

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

In the Matter of)	
)	
Telecommunications Relay Services)	CC Docket No. 98-67
and Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	
Telecommunications Relay Services and)	
Speech-to-Speech Services for Individuals with)	CG Docket No. 03-123
Hearing and Speech Disabilities)	
E911 Requirements for IP-Enabled)	WC Docket 05-196
Service Providers)	

**REQUEST FOR EXPEDITED CLARIFICATION
OF SECTION 64.604(a)(2) OF THE RULES**

The National Emergency Number Association (“NENA”) and the Association of Public-Safety Communications Officials International (“APCO”) hereby seek expedited clarification of Section 64.604(a)(2) of the Rules. Clarification is needed to ensure the well-being of users of telecommunications relay services (“TRS”) making 9-1-1 calls and emergency services professionals responding to such calls. Additionally, given the fast-approaching December 31, 2008 deadline for Internet-based TRS providers to implement an E9-1-1 solution, clarification is needed in order to make the best possible information available for Public Safety Answering Point (“PSAP”) call-taker training materials scheduled to be disseminated in December of 2008.

Sorenson Communications, Inc. had requested a similar clarification in its Comments of August 8, 2008, to which we now add the following background in support

of the FCC's prompt address to a critical element of the Further Notice.¹ Section 64.604(a)(2) reads:

(2) *Confidentiality and conversation content.*

(i) Except as authorized by section 705 of the Communications Act, 47 U.S.C. §605, Communications Assistants are prohibited from disclosing the content of any relayed conversation regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. STS CAs may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user. The caller may request the STS CA to retain such information, or the CA may ask the caller if he wants the CA to repeat the same information during subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls.

(ii) CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay user specifically requests summarization, or if the user requests interpretation of an ASL call. An STS CA may facilitate the call of an STS user with a speech disability so long as the CA does not interfere with the independence of the user, the user maintains control of the conversation, and the user does not object. Appropriate measures must be taken by relay providers to ensure that confidentiality of VRS users is maintained.

Addressing the role of the VRS interpreter during 911 calls, Sorenson said:

Another measure the Commission should take to improve the efficacy of VRS 911 calls is to allow interpreters to provide information, where appropriate, and not simply interpret what the deaf user is signing. For example, an interpreter should be permitted to describe what he or she sees over the videophone and respond directly to any questions from the PSAP regarding what the interpreter sees via the video connection to the caller's premises. This would allow interpreters to describe the scene of the emergency to the PSAP and to provide potentially critical information to emergency personnel that they would not otherwise obtain.² It

¹ Report and Order and Further Notice of Proposed Rulemaking ("Further Notice"), CG Docket 03-123 and WC Docket 05-196, FCC 08-151, released June 24, 2008. Although the "consumer privacy" discussion at ¶131 *et seq.* is focused on potential application of CPNI rules to TRS, we believe the suggestions here are germane to the general heading.

² For example, a video interpreter could warn emergency personnel if she sees a gun. *See, e.g.*, National Emergency Number Association ("NENA"), CG Docket No. 03-123, Presentation entitled "Video Relay Service – IP Relay Service – 9-1-1 Access," at 6 (filed Dec. 4, 2007). This is comparable to a warning that PSAP personnel could give emergency responders if the PSAP heard a gunshot, for example. With a VRS call, the gunshot would not be audible but the gun might be visible.

would also allow interpreters to step in and describe a situation accurately when the deaf user is unable to do so. This will prove helpful when users become incapacitated after dialing 911, become overwrought by the emergency, or, in more extreme situations, feel threatened and believe that they will be harmed if they provide certain information. Similarly, interpreters should be permitted to interrupt VRS 911 callers to ask for, or confirm, key data such as address or telephone number. During an emergency, time is of the essence and a distraught caller may need to be prompted to provide critical details to assist emergency personnel. Granting interpreters the discretion to interject into emergency calls and answer questions from PSAP personnel directly would greatly enhance the utility of VRS 911 calls and could provide emergency personnel with potentially life-saving information.³

Along the same lines, NENA recently stated that

Typically, 9-1-1 telecommunicators can hear and assess the environmental background of hearing callers and follow established procedures for sending assistance. FCC regulations should be amended to provide exemptions for VIs/CAs who process 9-1-1 calls so that they may provide necessary information to 9-1-1 telecommunicators to best expedite the emergency call process. The Commission should clarify that video relay service (VRS) provider VIs can provide visual information they observe from the video communication of a VRS user. The Commission should adopt rules requiring VI's to provide visual information to a 9-1-1 telecommunicator that will protect the life of the caller and/or others, including first responders.”⁴

NENA and APCO believe existing law supports such a clarification, not only for background scenes accompanying video relay but also for ambient sounds that might be audible to a Communications Assistant (“CA”) on a voice call. First, the FCC rule, properly tracking Section 225(d)(1)(F) of the Communications Act, 47 U.S.C. §225(d)(1)(F), “prohibit[s] relay operators from disclosing the content of any relayed conversation.” (emphasis added) NENA and APCO respectfully suggest that the kind of background information described by Sorenson and in NENA’s ex parte presentation of December 4, 2007 (note 2, *supra*) is not part of the content of any relayed conversation.

