

MILLER
ISAR INC.
TRUSTED ADVISORS

ANDREW O. ISAR

4423 POINT FOSDICK DRIVE, NW
SUITE 306
GIG HARBOR, WA 98335
TELEPHONE: 253.851.6700
FACSIMILE: 866.474.3630
WWW.MILLERISAR.COM

Via ECFS Delivery

April 22, 2009

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: GoAmerica, Inc. Petition for Rulemaking, Docket No. 03-123, Rulemaking RM-11512

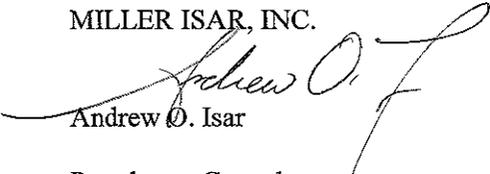
Dear Secretary Dortch:

Pursuant to the Commission's March 25, 2009 *Public Notice*¹ in the above-referenced matter, Healinc Telecom, LLC ("Healinc"), by its regulatory consultants, hereby files with the Commission, the Company's *Response of Healinc Telecom, LLC to GoAmerica, Inc. Petition for Rulemaking*. Healinc's responsive comments remain unchanged from those filed with the Commission on February 4, 2009, in opposing GoAmerica, Inc.'s Petition.

Thank you for your attention to this matter. Questions may be directed to the undersigned.

Sincerely,

MILLER ISAR, INC.


Andrew O. Isar

Regulatory Consultants to
Healinc Telecom, LLC

Attachment

cc: Mr. Thomas Chandler, Consumer and Government Affairs Bureau, Disability Rights Office (Via electronic mail)
Ms. Susan Kimmel Consumer and Government Affairs Bureau, Disability Rights Office (Via electronic mail)
Mr. Greg Hlibok Consumer and Government Affairs Bureau, Disability Rights Office (Via electronic mail)

¹ *Pleading Cycle Established for Comments on Petition for Rulemaking Filed by Go America, Inc. Concerning Internet-Based Telecommunications Relay Service (TRS) Provider Certification Requirements, Public Notice, CG Docket No. 03-123, Rulemaking RM-11512, DA 09-675, (March 25, 2009)*

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re)
)
Telecommunications Relay Services) CG Docket 03-123
For Deaf and Hard of Hearing and Speech)
Disabled Persons)
_____)

**RESPONSE OF
HEALINC TELECOM, LLC
TO GOAMERICA, INC. PETITION FOR RULEMAKING**

Healinc Telecom, LLC (“Healinc”), by its regulatory consultants, hereby submits its response to the January 23, 2009 *Petition for Rule Making* (“Petition”) submitted by GoAmerica, Inc. (“GoAmerica”) in the above captioned matter. Healinc opposes GoAmerica’s Petition. The basis for the Petition is unsubstantiated in fact. GoAmerica’s requested rulemaking purports to “encourage healthy and viable competition” and protect consumers. In reality, the Company’s proposed rulemaking is a protectionist effort effectively resulting in the evisceration of meaningful Internet Protocol (“IP”)-based relay service competition, the resultant innovation and competitive pressure that has benefited the Deaf Community. GoAmerica’s proposal would ultimately undermine the Commission’s pro-competitive policies and overriding goal of ensuring functional equivalency for the Deaf Community. For these reasons, Healinc urges the Commission to reject the Petition.

I. Introduction

Healinc is a provider of Video Relay Services (“VRS”) to the public. Healinc was deemed eligible to draw from the federal Telecommunications Relay Service Fund

“Fund”) in 2006,¹ although the Company has been providing IP-based VRS to the public since its inception in 2004, initially through billing partnering arrangements.² That Healinc and others, including GoAmerica, are today successfully serving the Deaf Community and public is testament to the viability of the very billing partnering arrangements GoAmerica now urges be prohibited.

Several IP-based relay market entrants can trace their beginnings to similar partnering arrangements that have ultimately proven effective in promoting competitive market entry, and technical and service innovation, and in achieving the Commission’s primary relay service goal; to ensure that the Deaf Community has access to telecommunications services that are functional equivalent to those used by other telecommunications service users. Such partnering arrangements have served the Deaf Community well. GoAmerica too has benefited from these arrangements. Why GoAmerica now seeks to prohibit such an effective vehicle for competitive IP-based relay market entry is perplexing, until viewed in the entirety of what GoAmerica proposes; to severely limit, if not altogether preclude, competitive entry and consumer choice. This becomes clear through the proposed amendments GoAmerica seeks.

