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

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

To: The Commission

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

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

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[1] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, CC Doc. No. 03-123, FCC 06-106, (July 20, 2006) ("Notice").

I. The FPSC's Interpretation of Functional Equivalence is Seriously Flawed

The Consumer Groups express their strong opposition to the Comments filed by the Florida Public Service Commission ("FPSC") on October 27, 2006, in which the FPSC asserts that Video Relay Service ("VRS") and Internet Protocol Relay ("IP Relay") service "go well beyond the ***functional equivalent*** requirement of conventional voice services required by Title IV of the Americans with Disabilities Act…"[2] This conclusion appears to stem from a flawed interpretation of the definition of TRS Services, defined by the Americans with Disabilities Act ("ADA")[3] as "telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is *functionally equivalent* to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communications services by wire or radio."[4]

The Consumer Groups question how the FPSC can logically arrive at this conclusion given the wealth of authority suggesting that "functionally equivalent" service must evolve to keep pace with modern technology. For example, the FPSC's conclusion stands in stark contrast to the legislative history of the ADA, whose drafters sought to allow people who are deaf, hard of hearing, and speech-disabled to join the "'economic and social mainstream of America'" by enabling telephonic communications with the rest of society.[5] Until that time, tens of millions of

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[2] Comments of the Florida Public Service Commission, CG Docket No. 03-123 filed October 27, 2006, at 2. ("FPSC Comments").

[3] PL 101-336, July 26, 1990, codified at 47 U.S.C. § 225.

[4] 47 U.S.C. § 225(a)(3) (emphasis added).

[5] House Rept. 101-485, Part 2, at 129 (May 15, 1990) ("House Rept. 101-485 Pt. 2"); *see also* 136 Cong. Rec. S 9684 (July 13, 1990) (statement of Sen. Inouye).

people who were deaf, hard of hearing, or speech impaired lived as veritable second class citizens, unable to interact with the rest of the country through the most ubiquitous of technologies, the telephone. The ADA fundamentally changed that status quo by requiring the Commission to ensure that deaf, hard of hearing, and speech impaired individuals have nationwide access to "functionally equivalent" relay services pursuant to FCC rules. The ADA specifically requires the Commission to ensure that its regulations encourage "the use of existing technology and *do not discourage or impair the development of improved technology*."[6] Thus, the ADA clearly contemplates that what is defined as functionally equivalent service will not remain static, but rather will evolve as technology evolves.

Indeed, the legislative history of the ADA demonstrates that Congress intended to encourage use of "'state-of-the-art'" technology and prevent "'freezing technology or thwarting the introduction of a superior or more efficient technology.'"[7] In recognition of these fundamental principles established by Congress, the Commission has held that "functional equivalence" requires "periodic reassessment" in light of the "ever-increasing availability of new services and the development of new technologies."[8] It therefore cannot be the case that Congress intended for the deaf and hard of hearing communities to be locked into one technology while the rest of the country benefits from the telecommunications revolution.

VRS and IP Relay have enormous potential to meet the goals established by the ADA. As explained above, Congress intended for the ADA to remove the barriers that individuals who

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[6] 47 U.S.C. § 225(d)(2) (emphasis added).

[7] House Rept. 101-485 Pt. 2 at 131, 133-134).

[8] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd. 5140, at ¶ 4 (2000).

are deaf, hard of hearing, or speech impaired experience when attempting to communicate with people who use telephones.

Many members of the deaf community communicate using a visual language--American Sign Language ("ASL"). ASL is not a direct translation from English and is distinct from any spoken language. ASL has its own vocabulary, grammar, and syntax, and conveys ideas in ways that are different from English. Consequently, for many native ASL users, communicating in English is akin to using a foreign language.

