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

In re	)
	)
Telecommunications Relay Services and Speech to	) CGB Docket 03- 123
Speech Relay Services for Individuals with Hearing	)
and Speech Related Disabilities	)
	)
To: The Commission	)

REPLY COMMENTS ON INTERSTATE RELAY SERVICES FUND PAYMENT FORMULA AND FUND SIZE ESTIMATE

HANDS ON VIDEO RELAY SERVICES, INC.

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May 23, 2007

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Hands On Video Relay Services, Inc. ("Hands On"), by counsel and pursuant to FCC Rule Section 1.415, replies to the comments filed to the National Exchange Carrier Association, Inc.'s ("NECA") May 1, 2007 Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate ("Fund Filing"). In support, the following is shown.

I. Commentors agree the current rate system and methodology is broken and needs to be fixed.

The various comments submitted on NECA's Fund Filing are unanimous that the system is broke and needs fixing. This is the consensus of providers, hundreds of consumers who have commented on this matter in the docket and the ratepayers who chose to address the matter.[1] This broad consensus among disparate interests is striking in that all agree the current rate methodology system is broken. The current system, if continued, will further irreparably harm the health of the industry and limit access and usage among the deaf community. Such a result is inconsistent with the civil rights intent of Congress in establishing relay services as part of the Americans with Disabilities Act.

The current system and methodology NECA is employing to arrive at recommended TRS rates has been described by commentors variously as

[1] *See* Sprint Nextel Comments at 1-3; Verizon Comments at 2-3. ATT did not comment on the rate setting process. Rather it addressed solely the issue of treatment of the expected TRS Fund surplus for the 2006-07 rate period. ATT Comments at 2-5.

"unlawful,"[2] "erratic,"[3] "haphazard,"[4] "burdensome and frankly, capricious,"[5] and "dysfunctional."[6]

Hands On concurs that the Commission must adopt a new rate methodology that works and which is verifiable.[7] If that sounds simplistic, it is…for the mere fact that the market is currently distorted, and the FCC's and NECA's attempted fixes to date only reinforce a system that acts as a barrier toward achieving functional equivalency. Outreach and marketing, research and development, usage of certified deaf interpreters, and training more interpreters, all critical elements of the Americans with Disabilities Act's functional equivalency requirement are threatened because NECA has apparently been given the word by the FCC to reduce the growth of the TRS Fund size that would otherwise result from use of a rate based on the weighted average of all provider cost and demand submissions. NECA's various suggested adjustments from the provider cost and demand rate are all inappropriate responses to a desire to limit growth of the TRS Fund. The Commission must act immediately to establish a

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[2] Sorenson Comments at 3-4.
[3] CSDVRS Comments at ii.
[4] *Id.*
[5] Hamilton Comments at 6.
[6] Sprint Nextel Comments at 1.
[7] As we have pointed out rate setting process lacks transparency. The public and providers are unable to verify what NECA does and therefore cannot meaningfully comment on the reliability and validity of its proposed rates. The NECA Fund Filing omits key data, especially for for VRS and IP Relay. How can the public comment on NECA's recommendations when it is left in the dark with respect to exactly how NECA has formulated those recommendations?

new rate methodology that adheres the Congressional mandate to achieve functional equivalency.

II. The projected cost and demand rate of $6.7738 is the only legitimate rate proposed by NECA—and even that number is inappropriate.

As several commentors have pointed out, of NECA's proposed 24 different suggested VRS rates the only legitimate rate proposed under an existing approved methodology is the projected cost and demand rate of $6.7738; even that number, however, is troublesome.[8] Hands On agrees that the alternatives NECA has proffered are methodologically flawed and would yield VRS rates below, in some cases, far below, the level needed to fund providers' reasonable costs.[9] However, as CSDVRS points out, even the highest VRS rate suffers from the infirmity that it is driven largely by the cost and demand data of a single dominant provider.[10] As such, that rate fails to account for the economies of scale providers would enjoy as they grow market share. Given the skewed structure of the VRS market today, any single across-the-board rate would, as articulated by the commentors, including Hands On, continue to over or under compensate providers.[11] Hands On therefore reiterates its position that the Commission must adopt a tiered rate structure in response to the pending Further Notice of Proposed Rule Making in this docket. *See Telecommunications Relay Services*, 21 FCC Rcd 8379 (2006) ("*FNPRM*").

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[8] Sprint Nextel Comments at 3, Sorenson Comments at 4, Verizon Comments at 4.
[9] CSDVRS Comments at ii and 8; Sorenson Comments at 8.
[10] CSDVRS Comments at 7-9.
[11] Hands On Comments at 36-44; CSDVRS Comments at 9

Hands On also generally agrees with the logic of the commentors that the FCC should not pre-judge its own decision on the *FNPRM* by adopting a rate mechanism for the 2007-08 rate period at odds with the current rate methodology.[12] Accordingly, Hands On does not object to the FCC adopting an interim order continuing the current freeze of the VRS rate until action on the *FNPRM* is effective. There is thus merit to Verizon's comment that to follow any other course, "will only perpetuate the concerns that prompted the Commission's *FNPRM* in the first place" and raise the same questions the Commission has on it.[13] However, Hands On continues to believe that a simplified tiered rate would be an appropriate interim compensation scheme pending the Commission's consideration and adoption of a well tailored multi-year tiered VRS rate.[14]

III. The Commission should adopt a tiered multi-year rate methodology.

As both Hands On and CSDVRS explained, a multi-year tiered rate methodology allows for the reimbursement of all providers equally for like amounts of minutes. Providers with greater volumes achieve greater efficiencies and economies of scale that result in less cost per minute and this efficiency should be reflected in the rate methodology.[15]

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[12] CSDVRS Comments at 18; Sprint Comments at 3; Verizon Comments at 2.
[13] Verizon Comments at 2.
[14] *See* Hands On Comments at 44.
[15] CSDVRS Comments at 10; Hands On Comments at 36-37.