GoAmerica proposes amendments to section 64.606(a)(2) that would effectively result in an outright prohibition on bill partnering arrangements, while at the same time, implementing more burdensome Fund eligibility criteria for new market entrants. Ostensibly GoAmerica maintains that these proposed amendments would preclude “unqualified and uncertificated entities to act as relay service providers without adequate

¹ *Certification Report and Order* at ¶21, citing to *In the Matter of Healinc Telecom, LLC for Video Relay Service and IP Certification of Eligibility for Compensation from the Interstate TRS Fund*, CH Docket No. 03-123 (2006).

² Termed “white labeling” arrangements by GoAmerica.

oversight,”³ and would “ensure that those providers who are certified are providing qualified services and products to the deaf and hard of hearing consumers, and to engender healthy competition...”⁴ GoAmerica employs the terms “back door” and “grey market” to suggest that new entities engaged in bill partnering arrangements are operating under a shroud of secrecy, and in a devious, underhanded manner. GoAmerica then suggests that stricter Fund eligibility criteria are necessary to protect the public from weak competitors, supporting its contention through a litany of speculative ills.

Rather than seeking to protect the public, GoAmerica’s true intent appears to be a freezing competitive entry under the specious guise that current bill partnering arrangements and lax certification requirements place the public at risk to weak competitors, increase Fund costs, undermine service quality, and dilute the pool of Communications Assistants to the detriment of current providers. GoAmerica’s espouses an opinion, unsubstantiated in fact, and in direct contravention to its own operating experience, and industry history. Healinc maintains that GoAmerica’s proposal represents a hypocritical, protectionist, self-serving approach to limit competition that in reality is harmful to the Deaf Community, contrary to Commission policy, goals, and to the public interest, and should be rejected.

II. GoAmerica Has Failed to Meet the Requirements for Rulemaking Petitions and the Burden For Demonstrating the Necessity for Rulemaking.

Notwithstanding that the Petition fails on its merits, as discussed *infra.*, the Petition also suffers from administrative infirmities, which should be cause for rejection. GoAmerica correctly cites to Section 1.401 *et seq.* of the Commission’s rules in its

³ Petition at pp. 1 and 2.

⁴ *Id.* at pg. 2.

pleading,⁵ but fails to meet the substantive requirements of section 1.401. Section 1.401(e) explicitly requires petitioners to “set forth the text or substance of the proposed rule, [or] amendment...” No such text or substance appears. Moreover, GoAmerica parades a litany of ills as the basis for proposing a rulemaking proceeding, but provides nothing more than unsubstantiated opinion and hypothetical calculations in support of its request for rulemaking; its Petition is void of fact. Although section 1.401 clearly allows petitioners to provide “views and argument” in support of the requested action, the rule also requires supporting “facts” and “data,” none of which appear in GoAmerica’s Petition.

The Company does not – because it cannot – provide factual evidence to support its contention that the Commission’s current regulations and underlying policies are ineffective, threaten the public, and warrant amendment. Its Petition should be rejected on this basis alone. Yet, beyond this failing, GoAmerica’s Petition should be rejected on the specious basis on which the Company predicates its request.

II. The Commission has Clearly Established It’s Pro-competitive Relay Services Market Policies and MMS As a Foundation for Achievement of Full “Functional Equivalency”

A. Congress and the Commission Have Long-Held Functional Equivalency as the Underlying Objective for the Provision of Relay Services.

Title IV of the Americans with Disabilities Act of 1990⁶ was designed to further promote universal service objectives set forth in the Communications Act of 1934, as

⁵ 47 C.F.R. §1.401 *et seq.*

⁶ Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990), adding Section 225 to the Communications Act of 1934 (Communications Act), as amended, 47 U.S.C. § 225; implementing regulations at 47 C.F.R. § 64.601 *et seq.* In Title IV, Congress announced that “[i]n order to carry out the purposes established under section 1 [of the Communications Act of 1934], to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are

amended (the “Act”), by providing to individuals with hearing or speech disabilities telephone services that are “functionally equivalent” to those available to individuals without such disabilities.⁷ Congress recognized that persons with hearing and speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services.⁸ The Commission’s mid-2005 TRS *Report and Order*⁹ underscored the importance of VRS as a significant advancement toward achieving “functional equivalency.”

