates set using the MARS plan will not be as accurate as those set using Verizon's proposed cost recovery methodology.

Nevertheless, Hamilton Relay, Inc. ("Hamilton") proposes that MARS is appropriate for IP-Relay and STS, noting that "[m]ost states compensate traditional TRS and STS services at the same rate," and that the rate for IP-Relay and TRS this year is very similar.[5] Hand On Video Relay Services, Inc. ("Hands On") "tentatively believes

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[4] *See* Comments of Sorenson Communications, CG Dkt. No. 03-123, 38 (filed Oct. 30, 2006).

[5] Comments of Hamilton Relay, Inc., CG Dkt. No. 03-123, 4-5 (filed Oct. 30, 2006) ("Hamilton Comments").

that it would be appropriate to apply the same rate to traditional interstate TRS as to IP Relay."[6] Neither party, however, provides any evidence that these services have similar cost structures or that provider costs are otherwise comparable for these services. Indeed, Hamilton admits that the rate for IP-Relay has differed significantly from the traditional TRS rate as recently as last year, though it summarily dismisses this difference as "an aberration."[7] Similarly, Hands On admits that it does not have sufficient experience with these services to accurately comment and notes that it "would defer to providers having actual experience in providing the two services."[8] Indeed, as Verizon can attest, TRS, STS, and IP-Relay do have different cost structures.

Providers of IP-Relay and STS face very different challenges in providing these services than they do in providing traditional TRS, and the Commission should consider these differences in setting rates for IP-Relay and STS. The costs associated with IP-Relay are significantly different from those associated with traditional TRS. Traditional TRS is a static technology with very few changes in the way it is provided year-to-year. IP-Relay, however, is a dynamic and evolving service that must react to changes in technology and customer preference. In the past year, Verizon spent considerable resources to ensure that its IP-Relay software was compatible with the recently released Sidekick III mobile handset, a cost necessitated by Verizon's commitment to universal access to its system as well consumer preferences for the latest mobile devices. Verizon has several full-time, on-staff programmers that develop handheld, desktop, and Web-

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[6] Comments of Hand On Video Relay Services, Inc., CG Dkt. No. 03-123, 6 (filed Oct. 30, 2006) ("Hands On Comments").

[7] Hamilton Comments, at 5.

[8] Hands On Comments, at 6.

based software, which need to be updated constantly to keep abreast of customer demand and the latest advances in the industry. Moreover, as Verizon's programmers develop these updates which improve IP-Relay, Verizon must spend additional resources teaching its Communications Assistants about the updated services and functionality. In addition, IP-Relay providers often pay a monthly fee to service providers like AOL for access to their instant messaging platform or to other vendors that provide software or support for IP-Relay. Penalties for adherence to minimum standards for IP-Relay are also more severe than those at the state level for TRS, which requires greater expenditures to ensure compliance with those standards. Thus, in any given year, the costs for IP Relay and traditional TRS may differ significantly.

This was true last year when the rate for traditional TRS was $1.440 and the IP-Relay rate was $1.278. Moreover, since that time, the TRS rate has declined while the IP-Relay rate has risen, indicating that the cost structures of these services impact them differently. Therefore, the fact that these services are currently reimbursed at almost the same rate should not lead to the arbitrary imposition of the same rate every year, since this might result in a failure to cover providers' costs in years when actual costs for these two services differ significantly.

STS is also a very different service from traditional TRS, necessitating a different cost recovery mechanism. In Verizon's experience, it takes longer to process an STS call, leading to a lower billable-to-session minute ratio for a given call. In addition, STS requires higher-skilled and trained operators, who are paid at a higher rate because of their more extensive training. Finally, call volume for STS is much lower, which leads to less cost efficiency as operators are paid the same amount regardless of whether they are

actively assisting a customer. Therefore, STS also requires a different cost recovery mechanism than TRS, and the Commission should not apply a MARS rate developed based on traditional TRS cost structures to STS or IP-Relay.

Instead of the MARS proposal, the Commission should adopt Verizon's proposal to set rates for these services, as well as for VRS, using provider-submitted cost and demand data every three years, with annual adjustments for inflation and exogenous costs. This procedure should not involve a full cost showing by providers, but rather a streamlined review to efficiently determine whether there have been any significant changes in the costs to provide these services. The Commission should use this procedure until a market based proposal can be developed.

III. THE COMMISSION SHOULD EXPAND THE CONTRIBUTION BASE TO INCLUDE SERVICES THAT ACT AS REPLACEMENTS TO TRADITIONAL TELEPHONE SERVICE, BUT SHOULD NOT EXPAND THE BASE TO INCLUDE INTERNET SERVICE PROVIDERS.

