

Before the  
Federal Communications Commission  
Washington D.C. 20554

In the Matter of )  
 )  
Telecommunications Services )  
For Individuals with Hearing and Speech ) CC Docket No. 03-123  
Disabilities, and the Americans with )  
Disabilities Act )  
\_\_\_\_\_ )

**REPLY COMMENTS OF COMMUNICATION SERVICE FOR THE DEAF**

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## TABLE OF CONTENTS

	Summary.....	ii
I.	Introduction.....	1
II.	Congress never intended for TRS to be considered an “accommodation.”.....	2
III.	Costs associated with research and development should be compensable.....	6
IV.	Costs associated with marketing and outreach should be compensable.....	8
V.	Costs associated with certified deaf interpreters should be compensated.....	11
VI.	VoIP and other IP-based providers should be required to make contributions to the Interstate TRS Fund.....	14
VII.	The record lacks support for a methodology that relies on interstate competitive bids.....	14
VII.	Conclusion.....	15

## SUMMARY

CSD urges the FCC to adopt a rate methodology for VRS that is above all, consistent with the Americans with Disabilities Act's (ADA's) mandates for functional equivalency. To this end, CSD supports the price cap approach jointly proposed by six of the current VRS providers. Whatever the methodology chosen by the FCC, however, CSD urges that the term of the calculated rate remain in effect for a minimum of three years, to ensure stability and predictability.

Congress mandated relay services as a means of achieving universal service for people with hearing and speech disabilities, not as an accommodation that had to be provided only upon request. Additionally, although entities covered under Titles I through III of the ADA need not provide accommodations when doing so would cause them to incur an undue burden, there is no such defense under Title IV. Rather, relay services were perceived by ADA legislators as one component of many that would be provided in the ordinary course of a telephone company's business. This business approach has directed fair compensation to relay providers over the past fifteen years, has rewarded companies that have been efficient, and has fostered significant technological innovation.

Unfortunately, the rate-making process utilized by the FCC and NECA over the past several years has threatened the stability and future of VRS. CSD appreciates the FCC's current efforts to end this erratic pattern, and urges the

agency to consider the original objectives of the ADA as it goes forward in devising a new rate methodology. To this end, we urge that the FCC reject the notion of competitive bidding, which will only create a monopoly that is immune to market pressures to improve relay quality. In addition, we urge the FCC to allow inclusion of costs associated with research and development, marketing (including branded marketing) and outreach, and certified deaf interpreters, along with all other reasonable expenses that have been permitted over these many years. Finally, we urge the FCC to revise its contribution rules to require interconnected VoIP providers to contribute to the Interstate TRS Fund.

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**I. Introduction**

Communication Service for the Deaf, Inc. (CSD) hereby submits these replies to the Federal Communication Commission's (FCC's) Further Notice of Proposed Rulemaking (Further Notice) which sought comment on interstate telecommunications relay service (TRS) rate methodologies.<sup>1</sup> CSD is a non-profit organization, which, through its relationship with Sprint, serves as a provider of VRS throughout all fifty states and the United States territories. As an organization run by and for deaf consumers and a leader in the field of relay services since the 1980s, CSD considers the impact of VRS regulatory actions from the perspective of both a provider and a relay consumer.

As noted in CSD's comments submitted in response to the 2006-07 rate proposed by the FCC, for some time now, CSD has had serious concerns about the

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<sup>1</sup> *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, FCC 06-106, 21 FCC Rcd 8379 (July 20, 2006).

lack of consistency, uniformity and transparency in the FCC's and the National Exchange Carrier's Association's (NECA's) VRS ratemaking process, as well as the failure of this process to consider first and foremost, the needs of relay consumers.<sup>2</sup> CSD joins the many commenters to this proceeding who maintain that the FCC has an obligation to establish a cost recovery methodology that is consistent with the mandates of functional equivalency set forth in Title IV of the American with Disabilities Act (ADA), as well as one that fairly reimburses providers for the reasonable costs associated with relay services. To this end, in the initial round of comments submitted in this proceeding, CSD accompanied six other providers in Joint Comments requesting the adoption of a price cap plan for VRS and IP relay.<sup>3</sup> CSD will not repeat the arguments laid out in the pleading submitted by these joint commenters, other than to note our agreement that utilization of this plan will create significant incentives for providers to maintain high levels of efficiency (as they will be able to retain the savings resulting from such efficiency), provide consistency in VRS and IP relay service rates, and eliminate the heavy administrative burdens associated with the present rate-of-return methodology. CSD urges that whatever rate methodology is chosen by the FCC, the calculated rates remain in effect for a minimum of three years; this will provide the stability and predictability that is necessary for providers to effectively plan for the provision

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<sup>2</sup> Comments of CSD (May 17, 2006).