The advent of VRS as a form of TRS has been one of the most important developments in the short history of TRS. VRS allows a deaf person whose primary language is ASL to communicate in ASL with the CA, who is a qualified interpreter, through a video link; the CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in ASL with the deaf person and by voice with the hearing person. As a result, the conversation between the two end users, deaf and hearing, flows in near real time and in a faster and more articulate manner than with a TTY or text-based TRS call. As a result, VRS calls reflect a degree of “functional equivalency” unimaginable in a solely text-based TRS world. The use of VRS reflects this reality: in April 2005 the monthly minutes of use were approximately 1.8 million, a ten-fold increase in the past two years, and more than the number of interstate traditional TRS minutes.¹⁰

available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.” 47 U.S.C. § 225(b)(1).

⁷ See, e.g., See H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. at 129-130 (1990) (House Report) (Section 225 “imposes on all common carriers providing interstate or intrastate telephone service an obligation to provide to hearing and speech-disabled individuals telecommunications services that enable them to communicate with hearing individuals. These services must be functionally equivalent to telephone service provided to hearing individuals.”); 47 U.S.C. § 225(a)(3).

⁸ See, e.g., House Report at 129.

⁹ *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, CG Docket No. 03-123, CC Docket No. 98-67, FCC 05-140 (July 19, 2005).

¹⁰ *Report and Order* at 3. See TRS Fund Performance Status Report as of May 31, 2005, www.neca.org (under Resources, then TRS Fund).

To promote “functional equivalency,” Congress further sought to ensure that attendant FCC TRS regulation would in no way stifle technological advancement. Pursuant to section 225(d)(2) of the Act,

The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 157(a) of this title, the use of existing technology and do not discourage or impair the development of improved technology.

In March 2000, the Commission recognized VRS as a form of Telecommunications Relay Service.¹¹ The Commission found that VRS – an IP-based relay service - provides a degree of “functional equivalency not attainable with text-based TRS by allowing those persons whose primary language is ASL to communicate in ASL, just as a hearing person does with, *e.g.*, spoken English.”¹²

In its 2004 Report to Congress, *Availability of Advanced Telecommunications Capability in the United States*, the FCC addressed the growing importance of VRS and IP relay as tools for the hearing and speech impaired,

Broadband-based Internet services have also become a critical communications tool for the deaf and hard-of-hearing, through the use of Internet Protocol Relay (IP Relay) and Video Relay Service (VRS), two forms of telecommunications relay services (TRS) that rely on the Internet. **This report shows that there has been more than a 640 percent increase in IP Relay usage and more than a 2,000 percent increase in VRS in the past two years [emphasis supplied].**¹³

¹¹ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Red 5140, at 5152-5154, paras. 21-27 (March 6, 2000) (*Improved TRS Order & FNPRM*); see also 47 C.F.R. § 64.601(17) (defining VRS).

¹² See, *e.g.* In the *Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Order on Reconsideration, FCC 05-203 (December 8, 2005) [“Report and Order”], para. 5.

¹³ *Availability of Advanced Telecommunications Capability in the United State*, (FCC Fourth Report to Congress (September 9, 2004) (http://www.neca.org/wawatch/wwpdf/091004_1.pdf) at 9. The FCC’s *Fourth Report to Congress* notes specifically that in June 2002, consumers used 35,443 VRS minutes. In May 2004, consumers used 733,040 VRS minutes; a more than 2,000 percent increase in VRS in the past two years (*Fourth Report to Congress* at 37). The Commission subsequently noted that in October 2005, there were approximately 1.8 million minutes of use. See, *Report and Order* at footnote 26.

The entry of new competitors has contributed not only to the proliferation of competitive alternatives to the public, but to the introduction of new IP-based technology and innovation that have greatly enhanced the provision of relay services, approximating “functional equivalency,” as the Commission readily acknowledged in the *Report and Order*. Further, growing availability of competitive alternatives has made it possible to accommodate the significant growth in VRS usage, while preventing market domination by a limited number of entrenched incumbent providers.

