

**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 Speech and Hearing Disabilities	)	RM–11512

**REPLY COMMENTS OF VIABLE COMMUNICATIONS, INC.**

¶ 1      Viable submits the following reply comments in response to the Public Notice<sup>1</sup> seeking comment on GoAmerica’s January 23, 2009, petition for rulemaking in which GoAmerica requests that the Commission (1) prohibit uncertified iTRS providers from billing the Interstate TRS Fund through partnering arrangements with certified iTRS providers and (2) require iTRS certification applicants to demonstrate certain capitalization and capacity levels as a prerequisite to certification.<sup>2</sup>

¶ 2      The clear majority of the six comments filed in this matter oppose either of GoAmerica’s proposed restrictions, and, indeed, no commenter supports GoAmerica’s petition in full. Only two commenters support GoAmerica’s proposal to ban certified iTRS providers from subcontracting with uncertified providers for the provision of iTRS services. As shown below, however, their rationale(s) for the proposed restrictions are either mistaken or, in any event, can effectively be alleviated by far less restrictive means than an outright prohibition. With respect to GoAmerica’s proposed capitalization and capacity requirements, save for a brief statement by

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<sup>1</sup> *Pleading Cycle Established for Comments on Petition for Rulemaking filed by GoAmerica, Inc., Concerning Internet-based Telecommunications Relay Services (TRS) Provider Certification Requirements*, CG Docket No. 03-123, Public Notice, Rulemaking No. RM–11512, DA 09-675 (March 25, 2009) (*March 2009 PN*).

<sup>2</sup> *See Telecommunications Relay Services for Deaf and Hard of Hearing and Speech Disabled Persons*, CG Docket No. 03-123, GoAmerica, Inc. Petition for Rule Making (filed Jan. 23, 2009) (*GoAmerica Petition*).

one commenter of general support for an unspecified capitalization/capacity threshold, the commenters unanimously oppose it.

**A. Bill-Partnering Arrangements.**

¶ 3 Four of the six commenters who have filed a response in this matter oppose GoAmerica’s proposed ban on subcontracting for the provision of iTRS services.<sup>3</sup> And for good reason: as Viable has explained in its original comments, such arrangements are an “established business practice that has proven indispensable to the successful maturation of the iTRS market” by enabling business flexibility and technological innovation.<sup>4</sup> This comports precisely with the Commission’s oft-stated goal in promoting iTRS competition and market entry, which, in turn, “bring[s] innovation to the provision of VRS and IP Relay, both with new equipment and new service features,”<sup>5</sup> and ultimately “has the effect of improving services and reducing prices.”<sup>6</sup> Indeed, facilitating competition and market entry was a driving reason why the Commission enacted Section 64.606(a)(2) in the first place.<sup>7</sup>

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<sup>3</sup> Hamilton Comments (filed April 24, 2009); Healinc Comments (filed April 24, 2009); Communication Access Center (CAC) Comments (filed April 24, 2009); Viable Comments (filed April 23, 2009).

<sup>4</sup> Viable Comments, at ¶ 4. Viable notes that its comments herein focus exclusively on uncertified iTRS providers who provide relay services for the certified provider, and not the other type of so-called “white label” arrangements in which non-iTRS providers such as “marketing agents” such as state consumer organizations lend their domain names in exchange for undisclosed compensation from the certified provider. As Viable has previously stated, such arrangements raise a distinct set of risks to TRS integrity by, among other things, their potential for facilitating or encouraging call collusion between iTRS providers and their consumers and their potential for consumer confusion, and Viable does not endorse or support in any way the continued use of such arrangements.

<sup>5</sup> *2005 Certification Order*, 20 FCC Rcd at 20587-88, paras. 17-22.

<sup>6</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, at para. 85 (June 24, 2008) (*Internet-based TRS Order*).

<sup>7</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, at para. 85 (June 24, 2008) (*Internet-based TRS Order*).