The power of VRS is that it allows many people who are deaf to communicate in near real time using their native language with a speed that is virtually the same as any natural signed or spoken conversation, rather than converting their thoughts into English and then typing them into a text-based service. In addition to improving ease and accuracy of language over TTY and other text-based services, VRS permits a conversation much closer to real time than TTY and other text-based services, because it does not suffer the delays, structure, turn-taking, and slow speed associated with typing text messages. In other words, there is no question that VRS is much closer to functional equivalency than TTY and other text-based services. Yet, the FPSC would argue that VRS and other innovative technologies are beyond functionally equivalency, and instead force the deaf, hard of hearing, and speech impaired communities who know and use ASL to rely on antiquated text-based services that inherently dilute and diminish their ability to communicate with the functional equivalency of telephone users. Simply put, the FPSC has it wrong.

II. <u>VRS and IP Relay Rates</u>

A group of VRS and IP Relay providers, including Communication Access Center for the Deaf and Hard of Hearing, Communications Service for the Deaf, Inc., GoAmerica, Inc.,

Hands On Video Relay Services, Inc., Snap Telecommunications, Inc., Sorenson Communications, Inc., and Sprint Nextel Corporation (collectively, the "Joint Commenters") proposed that the Commission use a price cap approach to set VRS and IP Relay rates rather than the current cost of service system.[9] For example, Sprint Nextel has expressed concern that the current rate setting process is "broken and in serious need of repair."[10] In general, the providers argue that the current method of rate setting is inefficient, suffers from a lack of transparency, and often produces inaccurate results.[11]

The Consumer Groups refer the Commission to their opening comments filed on October 30, 2006, where they addressed the need to recover legitimate costs at reasonable levels. In addition, the Consumer Groups encourage the FCC to take into consideration the comments and concerns of the Joint Commenters with respect to rate setting, price caps, and other related matters.

III. Any Solution to IP Relay Fraud Should Not Compromise the Transparency of Communications Assistants

Use of IP Relay by people who utilize stolen or fake credit card information or bad checks to order merchandise, often requesting that such merchandise be shipped to overseas locations, is referred to as "IP Relay fraud." Merchants can use the same business protections to prevent fraud when the caller is using IP Relay as they use when the caller is making an ordinary

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[9] Joint Comments of Communications Access Center for the Deaf and Hard of Hearing, Communications Service for the Deaf, Inc., GoAmerica, Inc., Hands On Video Relay Services, Inc., Snap Telecommunications, Inc., Sorenson Communications, Inc., and Sprint Nextel Corporation, CG Docket No. 03-123, October 30, 2006 ("Joint Comments").

[10] Comments of Sprint Nextel, CG Docket No. 03-123, October 30, 2006, at 1 ("Sprint Comments").

[11] *See, e.g.*, *Sprint Comments* at 7; Comments of Verizon, CG Docket No. 03-123, October 30, 2006 ("Verizon Comments"); Comments of Hamilton Relay, Inc., CG Docket No. 03-123, October 30, 2006 ("Hamilton Comments").

voice call. The Comments filed by Sorenson suggest several regulatory solutions to combat IP Relay fraud. These solutions include: requiring automatic electronic counting of minutes; blocking international IP Relay calls; developing criteria for identifying fraudulent calls; notifying the called party during the call and asking whether the call should be terminated; recording the IP address or other identifying information of callers who have placed fraudulent calls; and using such information to monitor future calls.[12] Although the Consumer Groups agree that IP Relay fraud must be combated to preserve the integrity of the Interstate TRS Fund, we object to any solution that would compromise the transparency of Communications Assistants ("CAs"). Instead, the Consumer Groups ask the Commission to consider alternative means to safeguard legitimate calls and ensure consumer confidence in the integrity and confidentiality of the IP Relay service.

