

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC**

<b>In the Matter of</b>	)	
	)	
	)	
Telecommunications Relay Services and	)	<b>CG Docket No. 03-123</b>
Speech-to-Speech Services for	)	
Individuals with Hearing and	)	
Speech Disabilities	)	
	)	
	)	

**EX PARTE COMMENTS  
OF THE  
NATIONAL ASSOCIATION FOR STATE RELAY ADMINISTRATION**

The National Association for State Relay Administration (NASRA) membership now includes thirty-four states. The mission of NASRA is to function as a clearinghouse for state telecommunications relay service administrator topics, issues, standards and policy statements.

At the September 19, 2008 annual NASRA conference, a majority of NASRA members passed a motion to support the ex parte comments made herein. A few states will refrain from supporting this filing and/or will submit their own comments to the FCC thus; there is no need for these states to give support to the following comments.

On January 26, 2005, the FCC issued a declaratory ruling<sup>1</sup> regarding any program that offers any kind of financial incentive or reward for a consumer to place a telecommunications relay service (TRS) call, including minimum usage arrangements or programs (whether or not tied to the acceptance of equipment), violates Section 225 of the Communications Act. As a result, effective March 1, 2005, any

---

<sup>1</sup> In the matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities. DA 05-140, Adopted January 24, 2005, Released January 26, 2005, CC Docket No. 98-67, CG Docket No. 03-123.

TRS provider offering such incentives or rewards for the use of any of the forms of TRS was ineligible for compensation from the Interstate TRS Fund.

Also, on January 26, 2005, the FCC issued an Order<sup>2</sup> clarifying that certain TRS marketing and call handling practices are improper. In its Order, the FCC addressed providers that use their customer database to contact prior users of their service and suggest, urge, or tell them to make more video relay service (VRS) calls. The FCC stated that this marketing practice constitutes an improper use of information obtained from consumers using the service, is inconsistent with the notion of functional equivalency, and may constitute a fraud on the Interstate TRS Fund because the Fund, and not the consumer, pays for the cost of the VRS call. The FCC noted that the purpose of TRS is to allow persons with certain disabilities to use the telephone system. Entities electing to offer VRS (or other forms of TRS) should not be contacting users of their service and asking or telling them to make TRS calls. Rather, the provider must be available to handle the calls that consumers choose to make. The FCC stated that VRS providers may not require consumers to make TRS calls, impose on consumer's minimum usage requirements, or offer any type of financial incentive for consumers to place TRS calls.

On November 19, 2007, the FCC issued a Report and Order and Declaratory Ruling.<sup>3</sup> In this Order, the FCC reaffirmed the *2005 Financial Incentives Declaratory Ruling* and the *2005 TRS Marketing Practices Public Notice*, and reiterated that providers seeking compensation from the Fund may not offer consumers financial or other tangible incentives, either directly or indirectly, to make relay calls. Such incentives include sweepstake giveaways (*e.g.*, the relay user earns chances to win a prize with each call made), sponsorships tied to service usage, charitable contributions by a provider based on

---

<sup>2</sup> DA 05-141, Released January 26, 2005, CC Docket No. 98-67, CG Docket No. 03-123.

<sup>3</sup> In the matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities. FCC 07-186, Adopted October 26, 2007, Released November 19, 2007, CG Docket No. 03-123.

calls made,<sup>4</sup> charitable contributions or other gifts or payments by a provider based on failure to meet specific performance standards (*e.g.*, if a call is not answered within a specific period of time, a contribution will be made to a third party organization), and offering financial incentives or rewards to register with the provider, add the provider to the consumer's speed dial list, or to become a provider's "VIP" customer.

The FCC emphasized that a financial incentive program is not permissible even in circumstances where the benefit goes to a third party, rather than the consumer making the call, or the program is tied to the consumer giving the provider feedback about the quality of the call. The FCC explained that even when the benefit goes to a third party, the program has the intent and the effect of rewarding consumers for making relay calls, as well as giving consumers an incentive to make relay calls that they might not otherwise make. Likewise, tying a reward to making calls *and* responding with feedback about the call does not change the fact that consumers are given an incentive to make calls they might not otherwise make. Providers seeking feedback on the quality of their service can readily do so without offering call incentives.

In addition, the FCC stated that impermissible marketing and incentive practices include calling a consumer and requiring, requesting, or suggesting that the consumer make VRS calls. In sum, because the obligation placed on TRS providers is to be available to handle calls consumers choose to make, when they choose to make them, *i.e.*, to be the "dial tone" for a consumer that uses relay to call to a voice telephone user, and because consumers do not pay for this service but rather providers are compensated pursuant to Title IV of the ADA, providers may not offer relay users financial and similar incentives, directly or indirectly, to use their service. Likewise, they may not use consumer or call data to contact TRS users or to in any way attempt to affect or influence, directly or indirectly, their use of relay service.