B. The Commission’s 2005 *Report and Order* Acknowledged the Need for Competitive Entry In Support of Functional Equivalence.

The Commission’s 2005 *Report and Order* established a process that would allow common carriers not associated with a state relay program to pursue certification through the Commission. The Commission adopted a procedural proposal set forth in *Second Improved TRS Order*’s NPRM¹⁴ that would “will permit common carriers desiring to offer only VRS and/or IP Relay, and not the other forms of TRS, to receive compensation from the Fund without having to meet one of the existing three eligibility criteria [*i.e.* state certification] set forth in the rules.”¹⁵ In so doing, the Commission concluded “that the present eligibility criteria for compensation from the Interstate TRS Fund set forth in the Commission’s rules do not reflect advances in the way that TRS is offered, particularly with respect to the two Internet-based forms of TRS, VRS and IP Relay.”¹⁶

Moreover, the Commission explicitly recognized that the state certification process *limited* competitive entry.

¹⁴ See *Second Improved TRS Order*, 18 FCC Rcd at 12443-12445, paras. 134-140.

¹⁵ *Report and Order*, para. 17.

¹⁶ *Id.*

We further recognize that requiring such entities to either contract with a state or with another provider – opportunities over which, as a practical matter, a new provider has little control – both elevates form over substance and artificially precludes new providers from offering service, thereby depriving consumers of additional choices. The record reflects that many states have been reluctant to accept VRS providers into their certified state programs.¹⁷

By permitting new entrants through a federal certification process, the Commission also recognized that “[p]ermitting common carriers to provide VRS and IP Relay and receive compensation from the Fund through certification by the Commission furthers the goals of Section 225.”¹⁸ Clearly, the Commission has sought to broaden, rather than limit, competition.

C. The Commission’s 2005 Report and Order Established An Effective Federal Certification Process To Ensure That Only Qualified Common Carriers Were Deemed Eligible for Compensation From the Federal TRS Fund.

To ensure that only qualified carriers would be deemed eligible to receive funding from the federal fund, the Commission established eight specific requirements that prospective applicants would be required to document for purposes of demonstrating eligibility.¹⁹ In pertinent part, these requirements included a description of how the provider will meet all non-waived mandatory minimum standards applicable to each form of TRS offered,²⁰ a description of the provider’s procedures for ensuring ongoing compliance with all applicable TRS rules; a narrative describing any areas in which the

¹⁷ Id. para 19 with citation: “Presently, three VRS providers qualify for compensation from the Interstate TRS Fund because they are part of a certified state program: Hands On (Washington); Sorenson (Utah); and Communication Access Center (CAC) (Michigan). The record reflects that other entities that desire to offer VRS have been unable to join a certified state program. See, e.g., *Ex Parte* Submission of Daryl Crouse, President, Snap Telecommunications, Inc. (Snap) (July 1, 2005) (submitted by counsel) (Snap *Ex Parte*) (asserting that Snap, which desires to offer VRS and receive compensation from the Fund, sought state certification but no state expressed an interest); see also NASRA Comments at 3-4 (noting that most states would opt for one VRS provider).”

¹⁸ Id. at para. 21.

¹⁹ Id. at 22. Now codified at 47 C.F.R. § 64.606.

²⁰ See generally 2004 TRS Report & Order, 19 FCC Rcd at 12594, Appendix E (summarizing waivers of TRS mandatory minimum standards for VRS and IP Relay) [original citation].

provider's service would differ from the applicable mandatory minimum standards; and a statement that the provider will file annual compliance reports demonstrating continued compliance with these rules.²¹

These requirements, supplemented by the Fund administrator's ongoing oversight, and the requirement that all eligible providers reapply for Fund eligibility upon the termination of their initial eligibility period, represent an effective process for enabling competitive entry and advancing the goal of functional equivalence, while ensuring that only viable providers that are capable of serving the public are deemed eligible to do so. This process also imposes a significant obligation on certified providers to ensure that their eligibility is never compromised, either by their own actions, and those of others with whom they who have entered into a billing partnership arrangements.