<sup>3</sup> The other six parties to these Joint Comments were: Communication Access Center for the Deaf and Hard of Hearing, GoAmerica, Inc., Hands On Video Relay Services, Inc. (Hands On), Snap Telecommunications, Inc., Sorenson Communications, Inc., and Sprint Nextel Corporation.

of their services and to invest in cost-saving technologies that can improve relay quality.

## **II. Congress never intended for TRS to be considered an “accommodation.”**

In its Further Notice, the FCC refers to TRS as “an accommodation under the ADA for persons with disabilities.”<sup>4</sup> But as others in this proceeding have already pointed out, although Titles I through III of the ADA specifically created obligations to provide accommodations for people with disabilities, Title IV’s mandates for relay services did not.<sup>5</sup> Nowhere in the language or the legislative history of the ADA can one find any mention of relay services as an “accommodation” whose funding is subject to the defenses that apply to the other sections of the ADA.

While it is true that relay services are intended to offer a means of remedying past discrimination, the relay mandates of the ADA are very different from the Act’s other sections. Specifically, although accommodations and auxiliary aids need only be provided (by employers, local governments and places of public accommodation) to the extent that doing so will not impose an undue burden on an entity’s operations or business, the obligation on common carriers to provide relay services is absolute. Indeed, while every effort should be made to ensure the reasonableness of relay costs, unlike the accommodations required under Titles I through III, there is no financial burden above which these services would ever not be provided. Moreover, while the accommodations required in Titles I through III are only provided upon the request of individuals with disabilities, the relay services

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<sup>4</sup> Further Notice at ¶8.

<sup>5</sup> Comments of Sorenson at 12; Comments of Hands On at 2-4.

mandated under Title IV are universally and automatically available to everyone who needs them.

The reason that the structure of Title IV is so different from its preceding titles is because this section was designed to extend the Communication Act's existing universal service obligation to people who have hearing and speech disabilities, much like other universal service obligations have been intended to ensure the affordable provision of telecommunications services to low income, rural, native and other Americans. To this end, Title IV itself incorporates the universal service obligation:

In order to carry out the purposes established under section 1, . . . the Commission shall ensure that . . . telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.<sup>6</sup>

For nearly twenty-five years, this universal service obligation has been the cornerstone of Congressionally-mandated telecommunications equality. For example, as far back as the Telecommunications for the Disabilities Act, which first required hearing aid compatibility and allowed the continued subsidization of specialized customer premises equipment with telephone company service revenues, Congress explained that a contrary result would cause people with disabilities to lose access to the telephone, which would “disserve the statutory goal of universal service.”<sup>7</sup> Congress again invoked the universal service obligation when it

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<sup>6</sup> 47 U.S.C. § 225(b)(1).

<sup>7</sup> P.L. 97-410, codified at 47 U.S.C. §610; H. Rep. No. 888, 97<sup>th</sup> Cong. 2d Sess. at 3 (1982).

expanded requirements for telephones to be usable with hearing aids in the Hearing Aid Compatibility Act of 1988.<sup>8</sup> The House Committee’s Report to this statute explained: “Our nation’s public policy goal is equal, universal telephone service for all Americans. This legislation endeavors to ensure that all hearing impaired persons will have complete access to the telephone network.”<sup>9</sup> The Committee later added that “[u]niversal compatibility and equal access by the hearing impaired to the telephone network follow from the [universal service provision of the] Communications Act of 1934. . . Advances in technology have made communication possible and it is time that hearing impaired persons are include in ‘all the people.’”

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As held true for these earlier laws, the requirement for telecommunications access in the ADA was not intended to be perceived as a charity that telephone companies had to donate; rather this was deemed to be part of a telephone company’s many obligations as it went about conducting its ordinary business. Instead of singling this service out as one that was “specially provided” and only available if it was economically feasible, Congress’s objective was to integrate relay users into the mainstream of our existing telephone system. Indeed, it was for this very reason that the ADA Congress rejected a proposal then put forth by some of the regional bell operating companies to create a federally funded “relay

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<sup>8</sup> P.L. 100-394, codified at 47 U.S.C. §610.

