

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

In the Matter of)	
)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	
E911 Requirements for IP-Enhanced Service Providers)	WC Docket No. 05-196
)	

**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**

August 8, 2008

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EXECUTIVE SUMMARY

Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), 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”), comment on the issues raised in the June 24, 2008 Further Notice of Proposed Rulemaking (“FNPRM”) on Internet-based Telecommunications Relay Service (“TRS”) numbering issues.

In the FNPRM, the FCC determined that it needed additional information on the following issues and Consumer Groups response is summarized as follows:

- **9-1-1 issues.** Current rules require, and Consumer Groups encourage the FCC to continue to require, Internet-based TRS providers to prioritize and answer emergency calls in accordance with the requirements of the March 19, 2008 *Interim Emergency Call Handling Order* and ensure adequate staffing of emergency call handling processes so that Communications Assistants (“CAs”) are not required to disconnect non-emergency calls in order to process emergency calls. The Consumer Groups instead propose an automatic system whereby 9-1-1 calls can be handed off by the default TRS provider to an alternate provider with an available CA if the default provider does not have a CA available. The Consumer Groups also propose automatic immediate sharing of Automatic Location Information (“ALI”) and Automatic Number Identification (“ANI”).
- **The length of the registration period.** The Consumer Groups recommend a six-month period after all Internet-based TRS providers are capable of registering consumers to allow existing users of Internet-based TRS services to obtain any necessary equipment, register with a default provider, provide their Registered Location, and obtain their new ten-digit NANP telephone numbers, and resolve any difficulties.
- **Whether Internet-based TRS users may obtain multiple telephone numbers.** The Consumer Groups believe that because the Act requires functional equivalency for TRS services, Internet-based TRS users should be eligible to apply for multiple numbers in the same way that telephone users are currently eligible for multiple numbers.
- **The treatment of toll free numbers.** The Consumer Groups encourage the use of geographic numbers and urge the Commission to require that all Internet-based TRS providers offer standard numbers with geographically appropriate area codes, and that if a provider offers toll free numbers, such offering must be no more than an optional

alternative to geographic numbers. Additionally, the Consumer Groups believe that mechanisms can be put in place to facilitate the provision of 9-1-1 services to toll free subscribers through the use of pseudo ANI, much in the same way that VoIP providers direct 9-1-1 calls to the appropriate PSAP for numbers where the Registered Location does not match the geographically appropriate area code.

- **Transitioning to Session Initiation Protocol (“SIP”) signaling.** The Consumer Groups support the use of signaling and other protocols that support the ongoing introduction and use of advanced technologies.
- **Whether a single telephone number may be assigned to multiple services.** The Consumer Groups maintain that functional equivalency requires that a customer with multiple devices on the same premises using the same service, such as VRS, should be able to obtain one telephone number for all such devices and should not be required to obtain a separate phone number for each device. Once a telephone number is assigned to a specific service for a specific user, then that number should continue to work with the same service on new equipment. However, the Consumer Groups do not support one number for multiple devices using different services because such may not be technically feasible.
- **Access of Internet-based TRS users to ten-digit telephone numbers in buildings or on campuses with multi-line telephone systems (“MLTS”).** The Consumer Groups believe that a MLTS operator should be required to assign ten-digit NANP numbers to deaf, hard of hearing and speech impaired individuals, when such is technically feasible, so that such individuals can fully use the MLTS.
- **Whether individuals who are not deaf or hard of hearing may obtain Internet-based TRS numbers for the purpose of making point-to-point calls with individuals who are deaf or hard of hearing.** The Consumer Groups stress that it is critical that all individuals, both hearing as well as individuals with hearing or speech disabilities, be able to obtain ten-digit numbers for the purpose of enabling point-to-point communication, especially video communication
- **Whether the numbering system should be extended to IP Captioned Telephone Service (“IP CTS”).** The Consumer Groups consider it very important that IP CTS users should also have access to ten-digit NANP numbers, but acknowledge that there may be technical challenges to such a plan. The Consumer Groups therefore urge the providers of CTS and IP CTS to develop and recommend technical solutions to these challenges so IP CTS users may enjoy the benefits of ten-digit NANP numbers.
- **System security.** The Consumer Groups strongly urge the Commission to institute all reasonable security measures necessary to ensure the privacy of information of users and to guarantee that the content of communications over Internet-based TRS is secure. However, security measures should not prevent consumers from accessing alternate TRS providers and should not prevent consumers from making point-to-point calls.

- **Protection against IP Relay fraud.** The Consumer Groups agree with the Commission that a closed system requiring Internet-based TRS providers to validate registration of IP Relay users before completing non-emergency calls may help curb IP Relay fraud. The Consumer Groups also agree that registration of IP Relay users should be verified for the purpose of preventing fraudulent registration. However, the Consumer Groups object to any registration verification that would be burdensome on IP Relay users or would be more extensive than credit checks required of voice telephone users.
- **Protection against slamming.** The Consumer Groups generally support, with some modifications, the slamming regulations as proposed by Sorenson Communications, Inc. (“Sorenson”) in its May 19, 2008 *ex parte* letter filed in this docket. In particular, at this time, the Consumer Groups do not support any requirement for third party verification of customer change orders and also oppose permitting preferred TRS provider freezes.
- **Protection of consumer privacy (CPNI).** The Consumer Groups generally support, with some modifications, the CPNI rule revisions as proposed by Sorenson Communications, Inc. (“Sorenson”) in its May 15, 2008 *ex parte* letter filed in this docket.
- **Cost recovery.** The Consumer Groups acknowledge that the cost of billing and collection for the costs associated with number portability may exceed the amounts assessed. It is therefore unreasonably burdensome on consumers to be assessed the initial cost plus the administrative cost involved in assessment and collection, unreasonably burdensome on Internet-based TRS providers to administer, or it may be a futile exercise which would cost the funds more than the funds would receive. Additionally, the Consumer Groups express *strong* opposition to the assessment of fees on consumers for services such as ten-digit numbering and access to 9-1-1 services that are intended to move consumers closer to functionally equivalent telecommunications services.

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Introduction

The Consumer Groups commend the FCC for its decision to assign ten-digit geographic telephone numbers from the North American Numbering Plan (“NANP”) to users of Internet-

¹ *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities and E911 Requirements for IP-Enhanced Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-151 (June 24, 2008) (“FNPRM”).

based Telecommunications Relay Services (“TRS”), including Video Relay Services (“VRS”) and Internet Protocol Relay Service (“IP Relay”).² The FCC adopted a number of rules associated with the ten-digit numbering, including:

- Number acquisition and assignment;
- Local number portability;
- Registration with a default provider;
- The development and provisioning of a central database of numbers;
- Access to the database;
- The database administrator;
- Emergency 9-1-1 calling;
- Consumer outreach and education;
- IP Relay fraud;
- Cost recovery; and
- A timeline for implementation.