The Commission should consider expanding the contribution base to include services that are considered replacements to traditional wireline and wireless telecommunications services, so that contributions are assessed symmetrically on similar services. However, the Commission should not impose fees that might discourage broadband deployment.[9]

Currently, the amount of each provider's contribution is calculated as a "product of the carrier's interstate end-user telecommunications revenue and a contribution factor determined annually by the Commission."[10] Historically, Internet services have not been

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[9] *See* Hamilton Comments, at 11; Hands On Comments, at 63.

[10] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, CG Dkt. No. 03-123, FCC 06-106, 5 n.27 (July 20, 2006) ("*TRS FNPRM*").

required to contribute to the TRS Fund. However, to the extent that the Commission wishes to include said services in the contribution base, it should ensure that it extends this requirement only to services that substitute for traditional wireline or wireless telephone services. Thus, the Commission should consider imposing the contribution requirement on Voice-over-Internet-Protocol providers, as these providers sell their services as replacements for traditional telephone service.

However, the Commission should not extend the contribution requirement to Internet service providers. Requiring contributions from ISPs will artificially drive up the cost of Internet service for all customers, a result that is not consistent with Congress' intent that the Commission encourage the deployment of broadband and new technologies nationwide.[11] Increased rates will lead to depressed demand, which would lower incentives for providers to deploy more advanced broadband Internet access service to currently unserved areas. Furthermore, as the Commission has recognized, "the Fund is not intended to be 'an unbounded source of funding for enhancements that go beyond [the mandatory minimum] standards."[12] Thus, arguments by Hamilton that "the Commission will have more funding to carry out the congressionally mandated TRS program" if it expands the base should carry no weight if TRS is sufficiently funded, as it is under the current mechanism.[13]

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[11] *See* 47 U.S.C. § 157 (2005).

[12] *TRS FNPRM* at 7.

[13] Hamilton Comments, at 11.

IV. THE COMMISSION SHOULD ONLY RELEASE PROVIDER COST AND DEMAND DATA IN THE AGGREGATE.

The Commission should only release cost and demand data in aggregate form, and should not release this competitively sensitive data on a provider-specific basis. Both Verizon and Sorenson noted that the Commission can sufficiently increase the transparency of the rate setting process for providers and the public by releasing aggregate cost and demand data.[14] Hands On goes a step further and suggests that all provider cost and demand data should be made public, especially since "it is merely projections."[15] In making this suggestion, however, Hands On ignores the fact that past provider submissions to NECA have included both projections and historical cost and demand data. Moreover, Hands On does not evidence any incremental benefit to be realized by releasing this data on a provider-specific, as opposed to an aggregate, basis. Conversely, there are potential negative effects to releasing provider-specific data, as this data could provide competitors a significant advantage in the market by identifying the actual costs and demand for each provider, which could be used to undercut providers in future state bidding processes or in marketing services. An appropriate balance between transparency and provider confidentiality demands that this data be released only in the aggregate.

V. THE COMMISSION SHOULD ADDRESS THE FRAUDULENT USE OF IP-RELAY BY EMPOWERING PROVIDERS TO ELIMINATE FRAUD.

Instead of reducing reimbursement rates to a point that drives providers out of the business, or expanding the contributor base by adding broadband service providers, the

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[14] Comments of Verizon, CG Dkt. No. 03-123, 14 (filed Oct. 30, 2006); Sorenson Comments, at 62-64.

[15] Hands On Comments at 51-52.

Commission should effectively address the fraud that affects IP-Relay. As the Commission has recognized by instituting a proceeding on this matter, fraud is a major driving factor in the growth in the Interstate TRS Fund.[16] In July and August, IP-Relay reimbursements from the Fund increased 10% and 16% over the average for the first half of the year. It is unlikely that the market demand for IP-Relay is growing at this pace. Rather, the spikes in recent months indicate a new wave of fraud.

Conscientious providers focused on combating fraud are successful, but only until new tactics are developed by the perpetrators of that fraud. Thus, providers need sufficient latitude to quickly respond to new fraud techniques. While Verizon applauds the Commission's attention to this growing problem, the Commission should not adopt stringent fraud control procedures that knowledgeable fraudsters will be able to evade. Instead, the Commission must allow providers to implement fraud control procedures that are malleable enough to effectively counteract the fraud they face every day in providing these services. Otherwise, fraud will continue to plague providers and drive up the size of the Fund.

VI. CONCLUSION

The Commission should reject the proposals of commenters that do not reflect the realities of the market for these services and that will not result in more efficient or

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[16] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Relay Service and Video Relay Service*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 5478, 5481 (¶ 4) (2006).

accurate rate-setting, and should instead adopt the changes proposed by Verizon in its initial comments.

Respectfully submitted,

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