<sup>9</sup> H. Rep. No. 674, 100<sup>th</sup> Cong., 2d Sess (1988) at 3. In addition, a finding in the statute itself states: “To the fullest extent made possible by technology and medical science, hearing impaired persons should have equal access to the national telecommunications network.” P. L. 100-394 Sec 2(1).

<sup>10</sup> *Id.* at 6.

corporation.” Not only would such a corporation separate people who were deaf, hard of hearing and speech disabled from all other ratepayers, it would allow the funding for their “special” services to be subject to the whims of the federal budgetary process. Congress turned down this approach both because it understood relay service to be just one of a variety of telephone services, and because it wanted a steady source of revenue to flow to relay services, just as all telephone services are supported by a consistent revenue stream. Acutely aware of the financial hardships that had plagued the locally funded relay services of the 1970s and 1980s, Congress wanted to be very careful *not* to impose funding restrictions that could in any way impede the provision of these services.

Unlike the entities covered under Titles I through III – all of whom are expected to *pay* for the accommodations mandated under those provisions *themselves* – relay providers are allowed to have the costs that they incur under Title IV reimbursed.<sup>11</sup> Precisely because Congress adopted this business approach (as compared to a charitable approach) for relay services, it certainly must have intended for companies to be able to receive compensation for these services to the same extent that they were compensated for their other telephone services. Accordingly, for more than the first decade of relay services, rather than penalize efficiency through mechanisms such as true-ups, the business model that was

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<sup>11</sup> That reasonable cost recovery was contemplated in the ADA’s provisions is revealed in the following statutory language: “Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. 47 U.S.C. §225(d)(3)(B).

adopted by Congress and followed by the FCC rewarded companies that produced efficient services in compliance with the ADA's functional equivalency mandates. The result is that Title IV has often been touted as one of the most successful Titles of the ADA, allowing technological innovation to flourish and produce enhancements to relay services that have truly changed the lives of people unable to hear or speak. It is against this backdrop that the Commission must now select appropriate cost recovery methodologies that are capable of continuing to provide incentives for improved relay services.

### **III. Costs associated with research and development should be compensable**

As the agency charged with implementing the ADA-created right to telecommunications access, the FCC must do what it can to support, rather than hinder provider efforts to achieve the greatest degree of functional equivalency. To this end, Congressional mandates direct the Commission to promulgate regulations that encourage "the use of existing technology and do not discourage or impair the development of improved technology."<sup>12</sup> Historically, it was this goal that not only permitted, but directed the recovery of relay costs associated with research and development.

When the Commission first authorized funding for VRS and IP relay, it decided to do so from the Interstate TRS fund in order "to encourage this new technology" and "speed its development."<sup>13</sup> Throughout the development of VRS, it

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<sup>12</sup> 47 U.S.C. §225(d)(2).

<sup>13</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further

was the support given to R&D that enabled VRS providers to make this service the principal mode of telephone communication for so many deaf users. Once a service that was accessed only through public stations, VRS is now a vibrant service that is competitively available to and from any home or office. VRS research and development has led to faster answer speeds, improvements in picture quality, and better end user functionality and interfaces.

However, under the present funding scheme, there is virtually no flexibility nor any incentive to research and invest in new and innovative service features for VRS or IP relay users. Worse, the FCC's decision to disallow reimbursement for R&D expenses hinders the ability of CSD and other providers to explore viable solutions to mandatory minimum standards which presently exist, but which have been temporarily waived (such as the handling of emergency calls). Without the ability to fund research to find these technical solutions, providers will have virtually no incentive – let alone the means – to undertake efforts that will bring relay services up to the minimums already set by the Commission. Smaller providers will be particularly hard hit, and their inability to innovate will, in turn, impede VRS competition.

Although in its recent Order on Reconsideration, the FCC stated that some reimbursement for R&D may be allowed if providers can identify both the manner that a waived standard might be met and the projected costs to achieve that goal, it nevertheless continued to maintain that R&D costs associated with meeting a

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Notice of Proposed Rulemaking, CC Dkt. 98-67, FCC 00-56, 15 FCC Rcd. 5140 at ¶24 (March 6, 2000) (*Improved Services Order*).

waived standard are not compensable because functional equivalence is defined by the mandatory minimum standards.<sup>14</sup> CSD continues to insist that this reasoning is illogical, both because it will be difficult to identify the manner in which a waived standard may be met without first conducting some exploratory R&D (which remains non-reimbursable), and second, because a temporarily waived standard remains a mandatory minimum standard until such time that the Commission deletes that standard from its rules.