In the FNPRM, the FCC determined that it needed additional information in the record and therefore asked for comment on the following items:

- 9-1-1 call issues;
- The length of the registration period;
- Whether Internet-based TRS users may obtain multiple telephone numbers;
- The treatment of toll free numbers;
- Transitioning to Session Initiation Protocol (“SIP”) signaling;
- Whether a single telephone number may be assigned to multiple services;
- Access of Internet-based TRS users to ten-digit telephone numbers in buildings or on campuses with multi-line telephone systems;
- Whether individuals who are not deaf or hard of hearing may obtain Internet-based TRS numbers for the purpose of making point-to-point calls with individuals who are deaf or hard of hearing;
- Whether the numbering system should be extended to IP Captioned Telephone Service;
- System security;
- Protection against IP Relay fraud;
- Protection against slamming;
- Protection of consumer privacy; and
- Cost recovery.

The Consumer Groups address the above matters herein.

² For the sake of clarity, the Consumer Groups will refer to all of these services jointly as Internet-based TRS services and the providers of these services as TRS providers.

1. 9-1-1 Calls

Noting that the current rules prohibit the interruption of or otherwise limiting the length of TRS calls, the Commission asked whether the rule should be modified so that a Communications Assistant (“CA”) handling a non-emergency call may terminate that call to handle a 9-1-1 call in the event a CA is not available to take the 9-1-1 call.³ However, Internet-based TRS providers are obligated to prioritize and answer emergency calls in accordance with the requirements of the *Interim Emergency Call Handling Order*⁴ and must ensure adequate staffing of emergency call handling processes so that CAs are not required to disconnect non-emergency calls in order to process emergency calls.⁵

The Consumer Groups consider it imperative that the Commission continue to require Internet-based TRS providers to adhere to these requirements. Prompt response to an emergency call can often make the difference between life and death in a life-threatening situation. Nevertheless, the Consumer Groups recognize that there may be situations where all of the CAs for a particular provider may be already busy with calls and that a CA is simply not available to answer the 9-1-1 call. Since the interruption of a call in progress would not be functionally equivalent TRS service, the Consumer Groups urge that alternative solutions, such as Neustar’s “inter-provider signaling”⁶ or other systems, be considered and adopted to ensure prompt, appropriate, and complete responses to 9-1-1 calls.

In particular, the Consumer Groups urge the Commission to consider automated processes for handling an emergency 9-1-1 call when a default TRS provider is unable to

³ FNPRM at ¶ 106. See 47 C.F.R. § 64.604(a)(3)(i).

⁴ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order, 23 FCC Rcd 5255 (2008).

⁵ FNPRM at ¶ 85-86.

⁶ FNPRM at ¶ 108.

immediately answer an emergency 9-1-1 call. For example, a default TRS provider may be able to handle the technical processing of that call and, *at the same time*, connect the caller to an available CA of another provider. The technical processing would involve connecting the call to the appropriate Public Safety Answering Point (“PSAP”) (based upon the consumer’s Registered Location) and transmitting the Automatic Location Information (“ALI”) and Automatic Number Identification (“ANI”) to the PSAP. To enable connecting the caller to an available CA of another provider, Internet-based TRS providers for a particular service, such as VRS, would need to establish and maintain a system of real-time information on the CA availability of each provider, so that the call can be handed off to a provider with an available CA to handle the CA part of the call. Such a process would help ensure that 9-1-1 emergency calls made through a consumer’s default provider are answered as quickly as possible. The Consumer Groups understand that this type of approach (or an alternative approach that would produce the same result) is technically feasible, and its development would ensure that emergency calls are processed immediately.

The Consumer Groups also urge the Commission to ensure that the processing of 9-1-1 emergency calls is standardized across all providers. If a next available CA system is established, it is essential that the “look” and the procedure for processing 9-1-1 calls be a standardized one across all providers to minimize consumer confusion. There is nothing worse than being confronted with something unfamiliar. Similarly, standardized procedures must be adopted for handling calls originating from a location other than a consumer’s Registered Location to ensure that these calls are routed to the appropriate PSAP. Such standardized procedures will also make it much easier to educate consumers.

In addition to the above recommendation, the Consumer Groups advocate for a means of providing access to all consumer ALI and ANI, on an as-needed basis, to all Internet-based TRS providers for a particular service. Due specifically to the very nature of an emergency call, a consumer whose 9-1-1 call to his/her default provider is not immediately answered (either by the default provider or the next available CA of another provider), for whatever reason, can be expected to attempt to place that 9-1-1 call through another provider. More importantly, a failure to anticipate and prepare for such eventualities – for “some” unknown quantity or even a single emergency call – is inconsistent with the FCC’s prior mandates for interoperability,⁷ and a gross expression of disregard for the life, safety, and health of Internet-based TRS users. Consumers should not be restricted to their default provider for the placement of 9-1-1 calls any more than they should be restricted to their default provider for any other call. Furthermore, consumers should not be expected to know or to treat 9-1-1 calls any differently than non-emergency calls, nor should consumers be expected to know that default and non-default Internet-based TRS providers will treat their 9-1-1 calls differently.

The Consumer Groups understand that providing automated and immediate access to all consumer ALI and ANI, on an as-needed basis, to all Internet-based TRS providers for a particular service is technically feasible – e.g., through a shared database of consumer Registered Location and number information, or by enabling automatic and immediate access among

⁷ *In the Matter of Telecommunications Relay Services and Speech-to Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CG Dkt No. 03-123; FCC 06-57 (May 9, 2006) at ¶36 (emphasis added):

If a VRS user is restricted to placing a call with one provider, and that provider’s wait time prevents the user from promptly reaching a CA in the event of an emergency, the consumer may suffer serious harm. *Even assuming a VRS provider is able to develop a means of promptly handling emergency calls*, this does not negate the broader public interest in ensuring full VRS access to all providers. In the event of an emergency, or an event that might temporarily affect a particular provider’s ability to offer service, consumers must be able to call any CA to reach emergency services. Particularly in the aftermath of September 11, 2001, and recent hurricanes in the Gulf Coast, *we find that it is essential to ensure that VRS consumers are not dependent on services of a single provider in the event of an emergency.*

providers to each provider's database of consumer Registered Location and number information. Such a system is absolutely necessary to ensure that calls are routed to the appropriate PSAP and that ALI and ANI are passed to the PSAP by any provider – regardless of whether a 9-1-1 call is placed to the default provider, is placed to a provider that is not the consumer's default provider, or is “handed off” to an alternate provider with an available CA.

2. Registration Period

Recognizing that a period of time will be needed after December 31, 2008 for existing Internet-based TRS users to register with a default provider, provide their Registered Location, and obtain their new ten-digit NANP telephone numbers, the Commission asked for comment on the length of time needed and whether there should be a cut-off date after which a user may not access Internet-based TRS unless he or she registers.

The Consumer Groups recommend a reasonable period of time to allow existing users to obtain any necessary equipment, complete the registration process, obtain their new ten-digit NANP telephone number, and resolve any difficulties. As such, a six-month period after all Internet-based TRS providers are capable of registering consumers (which is now scheduled to occur by December 31, 2008) should provide sufficient time for existing users to complete the necessary processes. Because it is important that users ultimately obtain the benefit of ten-digit numbering, including the benefits associated with 9-1-1 emergency calling, the Consumer Groups currently agree that the Commission may require Internet-based TRS providers to deny service (other than emergency calls) to unregistered users six months after all Internet-based TRS providers are capable of registering consumers. The Consumer Group's current agreement is conditioned on the Commission undertaking a periodic review of the actual registrations resulting from outreach and education efforts of the Commission and Internet-based TRS

providers. To obtain service after that six-month “cut off” date, an unregistered user would need to register with a default provider. However, because the registration process may require some time, unregistered and all new users who register with a default provider, provide their Registered Location, and apply for their new ten-digit NANP telephone numbers should be permitted to place relay calls immediately, at least on a temporary basis, e.g., through the assignment of a temporary “guest” or application number/identification system. Further, registration must remain available at all times to new users as they learn about the benefits of registration.