³ Comments, 3-4.

⁴ Comments, Further Notice, at 7.

Section 225(d)(1)(F) also forbids relay operators “from keeping records of the content of any such conversation beyond the duration of the call.” But again, the visual or aural background of these potentially life- or property-threatening calls -- being no part of the literal call content – should not be off-limits to the retention of records, such as operator notes, for some period after the call ends.⁵

Section 225(d)(1)(G) “prohibit[s] relay operators from intentionally altering a relayed conversation.” In describing a visual or aural background, NENA and APCO believe that the conscientious interpreter or CA would not intend to alter the content of a relayed message, but to put the message in a context both helpful to the PSAP or public safety responders and perhaps critical for the life and health of the caller or the caller’s property.

Even if background visual and aural information were deemed integral with the “content” of relayed conversations, we believe that Section 705 of the Communications Act, 47 U.S.C. §605, would allow relay operators to pass this to PSAPs for the use of responders in appropriate circumstances. We are guided here, in the first instance, by a memo dated September 10, 1996, from the Criminal Division of the U.S. Department of Justice, requested by the Commission in its consideration of the lawfulness of location determination for wireless callers to 9-1-1.⁶ Although the Department’s memo focused on whether the physical location of a wireless emergency caller violated the Communications Assistance for Law Enforcement Act (“CALEA”) or certain criminal

⁵ For this reason, NENA’s December 2007 presentation, at slide 6 (attached), recommended that relay service providers be allowed to “store information and save documentation about emergency calls.” Since then, the Commission has exempted “basic identifying information” from the prohibition on record retention, finding that such information is not part of the content of a relayed conversation. Report and Order, FCC 08-78, released March 19, 2008, ¶19.

⁶ Memorandum Opinion and Order, Docket 94-102, 12 FCC Rcd 22665 at ¶131, nn.338,339.

statutes protecting caller privacy, it also cited (6-7, note 13) cases finding no violation of Section 705 where a wire telephone user had implicitly consented to monitoring of calls.⁷

The Department employed this “implied consent” analysis in two different sections of the memo:

As set forth above, 18 U.S.C. § 2703 requires wireless carriers to obtain a warrant, a court order or the consent of the customer before disclosing to governmental authorities information relating to such customer. Although the disclosure of information regarding the physical location of a customer would likely fall within this provision, it is our view that, by dialing 911, the caller impliedly consents to the disclosure of information regarding his location at the time of the call.

* * *

In our opinion, a cellular caller dialing the 911 emergency line has not exhibited an “actual (subjective) expectation of privacy” in information regarding his physical location, much less a “reasonable” one. It is hard to imagine any clearer indication of the absence of an expectation of privacy than a cry for help; by reaching out to government officials to seek their help, the caller indicates that he has no expectation of privacy in information that could help authorities respond to the emergency.⁸

In the view of NENA and APCO, the Commission’s acceptance of the Justice Department’s implied-consent analysis -- justifying divulgence of the location of wireless emergency callers -- permits acceptance here of disclosure by interpreters or CAs of “background” visual and aural information which the interpreters or CAs believe, in good faith and best judgment, would enable PSAP call-takers and emergency responders to better assist VRS or TRS callers to 9-1-1. To be clear, this exception would be limited strictly to 9-1-1 calls.

NENA and APCO do not believe our request requires the Commission to undertake a formal rulemaking. However, while we are persuaded such a clarification can and should issue within the statutory bounds of Section 225 of the Act, as

⁷ http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=1742430001

⁸ Sections B (4-5) and C1 (7-8), respectively, footnotes omitted.

implemented by Section 64.604(a)(2) in its reference to Section 705, if the Commission determines to proceed by rulemaking, NENA and APCO would participate fully to advocate the interests of PSAP call-takers and public safety responders.

Respectfully submitted,

NENA and APCO

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THEIR ATTORNEYS

Slide 6, NENA ex parte presentation of 12/4/07, Docket 03-123

- Allow interpreter to relay visual information to PSAP (e.g. presence of gun via video link without direct caller communication).
- Permit interpreters to take notes during calls once they are identified as emergency calls and permit saving of such documentation.
- Permit provider to store information and save documentation about emergency calls.