

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telecommunications Relay Services and	)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals with	)	
Hearing and Speech Disabilities	)	
	)	
Petition for Rule Making of GoAmerica, Inc.	)	RM-11512
to Amend Section 64.606(a)(2) of the	)	
Commission's Rules	)	

To: Secretary, FCC  
For: The Commission

**COMMENTS OF HAMILTON RELAY, INC.**

Hamilton Relay, Inc. ("Hamilton"), by its counsel, hereby submits these comments in response to the January 23, 2009 Petition for Rule Making ("Petition") filed by GoAmerica, Inc. ("Petitioner"), in the above-captioned proceeding.<sup>1</sup> Petitioner requests that the Commission amend Section 64.606(a)(2) of the Commission's rules to: (1) prohibit the practice of providing "white label" telecommunications relay services ("TRS") by uncertified entities receiving compensation from the Interstate TRS Fund (the "Fund") through certified providers; and (2) to require applicants for Internet-based TRS certification to demonstrate sufficient resources to provide an Internet-based TRS service.

Hamilton believes that the goal of the Petition can be accomplished by establishing clear rules confirming that certified providers ultimately bear responsibility for the conduct of any entities that are subcontracted to provide relay services. Hamilton's concern with the proposal in the Petition is that it could be construed to effectively prohibit all subcontracting of relay

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<sup>1</sup> See DA 09-675 (rel. Mar. 25, 2009). GoAmerica has since changed its name to Purple Communications, but for ease of reference will be referred to herein as "Petitioner."

services. The problem is not that services are being subcontracted, but that services are being subcontracted without any disclosure of who the certified provider is, which leads to consumer confusion and ineffective enforcement.

To address this problem, the Commission should adopt rules specifically requiring that the name of the certified provider be clearly identified to the end user, even in situations where the service is being provided by a subcontracted entity. This requirement would ensure that relay users know whose services they are actually using, and it will help ensure effective enforcement by the Commission.

The Commission's certification rules under Section 64.606(a)(2) have been helpful in ensuring that providers meet minimum standards of service. However, those rules did not anticipate situations where a subcontractor is operating and marketing the service under its own name, but is indirectly being reimbursed under a certification which has been granted to a separate entity with a completely different name. This becomes problematic from a consumer standpoint when complaints about service quality arise, and is also problematic from an enforcement standpoint. Hamilton believes the consumer concern can be alleviated by requiring clear identification of the certified provider's name on all subcontracted services, and the enforcement concern can be alleviated by adopting rules formally establishing that certified providers ultimately bear responsibility for the conduct of any entities subcontracted to provide relay services. For example, if a subcontracted entity failed to meet any mandatory minimum standards, the certified entity would be ultimately responsible and subject to any enforcement action by the Commission.

As part of its review of this Petition, Hamilton believes that the Commission should take the opportunity to look more broadly at the certification process. Specifically, Hamilton submits

that an IP-based provider should be certified through one of the following methods: 1) the provider is a common carrier that is required to make contributions to the TRS Fund; 2) the provider is providing traditional TRS through a state-certified State TRS program whose data is used in calculating the MARS reimbursement rate; or 3) the provider has been certified by the Commission pursuant to Section 64.606(a)(2), as that rule may be revised as a result of this proceeding.<sup>2</sup>

Historically, all providers of TRS complied via the first method because they were all common carriers, and common carriers are specifically covered by Section 225 of the Communications Act. Since VRS and Internet Relay became compensable forms of TRS earlier this decade, it has become increasingly the norm that such providers are non-common carriers. Indeed, Hamilton is not aware of any common carrier that currently provides VRS. Due to the potential lack of oversight caused by these circumstances, Hamilton believes it is critically important to the integrity of the Fund, and to the fundamental goal of protecting consumers, that providers be certified through one of the three methods referenced above before being eligible for reimbursement from the Fund.

It is clear that traditional TRS providers certified by a state-certified TRS program have been thoroughly vetted, and indeed the Commission certifies the state TRS programs, providing additional layers of protection. The Commission therefore has several methods of ensuring that such state-certified providers that also choose to provide IP-based forms of TRS do so in a manner that complies with Commission rules.

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<sup>2</sup> Hamilton supports a threshold for measuring financial ability as a precondition to certification, but takes no position with respect to the specific capitalization amounts suggested by Petitioner.

It is not clear, however, that the current federal certification program for IP-based relay providers has sufficient threshold requirements and enforcement mechanisms to ensure that providers certified under the program are meeting minimum standards of service and other Commission requirements. Therefore, Hamilton encourages the Commission to consider not only the Petitioner's proposal but also other ways in which regulatory oversight of IP-based providers can be improved through the certification process.

As a corollary matter, the Commission may wish to consider imposing Section 214 discontinuance requirements on federally certified IP-based providers, in order to ensure that any discontinuance is conducted in an orderly manner and that consumer 10-digit telephone numbers are transferred promptly to another certified provider prior to the discontinuance.<sup>3</sup>

Finally, Hamilton believes that the Commission may adopt more specific federal certification criteria without foreclosing competition in the TRS industry. The threshold financial assurances being proposed are not insurmountable and are directly related to the Commission's goal of protecting consumers. Moreover, other Commission-regulated entities must make analogous minimum financial certifications. For example, all applicants for new broadcast facilities must have reasonable assurance of committed financing sufficient to construct the proposed broadcast facility and operate it for three months without revenue.<sup>4</sup> These financial requirements have not hindered a competitive broadcast industry. A showing of financial viability by providers seeking federal TRS certification likewise would not hinder

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<sup>3</sup> See 47 U.S.C. § 214(c); 47 C.F.R. § 63.71.

<sup>4</sup> See *Merrimack Valley Broadcasting, Inc.*, 82 FCC 2d 166, 167 (1980); *Liberty Productions*, 7 FCC Rcd 7581, 7584 (1992); see also Instructions to FCC Form 301, at 2.

competition. The ultimate goal of the ADA is to ensure functional equivalence, not to ensure easy barriers to entry into the relay marketplace.

Respectfully submitted,

HAMILTON RELAY, INC.

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*Submitted via ECFS*