In sum, CSD urges the Commission to reimburse both a provider's efforts to find solutions that are designed to achieve the ADA's goals of functional equivalency, as well as efforts to meet temporarily waived relay standards.<sup>15</sup>

#### **IV. Costs associated with marketing and outreach should be compensable.**

The FCC itself acknowledges that Title IV of the ADA was intended to “remedy the discriminatory effects of a telephone system inaccessible to persons with disabilities.”<sup>16</sup> As a remedial statute, the goal of this provision was to fully integrate individuals with disabilities who previously had been denied access to the

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<sup>14</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration, CG Dkt. No. 03-123, FCC 06-87 at 16 (July 12, 2006).

<sup>15</sup> That it has been the understanding of prior Commissions, TRS providers, and the relay user community that temporarily waived standards would ultimately go into full force and effect once they became technically feasible, is reflected in the ongoing provider requirement to submit FCC reports on efforts to develop technical solutions for standards that are temporarily waived. Such reports were required for coin sent-paid calls (before this relay feature was eliminated) and various waivers granted for the provision of captioned telephone. Until now, the message to providers has always been clear: even if a minimum standard is temporarily waived, providers should be doing whatever they can to meet that standard.

<sup>16</sup> Further Notice at ¶8.

mainstream of society. Lack of access to the telephone for the first hundred years of its existence caused extreme isolation for deaf, hard of hearing and speech disabled communities. Because of this, when the ADA was enacted, it was obvious that the mere passage of the Act would not be enough to educate consumers with hearing loss about their new rights. Considerable effort would be needed to break through the segregation that had pervaded these communities for so many decades. The difficult job of getting this word out began in the 1960s (with the introduction of the first TTYs) and continues to this day. As noted by Sorenson, despite the extraordinary benefits of VRS, a mere 10 percent of all potential VRS consumers now use this service.<sup>17</sup> In addition, all that the FCC need do is to conduct a random poll of strangers to learn that the vast majority of the general public has no idea what relay services are.

It is for the above reasons that when the ADA's mandates for nationwide relay services became effective, the FCC made a point of requiring relay providers to conduct outreach and education on the newly mandated services. The Commission explained "[w]e believe that public access to information regarding the availability, use of service, and means of access, is critical to the implementation of TRS."<sup>18</sup> Repeatedly, throughout its relay regulatory history, the FCC has reaffirmed this principle, noting in its rules that "efforts to educate the public about TRS should extend to all segments of the public, including individuals who are hard

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<sup>17</sup> Comments of Sorenson at 23.

<sup>18</sup> *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Report and Order and Request for Comments, CC Dkt. No. 90-571, FCC 91-213 at ¶26 (July 26, 1991).

of hearing, speech disabled, and senior citizens as well as members of the general population.<sup>19</sup> For example, in March of 2000, the FCC stated that in order for Title IV to achieve functional equivalency, “[i]t is crucial for everyone to be aware of the availability of TRS.” The Commission went on to explain that “TRS was designed to help bridge the gap between people with hearing and speech disabilities and people without such disabilities with respect to telecommunications services. The lack of public awareness prevents TRS from achieving this Congressionally mandated objective.”<sup>20</sup>

When in June of 2004, the Commission rejected the development of a NECA-funded national outreach program, it made clear that provider costs “attributable to reasonable outreach efforts” were already permissible costs from the Interstate TRS Fund.<sup>21</sup> The Commission explained that:

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<sup>19</sup> 47 C.F.R. §64.604(c)(3).

<sup>20</sup> *Improved Services Order* at ¶ 105. See also “[C]onsumer education, training and outreach are essential to the success of TRS.” *Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996*, Notice of Inquiry, 12 FCC Rcd 1152 at ¶ 45 (1997). In addition, the FCC’s order on 711 expressly stated that “on-going and comprehensive education and outreach programs to publicize the availability of 711 access in a manner reasonably designed to reach the largest number of consumers possible” would be necessary to achieve the successful use of this abbreviated dialing code. The Commission confirmed that “[t]o the extent costs of education and outreach are attributable to the provision of interstate TRS, . . . relay providers should include these costs as part of their annual data report of their total TRS operating expenses.” *Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Second Report and Order, CC Dkt. No. 92-105, FCC 00-257 15, FCC Rcd 15188 at ¶61 (August 9, 2000).

