

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Telecommunications Relay Services)	
and Speech-to-Speech Services for)	CG Docket No. 03-123
Individuals with Hearing and Speech)	
Disabilities)	
)	
Petition for New Rule on VRS Number)	WC Docket No. 05-196
Porting)	

OPPOSITION OF AMERICAN NETWORK, INC.

American Network, Inc. (“ANI”), pursuant to Section 1.405 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”) and the invitation extended by the FCC in its Public Notice released on April 24, 2009,^{1/} hereby submits its Opposition to the Petition for Rule Making on VRS Equipment Porting (“Petition”) submitted jointly by CSDVRS, LLC, Snap Telecommunications, Inc., Sprint Nextel, and Viable, Inc. (“Petitioners”).^{2/} The Petition is anti-competitive and contrary to the Commission’s policies. Accordingly, the Commission should promptly dismiss the Petition and affirm its rules promoting consumers’ ability to choose customer premises equipment (“CPE”) and providers of Internet protocol (“IP”) based Telecommunications Relay Services (“TRS”).

^{1/} 47 C.F.R. § 1.405; *Consumer and Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed*, Public Notice, Report No. 2888 (rel. Apr. 24, 2009).

^{2/} ANI notes that Viable, Inc. is not a certified provider of IP-based TRS and therefore has no standing to submit the Petition. As ANI has pointed out elsewhere, Viable is a so-called provider of “white-label” TRS services, which is inconsistent with the FCC’s rules and contrary to the public interest. *See* Comments of American Network, Inc., RM-11512, CG Docket No. 03-123 (filed Apr. 24, 2009). To the extent that the FCC continues to sanction the provision of white label services, Viable should participate in Commission proceedings only through the entity that has FCC authorization to provide TRS services and seek reimbursement from the TRS Fund.

I. Introduction

Petitioners' complaints originate from the FCC's rules, adopted in June 2008, which are intended to transition IP-based TRS to ten-digit dialing.^{3/} In the *Report and Order*, the Commission, among other things, found that an IP-based TRS user's CPE should directly provide necessary routing information to the user's default provider.^{4/} Similarly, the FCC required that IP-based TRS providers take steps to cease acquiring routing information from users who port their numbers to other providers or otherwise select a new default provider.^{5/} In particular, the FCC required that every IP-based TRS provider ensure that all CPE it has issued delivers routing information or other information only to the user's default provider.^{6/}

Some of the Petitioners challenged the *Report and Order*, asserting that because a new provider may not be able to cause a user's existing CPE to acquire the routing information from a new provider, consumers should be able either to: 1) continue using the original CPE with the understanding that routing information will continue to be used by the original TRS provider; or 2) acquire a new device from the new default provider.^{7/} The Commission correctly rejected Petitioners' earlier request, finding that a TRS user's CPE should provide necessary routing

^{3/} *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591 (2008) ("*Report and Order*").

^{4/} *Id.* ¶ 61.

^{5/} *Id.*

^{6/} *Id.*

^{7/} *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, ¶ 60 (2008) ("*Order on Reconsideration*").

information to the IP-based TRS user's default provider directly.^{8/} The Commission specifically rejected the proposal that a default provider furnishing CPE must ensure that its enhanced features can be used after a user ports his or her number.^{9/} The Commission correctly reasoned that its requirements would facilitate the growth of equipment that is completely portable, including the advanced features associated with that equipment.^{10/}

Unsatisfied with the FCC's continued rejection of their arguments, the Petitioners again have asked the Commission to endorse the position of providers who lock-in users to particular equipment. In particular, they ask that the FCC eliminate the requirement mandating that providers enable the porting of CPE from one default provider to another.

ANI is a certified provider of IP-based TRS committed to providing deaf and hard-of-hearing consumers with the same type of equipment choices to which hearing consumers are accustomed. Granting the Petition would amount to a significant step backward in the provision of state-of-the-art equipment to the deaf and hard-of-hearing community. Accordingly, ANI opposes the Petition and asks the FCC to again reject Petitioners' requests.

II. Comments

A. CPE Can Be Portable Today

The equipment portability rules are designed to ensure that consumers can use equipment that they have already purchased when they change default providers. Recognizing that providers may not be readily able to discern information about incumbent CPE that would enable

^{8/} *Id.* ¶ 63.

