Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of | ) | |
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| Telecommunications Relay Services | ) | CG Docket No. 03-123 |
| And Speech-to-Speech Services for | ) | |
| Individuals with Hearing and Speech | ) | |
| Disabilities | ) | WC Docket No. 05-196 |
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| Petition for Clarification on Default Provider | ) | |
| Obligations In Ten-Digit Numbering Order | ) | |
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PETITION FOR CLARIFICATION ON DEFAULT PROVIDER OBLIGATIONS IN TEN-DIGIT NUMBERING ORDER

## I. Introduction and Background

CSDVRS, LLC hereby respectfully requests clarification that the Federal Communications Commission's (FCC or Commission) new rule, contained at 47 C.F.R. §64.611(a)(2) and adopted in its June 2008 Numbering Order,[1] does not negate the requirement of every provider of video relay service (VRS) to provide fully interoperable relay service.

On June 24, 2008, the FCC released a Report and Order creating a new numbering system, by which providers of IP-based relay services will distribute ten-digit phone numbers linked to the North American Numbering Plan to

[1] *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, Dkt. No. 03-123, FCC 08-151 (2008).

users of IP-based telecommunications relay services (TRS). As part of the new system, IP-based TRS users will have to register with a single, "default provider." The FCC explains that there are three reasons for having to choose a default provider: (1) so that the provider may associate the user's telephone number with an IP address for the completion of calls; (2) to facilitate the provision of 9-1-1 service, and (3) to facilitate network security measures.[2]

The new Order goes on to state that "all inbound and outbound calls will, by default, be routed through the default provider."[3] The Commission justifies this arrangement by concluding that calls routed in this fashion is analogous – and therefore – functionally equivalent – to services provided over the PSTN and via interconnected VoIP services, because users of those services make all of their long distance calls on their carrier's network, unless they dial around to an alternative long distance provider. Additionally, the FCC says, the new IP-based numbering system will still allow TRS users to "dial around" the default provider to use the services of a competing provider.

CSDVRS has concerns that overall, the FCC's new emphasis on having a default provider handle virtually *all* inbound and outbound calls for their registered users, may have the unintended effect of giving default providers the impression that they may make it difficult for relay consumers to access alternative providers by dialing around. Today, VRS users have unfettered access in making calls to any providers of their choice for each and every call

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[2] *Id.* at ¶42.
[3] *Id.* at ¶43, codified at 47 C.F.R. §64.611(a)(2).

that they make. Consumers have pressed hard for such access, and have had the comfort of knowing that they are not limited to any one provider at any given time. After the numbering system is in place, consumers still need to be able to dial around to any provider without delays, warnings, distractions or other obstacles that might impede such calls. In order to ensure that this is the case, the FCC should clarify that nothing in its Numbering Order empowers any VRS provider to make it any more difficult to make a dial around call than it has been to make such a call to date. While we understand that dialing around may take one or two additional steps, no default provider should be permitted to create barriers that would impede or discourage a user from making a dial around call, such as pop-up screens or warning messages, or degradation of the TRS call, video quality or video interpreter capabilities.

CSDVRS also submits (and further explains below) that the FCC's reasoning for adopting this new rule is flawed because of two fundamental differences between VRS and PSTN-based or interconnected VoIP services: First, the required speed of answer for VRS is not at all functionally equivalent to the dial tone enjoyed by voice telephone users. Second, there is no fiduciary relationship between a VRS user and a default provider. As shown below, these two fundamental distinctions raise questions about having to rely on the default provider for all incoming and outgoing calls, and make all the more critical the need for clear FCC guidance requiring all providers to facilitate calls to competing providers.

## II. The Numbering Order Potentially Conflicts with the FCC's Guarantee of Full VRS Interoperability

The reasoning and practical implications of the FCC's new rule at 47 C.F.R. §64.611(a)(2) is potentially in conflict with the Commission's 2006 Interoperability Order.[4] As the Commission is well aware, that order firmly established the right of all VRS users to be able to place and receive calls through any VRS provider,[5] and banned the practice of "call blocking," wherein providers would either restrict the use of VRS to a single provider or degrade service quality when users made connections to other providers over equipment distributed by a VRS provider. Providers violating these prohibitions were deemed ineligible for compensation.

The primary reason for the Commission's ruling on interoperability was that the services provided through VRS were in fact different from those provided over the PSTN (or now, VoIP services) in a very significant way. Unlike the PSTN or VoIP, which each provide an instantaneous dial tone, it is not always possible to reach a video interpreter (communication assistant who handles VRS calls) immediately. The FCC understood that if the first VRS provider contacted could not handle a requested call right away, consumers

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[4] *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Further Notice of Proposed Rulemaking, Dkt. No. 03-123, FCC 06-57 (2006).