---

<sup>4</sup> For example, a promotion where a provider will make a donation to a specific deaf organization each time a consumer makes a call through its service. Such a promotion also suggests that the provider is being overcompensated, since the provider is willing to give away some of the money it earns with each call.

The FCC communicated that providers offering programs or otherwise taking action that has the effect of providing consumers incentives to make relay calls, or misusing customer information, will be ineligible for compensation from the Fund, and may also be subject to other actions for violations of its rules.

On May 28, 2008, the FCC released a Declaratory Ruling<sup>5</sup> clarifying language contained in paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling*. In those paragraphs, the FCC provided examples of certain prohibited uses of consumer or call database information by TRS providers, including restrictions on the use of such information, among other things, “[to] attempt to ... influence ... [consumers’] use of relay service,” or “for lobbying or any other purpose.” The FCC clarified that the language in paragraphs 95 and 96 restricting the use of consumer information does not prohibit contacts by TRS providers with TRS users that are directly related to the handling of TRS calls. Providers could directly contact relay users in order to inform users of a service outage, respond to a consumer’s call for emergency services, assist in the delivery of emergency services, and provide technical support for TRS products or services used by the consumer. The FCC emphasized that any such direct contacts with relay users must be informational in nature and must relate to the provision of, or the consumer’s use of, TRS. The FCC also declared that providers may not contact consumers and offer financial or other incentives to generate additional or longer calls that can be billed to the Fund because such contacts are *not* directly related to the purpose of handling relay calls. The FCC conveyed that it may revisit these determinations if specific facts are brought to its attention suggesting an abuse of this proviso.

To follow-up on Order FCC 08-138 in which the FCC asked for specific facts, NASRA submits this petition for clarification concerning current marketing practices of VRS Providers as to whether certain practices which NASRA has become aware of are legal and ethical. For the last year, NASRA members have become aware of several VRS providers’ marketing “tactics” that seem to be in conflict with current FCC regulations. NASRA requests that the FCC evaluate and provide clarification on the

following examples as to whether or not the practices of several VRS providers are complying with FCC TRS regulations.

**Example No. 1:**

- A VRS provider which would sign up organizations or clubs whose members are potential VRS users. The group name would be part of the domain name that would be marketed to attract VRS users. Example: xyzVRS. In return for marketing the domain name, the VRS provider would pay the organization or club an undetermined amount of money. There would be no “requirement” for the escalation of VRS minutes. The VRS provider doesn’t share its rationale as to the inconsistent payment amounts.

**NASRA Comment:** It has come to the attention of NASRA members that these clubs and organizations recognize that the more VRS minutes members use, the more financial incentives are provided to them. The result of this process is that members who recognize the benefits encourage other members to make VRS calls through the club/organization domain name established for them by the VRS provider. NASRA is concerned about the practice of increasing reimbursable VRS minutes under the guise of marketing the organization’s domain name. Clubs and organizations imply there is no relation between VRS provider’s minutes of use initiated via their dedicated domain name and the amount of the money received from the VRS provider. However, some organizations have acknowledged that they have been receiving money from a VRS provider which they believe is based on the VRS call volume. NASRA believes the marketing program described in Example No. 1 may be a direct violation of FCC rules. As the FCC delineated in paragraph 93 of FCC 07-186, “We emphasize that a financial incentive program is not permissible even in circumstances where the benefit goes to a third party, rather than the consumer making the call, or the program is tied to the consumer giving the provider feedback about the quality of

---

<sup>5</sup> In the matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities. FCC 008-138, Adopted May 28, 2008, Released May 28, 2008, CG Docket No. 03-123.

the call. Even when the benefit goes to a third party, the program has the intent and the effect of rewarding customers for making relay calls that they might not otherwise make.”

Another possible ramification of this practice is that a VRS provider would have a group of users tied to that company’s VRS product. If the customer base is established and the local Deaf organization is receiving substantial revenue from an agreement with a particular provider, then it becomes more difficult or perhaps more expensive for the state to procure a contract with a different VRS provider should the FCC enforce jurisdictional separation of costs in regard to IP based TRS services. It could more difficult for the state due to pressure from the consumer organization and more expensive due to the equipment change/switch-out associated with a different contractor.

**Example No. 2:**

- NASRA has learned that some VRS providers set up marketing or a sales division/department, and hire deaf persons as marketers or salespersons. Their job is to continually use VRS to make telemarketing calls. By employing full-time telemarketers who use their VRS products, providers exponentially increase their minutes of use. Obviously the higher the number of marketing or salespersons employed, the higher the VRS minutes would be. Consequently, their marketing/sales divisions become subsidized by the interstate TRS fund.