III. GoAmerica's Approach Seeks to Preclude Competitive Entry, In Direct Contravention to Commission Policy and "Functional Equivalency"

Taken together, GoAmerica's proposal to end billing partnership arrangements and amend the Commission's well-established eligibility and enforcement process represent little more than an effort to limit, if not entirely preclude, competitive entry of new IP-based relay service providers outright, in a "one-two punch." Such an effort is in direct contravention to the Commission's pro-competitive policies, and ultimately undermines gains in achieving functional equivalency.

The first punch – elimination of bill partnering arrangements - would compel prospective market entrants to abandon independent operations and serve on behalf of, and to the benefit of, existing eligible providers as agents, or seek to obtain significant

²¹ These procedures largely mirror those proposed in the NPRM in the *Second Improved TRS Order*. See *Second Improved TRS Order*, 18 FCC Rcd at 12443-12445, paras. 134-140. Although Sprint opposed the adoption of a federal certification process, it did not address the specific elements of such a process were one to be adopted. See Sprint Comments to *Second Improved TRS Order* at 17-18; Sprint Comments at 13-14 [original citation].

financing for infrastructure and operations investments calculated to meet the Commission's eligibility requirements, with only limited ability to test the viability of the Company's operations prior to seeking Commission eligibility. At a time when venture capital is at an absolute premium, the likelihood access to such funding would be highly unlikely, relegating these entities to serving as agents for existing providers or simply give up any hope of market entry.

The second, "knock out" punch of GoAmerica's dubious recommendation takes the form of raising the eligibility bar for new market entrants, under the guise of consumer protection. GoAmerica would not only require new entrants to meet an unspecified level of financial viability, but to demonstrate an ability to serve an arbitrary, and again unsubstantiated, minimum number of minutes each month while maintaining the existing Mandatory Minimum Standard ("MMS") of making communications assistants available 24 hours per day, seven days per week.

Such limitation of competitive alternatives, competitive pressure, and resultant innovation, guarantees a "business as usual" approach by a limited number of providers, contrary to federal law, Commission policy, and moreover, to the interests of the Deaf Community. This approach ignores the effectiveness of the Commission's federal certification process, existing MMS, the Fund administrator's ongoing oversight, and additional rules and Commission orders, which serve as the foundation for achieving functional equivalence while protecting consumers.

IV. GoAmerica's Rationale For Prohibiting "White Labeling" and Increasing Entry Requirements Is Specious and Self-Serving.

A. The MMS and Commission MMS Enforcement Procedures Ensure That Providers Remain Compliant or Risk Loss of Certification and Moreover, Loss of Their Business.²²

GoAmerica stresses that bill partnering arrangements enable unqualified entities to act as relay service providers "without adequate oversight,"²³ presumably by the certified partner company, and by the Commission. GoAmerica is wrong on both counts.²⁴

The Company acknowledges that the "billing provider bears ultimate responsibility" for the partnering entity, but then introduces a novel, unsupported, and entirely obtuse concept that partnering relationships "raise statutory and constitutional due process issues, as well as issues of practicality."²⁵ What appears absent in GoAmerica's argument is a full appreciation of the weight of responsibility borne by certified bill partners, and fatal repercussions to the certified partner for failure properly ensure that its billing partner complies with the MMS and other requirements.

²² Note here that FCC has no entry requirements for competitive carriers. Draw on FCC detariffing orders – VRS consumers do not pay – Government pays and already has mechanisms to protect

²³ Petition at 2.

²⁴ Indeed, there is no analog to current level of IP-based relay service provider regulation in Commission Fund eligibility certification and ongoing regulatory requirements, let alone those proposed by GoAmerica, for competitive domestic and international telecommunications providers under existing regulation. While the international application process established pursuant to Section 214 of the Communications Act of 1934, as amended, imposes a minimum certification requirement, competitive telecommunications providers are otherwise subject to streamlined federal regulation. IP-based relay service providers are already subject to far greater Commission regulation and scrutiny than any other regulated entity, with limited exceptions. It is unclear, then, why GoAmerica maintains that a yet greater level of regulation is now needed for new IP-based relay service providers to protect the public, when if anything, the Commission has progressively streamlined its regulations for competitive telecommunications providers. This is not to suggest that the Commission should streamline current relay service regulations, only that relay service providers are already subject to far greater regulatory requirements than are competitive telecommunications providers who arguably serve a much broader subscriber base.