^{9/} *Id.*

^{10/} Recognizing that IP-based TRS providers have been selling equipment designed to prevent porting and consumer choice, the FCC granted a one-year waiver for compliance with its new requirements for providers that do not have access to the technical information about a user's CPE that would permit the provider to update the user database and provide service to the user through its CPE. *Order on Reconsideration* ¶ 68.

providers to cause new customers' calls to be routed to a new provider, the FCC already has waived its porting rules until the end of this year. Therefore, by the end of 2009, IP-based TRS providers will have had nearly 18 months to learn how to fully port CPE. All current CPE uses common signaling protocol -- either based on International Telecommunications Union ("ITU") standard H323 or the Internet Engineering Task Force's Session Initiation Protocol ("SIP"). If TRS providers are unable to determine how to port equipment by December 31, 2009, it is because they are not making a good faith attempt to do so and instead are trying to perpetuate their own user base.

Petitioners argue that even if CPE can be ported, the CPE may lose all of its functionality when used with another TRS provider's system. Even if Petitioners' arguments are valid -- and ANI does not believe that they are -- Petitioners do not assert that ported CPE will lose *all* of its functionality. In order to promote full CPE portability, consumers will be willing to sacrifice some loss of functionality in the short term for fully portable CPE -- with full functionality -- in the future. The loss of functionality is no reason to inhibit CPE portability in the short term as Petitioners request.^{11/} If there is any loss of advanced functionality, it will occur because manufacturers to date have not produced equipment that will permit users to change providers and retain functionality. The FCC's current rules will promote the production of equipment that will permit users to transport the functionality of CPE with them when they change providers.^{12/} Equipment naturally will evolve so that advanced functionality will reside in CPE and not in a

^{11/} Moreover, Petitioners assume that consumers are unable to make the choice between potentially losing advanced features and selecting a new IP-based TRS provider. These assumptions are paternalistic and anti-consumer.

^{12/} Petitioners assert that because 95% of CPE has been distributed by one provider, consumers' purported loss of functionality will ensure that consumers do not abandon that provider. This argument assumes that no competitive marketplace for IP-based, fully portable TRS devices will develop in the future -- an argument that is contrary to history and marketplace realities.

provider's server. Under the approach that the Petitioners prefer, manufacturers will have no incentive to innovate because TRS providers will be under no obligation to facilitate CPE porting. Moreover, the Commission's rules will promote competition among TRS providers. Those willing to compete will ensure that their systems support the features of ported equipment; those that rely on the FCC to support their market position will appropriately be at a competitive disadvantage. If the FCC does not uphold its current rules, marketplace forces will not be permitted to prevail and users will continue to be subject to outdated equipment.

Petitioners assert that unless the FCC eliminates its equipment porting rules, equipment will be required to support multiple providers and providers will bear the increased costs -- costs that ultimately will be reflected in the TRS Fund -- of the development of these devices. Petitioners' arguments fail to recognize that third parties should and will develop and market TRS devices.^{13/} While the FCC's rules contemplate that TRS providers may sell or market equipment, they are under no obligation to do so. If such providers choose to engage in the sale or marketing of CPE, they are certainly under no obligation to develop and manufacture that equipment. Indeed, marketplace forces will ensure that TRS device producers will develop independent of service providers, and the most successful of those device producers will be those whose products are compatible with the greatest number of TRS provider services. TRS providers should not be in the business of developing TRS equipment and certainly should not be permitted to include the development of equipment in their estimates of the cost of providing

^{13/} Petitioners' assumption that providers should sell and service CPE evidences a mind-set that, as noted below, the FCC rejected over 40 years ago. *See infra* note 20.

TRS service. The device and service marketplaces should be de-linked and not used -- as Petitioners would have it -- to lock customers into using a particular provider.^{14/}

B. Petitioners' Comparison to the Wireless and Wireline Marketplaces is Inaccurate

Petitioners' argue that they should not be required to support equipment porting because the FCC does not require wireless providers to do so. The Petitioners are wrong for several reasons. First, although the FCC has not required wireless CPE portability in the past, current trends suggest that the FCC may impose these requirements if the industry does not offer CPE portability on its own. In particular, when the FCC recently adopted rules governing the 700 MHz band, it required that the licensee of one of the bands ensure that its service was open-platform and open-access.^{15/} In imposing this requirement, the FCC said that “[t]he Commission generally relies on the competitive marketplace to deliver the benefits of choice, innovation and affordability to American consumers, and regulates only when market driven forces alone may not achieve broader social goals.”^{16/} There have been calls for all wireless carriers -- and not just those subject to the FCC's 700 MHz rules -- to be subject to open platform conditions.^{17/}

^{14/} Similarly, Petitioners' concerns that providers will be obligated to upgrade or repair equipment sold by another provider is premised on the anti-consumer assumption that devices must be developed and sold by service providers.

