October 29, 2008

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Ex Parte* Notice: *Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*
CG Docket No. 03-123

Dear Ms. Dortch:

In 2007, the Federal Communications Commission ("FCC" or "Commission") substantially revised its cost recovery methodology for interstate telecommunications relay services ("TRS").[1] The Commission did not, however, make corresponding changes to the data it asks the National Exchange Carrier Association ("NECA") to collect from TRS providers. This has created a mismatch between the data that NECA collects and the data the Commission needs to evaluate its current rate plans. In this letter, the undersigned providers suggest changes to the annual data submissions that the Commission requires from TRS providers. The proposed changes would eliminate the collection of irrelevant information and replace it with new collection requirements that are designed to provide NECA with more pertinent information. If implemented, these changes would reduce the burden on providers, while increasing the utility of the information available to the Commission.

On April 1, 2008, video relay service ("VRS") and Internet Protocol relay ("IP Relay") providers filed projected and historic cost information in accordance with guidelines issued by NECA. Because this filing was made during the initial phase of the Commission's new three-year plan for setting VRS and IP Relay compensation rates, the providers did not vigorously pursue with the Commission the issue of inefficient data reporting. As explained in this *ex parte* letter, however, the providers now urge the Commission to revise the guidelines governing the 2009 submissions in a timely manner, in order to eliminate the costly collection of obsolete and unnecessary information, and to assist substantially the Commission's evaluation of the effectiveness of the three-year rate plans by collecting new information that will provide a more complete and realistic view of the cost of providing VRS and IP Relay services.

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1 *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, ¶ 1 (2007) (*2007 Report and Order*).

The preparation of projected cost estimates for the next rate year is unnecessary, expensive and burdensome. In its November 19, 2007 Report and Order, the FCC adopted a cost recovery methodology for VRS with a tiered rate structure based on call volume, and a separate cost recovery methodology for IP Relay based on price caps.[2] The Commission also adopted rates for VRS and IP Relay covering a three-year period, subject to annual adjustments.[3] After the initial rate year, the rates for VRS and IP Relay were to be reduced by 0.5 percent annually to account for productivity gains.[4] Under these rate plans, forecasted cost estimates are no longer used in setting the compensation rates, and, therefore, are unnecessary. The process of preparing these cost projections—which serve no useful purpose—is expensive and burdensome, however. In particular, these requirements place an unnecessary and onerous burden on smaller providers with limited staff. Providers must review historical cost data in detail for each line item, analyze the data and make predictions about how costs are likely to change during the next rate year. For example, providers must predict potential changes in wages for communications assistants, including video interpreters, the need for additional call centers and changes in staffing needs. All of this work takes time and money and the resulting forecasts will have absolutely no effect on the compensation rates for the upcoming rate year, because those rates were prescribed in the November 2007 order. Providers generally do not budget or record expenses in the categories required for NECA reporting, so the development of these projections is not used for any purpose. Given the burdensomeness of generating cost projections, and given that these projections no longer factor into the compensation rates for VRS or IP Relay, the Commission should relieve providers of the obligation to submit projected costs.

The historical allowable cost information that providers are currently required to submit annually also will not be useful to the Commission in evaluating the current rate plans. NECA currently requires providers to report data in a format designed for the capital-intensive telecommunications industry. VRS and IP Relay are labor intensive, however, not capital intensive. In addition, the NECA form includes only those costs that the FCC deemed compensable under the ratemaking methodology that was in effect prior to the November 2007 order. As a result, the current form excludes various actual, legitimate costs that VRS and IP Relay providers incur in providing their services to deaf and hard-of-hearing users, such as certain research and development costs.[5] Because the current form for reporting historical costs does not provide the Commission with a

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2 *Id.*

3 *Id.* ¶¶ 45, 56

4 *Id.* ¶¶ 43, 56.

5 *See, e.g.*, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, ¶ 189 (2004) (affirming that engineering expenses directed at research and development should be disallowed).

reliable, comprehensive view of the costs that the VRS and IP Relay providers actually incur in delivering their services, the Commission should eliminate the requirement that providers continue to complete and file annual historical data in this form.

We recognize that the FCC will need reliable, relevant data both to evaluate the effectiveness of the November 2007 rate plans for IP Relay and VRS in achieving the Commission's goals of increasing the availability of TRS, promoting competition and encouraging efficiency,[6] and to assess the need for modifications to the rate plans at the end of the current three-year period. Because, as explained above, the data currently being collected are not well-suited to either purpose, the FCC can and should replace the current data filing requirements with new requirements that will produce information relevant to the agency's evaluation of the two issues noted above. We outline below several different types of non-cost and cost information that the Commission and/or NECA could compile through annual data submissions by the IP Relay and VRS providers (some of which may require confidential treatment) and otherwise that would assist the FCC in making its assessment.