²⁵ Petition at 2.

As noted *supra.*, the Commission has established an effective set of minimum requirements and enforcement process to protect the public. Any entity that fails to meet the MMS and other obligation is doomed to forfeit its certification, and is virtually assured that it will be unable to provide IP-based services, accordingly. In other words, the entirety of an IP-relay provider's business is at risk if it is in non-compliance, whether directly or as a result of the actions of a partnering entity. The Commission retains full regulatory oversight of the certificated entity, and of the entity's billing partner, accordingly. That Commission does not technically maintain direct oversight of the partnering entity is irrelevant.

Further, the Commission is well aware of the industry's bill partnering practice. Providers have successfully engaged in the practice for several years, to the benefit of the public. Were bill partnering the issue that GoAmerica paints it to be, it follows that the Commission would have long ago prohibited the practice altogether, or imposed additional limitations on how bill partnering arrangements would be authorized. The Commission has done neither. Nor has the Commission needed to take action. Healin is unaware of any complaint or concern expressed by the public that would rise to the level of demanding Commission action. Seemingly only GoAmerica maintains that an issues exists, but again, has done nothing to factually support its claims.

It is absolutely incumbent on the certified carrier to ensure that the entirety of its operations, including those functions performed by partnering entities, remain fully compliant. Lack of "adequate" oversight by the provider would constitute poor management. Arguably, any certified entity that is lax in overseeing the actions of

partnering entities, and would engage in such poor management practices, exposes itself to de-certification and does not deserve to maintain the privilege of serving the public.

B. GoAmerica's Proposed Regulatory Amendments Would Not Guarantee Greater Protection.

Even *arguendo* that GoAmerica's proposal were adopted, it does not follow that the proposed requirements would provide the level of added public protection professed by the Company. Assurances of financial viability will not ensure better service quality or longevity. While logically one might conclude that greater capitalization will provide the resources to improve service quality, this is purely speculative conjecture. The real issue is not one of demonstrating some arbitrary level of financial viability, but rather whether the provider meets the MMS.

Failure to meet the MMS on an ongoing basis places any entity in the position of risking certification and the company's ability to serve, as noted. And if the Company does not serve its subscribers well, particularly now in light of the Commission's ten digit dialing requirements, no level of financial viability will translate into satisfied subscribers, if subscribers are not well served. Subscriber satisfaction is a function of the MMS, and of the entity's efforts to provide exceptional service quality. The latter cannot be guaranteed by regulatory requirements. Companies that do not provide quality services cannot expect to attract and retain subscribers regardless of how well capitalized they may be.

For the same reasons, GoAmerica's proposed ability to demonstrate a capability of meeting an arbitrary usage level fails. Notwithstanding that the delayed hold times would bring the company into non-compliance with the MMS if unable to meet demand, untimely response times would contribute to subscriber irritation and ultimately to a loss

of customers. Meeting demand and providing an exceptional calling experience is already an inherent obligation of all providers, not just in terms of meeting current MMS, but in retaining subscribers and ensuring longevity.

Lastly, relay service providers are already bound to provide perpetual service under the MMS. A separate demonstration required of new providers would duplicate an existing MMS requirement and serves no useful purpose.

Ironically, GoAmerica has benefited from engaging in the very bill partnership arrangements it seeks to prohibit, while raising the financial requirements for new entrants that may have precluded GoAmerica's own certification in past years. On June 9, 2006, GoAmerica Was granted certification as a Provider of Internet Protocol Relay and Video Relay Service (VRS) Eligible for Compensation from the Interstate TRS Fund Notice of Certification of GoAmerica, Inc.²⁶ Yet, as the Company states in its Securities and Exchange Commission Form 10-K for 2005,

Our i711.com® telecommunications relay service was launched in March 2005, which uses Nordia, Inc.'s technology platform and relay operators ... to facilitate calls, and enables people who are deaf or hard of hearing to call and "converse" with hearing parties by using a computer, wireless handheld device or similar unit, through an operator that interprets text to voice and vice versa. Throughout 2005, we provided a wireless version of relay services under a license to Sprint-Nextel, which was marketed under a Sprint brand. During the first quarter of 2006, we began offering our own branded wireless relay service and terminated our license with Sprint-Nextel.²⁷

Go America apparently relied on Nordia, Inc. and Sprint-Nextel as certified partner companies for more than one year. Nearly three years later, this appears to be irrelevant to GoAmerica.