^{15/} *See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et al.*, Second Report and Order, 22 FCC Rcd 15289, ¶¶ 195, 202 (2007) (“Although we generally prefer to rely on marketplace forces as the most efficient mechanism for fostering competition, we conclude that the 700 MHz spectrum provides an important opportunity to apply requirements for open platforms and devices and applications for the benefit of consumers, without unduly burdening existing services and markets . . . [Therefore,] we find it is reasonable to impose certain conditions on the C Block in the Upper 700 MHz Band to provide open platforms for devices and applications.”).

^{16/} *Id.* ¶ 200.

^{17/} *See, e.g.*, Rural Cellular Association, Petition for Rulemaking regarding Exclusivity Arrangements between Commercial Wireless Carriers and Handset Manufacturers, RM-11497 (filed May 20, 2008) (petitioning the Commission to “investigate the widespread use and

Carriers have already responded to these concerns without being required to do so by the Commission. A consumer can purchase an unlocked GSM telephone in Europe, use it with a European-based carrier, and employ the same phone on T-Mobile's GSM network in the United States by simply exchanging a T-Mobile SIM card. In the United States, Clearwire, a provider of nomadic wireless Internet access services, made it clear that its service will use standards-based WiMAX technology and that users may employ devices of their own choosing on its network.^{18/} Verizon Wireless has made a similar commitment toward open-network architecture in the future.^{19/} In each of these cases, carriers and the FCC expect CPE to be portable if it is

anticompetitive effects of exclusiv[e] arrangements between commercial wireless carriers and handset manufacturers” and adopt rules prohibiting such arrangements); Dave Rosenberg, *iPhone or BlackBerry? Service Is a Major Factor*, CNET, May 4, 2009 (complaining that the iPhone should be able to be used on any wireless network, not just AT&T's); Grant Gross, *Verizon Wireless' Open Network Earns Praise*, PCWORLD, Nov. 28, 2007 (reporting that FCC Chairman Kevin Martin stated that “wireless customers should be able to use the wireless device of their choice and download whatever software they want onto it”); Leslie Anne Jones, *Shut Out of Service, Tech-Head Alaskans Will Need Guts to Get Hands on iPhone*, ANCHORAGE DAILY NEWS, June 23, 2007 (describing that while most of the contiguous states have access to the iPhone, “as per usual, Alaskans will be stuck in the telecommunications dark ages sans iPhone [because] AT&T has a five-year exclusive contract with Apple”).

^{18/} See Jim Zarroli, *Sprint, Clearwire in WiMax Venture*, NPR.COM, May 7, 2008 (stating that “[a]ny devices that currently have the potential to access the Internet could become a platform for [Clearwire's] WiMax . . . [t]hey just need a special chip, [s]o laptops, cellular phones, gaming devices, cameras, PDAs, mp3 players and cars are all possible interfaces”); Monica Paolini, *Developers Should Tailor Apps to Customer, Not Device*, FIERCE BROADBAND WIRELESS, Feb. 9, 2009 (“In the U.S., subscribers to Sprint Nextel's Xohm and Clearwire's Clear recently launched WiMAX services have the option to use multiple devices within a single service plan. Subscribers may also use the same device under contracts with different service providers.”).

^{19/} See Andrew R. Hickey, *Verizon to Unveil Open Network for 'Any Device, Any Application' Specs*, CHANNELWEB, Feb. 27, 2008 (“Verizon Wireless this week said it will detail the technical specifications to enable any device and any application to run over its wireless network.”); see also Press Release, Google, Industry Leaders Announce Open Platform for Mobile Devices (Nov. 5, 2007) (“A broad alliance of leading technology and wireless companies today joined forces to announce the development of Android, the first truly open and comprehensive platform for mobile devices.”); Grant Gross, *AT&T Says Its Wireless Network Also Open to Outside Devices*, ITWORLD, Dec. 6, 2007 (reporting that AT&T's network is open to outside devices and applications).

technically capable of operating on another network. While there are currently no expectations that CDMA equipment would be able to operate on a GSM network, these limitations are not relevant to IP-based TRS networks because such networks all operate using Internet protocol.