3. Eligibility for Multiple Telephone Numbers

The Commission asked for comment on whether Internet-based TRS users should be entitled to obtain multiple telephone numbers, and if so at what cost. Because Section 225 of the Communications Act (the “Act”)⁸ requires functional equivalency for TRS services, Internet-based TRS users should be eligible to apply for multiple numbers in the same way that telephone users are currently eligible for multiple numbers. Multiple numbers are likely to be necessary to receive and place calls on CPS equipment that uses different technologies (i.e., IP text for a mobile device and IP video for a videophone device), and for multiple video-based CPS equipment that operate on systems with different IP addresses (such as work/business and home/personal, or multiple devices in a single household).⁹

The Consumer Groups laud the provision of ten-digit numbers because such will enable functionally equivalent 9-1-1 emergency call services, a service currently enjoyed by telephone users. Consumers are unable to obtain this service through their Internet providers. The Consumer Groups also note that the cost to provide 9-1-1 emergency call service routing for

⁸ 47 U.S.C. § 225.

⁹ The Consumer Groups understand that the implementation or adoption of SIP technology for VRS may eliminate the need for multiple IP addresses and numbers at a single location.

telephone users is normally subsumed within the charge or fee for all telephone services rendered, and is not optional, nor is it assessed as an independent line item. The same is true for the cost of the telephone number itself.

While it may be convenient to suggest that Internet-based TRS users should pay for the administrative costs of ten-digit numbers and 9-1-1 emergency call service routing, a cost that is not optional nor usually segregated for telephone users, the Consumer Groups urge the Commission to consider other factors. Since these costs are generally small, the Consumer Groups assert that the additional administrative cost to assess and collect this or any fee will exceed the cost of providing ten-digit numbers and 9-1-1 access. As such, the Consumer Groups oppose the assessment of such fees on consumers on that basis.

Further, the FCC also acknowledges that because “persons without a hearing or speech disability have misused IP Relay to defraud merchants,”¹⁰ “curbing of IP Relay fraud is a collateral benefit of [the FCC’s] registration requirements.”¹¹ The Consumer Groups assert that the cost savings resulting from curbing IP Relay misuse will far outweigh the cost of providing ten-digit numbers and 9-1-1 access to consumers.

4. Use of Toll Free Numbers

The Commission requested comment on whether Internet-based TRS users should be required to pay a fee for use of a toll free number.

At the outset, the Consumer Groups support the Commission’s finding in the FNPRM that “Internet-based TRS users should be assigned geographically appropriate NANP numbers.”¹² Therefore, the Consumer Groups encourage the use of geographic numbers and urge the Commission to require that all Internet-based TRS providers offer standard numbers

¹⁰ FNPRM at ¶ 92.

¹¹ FNPRM at ¶ 94.

¹² FNPRM at ¶ 41.

with geographically appropriate area codes, and that if a provider offers toll free numbers, such offering must be no more than an optional alternative to geographic numbers.

The Consumer Groups acknowledge that users of traditional voice telephone services that are toll free subscribers (have a toll free number) currently pay the toll charges for completed calls, if any. While it may be convenient to suggest that Internet-based TRS users who are toll free subscribers should pay the toll charges for completed calls, if any, the Consumer Groups urge the Commission to consider other factors. The Consumer Groups recognize that, currently, calls made by telephone users to an IP text or video relay consumer are made through Internet-based TRS providers' toll free numbers. In other words, Internet-based TRS providers currently pay toll charges, if any, for completed calls. Toll charges that could be assessed against a consumer with a toll free number can be avoided when telephone users dial the Internet-based TRS provider's toll free number. Shifting the cost of toll charges, if any, from the Internet-based TRS provider to the toll free subscriber, in this instance, would seem only to discourage direct dialing between a telephone user and individual who is deaf or hard of hearing. The same may be true of toll charges that could be assessed by telephone users who call an individual who is deaf and hard of hearing who has a number with a geographically appropriate area code. However, today many (if not most) people have telecommunications service plans that are not based on toll charges. The Consumer Groups are not convinced that shifting toll free charges from Internet-based TRS providers to individual toll free subscribers is appropriate or necessary, or would result in benefits associated with ten-digit numbers – the ability of telephone users to dial one number to reach an individual who uses an Internet-based TRS provider to achieve functionally equivalent telecommunications access.

The Consumer Groups believe that mechanisms can be put in place to facilitate the provision of 9-1-1 services to toll free subscribers through the use of pseudo ANI, much in the same way that VoIP providers direct 9-1-1 calls to the appropriate PSAP for numbers where the Registered Location does not match the geographically appropriate area code.

5. Signaling

The Commission asked for comment on NeuStar's underlying objective of transitioning to SIP-based end devices and steps the Commission could take to facilitate the process, as well as for comment on what other steps the Commission should take to facilitate standards-based signaling in other contexts such as IP Relay. The Consumer Groups support the use of signaling and other protocols that support the ongoing introduction and use of advanced technologies and look forward to seeing the comments that are filed by providers and others that address this technical issue. The Consumer Groups note that a significant advantage of SIP is that it enables multiple video devices or "extensions" (i.e., within a household) to function with one ten-digit number. The Consumer Groups also understand that H.323 devices are no longer available in retail stores and that technology, generally, is moving towards SIP. The Consumer Groups urge the Commission to support the inclusion of and functional equivalency for consumers with hearing and speech disabilities as technology advances. Further, for the purposes of functional equivalence, the Consumer Groups urge the Commission to support signaling and protocols that ensure compatibility and communication between devices that use dissimilar technologies (i.e., between H.323 standard and SIP end devices) and with similar devices and services in other countries to the extent possible.

6. Assignment of a Single Telephone Number for Use with Multiple Services

Noting that a hearing user does not have a single telephone number for multiple services, but does have call forwarding between numbers, the Commission asked for comment on whether a call forwarding system is sufficient for Internet-based TRS devices. Alternatively, the Commission asked whether functional equivalency requires a single NANP number to be assigned to multiple Internet-based TRS services, and the extent to which costs for such additional functionalities should be passed on to Internet-based TRS users.

In earlier comments, the Consumer Groups suggested that functional equivalency would require that deaf and hard of hearing users should have one NANP number for multiple devices, and perhaps for multiple forms of TRS.¹³ The Consumer Groups would like to take this opportunity to clarify their position on the issue. The Consumer Groups maintain that functional equivalency requires that a customer with multiple devices on the same premises using the same service, such as VRS, should be able to obtain one telephone number for all such devices and should not be required to obtain a separate phone number for each device. For example, just as a voice telephone user has extensions in different rooms in his or her house, an Internet-based TRS user, such as VRS, may have videophones in different rooms and may want to have the same telephone number for all such videophones. As a practical matter, achieving this functional equivalency may necessitate the use of certain standards or protocols (i.e., SIP).