<sup>21</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Dkt. No. 90-571, CC Dkt. No. 98-67, CG Dkt. No. 03-123, 19 FCC Rcd 12475 at ¶97 (June 30, 2004).

outreach is an issue of recurring and serious importance for TRS users. Those who rely on TRS for access to the nation's telephone system, and thereby for access to family, friends, businesses, and the like, gain little from the mandate of Title IV if persons receiving a TRS call do not understand what a relay call is and therefore do not take the call, or if persons desiring to call a person with a hearing or speech disability do not know that this can easily be accomplished through TRS (and dialing 711). We also recognize the strong sentiment reflected in the comments that outreach efforts to date have not been adequate.”<sup>22</sup>

Unfortunately, unlike other sections of the ADA, which were the subject of major outreach efforts conducted by the Department of Justice, protection and advocacy agencies, and technical assistance centers located throughout the country after passage of that Act, the relay provisions have never truly had the benefit of a comprehensive nationwide outreach program. But what is perhaps more disturbing is the contrast between the FCC’s efforts to publicize other FCC programs, such as its V-chip and Lifeline/Link-up programs, and its efforts to educate the public about relay services. Not only did the FCC set up its own working group of staff from the FCC, the National Association of Regulatory Utility Commissioners, and the National Association of State Utility Consumer Advocates to gather input on the most effective ways to enhance consumer awareness of Lifeline and Link-Up telephone services,<sup>23</sup> but the agency has even penalized providers that have failed to publicize these universal service programs<sup>24</sup> How strikingly different from the

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<sup>22</sup> *Id.* at ¶95.

<sup>23</sup> “Working Group On Lifeline And Link-Up Telephone Services Seeks Information on Effective Outreach to Low-Income Consumers,” FCC Public Notice, DA 06-41 (January 10, 2006).

<sup>24</sup> For example, on October 15, 2004, the FCC assessed a \$20,000 forfeiture against Pend Oreille Telephone Company for failing to publicize the availability of Lifeline and Link-Up universal service discounts in a manner reasonably designed to reach

instant situation, wherein the agency is poised to penalize providers who are requesting the means to conduct outreach!

So long as so many Americans remain completely ignorant of the availability and use of relay services, it is unfair for the FCC to not cover expenses associated with marketing and outreach. CSD also agrees with the unanimous view of all parties to this proceeding that such compensation should include the costs of branded marketing. As noted by the Consumer Groups and Hamilton, providers need to be able to inform consumers about variations in their service features.<sup>25</sup> The benefits of such advertising are two-fold: they provide consumers with information about where they can obtain features that meet their individualized needs (much like advertisements by telephone companies to the hearing public do), and they provide incentives to providers to invest in new innovations that can be shared with potential relay users. Moreover, with interoperability now in play, providers need to be able to inform consumers about their services in order to effectively compete.<sup>26</sup>

**V. Costs associated with certified deaf interpreters should be compensated.**

CSD agrees with the Consumer Groups and Hands On that there is considerable value in utilizing CDIs to facilitate communication in situations when the deaf party to the call has minimal language skills or otherwise needs the added

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low-income residents on tribal lands. A \$75,000 fine was assessed against CenturyTel, Inc. for the same infraction on November 17, 2005.

<sup>25</sup> Comments of Consumer Groups at 5; Comments of Hamilton at 8.

<sup>26</sup> Comments of Sorenson at 48; see also Comments of Hands On at 44-45 (discussing the benefits that marketing will have on increased competition).

expertise of a person who has grown up in the deaf community.<sup>27</sup> Hands On defines various categories of such individuals: “[f]oreign 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 who tend to have lower language skills than the average deaf person.”<sup>28</sup> The latter group is largely composed of individuals who have lower incomes and minimal educational backgrounds. These individuals have often grown up isolated – sometimes with little if any schooling – and are not fully familiar with either American Sign Language (ASL) or English grammar.

In the D.C. metropolitan area, many deaf individuals who fall into this “minimal language” category used to routinely visit Gallaudet University’s legal services law clinic, housed at the National Center for Law and Deafness from 1975 through 1995. During those years, lawyers at the clinic often turned to the expertise of CDIs to facilitate conversations with deaf individuals who were unable to communicate either directly or through a hearing interpreter. The added knowledge of deaf culture that these deaf interpreters possessed, as well as their unique ability to communicate through gestures and other means, were especially critical to achieving effective communication about legal matters, such as immigration, wills, housing and Social Security, along with routine matters, such as

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<sup>27</sup> See Comments of Consumer Groups at 4.

<sup>28</sup> Comments of Hands On at 61-62.

the need for further documentation or additional appointments to address the client's problem.