¶ 4 Sorenson and American Network, both of whom support GoAmerica’s proposed prohibition on bill-partnering arrangements, contend that such arrangements subvert Commission rules and are contrary to the public interest. They also echo GoAmerica’s main complaint against bill partnering arrangements, which is that uncertified providers are not subject to effective Commission oversight and regulation. As has been pointed out in the comments, however, Section 64.606(a)(2) requires full compliance with applicable operational, technical, and functional mandatory minimum standards for certified iTRS providers to be eligible for Interstate TRS Fund compensation.<sup>8</sup> It does not distinguish between services provided by the certified entity and those by a subcontracting entity, and it authorizes the Commission to suspend or revoke certification upon a determination that certification is “no longer warranted”—which includes the certified provider’s failure to ensure compliance with applicable TRS rules.<sup>9</sup> Indeed, American Network itself admits that the threat of de-certification is an “adequate tool[]” to deter unacceptable deterioration in iTRS service quality or program integrity.<sup>10</sup>

¶ 5 Nevertheless, to remove any ambiguity that may exist regarding Section 64.606’s applicability to uncertified iTRS providers, Viable fully supports Hamilton’s well-reasoned proposal that the Commission establish “clear rules confirming that certified providers ultimately bear responsibility for the conduct of any entities that are subcontracted to provide relay services.”<sup>11</sup> Establishing formal rules in this regard would capitalize on the regulatory

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<sup>8</sup> 47 C.F.R. § 64.606(a)(2); *2005 Certification Order*, 20 FCC Rcd at 20588, paras. 22-23.

<sup>9</sup> Demonstrated compliance with the mandatory minimum standards is, in fact, the benchmark for “functionally equivalent” relay services as Section 225 requires. *See 2004 TRS Report & Order*, 19 FCC Rcd at 12547-48, para. 189. Accordingly, “when a provider offers eligible services that meet these standards it may recover its costs of doing so from the Interstate TRS Fund.” *Id.*

<sup>10</sup> American Network Comments, at 5.

<sup>11</sup> Hamilton Comments, at 1–2.

infrastructure present in Section 64.606 and thus would be an effective, yet far less restrictive, means towards ensuring uncertified iTRS provider compliance with Commission rules than an outright prohibition on bill-partnering arrangements.

¶ 6 To further serve the public interest, Viable also proposes that all certified iTRS providers who subcontract to uncertified providers be required to register or formally disclose to the Commission their subcontractual relationship(s), and that the uncertified providers who engage in direct contact with iTRS users do so under either their own brand name as registered by the certified provider or under the name of the certified provider itself. In both cases, any unsatisfied iTRS user will be able to lodge a complaint with the Commission effectively by reporting either the name of the certified provider or the name of the uncertified provider, which, in turn, would be easily traceable to the responsible certified provider. This requirement would provide customers a “clear path”—to use American Network’s words—to bring violations of the [Commission’s] rules to the [Commission’s] attention.”<sup>12</sup>

¶ 7 Such rules—clarifying certified provider accountability and requiring registration of subcontracted iTRS providers—will protect the public effectively while continuing to allow the iTRS industry to use bill-partnering arrangements as a strategic tool to facilitate business and technological innovation. Prohibiting bill-partnering arrangements, on the other hand, not only would strip the industry of an established business practice, but would abruptly shut down iTRS providers such as Viable who have invested considerable capital and resources in reliance on the Commission’s longstanding practice of allowing such arrangements. Given the clearly less restrictive means described above toward achieving the stated consumer protection objectives, this would be not just inequitable, but wholly unnecessary.

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<sup>12</sup> American Network Comments, at 3.

¶ 8 Finally, a response is in order to Sorenson’s accusations that uncertified providers, and Viable in particular, have “perpetrated a scheme” that threatens not only the integrity of the TRS fund but also the public interest. First, Viable is fully committed to maintaining full compliance with applicable Commission regulations. The example suggested by Sorenson does not violate any FCC regulations and is functionally equivalent to the programs offered to the wider community who can hear. The program certainly did not constitute (as Sorenson contends) “aggressive[]” advertising of a program designed to self-generate minutes. Rather, Viable has investigated suspicious activity and taken aggressive remedial action against entities with whom we were associated with when indicated to protect the integrity of the fund and the company.