Also, in their previous comments, the Consumer Groups suggested that users may have multiple videophones or other devices and that “[c]onsumers should be able to change equipment with ease and without notifying their number or IP-based TRS provider, just as hearing people

¹³ *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 and California Coalition of Agencies Serving the Deaf and Hard of Hearing to Refresh the Record on IP-Based TRS Numbering*, CG Docket No. 03-123, filed on April 18, 2008 (“TDI Coalition Refresh Comments”).

do with telephones or wireline systems with SIM cards on wireless devices.”¹⁴ The Consumer Groups reiterate their position that once a telephone number is assigned to a specific service for a specific user, then that number should continue to work with the same service on new equipment. For example, if a hearing user upgrades his or her cellular telephone, he or she is able to transfer a SIM card to the new phone and the telephone number continues to function on the new equipment. As such, the Consumer Groups maintain that a similar process should be available to deaf, hard of hearing and speech impaired users to transfer their NANP number to new equipment within the same service type.

Similarly, just as a nomadic VoIP customer can move his or her VoIP phone from one location to another and need not obtain a new telephone number, an Internet-based TRS user, such as a VRS user, should be able to move his or her device from one location to another without the need to obtain a new number. As a practical matter, achieving this functional equivalency may necessitate that (1) the device automatically updates the default provider when and if the IP address changes as a result of changing physical location or Internet connections, and (2) the user notifies the default provider of the new (or temporary) Registered Location.

The Consumer Groups further clarify that it is not their position that a user must have the option of using the same telephone number with multiple types of TRS services, as such may not be technically feasible. Instead, as suggested by the Consumer Groups and by the Commission in the FNPRM, some type of call forwarding functionality ought to be technically practical, enabled, and sufficient for call forwarding from one service to another. For example, just like a telephone user can forward calls placed to their wireline phone number to their cell phone number, Internet-based TRS users should be able to forward calls placed to their videophone number to their IP text number which they can receive on their pager or PDA. In other words,

¹⁴ TDI Coalition Refresh Comments at 4.

incoming calls from telephone users would be routed, in this example, not through the user's default VRS provider but through the user's default IP Relay provider.

While it may be convenient to suggest that Internet-based TRS users should pay for the functionality of call forwarding, as described above, the Consumer Groups urge the Commission to consider other factors. First, the functionality of call forwarding is commonly included in services provided to telephone users at no additional charge. Further, the additional administrative cost to assess and collect such a fee, which should be nominal at best, will exceed the cost of providing the functionality.

7. Multi-Line Telephone Systems

The Commission asked for comment on what, if anything, the FCC should do to ensure that Internet-based TRS users who live or work in places where there are multi-line telephone systems ("MLTS"), such as in government or office buildings or on college campuses, have access to functionally equivalent telephone numbers and 9-1-1 services. The FCC asked whether MLTS operators can and should provide numbers to Internet-based TRS users, and what additional safeguards would be needed for routing and handling of 9-1-1 calls.

The Consumer Groups stress that a MLTS operator should be required to assign ten-digit NANP numbers to deaf, hard of hearing and speech impaired individuals so that such individuals can fully use the MLTS. However, to the extent that this is not technically possible on a MLTS without the need to completely overhaul the MLTS, the Consumer Groups propose that on an interim basis, that Internet-based TRS users be able to obtain a ten-digit NANP number that is not part of the MLTS for use within the building or campus served by the MLTS. However, the Commission should impose a requirement that when a new MLTS is installed, or an existing MLTS is substantially upgraded, that the new or substantially upgraded MLTS have the

capability of assigning ten-digit numbers to Internet-based TRS users. The Consumer Groups look forward to seeing the comments that are filed discussing the technical feasibility of a MLTS operator assigning a number to an Internet-based TRS user.

8. Eligibility to Obtain Internet-Based TRS Telephone Numbers

The Commission asked for comment on who should be eligible to obtain telephone numbers from Internet-based TRS providers, the effects of such eligibility on the Interstate TRS Fund (“TRS Fund”) and number exhaust concerns, safeguards such as eligibility requirements and/or verification, other possible means of facilitating “point-to-point” communication among people with and without hearing or speech disabilities, and the scope of section 225 with regard to these questions.

It is critical that all individuals, both hearing as well as individuals with hearing or speech disabilities, be able to obtain ten-digit numbers for the purpose of enabling point-to-point communication, especially video communication.¹⁵ Currently, there is no mechanism in place to enable hearing individuals to obtain ten-digit numbers to make point-to-point video calls with individuals with hearing or speech disabilities, or vice versa. Nor is there any indication that industry is close to enabling this service. Further, it is expected that the anticipated system for routing point-to-point video calls between individuals who have hearing or speech disabilities can also route point-to-point video calls between individuals who have and who do not have hearing or speech disabilities. The Consumer Groups strongly support enabling hearing family members, friends, work colleagues, services providers, and others having the opportunity to

¹⁵ Hearing individuals generally have the option of contacting an individual with a hearing or speech disability who uses Internet-based text communication by using any text-based device with an Internet connection, such as a computer or PDA, along with the individual’s Instant Message service address. That Instant Message service address or identifier is static. On the other hand, an individual with a hearing or speech disability who uses Internet-based video communication does not have a static address or identifier. Ten-digit numbers are the means of providing static identifiers for users of Internet-based video communication, and they are necessary for both parties engaged in the video communication exchange.

make point-to-point as well as relay calls with individuals with hearing or speech disabilities. Hearing individuals need the ability to have point-to-point video calls with individuals who are deaf or hard of hearing, and ten-digit NANP numbers are needed in order to place such calls. For example, a deaf child may want to make a point-to-point call to a hearing parent using videophone, or vice versa. Similarly, service providers may want to make a point-to-point call to a client who has a hearing or speech disability, or vice versa. There is no reason to go through a VRS provider when the child and parent or service provider and client can communicate with each other directly by using sign language and/or speech reading.

Permitting hearing individuals to obtain ten-digit numbers from VRS providers for the purpose of making point-to-point calls would reduce the number of relay calls and cost to provide VRS. Such may be a disincentive for VRS providers to provide ten-digit numbers for hearing people. However, because providing ten-digit numbers for hearing individuals to make point-to-point video calls is expected to reduce TRS Fund requirements, the Commission should not only permit but should mandate that VRS providers do so. While it may be convenient to suggest that hearing people who obtain ten-digit numbers from VRS providers should pay the administrative costs associated with that ten-digit number, the Consumer Groups urge the Commission to consider this important factor (reducing TRS Fund requirements), along with the other factors described above in sections 3, 4, and 6. Requiring hearing people to pay these administrative costs may be a complete disincentive to make point-to-point calls and result in significant and unnecessary additional costs to the TRS Fund.

The number of hearing people who can be expected to apply for a ten-digit number to make point-to-point video calls is relatively small and should not raise number exhaust concerns.