The FCC's mandatory minimum standards require qualified VRS interpreters who are "able to interpret effectively, accurately and impartially, both receptively and expressively, using any specialized vocabulary."<sup>29</sup> This standard, taken from the Department of Justice's regulations on Titles I through III of the ADA, is designed to ensure that full, effective and accurate communication takes place through video interpreters.<sup>30</sup> Under the ADA, when a CDI is needed to achieve such communication, the failure to provide such an individual amounts to noncompliance. At a minimum, then, the FCC should permit the costs of these individuals to be compensated to providers.

Because CDIs will only be needed rarely, expenses associated with their provision should not be significant. Moreover, allowing reimbursement for these costs will, in the long run, lower overall VRS costs. This is because when hearing interpreters are unable to understand the signs or gestures of deaf individuals, they have no choice but to repeatedly request clarification. On a relay call, the time it takes to make each other understood before effective communication is achieved consumes extra minutes that are billed to the TRS Fund. It would be far more time and resource efficient – as well as logical – to permit compensation for the very minimal costs associated with a CDI, so that prompt and efficient communication can be achieved the first time around.

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<sup>29</sup> 47 C.F.F. 64.604(a)(1).

<sup>30</sup> See *e.g.*, 28 C.F.R. §36.104; 56 Fed. Reg. 35553 (July 26, 1991).

At present, the number of CDIs in the United States remains limited. Thus, while CSD proposes that the costs for these deaf interpreters be allowable, though not mandated for now, it is CSD's hope that in the coming years, interpreter training programs will realize the need for this type of expertise, and incorporate into their programs adequate training for deaf individuals to become certified. It is at that time that the FCC could consider making this a mandatory VRS feature.

**VI. VoIP and other IP-based providers should be required to make contributions to the Interstate TRS Fund.**

In June 2006, the FCC expanded the obligation to make contributions to USF to interconnected VoIP providers.<sup>31</sup> However, the Commission stopped short of directing these providers to contribute to the Interstate TRS Fund as well. As the nation's communication systems migrate toward IP technologies and away from the public switched telephone network, contributions from IP-based providers will be critical to sustain the viability of relay programs and to distribute the costs associated with these programs among subscribers of all communication services. Indeed, some states have already recognized this need. For example, as of January 2007, the new "Communications Sales Tax Bill" will extend Virginia's relay surcharge to all communications services providers, including providers that offer telephone, cable, and VoIP services.<sup>32</sup> The FCC should similarly require providers

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<sup>31</sup> *In the Matter of Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, CC Dkt. No. 90-571, FCC 06-94 (June 27, 2006).

<sup>32</sup> See <http://leg1.state.va.us/cgi-bin/legp504.exe?061+ful+HB568S1>. The new legislation defines "communications services" as "the electronic transmission,

of all IP-based services that offer telephone-like functions to make contributions to the TRS Fund to sustain its viability.

**VII. The record lacks support for a methodology that relies on interstate competitive bids.**

The FCC's Further Notice makes passing mention of use of a competitive bidding process as a means for determining VRS rates. There are a number of problems with this approach, the first of which is the Commission's own reason for suggesting it. Specifically, the FCC suggests this methodology as one that is "consistent with the principle that TRS is intended to be an accommodation for persons with disabilities." As fully explained above, however, Congress never intended for TRS to be treated as an accommodation. More importantly, there is nothing submitted in the record to this proceeding to even remotely support a competitive bidding scheme. To the contrary, valid concerns have been raised that this approach would create a monopoly that could easily become immune to market forces.<sup>33</sup> Were this to occur, VRS competition would cease, VRS technological innovation would decline, and call quality would inevitably suffer. Certainly this could not be in the best interests of consumers, nor compliant with the ADA's goals of functional equivalency.

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conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for the transmission or conveyance." Virginia Communications Sales and Use Tax, Ch 6.2 §58.1-647

<sup>33</sup> Comments of Sorenson at 58.

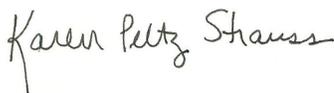
## VIII. Conclusion

The past several years have been characterized by sudden and unexpected shifts in longstanding policies governing VRS cost recovery. Justifications for these abrupt changes have often come after the fact – i.e., only *after* the changes have been made – putting VRS providers in the precarious position of never knowing in advance which of their expenses will be permitted. CSD appreciates the FCC’s current efforts to find a clearly defined rate methodology that provides stability, consistency, and transparency. Above all, we urge that the methodology chosen be one that fully meets the telecommunications needs of relay users.

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