**NASRA Comment:** NASRA requests clarification as to whether this type of VRS telemarketing plan is reimbursable from the federal TRS fund, or whether VRS telemarketing minutes of the company should not be submitted for reimbursement. In a standard telemarketing environment, if an employee is not successful, he or she is terminated. In a VRS telemarketing environment, if an employee is not a successful marketer, the provider still benefits by having that employee continue to make VRS calls. The provider is reimbursed through the interstate TRS fund for every VRS minute whether the telemarketing call is successful or not. NASRA requests clarification as to whether the marketing policy outlined in

Example 2 may be in violation of FCC rules. As the FCC delineated in paragraph 94 of FCC 07-186, “...impermissible marketing and incentive practices include calling a consumer and requiring, requesting, or suggesting that the consumer make VRS calls.” Also, in paragraph 96 of the same Order, the FCC stated that providers may not use consumer or call data to contact TRS users or to in any way attempt to affect or influence, directly, or indirectly, their use of relay service.

**Example No. 3:**

- NASRA has been made aware of a few independent marketing services that have been formed (separate from VRS providers) which contact VRS providers and work out an arrangement whereby they commit to use its VRS for their marketing. In return they receive a commission of an unspecified amount per minute. The marketing service would employ deaf persons to make VRS calls that may include marketing, sales pitch, outreach, etc.

**NASRA Comment:** While NASRA agrees that the functionally equivalent employment of deaf and hard of hearing persons is the goal of Title 4 of the ADA which is regulated by 47 CFR Part 64, we question the alleged practice of VRS providers compensating independent marketers for using VRS. NASRA acknowledges that there may, and should be, bona fide marketing services employing deaf and hard-of-hearing people through TRS. However, NASRA requests clarification as to whether the practice of providing commissions to independent marketers may be a violation of Section 225 of the Communications Act of 1934 and the TRS regulations. As delineated in DA 05-140, “...any program that offers any kind of financial incentive or reward for a consumer to place a TRS call, including minimum usage arrangements or programs (whether or not tied to the acceptance of equipment), violates Section 225 of the Communications Act.” (Paragraph 4)

**Example No. 4:**

- NASRA has been made aware of a VRS provider(s) program whereby a person enrolls in the provider(s) program, then solicits others to enroll in the same program. Solicitation of new members qualifies the original member to receive a free video phone.

**NASRA Comment:** NASRA members have learned that while there is no mention of a minimum number of VRS minutes for each program member, consumers have reported that in addition to soliciting new members, they must also use the provider(s) VRS service as well in order to receive the free video phone. NASRA believes this practice increases the amount of unnecessary VRS minutes and may be in violation of FCC rules. In FCC 07-186 the FCC reaffirmed the *2005 Financial Incentives Declaratory Ruling* and the *2005 TRS Marketing Practices Public Notice*, and reiterated that providers seeking compensation from the Fund may not offer consumers financial or other tangible incentives, either directly or indirectly, to make relay calls. (Paragraph 92)

### **Conclusion**

The burden on the federal TRS fund continues to grow due to the increase in VRS minutes of use. By DA 08-303, released February 6, 2008, the FCC had to expand the TRS contribution factor noting that “because of the continued significant growth in VRS minutes, together with the revised compensation rates, the present Fund size may be inadequate to compensate providers for the remainder of the present 2007-2008 Fund year.” NECA, the National Exchange Carrier Association, asserted that increasing the Fund size was necessary to ensure that it does not run out of money before the end of the Fund year.

In FCC 07-110, released June 15, 2007, the FCC noted that the growing popularity of more expensive forms of TRS, such as VRS, has increased overall Fund requirements in recent years, placing upward pressure on the contribution factor that is used to calculate carrier assessments and payments into the Fund. The FCC stated that increasing demand for VRS is likely to continue and concluded that the

situation was untenable both for individual contributors and for the Fund as a whole, and subsequently expanded TRS contribution requirements to VoIP providers.

NASRA believes the tremendous growth of VRS minutes of use will continue to place additional pressures on the federal TRS fund. It is imperative that VRS costs be controlled and that VRS providers not be allowed to “game” the system through financial or other tangible incentives. NASRA urges the FCC to ensure all TRS rules are enforced and deaf and hard-of-hearing persons are not denied access to TRS vital services because of abuse of the TRS system.

In paragraph 9 of FCC 08-138, the FCC noted that it may revisit the financial incentive determinations if specific facts of abuse are brought to its attention. In this petition, NASRA seeks clarification as to whether the examples provided are ethical and legal. In any instance where the FCC decides that these examples are not within the scope of the FCC rules, we encourage swift enforcement by the FCC.

The FCC, through its Orders, has repeatedly stated that compensating IP and TRS services from the federal TRS fund is only an interim measure, and that the jurisdictional separation of costs of IP TRS services will be decided in the future. The NASRA members believe that the issues brought forth in this petition must be clarified and resolved prior to any consideration of implementation of jurisdictional separation of costs of IP and TRS. NASRA also urges the FCC to strictly enforce its rules concerning VRS and financial incentives regarding IP and TRS companies receiving compensation from the Interstate TRS fund.

Respectfully Submitted,

NASRA Board

DATED: November 10, 2008