Safeguards such as eligibility requirements and/or verification for the assignment of ten-digit numbers by VRS providers should be minimal. Verification of eligibility may be accomplished during the application process or by confirming the receipt of the ten-digit number by placing a point-to-point video call to the VRS provider's customer service department. Safeguards such as eligibility requirements and/or verification for the assignment of ten-digit numbers by IP Relay providers are discussed further below in section 11.

9. IP Captioned Telephone Service

The Commission asked whether the numbering system should be extended to IP Captioned Telephone Service ("IP CTS") and whether the unique characteristics of IP CTS make it difficult or infeasible to map a NANP number to an IP address for IP CTS.

At the outset, the Consumer Groups point out that MLTS presents a unique challenge for Captioned Telephone System ("CTS") users. Unless a dedicated line is requested and granted to an employee working in an office with MLTS, the hard of hearing or deaf user is excluded from using IP CTS. This is particularly troublesome because it is often difficult for an employee to ask the employer to spend money on a dedicated line. The Consumer Groups therefore urge the industry to find technical solutions to the problem of providing IP CTS through a MLTS.

In addition, the Consumer Groups consider it very important that IP CTS users have access to ten-digit NANP numbers, but acknowledge that there may be technical challenges to such a plan. We urge the providers of CTS and IP CTS to develop and recommend technical solutions to these challenges so IP CTS users may enjoy the benefits of ten-digit NANP numbers and look forward to seeing the comments on this issue.

10. Security

The Commission asked for comment on NeuStar's proposals to require device registration, close firewalls, and close the network such that default Internet-based TRS providers accept calls only from their own registered users, from the public switched telephone network ("PSTN"), or from another Internet-based TRS provider. The Commission also asked if there are other security measures that are needed and how each of the proposed security measures would permit users to continue to make and receive relay calls directly through providers that are not the default provider and how the proposed security measures would permit point-to-point calling.

The Consumer Groups strongly urge the Commission to institute all security measures necessary to ensure the privacy of information of users and to guarantee that the content of communications over Internet-based TRS is secure. Deaf and hard of hearing individuals who work in areas that are subject to high security requirements have expressed concern that they are not permitted to use videophones and other Internet-based TRS equipment to communicate. If appropriate security measures are instituted for Internet-based TRS, these workers may be able to utilize these devices and increase their productivity.

On the other hand, the Consumer Groups also want to make sure that the security measures that are instituted do not interfere with point-to-point calling as well as the ability to make an Internet-based TRS call through a provider other than the user's designated default provider. The Consumer Groups oppose measures that would restrict consumers to a closed network, segregated from the mainstream or from users who, in the future, may have and use ten-digit numbers associated with video communication devices from sources and that operate on networks other than those associated with Internet-based TRS providers. Further, the Consumer

Groups oppose measures that would require or limit consumers to communication through their default provider or to communication only between registered users of their default provider. Such limitations or restrictions would effectively abolish the long standing principle of interoperability. The Consumer Groups look forward to seeing the comments filed concerning security measures.

11. IP Relay Fraud

The Commission asked whether a closed system requiring Internet-based TRS providers to validate registration of users before completing non-emergency calls would help curb IP Relay fraud and whether such a system would work without imposing undue burdens on legitimate users. The FCC also asked how Internet-based TRS providers could verify that the registration information itself is not fraudulent. Absent such a mandatory system, the FCC asked whether it should encourage or require Internet-based TRS providers to filter out TRS requests coming from suspected illegitimate users, such as known fraudsters or overseas users.

The Consumer Groups agree that a closed system requiring Internet-based TRS providers to validate registration of IP Relay users before completing non-emergency calls may help curb IP Relay fraud. By requiring registration, it may be much more difficult for hearing people to misuse IP Relay or take advantage of the anonymity currently afforded under the current system for the purpose of perpetrating fraudulent commercial transactions without being caught.

The Consumer Groups also agree that registration of IP Relay users should be verified for the purpose of preventing fraudulent registration, and may be more involved than that required of VRS users. However, we would object to any registration verification that would be burdensome on IP Relay users. If there were a system that automatically verified registration in an instant, it would be transparent to users and therefore would not impose any undue burdens on legitimate

users. If no such automatic verification system exists, we suggest the use of a process similar to a credit check used by voice telephone and wireless companies whereby the user's identity and address could be verified. Alternatively, it may be sufficient to require the return of a postcard acknowledgment mailed to the consumer's Registered Location. In other words, the Consumer Groups would support a verification procedure that is no more burdensome than the standard verification procedure for telephone users.

In the absence of or in addition to a mandatory registration and verification procedure, the Consumer Groups agree that it may be necessary to permit IP Relay providers to filter out IP Relay call requests originated by known illegitimate users. However, IP Relay providers must be careful to make sure that they do not filter out legitimate calls, and to the extent they are unsure whether the caller is legitimate or not, they must put the call through. This approach would benefit consumers in two ways. First, filtering out illegitimate IP Relay calls helps preserve the TRS Fund. Second, filtering out illegitimate IP Relay calls can result in increased confidence by merchants and other call recipients to accept IP Relay and other forms of TRS calls.

12. Slamming

The Commission asked for comment on specific slamming regulations, and whether the TRS rules should track the slamming regulations already in place. The Commission specifically asked parties to comment on the proposed rule language submitted by Sorenson on May 15, 2008 and amended on May 19, 2008. The Commission asked parties to address:

- Jurisdiction;
- Change of service order procedures;
- Verification of consumer consent;
- Liability relating to unauthorized change of the default provider;

- State participation in slamming complaints;
- Preferred TRS provider freezes;
- Transfer of all or part of a provider's customer base; and
- Forfeiture amounts for slamming violations.

Except as discussed herein, the Consumer Groups generally support with some modifications the slamming regulations as proposed by Sorenson Communications, Inc. ("Sorenson") in its May 19, 2008 *ex parte* letter filed in this docket. In particular, for the reasons discussed below, at this time, the Consumer Groups oppose any requirement for third party verification of customer change orders and also oppose permitting preferred TRS provider freezes.

On the issue of jurisdiction, Section 225 of the Act gives the Commission plenary jurisdiction over the regulation of TRS providers, the provision of TRS, and the administration of the TRS Fund. Because the Commission has plenary jurisdiction, it has the authority to regulate TRS change of service orders. In particular, Section 225(a)(3) of the Act¹⁶ requires that TRS be functionally equivalent to voice communications service. Since voice telephone users enjoy the protections of the Commission's anti-slamming regulations, as a matter of functional equivalency, TRS users should enjoy the same protections once they select their default TRS providers.

Just as a voice telephone carrier may not effect a change of service order except in accordance with prescribed procedures, the same should apply to a TRS provider. However, the Consumer Groups do not support applying to TRS providers the requirement that providers use a third-party neutral entity to verify a request from users to change their default TRS providers at

¹⁶ 47 U.S.C. §225(a)(3).

this time. Such procedures and additional steps may unnecessarily confuse users and act as a barrier to effective competition by making it more difficult for users to change providers. The requirement was enacted for telephone carriers as a result of a number of carriers making unauthorized changes of carrier. However, the Consumer Groups urge the Commission to instead require that confirmation by the new provider of a request to switch or port a number to another provider be made in the consumer's primary language.