Therefore, the Petitioners' argument that they should be treated like wireless carriers is out of step with reality. As noted above, marketplace forces will ultimately result in the production of state-of-the-art, IP-based, portable TRS CPE by third-party manufacturers as they have in the wireless industry. By retaining the rules adopted in the *Report and Order*, the Commission will ensure that IP-based TRS CPE is not unnecessarily required to wait to achieve the same level of CPE portability that wireless providers will soon enjoy.

Second, the fact that TRS providers are taxpayer-funded means that the TRS service is not the same as the wireless marketplace in any case, and that the FCC has the right and responsibility to abbreviate the evolutionary cycle that wireless services are now completing. As recent events have demonstrated, wireless carriers have come to recognize that open-platform networks are a competitive advantage. However, TRS providers are not driven by the same economic model as wireless carriers. Therefore, the FCC must impose its policy objectives to aid the usual marketplace forces. Those policy objectives plainly favor full portability of CPE.^{20/}

^{20/} The Petitioners' argument that full portability only existed in the context of the government's recognized telecommunications monopoly precisely demonstrates the point. The competitive marketplace has evolved in a very brief time to equipment portability. However, IP-based TRS, because it is government-funded, does not operate in the same competitive environment. Therefore, government-imposed portability requirements are appropriate. Moreover, Petitioners' arguments regarding the portability of wireline devices fails to recognize that it was only because of government action that CPE became portable, not because a single wireline network existed as an integrated network. See *Use of the Carterfone Device in Message Toll Telephone Service, et al.*, Decision, 13 FCC 2d 420 (1968) (determining that Carterfone and other devices should be allowed to connect directly to AT&T's network). Prior to *Carterfone* and its progeny, consumers were required to purchase handsets wired to their premises from the monopoly service provider. This discredited approach should not be adopted for the IP-based TRS industry.

In exchange for TRS Fund support, TRS providers must be willing to offer service compatible with all CPE.

III. Conclusion

American Network, Inc. hereby submits the foregoing Opposition and asks that the FCC deny the above-referenced Petition and take such other actions consistent with the views expressed herein.

Respectfully submitted,

AMERICAN NETWORK, INC.

/s/ Kent Charugundla

Kent Charugundla

CEO

American Network, Inc.

142 East 39th Street

New York, NY 10016

Counsel to American Network, Inc.:

Russell H. Fox

Jennifer A. Cukier

MINTZ, LEVIN, COHN, FERRIS,

GLOVSKY AND POPEO, P.C.

701 Pennsylvania Ave., N.W., Suite 900

Washington, D.C. 20004

(202) 434-7300

rfox@mintz.com

Dated: May 11, 2009

CERTIFICATE OF SERVICE

I, Jennifer A. Cukier, hereby certify that on this 11th day of May, 2009, the foregoing Opposition of American Network, Inc. was filed electronically through the FCC's Electronic Comment Filing System ("ECFS") and copies were served on the following as indicated:

Best Copy & Printing, Inc. (BCPI)
Portals II
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554
fcc@bcpiweb.com
VIA ELECTRONIC MAIL

Sean Belanger
CEO
CSDVRS, LLC
600 Cleveland Street
Suite 1000
Clearwater, FL 33755
VIA FIRST CLASS MAIL

Karen Peltz Strauss
Legal Consultant for CSDVRS, LLC
3508 Albemarle Street, NW
Washington, D.C. 20008
VIA FIRST CLASS MAIL

Tom Kielty
President & Chief Executive Officer
Snap Telecommunications, Inc.
1 Blue Hill Plaza, 14th Floor
Pearl River, NY 10965
VIA FIRST CLASS MAIL

Michael B. Fingerhut
Senior Counsel, Government Affairs
Sprint Nextel Corporation
2001 Edmund Halley Drive
Reston, VA 20191
VIA FIRST CLASS MAIL

Carla M. Mathers
General Counsel
Viable, Inc.
5320 Marinelli Road
Rockville, MD 20852
VIA FIRST CLASS MAIL

/s/ Jennifer A. Cukier
Jennifer A. Cukier