Even the largest provider in the industry, Sorenson, acknowledges the existence economies of scale in providing VRS.[16] Although Sorenson downplays the degrees to which such economies of scale exist, such efficiencies clearly do exist. Hands On concurs with Sorenson's position that "these economies of scale can be created and captured by other firms as those other firms gain volume, which they are likely to do given the current low penetration of VRS."[17]

The tiered method starts with higher payments for certain volumes of minutes. As the minutes grow and a provider moves to the next tier, the pay per minute decreases for this next tier. As the volume increases there is a built-in mechanism to adjust the rate down, eliminating the need for an annual adjustment, detailed Commission scrutiny or some kind of true-up mechanism. This allows the rate to stay in effect for several years with minimal modification – e.g., inflation and exogenous costs -- to achieve stability and allow for long term planning by VRS providers. This approach will ensure competition in the market while avoiding windfall profits to any one provider and will serve to limit growth in the TRS Fund without putting small VRS providers at risk of going out of business.

IV. The rate methodology must establish rates at a level to allow providers to pursue and provide functional equivalency.

In enacting the Americans With Disabilities Act, Congress recognized the discriminatory system that prevented deaf and hard of hearing persons from being

[16] Sorenson Comments, Attachment B at 6.
[17] *Id*.

able to communicate with hearing persons over the nation's telephone network. Determining that this presented a civil rights issue, Congress established the relay services and mandated the Commission to ensure functional equivalency for deaf and hard of hearing persons. It is thus discouraging that NECA is proposing – apparently at the instance of the FCC -- the potential elimination of funds for outreach and marketing, research and development, certified deaf interpreters and training programs to ensure adequate numbers of video interpreters. As the commentors have shown, failure of the Commission to allow funding of these elements of VRS (and other TRS services) would prevent the achievement of the functional equivalency Congress mandated.[18] Each of those items is a critical element necessary to achieve functional equivalency, and each should be fully funded.

In this connection, Hands On applauds Sorenson's efforts to address the interpreter supply issue by proposing further training of prospective interpreters.[19] Hands On has long argued that the Commission and providers need to be focused on targeted training programs to increase the supply of qualified video interpreters. The Commission is urged to actively seek ways to appropriately fund interpreter-training programs.[20] It would appear that the Sorenson program is a legitimate and

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[18] CSDVRS Comments at 12-17; Verizon Comments at 3-8; Hamilton Comments at 5; Sorenson Comments at 19-25.
[19] Sorenson Comments at 17-19.
[20] If the Commission believes that Congressional action is necessary to address this issue, it is the Commission's duty to purpose that legislation to Congress. However, Hands On

necessary program, although without transparency in the rate setting process it is impossible for the public to meaningfully comment on such a program. Nevertheless, a failure of the Commission to address this issue risks raising answer speeds, run-away inflation of interpreter salaries, and the curtailing, if not denial, of service to deaf and hard of hearing persons. Now is the time for the Commission to act, *before* the interpreter shortage becomes so acute that denial of service results.

V. Conclusion.

The Commission needs to act promptly to fix the VRS rate setting process to assure functional equivalency to consumers and stability and predictability of the process to providers and rate payers. All of the 24 different rates NECA proffered in its Fund Filing are inappropriate. The only rate that NECA legitimately proposed under the Commission's rules, precedent and policy is the $6.7738 provider cost and demand estimate; however, that rate would be an inappropriate rate to adopt because it is largely driven by the demand and cost estimates of the dominant provider. Instead, the FCC should move with all deliberate speed to adopt a well tailored tiered rate structure, which accounts for the economies of scale inherent in providing VRS. In the meantime, the Commission should continue the existing freeze of the VRS rate or adopt a

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believes the Commission had authority under Section 225 to allow TRS Funds to be used for interpreter training without further Congressional action.

simplified tiered structure subject to adjustment once the permanent tiered structure is developed.

To the extent the Commission adopts a weighed average rate for the 2007-08 rate period – and it should not – the rate adopted should not exclude essential costs of providing functionally equivalent VRS. Such costs as marketing, outreach, certified deaf interpreters, research and development to meet waived standards and interpreter training are essential to achieving full functional equivalence for VRS service.

Respectfully submitted

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May 23, 2007

CERTIFICATE OF SERVICE

I, George L. Lyon, Jr., hereby certify that on this 23th day of May, 2007, copies of the foregoing Reply Comments on Interstate Relay Services Fund Payment Formula and Fund Size Estimate was emailed to the following persons:

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