The TRS situation is different due to the relatively small universe of certified TRS providers and TRS users, which should make policing and enforcement much easier than in the telephone carrier context. At the same time, TRS is still a relatively new service and industry that operates without the benefit of decades of experience that telephone carriers enjoy. However, the Consumer Groups cautiously suggest that TRS providers may heed the experience of telephone carriers and may not engage in unauthorized changes of preferred providers. Based on this optimistic outlook, the Consumer Groups suggest that consumers not be subjected to the confusing and burdensome process of third party verification at this time. If it later turns out that there are slamming complaints in the TRS context, the Commission retains the authority to revisit the issue and institute a third party verification requirement at that time.

Therefore, the Consumer Groups support Sorenson's proposed Section XX.XX20,¹⁷ subject to the following revisions and proposed Section XX.XX30 in its entirety.

- Modify Section (c)(2) to state: "The provider has obtained the subscriber's ^ authorization in the consumer's primary language by means of electronic, verbal, written, or sign language communication to submit the preferred provider change order. Such authorization must be placed from one of the telephone number(s) on which . . ."
- Replace Section (3) by the following: "In the case of authorization pursuant to Section XX.XX20(c)(2), the new provider must verify the following information,

¹⁷ Section XX.XX20(e) is addressed below in our discussion of a provider's acquisition by sale or transfer of another carrier's customer base.

at a minimum: The date of the verification; the identity of the subscriber, including date of birth or last four digits of a social security number; confirmation that the person on the call wants to make the provider change; confirmation that the person on the call understands that a provider change, not an upgrade to existing service, or any other misleading description of the transaction, is being authorized; the names of the providers affected by the change (not including the displaced provider); the telephone numbers to be switched; and the types of services involved (including a brief description of a service about which the subscriber demonstrates confusion regarding the nature of the service). The verification process shall be conducted in the consumer's primary language (whether electronically, verbally, in writing, or by sign language) and shall be recorded either in its entirety in electronic, audio and/or video format, as applicable. The provider shall inform both the subscriber and, where applicable, the communications assistant relaying the call, that the call is being recorded, and whether the recording is in electronic, audio and/or video format. In accordance with the procedures set forth in XX.XX20(a)(1)(ii), submitting providers shall maintain and preserve electronic, audio and/or video records of verification of subscriber authorization for a minimum of two years after obtaining such verification."

- Delete Section (d).

The Consumer Groups support enacting liability provisions relating to unauthorized change of the default provider that are similar to the liability provisions relating to the unauthorized change of a voice telephone carrier. However, because it is the TRS Fund, and not the user, that compensates the TRS provider, then the payment that would ordinarily be due to be paid to the subscriber should instead be paid to the TRS Fund. Moreover, because all compensation for Internet-based TRS is paid by the TRS Fund and not by any state TRS funds, it would be inappropriate for the states to resolve slamming complaints involving Internet-based TRS. Therefore, the Consumer Groups support the resolution of all such complaints by the Commission. The Consumer Groups thus support Sections XX.XX40 through XX.XX70 as proposed by Sorenson.

The Consumer Groups oppose allowing preferred TRS provider freezes and therefore oppose Sorenson's proposed Section XX.XX90. Freezes act as a barrier to effective competition by making it more difficult for users to change providers. As was the case with third party

verification, the requirement was enacted for telephone carriers as a result of a number of carriers unduly pressuring consumers to change carriers and making unauthorized changes of carrier. The TRS situation is different due to the relatively small universe of certified TRS providers and TRS users, which should make policing and enforcement much easier than in the telephone carrier context. At the same time, TRS is still a relatively new service and industry that operates without the benefit of decades of experience that telephone carriers enjoy. Without suggesting that existing policing and enforcement is entirely effective, the Consumer Groups note that the Commission has taken some action when certain marketing practices have been brought to the Commission's attention.¹⁸ As such, the Consumer Groups cautiously suggest that consumers not be burdened by or competition inhibited by permitting freezes at this time. If it later turns out that there are improper marketing practices that cannot easily be resolved by Commission action, the Commission retains the authority to revisit the issue and change the rules to permit preferred TRS provider freezes at that time.

Therefore, the Consumer Groups support the following new language for Section XX.XX90 instead of Sorenson's proposal: "A preferred provider freeze prevents a change in a subscriber's preferred provider selection unless the subscriber gives the provider from whom the freezes was requested his or her express consent. Preferred provider freezes shall not be permitted."

Because voice telephone carriers are permitted to acquire by sale or transfer either part or all of another carrier's customer base, provided that the acquiring carrier complies with the Commission's anti-slamming procedures, the Consumer Groups do not have a problem with permitting TRS providers to acquire by sale or transfer either part or all of another provider's

¹⁸ See, e.g., *FCC Clarifies that Certain TRS Marketing and Call Handling Practices are Improper*, 20 FCC Rcd 1471 (2005) ("2005 TRS Marketing Practices PN").

customer base in accordance with anti-slamming procedures. Because Sorenson's proposed Section XX.XX20(e) mirrors the anti-slamming procedures applicable to voice telephone carriers, the Consumer Groups do not for the most part have a problem with Sorenson's proposal. However, if the Commission does not permit preferred TRS provider freezes as recommended by the Consumer Groups in the prior paragraph, then the references to freezes in Section XX.XX20(e)(1)(v) can be eliminated.

The Consumer Groups support applying the same standard forfeiture amounts for slamming violations by TRS providers as are applied to voice telephone carriers. There is no reason to do otherwise.

13. Consumer Privacy

The Commission asked for comment on specific Customer Proprietary Network Information ("CPNI") regulations and whether the TRS rules should track the CPNI regulations already in place. The Commission specifically asked for comment on the proposed CPNI rule revisions submitted by Sorenson on May 15, 2008. The Commission asked parties to address:

- Applicability of CPNI rules to all TRS providers, including traditional TTY-based providers;
- Commission authority under Section 225 of the Act to extend CPNI rules to point-to-point services;
- Ancillary jurisdiction as a basis for jurisdiction;
- Reconciliation of CPNI rules with existing TRS restrictions on providers' use of customer database information;
- Protection of Registered Location information;
- Use of personally identifiable information for marketing purposes; advantages and disadvantages of applying CPNI rules to TRS providers as opposed to expanding the existing TRS requirements governing permissible uses of database information;

- Whether express consumer consent is required before a TRS provider may disclose data to a third party; and
- Systems providers currently have in place to protect consumer data and the degree to which these systems have succeeded in protecting such data from unauthorized disclosure.

Except as discussed herein, the Consumer Groups generally support with some modifications the CPNI rule revisions as proposed by Sorenson Communications, Inc. (“Sorenson”) in its May 15, 2008 *ex parte* letter filed in this docket.

As discussed in the context of slamming regulations, Section 225(a)(3) of the Act requires that TRS be functionally equivalent to voice communications service. Since voice telephone users enjoy the privacy protections of the Commission’s CPNI regulations, the Act’s mandate of functional equivalency confers jurisdiction on the Commission to require that TRS users enjoy the same CPNI privacy protections.