²⁶ See, e.g. Public Notice, CG Docket No. 03-123, DA 06-1244, (rel. June 9, 2006).

²⁷ See, Edgar Online, GoAmerica Inc. (GOAM) 10-K, Section 7 (March 30, 2006), <http://yahoo.brand.edgar-online.com/default.aspx?cik=1101268>

Also apparently now irrelevant to the Company's proposal, is GoAmerica's past financial viability. Through 2006 the Company posted significant losses,²⁸ which could have precluded GoAmerica from market entry under the certification restrictions it now proposes. Consistent with GoAmerica's arguments, the Company should not have been granted certification, as its then dubious financial position could have been viewed as posing a threat to the public when it entered the IP-based relay market.

C. Competitive Entry Fosters Demand For Interpreters and Lowers Costs.

Next, GoAmerica introduces another interesting, if not novel, argument, that the failure to introduce additional regulatory obligations on new market entrants has the effect of creating a shortage of qualified interpreters and of increasing costs. GoAmerica has this argument backwards. Simply put, limiting competitive entry has the opposite effect of limiting demand for communications assistances. In the absence of demand, there is less incentive for individuals to enter the field. This simply exacerbates any perceived shortage of interpreters.

As to the expressed concern of raising costs, the more effective a provider is in meeting usage demand, the lower its costs for providing service. Here again, this is a function of effective company operations, and not of the number of new market entrants. Followed to its extreme, in theory it would arguably be far more efficient from a costing perspective to monopolize relay services than to allow for competitive entry. Clearly this is inconsistent with the Commission's pro-competitive policies and functional equivalency goal.

²⁸ See, e.g. Edgar Online, GoAmerica Inc.10-Q, Section 1, Income Statement (November 8, 2006).

D. Prohibition Against “White Labeling” and Raising Entry Standards Is a Protectionist Effort Benefiting Only Larger, Entrenched Providers

GoAmerica’s proposal serves no one other than the entrenched dominant incumbent carriers who stand to gain from the current growth in IP relay usage, and limiting competition, particularly at a time when existing providers are engaged in the relay service equivalent of presubscription under the Commission’s ten-digit dialing requirements. Several of today’s service providers, including GoAmerica, have benefited from bill partnering arrangements, and, as is the case with Healinc, have enabled providers who otherwise would have been excluded from market entry, to serve subscribers and meet growing demand. Assured of limited new competitive entry, dominant incumbent carriers become better able to leverage their resources to compete with existing providers, while maintaining greater control and certainty over the market.

Rather than rely on unnecessary regulatory impediments to entry as a means to enhance profitability, any service provider that wishes to gain market share should focus on constant service innovation and improvement for the benefit of subscribers as the path to success.

V. Conclusion

The Commission has clearly, and successfully, established its pro-competitive policies and framework for protecting the public under defined MMS and ongoing enforcement, in support of achieving “functional equivalency.” Companies such as Healinc have been innovators in pursuing new IP-based applications and in creating competitive pressure for innovation consistent with Commission policies. Healinc, GoAmerica, and others, would not currently be engaged in the provision of IP-based

relay services were it not for the Commission's reasoned approach to competitive entry and ongoing oversight.

GoAmerica's proposed prohibition on "white labeling" and added certification requirements is a factually void, thinly veiled, hypocritical, self-serving attempt to limit competitive entry, increase market share, and moreover undermine relay service innovation and competition that has been realized, to the detriment of the public, contrary to Commission policies. In light of the foregoing, GoAmerica's Petition should be summarily denied.

Respectfully submitted this 22nd day of April, 2009.

HEALINC TELECOM, LLC

By: 

Andrew O. Isar
MILLER ISAR, INC.
4423 Point Fosdic Drive NW
Suite 306
Gig Harbor, WA 98335
Telephone: 253.851.6700

Its Regulatory Consultants