[5] *Id.* at ¶¶1, 29.

needed to be able to try a second or even a third VRS provider in order to achieve functional equivalency:

> The Commission has stated that "[t]he ability to make a telephone call without delay ... is fundamental to our concept of a rapid, efficient, Nationwide communications system." The Commission has further emphasized that the "[s]peed-of-answer requirements are a cornerstone of the Commission's TRS rules," and the "ability of a TRS user to reach a CA prepared to place his or her call, without experiencing delays that a voice telephone user would not experience in placing a telephone call, is fundamental to the concept of 'functional equivalence.'"[6]

Indeed, the FCC found the need to require VRS interoperability even though it had already established rules specifying the speed by which a VRS provider needed to answer calls. The speed of answer for VRS calls is currently 80% of all calls within two minutes, as measured on a monthly basis.[7] While this standard has improved slightly over its original three minute benchmark, the current standard is still a far cry from the dial tone service enjoyed by PSTN and VoIP users. Even under the current rule, providers are still permitted to have long periods of time during which callers may have to wait up to several minutes to make a VRS call.

As noted by the FCC, for this reason, the speed of answer rules have never been sufficient to ensure functional equivalency for VRS users; rather a

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[6] Interoperability Order at ¶6, citing *Telecommunications Services for Hearing-Impaired and Speech Impaired Individuals, and the Americans with Disabilities Act of 1990,* CC Docket No. 90-571, Notice of Proposed Rulemaking, 13 FCC Rcd 14187, 14289, at ¶¶ 3, 49 (May 20, 1998)

[7] 47 C.F.R. § 64.604(b)(2)(iii). See also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Report and Order, 20 FCC Rcd 13165 (July 19, 2005) (*2005 VRS Speed of Answer Order)* (phasing in speed of answer requirements for VRS).

user *must* have the ability to call any provider at any time. As the FCC itself has noted, "[c]ompliance with the [speed of answer] rule is measured on a monthly basis, and the compliance rate is presently 80 percent of all calls[;] even if the standard is met a VRS user may have to wait a significant amount of time to reach a CA. Therefore, . . . speed of answer does not necessarily ensure functional equivalency for any particular call."[8]

The Commission has further ruled that in an emergency, the inability to reach a second VRS service when the first provider contacted is not able to handle a call because of long wait times could result in "serious harm" to the consumer.[9] Again, in its Interoperability Order, the FCC explained:

> *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.*[10]

In addition to long wait times, there is a second reason that relay users cannot be expected to only rely on their default provider. VRS users have no fiduciary relationship with their default provider. Unlike subscribers to PSTN and interconnected voice services, who purchase those services from common

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[8] Interoperability Order at ¶31.
[9] Interoperability Order at ¶36.
[10] *Id.* at 36 (emphasis added). For example, the FCC pointed to Sorenson's decision to adopt a call prioritization system as a means of ensuring prompt handling of emergency calls, which is now required of all providers to expedite the handling of these calls.

carriers for a fee and have a justifiable expectation that they will receive a certain level of service, no such relationship exists between a VRS user and his or her chosen default provider. The provider is not bound to the user by contract; indeed, at present, it appears that the provider is not subject to any requirements otherwise imposed on common carriers in Title II of the Communications Act, except for those explicitly implementing Section 225. Without this fiduciary relationship – or for that matter – coverage under the common carrier rules – a provider does not have any real obligation to its users to continue service. It is providing service at will, and can discontinue that service at any time, for any reason. While it is unlikely that a VRS provider would actually discontinue service intentionally, experience shows that unforeseen circumstances (including financial or technical difficulties) could in fact suspend service, and in fact, has done so for lengthy periods of time – without any FCC consequences. In such cases it is critical for users to be able to *easily* access any provider.

## III. Conclusion

For the above reasons, CSDVRS requests that the Commission clarify that, notwithstanding the selection of a default provider, each and every VRS provider has an obligation to ensure that it is as easy for a VRS user to place an outbound call to competing providers as it is to place a call to the user's default provider. Otherwise stated, no default provider that distributes equipment should be allowed to configure that equipment in a manner that would increase

the difficulty of dialing alternative providers beyond what consumers need to do to reach these providers today. Anything short of such a ruling would conflict with the FCC's interoperability ruling by restricting access to competing VRS providers in violation of the Communication Act's functional equivalency mandate.[11]

Respectfully submitted,

/s/

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[11] Interoperability Order at ¶30, citing 47 U.S.C. § 225(a)(3). In this Order, the FCC also explained that "[v]oice telephone users reach a dial tone almost instantaneously every time they pick up the telephone. . . [T]he Commission has recognized that reaching a CA ready to handle the call is essentially the same as reaching a dial tone. *See, e.g., 2004 TRS Report and Order,* 19 FCC Rcd at 12480, para. 3 n.18.