Nevertheless, due to certain inherent differences between voice telephone services and TRS, such as the need to use CAs and the fact that the TRS Fund, and not the consumer, pays for service, some additional protections, as discussed below, are needed. Since Section 225 of the Act gives the Commission plenary jurisdiction over the regulation of TRS providers, the provision of TRS, and the administration of the TRS Fund, the Commission has the authority to require additional consumer privacy protections as a condition for receiving compensation from the TRS Fund.

On the matter of CPNI, there is no basis to distinguish traditional (TTY or non-Internet-based) TRS providers from Internet-based TRS providers. Therefore, the Commission should confer CPNI protections on all TRS users, no matter what method of transmission is used for the particular service.

Although point-to-point services do not fit within the Communications Act's Section 225(a)(3) definition of TRS, the Commission has ancillary jurisdiction to extend the CPNI rules to point-to-point services. Ancillary jurisdiction may be employed, in the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated¹⁹ and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [its] various responsibilities."²⁰ Both predicates for ancillary jurisdiction are satisfied here.

First, TRS services fall within the subject matter jurisdiction granted to the FCC in the Act under Section 225. Likewise, the Commission has subject matter jurisdiction over point-to-point calls pursuant to its authority provided by Section 1 of the Act, because it is charged with the responsibility of making available "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service. . . ."²¹ Since point-to-point video calls are a primary means by which people who use sign language, for example, communicate with each other, point-to-point calls are an integral part of a "Nation-wide. . . communication service," and to exclude such calls

¹⁹ See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, Report and Order and Notice of Proposed Rulemaking, 22 FCC Rcd 6927, ¶55, CC Docket No. 96-115, WC Docket No. 04-36 (2007) (*VoIP-CPNI Order*); see also *United States v. Southwestern Cable Co.*, 392 US 157, 177-78 (1968) (*Southwestern Cable*). *Southwestern Cable*, the lead case on the ancillary jurisdiction doctrine, upheld certain regulations applied to cable television systems at a time before the Commission had an express congressional grant of regulatory authority over that medium. See *id.* at 170-71. In *Midwest Video I*, the Supreme Court expanded upon its holding in *Southwestern Cable*. The plurality stated that "the critical question in this case is whether the Commission has reasonably determined that its origination rule will 'further the achievement of long-established regulatory goals in the field of television broadcasting by increasing the number of outlets for community self-expression and augmenting the public's choice of programs and types of services.'" *United States v. Midwest Video Corp.*, 406 US 649, 667-68 (1972) (*Midwest Video I*) (quoting Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals, Docket No. 18397, First Report and Order, 20 FCC 2d 201, 202 (1969)).

²⁰ *Southwestern Cable*, 392 US at 178; *VoIP-CPNI Order*, at para. 55.

²¹ 47 U.S.C. § 151.

from a the definition of a “Nation-wide. . . communication service” would be discriminatory against people who are deaf.

Second, the analysis requires an evaluation of whether imposing CPNI obligations is reasonably ancillary to the effective performance of the Commission’s various responsibilities. As shown below, both requirements are clearly met and the FCC has ancillary jurisdiction to extend the CPNI obligations to providers of TRS and point to point services.

In its *VoIP-CPNI Order*, the FCC extended CPNI obligations to providers of interconnected VoIP services. In its decision, the FCC noted that it is reasonable for “American consumers to expect that their telephone calls are private irrespective of whether the call is made using the services of a wireline carrier, a wireless carrier, or an interconnected VoIP provider, given that these services, from the perspective of a customer making an ordinary telephone call, are virtually indistinguishable.”²² Since a TRS call must be functionally equivalent to a voice telephone call, as required by Section 225(a)(3) of the Act,²³ TRS users must be given the same expectation of privacy as voice telephone users. Moreover, to a VRS user, point-to-point video calls are simply another type of call, and the user expects the same privacy with a point-to-point video call that he or she would expect, and be entitled to, with a TRS, VoIP, wireline or wireless call. To a person whose primary means of communications is sign language, a point-to-point video call transmitted over the Internet is the primary means by which that person can communicate with another person whose primary means of communication is also sign language. In essence, a point-to-point video call to someone using sign language is no different from a VoIP call to a hearing person. Therefore, a point-to-point video call and a VoIP are “virtually indistinguishable,” and thus users must have the same expectation of privacy.

²² *VoIP-CPNI Order*, at para. 56.

²³ 47 U.S.C. § 225(a)(3).

Section 222 requires telecommunications carriers to protect the confidentiality of CPNI. As noted in the FCC's *VoIP-CPNI Order*, extending such protections beyond traditional wireline or wireless customers is necessary to protect the privacy of all users that place or receive calls from non-wireline or wireless customers (i.e., VoIP customers or, in this case, TRS and point-to-point users). As CPNI includes call detail information concerning all calling and called parties, protecting the inadvertent disclosure of the CPNI of TRS and point-to-point users, serves to protect the privacy of all consumers participating in the call. Therefore, the FCC should find that the extension of CPNI privacy requirements to TRS and point-to-point providers is reasonably ancillary to the effective performance of the Commission's duty to protect the CPNI of all telecommunications users under Title II. Just as TRS users interface with wireline and wireless callers, point-to-point callers are generally also TRS users and operate on the same network using the same equipment. In order to protect the confidentiality of CPNI on the entire network, CPNI protections must be extended both to TRS and point-to-point services.

The Commission should also be guided by Section 1 of the Act, as it was in the *VoIP-CPNI Order*, and find that because it is charged with the responsibility of making available “a rapid, efficient, Nation-wide, and world-wide wire and radio communication service. . . for the purpose of *promoting safety of life and property* through the use of wire and radio communication,” protecting a consumer's private information continues to be one of the Commission's public safety responsibilities.²⁴ As the Commission has stated, if it fails to properly exercise its responsibilities under Sections 222 and Section 1 of the Act, a significant number of American consumers might suffer a loss of privacy and/or safety resulting from

²⁴ USC §151 (emphasis added); See 47 USC §222.

unauthorized disclosure of their CPNI - and be harmed by this loss.²⁵ This applies as much to users of point-to-point services as it applies to users of wireline, wireless, VoIP and TRS services.

The Consumer Groups submit that it makes good sense to broadly apply CPNI protections to all consumers, whether they are wireline or wireless telephone subscribers, VoIP subscribers or TRS users. All categories of consumers expect the same level of privacy protections, and in the case of TRS, functional equivalency requires it. Moreover, the Consumer Groups do not see any clear disadvantage to applying CPNI protections to TRS users, so long as the additional protections needed due to the unique nature of TRS discussed herein are also applied. Therefore, the rules governing the disclosure of CPNI to third parties that apply to voice services should also apply to TRS services.

Since a user's Registered Location for the purpose of 9-1-1 calling would be considered CPNI, the Registered Location must be afforded all CPNI protections and can only be disclosed to third parties for the purpose of completing a 9-1-1 call and providing the Registered Location to the PSAP and first responders as permitted by CPNI regulations.

As mentioned above, the unique nature of TRS results in the need for some additional customer privacy protections, and Commission rules, orders and public notices have addressed these additional protections. For example, because a TRS call requires the use of a CA, Section 64.604(a)(2) governs CA confidentiality requirements. This provision is unique to the way TRS works and must be maintained.