Non-Cost Information

We suggest that the Commission require VRS and IP Relay providers to submit annually the following non-cost information:

- **Growth in IP Relay and VRS Penetration:** With the introduction of North American Numbering Plan (NANP) numbers for IP Relay and VRS, the Commission will, for the first time, have access to data regarding the number of IP Relay and VRS users. The FCC could ask each provider to file data on the total number of NANP numbers provided to IP Relay users and the total number of NANP numbers provided to VRS users. Over time, the FCC will be able to use these data to measure growth in the number of IP Relay and VRS users. Because the deadline for implementation of NANP numbers is Dec. 31, 2008, on an interim basis, the FCC may also wish to examine data on each provider's total number of IP Relay and VRS minutes for the preceding year, which NECA already collects.

- **Service Quality:** The Commission could compile information from a variety of sources that would indicate trends in IP Relay and VRS service quality, including (1) providers' overall service quality (*e.g.*, calculate for the immediately preceding calendar year the number of FCC complaints filed against IP Relay/VRS providers regarding their provision of these relay services as a percentage of the total number of IP Relay/VRS minutes and compare that ratio with the ratios in prior years); (2) providers' improvement (or decline) in average

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6 *See, e.g.*, *2007 Report and Order* ¶¶ 71, 77; 47 U.S.C. § 225(b)(1).

speed-of-answer over the past year; and (3) service innovations or improvements deployed in the immediately preceding calendar year.

In addition, the annual filings by service providers would enable the Commission to monitor changes in the structure of the IP Relay and VRS businesses by determining the number of providers that entered and exited (through merger or otherwise) during the previous year.

Cost Information

The Commission also is likely to want to collect key cost information pertaining to the provision of VRS and IP Relay. The rate plans the Commission adopted for IP Relay and VRS assume that providers will realize productivity gains that exceed any cost increases caused by inflation.[7] To determine whether providers are achieving the expected efficiency improvements and driving costs down, the Commission may want to collect data that show whether and how various input costs are changing, and in particular, whether and the extent to which they are changing in ways that are different from the economy as a whole. Cost changes for the economy as a whole would be reflected in the general inflation rate, which is incorporated in the current rate formula as GDP-PI. One would expect that many costs associated with the provision of VRS and IP Relay would change in ways that are similar to the economy as a whole, but there are other cost changes that may not accurately be captured by the GDP-PI.

<u>VRS</u>

There are at least two key factors that may cause VRS costs to change in ways that are different from the economy as a whole. The first relates to interpreter efficiency and the second relates to interpreter availability.

It is reasonable to anticipate that VRS providers will be able to improve the efficiency of their interpreters over the term of the rate plan. The new rate plan gives providers incentives to use all resources, including interpreters, in a more efficient manner. Growth in the industry should improve efficiency as well. As the Commission noted, providers with a relatively small number of minutes generally have higher per-minute costs than do larger providers.[8] Presumably, providers will be able to achieve economies of scale as the number of minutes they handle increases.[9] For example, as a provider's minutes of use grow one would expect that certain relatively fixed costs, such as overhead, would not increase as rapidly. Consequently, the per-minute costs should decline, *ceteris paribus*.

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7 *See 2007 Report and Order* ¶ 43.

8 *Id.* ¶¶ 52-54.

9 *See id.* ¶ 53 (adopting tiered VRS compensation rates based upon call volume in order to account for economies of scale).

On the other hand, if the increase in demand for interpreters caused by growth in VRS minutes of use outstrips the increase in available interpreters, one would expect that asymmetry to cause interpreter wages (and benefits) to increase faster than the economy-wide rate of inflation. In addition, such an increase in interpreter costs might lead to an increase in VRS providers' spending on interpreter training as a means of augmenting the supply of new interpreters. This too would cause VRS costs to increase at a rate faster than the general inflation rate.

The FCC should consider asking providers to file targeted cost information that would allow the Commission to determine the manner in which the cost per unit of certain key cost categories is changing over time. For example, the FCC could require providers to file total interpreter costs, including wages, training, and benefits (including retirement and retirement-like benefits), for the preceding calendar year, along with the total number of reimbursable minutes for that calendar year. Dividing total interpreter costs by minutes would yield a per-unit cost, which could then be monitored annually. As an initial step, the Commission would need to obtain baseline data for interpreter costs so that it could monitor the per-minute cost changes for the duration of the rate plan.

IP Relay

There is no *a priori* reason to expect that IP Relay costs will change from year to year in a manner that is different from the economy as a whole, absent the imposition of new requirements by the Commission Since labor costs are a significant portion of the costs of providing IP Relay, the Commission could assess the validity of this assumption by asking providers to file targeted cost information that would allow the Commission to determine the manner in which the cost per unit of certain key cost categories is changing over time. For example, the FCC could require providers to file total communications assistant (CA) costs, including wages, training, and benefits (including retirement and retirement-like benefits), for the preceding calendar year, along with the total number of reimbursable minutes for that calendar year. Dividing total CA costs by minutes would yield a per-unit cost, which could then be monitored annually. As an initial step, the Commission would need to obtain baseline data for CA costs so that it could monitor the per-minute cost changes for the duration of the rate plan.

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The undersigned providers urge the Commission to eliminate the collection of unnecessary information, and to begin collecting the new, more useful, information described above. These changes would better serve the Commission's needs while also reducing the burden on providers.

Pursuant to the Commission's rules, this letter is being submitted for inclusion in the public record of the above-referenced proceeding.

Respectfully submitted,

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