The Consumer Groups object to any proposal that would require IP Relay CAs to screen out and block or terminate calls that they determine are not legitimate. Because their members are users of IP Relay, the Consumer Groups are sensitive to the expectations of people who are deaf, hard of hearing or speech impaired when using these services. Specifically, there is a consumer expectation that CAs be transparent to the call. Transparency requires that the CAs treat anything said during a call as strictly confidential with the full expectation that the content of the call not be conveyed to anyone other than the parties involved in the call.[13] Without CA

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[12] Comments of Sorenson Communications, Inc., CG Docket No. 03-123 filed October 30, 2006, at 61-62 ("Sorenson Comments").

[13] The ADA requires the Commission to prescribe TRS regulations that "prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call. . . ." 47 C.F.R. § 225(d)(1)(F).

transparency, consumers making legitimate calls would not be ensured of the same level of privacy that people who use telephones have when they call each other.

As discussed earlier, the ADA requires that TRS, including IP Relay, be functionally equivalent to voice telecommunications services. Just as voice telephone users have an expectation of privacy when calling each other, so should IP Relay users have the same expectation of privacy. If the CAs are permitted or required to screen out and block or terminate calls that they perceive to be a misuse of IP Relay, consumers would not have the experience of functionally equivalent service, and without functional equivalency, there would be no compliance with the mandates of Section 225.

The Commission itself has stated that "due to the transparent nature of the CA's role in a TRS call the CA may not interfere with the conversation. The TRS statutory and regulatory scheme do not contemplate that the CA should have a law enforcement role by monitoring the conversations they are relaying."[14] Therefore, the requirement of strict confidentiality on the part of CAs must be protected, just as confidentiality is strictly protected when people speak to their physicians, therapists, lawyers or clergy. With each of these professionals, it is the expectation of confidentiality that makes free and open communication possible. The same is equally true for CAs, where the CA is fulfilling a role that makes it possible for two people to communicate with each other through IP Relay or VRS.

Moreover, just as is the case with telephone calls between hearing people, where only a party to the call can terminate the call, in the case of IP Relay and VRS calls, only a party to the call should be able to terminate the call. If a CA had the discretion to terminate the call on his or her own volition, the CA would have authority over a call that no telephone company has over

[14] FCC Reminds Public of Requirements Regarding Internet Relay Service and Issues Alert. Public Notice. DA 04-1738 (June 18, 2004).

ordinary calls made between hearing people. That type of discretion would clearly violate the functional equivalency requirement of the ADA.

There are available alternative means to safeguard legitimate calls and ensure consumer confidence in the integrity and confidentiality of IP Relay. These alternatives serve to strengthen prevention of fraudulent transactions, generally. For example, merchants can ask for the 3-digit security code on the back of the credit card or the 4-digit security code on the front of the card as an additional protection. In addition, the merchant can delay shipment of the merchandise until after payment is confirmed with the credit card company. Finally, just as is the case with ordinary telephone orders, there is nothing preventing merchants from refusing orders requesting shipment to suspicious overseas locations. Commission action is not needed for any of these remedies. Merchants are free to implement them on their own. However, merchants should not be permitted to refuse to accept IP Relay calls in general as a way to prevent fraud. Instead, they should use the kinds of fraud prevention measures discussed herein.

In addition, education and outreach on the part of the Commission and the IP Relay providers would be useful for the purpose of encouraging merchants to implement these protections. Because these campaigns are directed at businesses and involve business practices, they should be coordinated with the Federal Trade Commission, Department of Commerce, and national trade organizations such as the U.S. Chamber of Commerce and credit card companies.

IV. Conclusion

The Consumer Groups strongly object to the FPSC's flawed characterization of VRS and IP Relay as going beyond functional equivalence. Both the ADA and the Commission have made it clear that functional equivalence is a standard that evolves with the development of new technologies. The Consumer Groups refer to their opening comments with respect to rates for

VRS and IP Relay. Lastly, the Consumer Groups object to any solution to the problem of IP Relay fraud that would compromise the transparency of Communications Assistants, but instead support other proposed solutions to combat IP Relay fraud.

Respectfully submitted,

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