¶ 9 Sorenson complains that “the sole function of CAC and CSDVRS in these relationships is to serve as conduits that funnel federal payments to Viable and BIS; CAC and CSDVRS thus do not help Viable and BIS to provide VRS, but only to obtain payments from the Fund.” This outrageous allegation is completely unfounded with respect to Viable and patently untrue. Viable and CAC have, since the beginning of their relationship, shared resources in order to ensure that the mandatory minimum standards are consistently met with the highest quality services. Any suggestion otherwise is false. Further, the contract between Viable and Communication Access Center requires full compliance with all FCC regulations, and Viable has scrupulously adhered to the applicable mandatory minimum standards in delivering its iTRS services.

¶ 10 Second—and more fundamental—is simply that certified providers have engaged in the various forms of improper conduct that Sorenson apparently is now trying to pin solely on uncertified providers such as Viable. As recently as July 30, 2008, the accounting firm KPMG reported to the Commission that TRS providers were pervasively seeking reimbursement for call

minutes for which they had no supporting documentation, or for expenses that the Commission had previously disallowed as reimbursable expenses, including for the installation of VRS equipment.<sup>13</sup> In December of 2008, the House of Representatives' Committee on Energy and Commerce issued a report that referenced a Commission estimate that Sorenson itself was overcompensated \$137 million from the Interstate TRS Fund for the years 2005–06 alone, and explicitly demanded that the Commission “immediately initiate a full investigation and audit of Sorenson,” who to that point had “stonewall[ed]” audit efforts.<sup>14</sup> Finally, it was Sorenson’s own anticompetitive refusal to deal with competitors that necessitated the Commission’s 2006 *Interoperability Ruling*.<sup>15</sup>

¶ 11 To be clear, the point of the preceding discussion is not to target any one certified provider in particular, but merely to illustrate the obvious—that certified and uncertified providers alike are capable of practices that threaten TRS fund integrity or the quality of TRS services. The remedy is not to scapegoat uncertified iTRS providers, but to strengthen accountability and enforcement mechanisms applicable to both certified and uncertified providers. To alleviate any ambiguities that may exist regarding accountability and enforcement for uncertified providers who subcontract with certified iTRS providers, the proper approach is not to prohibit such arrangements, but to (1) establish clear rules confirming that certified providers ultimately bear responsibility for the conduct of any subcontracting iTRS provider; (2)

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<sup>13</sup> *Deception and Distrust: The Federal Communications Commission under Chariman Kevin J. Martin*, at Exhibit 7 (available at <http://energycommerce.house.gov/images/stories/Documents/PDF/Newsroom/fcc%20majority%20staff%20report%20081209.pdf>) (hereinafter *Deception and Distrust*).

<sup>14</sup> *Deception and Distrust*, at 7, Exhibit 6.

<sup>15</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03–123, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, 5460 (May 9, 2006) (*Interoperability Declaratory Ruling and FNPRM*).

require certified iTRS providers who subcontract to uncertified providers to register or formally disclose to the Commission their subcontractual relationship(s); and (3) require uncertified providers who engage in direct contact with iTRS users do so under either their own brand name as registered by the certified provider or under the name of the certified provider itself.

**B. Capital/Capacity Requirements.**

¶ 12 Viable believes that, save for the comments filed by Hamilton, the comments on this issue are generally uniform in arguing against adopting GoAmerica' capitalization and capacity proposal. Viable accordingly stands by its originally filed comments on this particular issue.

**C. Conclusion**

¶ 13 The original proposal set forth by GoAmerica is plainly anti-competitive and the comments filed by Sorenson express its demonstrated pattern of attempting to thwart competition and innovation in the industry. For both Sorenson and GoAmerica, subcontracting is only problematic when it involves a competing brand, not when it involves subcontracting for services such as Sorenson's arrangement with Gallaudet Interpreting Services. CAC, on the other hand, should be applauded for introducing competitors, including Viable, into the industry. Viable is confident that the FCC can appreciate the real issue here which is competition, not quality control.

Viable is an established company with a strong infrastructure, a high-end self-engineered product and a recognized member of this industry. Viable has been lobbied by both Sorenson and GoAmerica to lend its support to specific issues in front of the FCC. Viable has actively participated in this docket and vigorously competes with Sorenson and GoAmerica by providing high quality products and services. Finally, Viable complies with all of the mandatory minimum

standards under the supervision of and in collaboration with Communication Access Center our development and billing partner.

Respectfully submitted,

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