Also, because the TRS Fund, and not the user, compensates the TRS providers for calls made, the Commission has appropriately prohibited TRS providers from engaging in incentive programs and other marketing practices directed at increasing usage and encouraging users to

²⁵ *VoIP-CPNI Order*, at para. 58.

place calls that they might otherwise not make.²⁶ The Consumer Groups believe that this policy is necessary to protect the TRS Fund and should remain in effect. In that regard, the Consumer Groups offer the following language to be added to the Sorenson proposed revised Section 64.2005(a): “. . .provided, however, in the case of TRS, permissible marketing shall not include contacting users and suggesting, urging, or telling them to make more or longer TRS calls.” This language can be added at the end of the 64.2005(a) paragraph, and prior to subsection (1).

On the other hand, because Section 64.2005(a) of the rules permits voice telephone companies to access CPNI for the purpose of marketing services within the same category of service to its subscribers, the Consumer Groups do not object to a TRS provider marketing TRS services and features to a user who has registered with that TRS provider as his or her preferred provider (without the user’s explicit consent) for the types of services that the consumer already receives from that provider. However, just as a serving wireless carrier may not access CPNI for the purpose of marketing to a roamer (because a roamer is not a subscriber of the serving carrier), this policy should not be extended to an incidental user of a TRS provider. That is, a user placing a call through a provider other than his or her default provider, for purposes of using the TRS provider’s relay services or for the placement or transmission of any point-to-point call that may intersect with the non-default provider’s database or be carried over the non-default provider’s network or system.

The Consumer Groups have concerns about the applicability of Sorenson’s proposed definition for point-to-point calls. In its May 15, 2008 *ex parte* letter filed in this docket, Sorenson suggests that point-to-point calls be defined as: “a video service that *facilitates* the

²⁶ *Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 22 FCC Rcd 20140 at pars. 89-94 (2007) (“2007 TRS Rate Methodology Order”); *FCC Clarifies that Certain TRS Marketing and Call Handling Practices are Improper*, 20 FCC Rcd 1471 (2005) (“2005 TRS Marketing Practices PN”).

transmission of non-relay calls . . .” The Consumer Groups object to the applicability of such a broad definition that could be read to sweep virtually all point-to-point calls to entitle every provider to use that caller’s CPNI. For purposes of CPNI, the Commission should make clear that a provider’s “customer” should be limited to those consumers who are currently registered with a provider as the consumer’s default provider. Moreover, as discussed above, any marketing to “customers” must be limited to informing the user of services and features related to the type of service already received from that provider, and may not be directed at increasing usage.

Paragraphs 95-96 of the *2007 TRS Rate Methodology Order* go on to state that “a provider may not contact its customers, by an automated message, postcards, or otherwise, to inform them about pending TRS compensation issues and urge them to contact the Commission about the compensation rates.”²⁷ The Commission attempted to clarify this ruling by explaining that “. . . providers may not use customer information obtained through the provision of federally-funded relay services, or use funds obtained from the Interstate TRS Fund, to engage in lobbying or advocacy activities directed at relay users.”²⁸

These two rulings have created some confusion, with providers arguing that the rulings are overly broad and can be read to mean that providers cannot advocate political positions on their websites, when speaking at conferences or through advertising, and that such limitations on political speech are in violation of the First Amendment to the Constitution. Although the Consumer Groups do not wish to interject themselves into this First Amendment debate, the Consumer Groups believe that the Commission can provide more certainty and diffuse the

²⁷ *2007 TRS Rate Methodology Order* at para. 95.

²⁸ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling, FCC 08-138, released May 28, 2008 (“*Consumer Contacts Declaratory Ruling*”).

dispute by vacating the *Consumer Contacts Declaratory Ruling* and paragraphs 95-96 of the *2007 TRS Rate Methodology Order* at the same time as it adopts rule revisions applying the CPNI rules to TRS.

The CPNI rules would prohibit a TRS provider from using CPNI for the purpose of contacting a TRS user for political and regulatory advocacy purposes, unless the TRS user affirmatively agrees to such contacts through an opt-in procedure. However, the Consumer Groups would want the Commission to clarify that a general opt-in, such as “please check the accompanying box if you wish to receive occasional information from us concerning public issues” would be insufficient, because it would be too vague to sufficiently inform the TRS users of the communications they would be receiving. Rather, the Commission should explain that any such opt-in must first require the user to affirmatively check the box and must clearly explain to the user in clear and unambiguous language that the user would be receiving requests from the provider to participate in political issues before Congress and other legislative bodies and regulatory issues before the FCC and state commissions on issues of concern to the provider that the provider believes are also of interest the user. The Consumer Groups also strongly recommend that such notices be available in American Sign Language on TRS provider websites as well, and that providers be required to make available a simple method for withdrawing the affirmative check (to “unsubscribe”) in the event a consumer decides to discontinue receipt of such materials. Notices describing the method to unsubscribe are typically found in each message distributed to consumers who have opted in to receive such contacts.

In addition, the CPNI rules would not prohibit a TRS provider from advocating political and regulatory issues on its website, at conferences, and through advertising. However, the Consumer Groups consider it important for the Commission to remind TRS providers that TRS

is the equivalent of dial tone. Just as voice telephone users do not receive political and regulatory advocacy messages when picking up a telephone to make a call, the Commission should emphasize that although TRS providers are permitted to advocate political and regulatory issues on their websites, the providers may not advocate such issues (or for that matter promote or advertise anything) on those web pages that must be navigated to make a relay call, because those web pages are the functional equivalent of dial tone.

Lastly, the Consumer Groups look forward to seeing the comments filed by TRS providers on the issue of systems that the TRS providers currently have in place to protect consumer data and the degree to which these systems have succeeded in protecting such data from unauthorized disclosure.

14. Cost Recovery

Since voice telephone users generally bear their own costs associated with acquiring numbers and number portability, the Commission asked for comment on whether, and to what extent, the costs of acquiring numbers, including porting fees, should be passed on the Internet-based TRS users, and not paid for by the Interstate TRS Fund. The Commission also asked if there are other costs, such as 9-1-1 charges that should be passed on to the consumers.

The Consumer Groups have responded to these questions as they relate to a variety of circumstances presented in items 3, 4, 6, and 8, above. Also, as noted above for those circumstances, the cost of billing and collection for the costs associated with number portability may exceed the amounts assessed. If that is the case, it may be unreasonably burdensome on consumers to be assessed the initial cost plus the administrative cost involved in assessment and collection, unreasonably burdensome on Internet-based TRS providers to administer, or it may be a futile exercise which would cost the funds more than the funds would receive.

Again, the Consumer Groups express *strong* opposition to the assessment of fees on consumers for services such as ten-digit numbering and access to 9-1-1 services that are intended to move consumers closer to functionally equivalent telecommunications services. Consumers already pay, and pay dearly, for adequate Internet access to enable IP-based communications, and for IP-enabled devices that are often produced with unusable voice telephone functions and non-optional voice telephone service plans. Functional equivalency has not yet been reached, and reaching it still has a long way to go, even with the advancements anticipated and outlined above.

Conclusion

For the reasons stated herein, the Consumer Groups respectfully request that the Commission adopt each of the above recommendations.

Respectfully submitted,

/S/

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