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

In re	)	
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TELECOMMUNICATIONS RELAY SERVICES AND SPEECH-TO-SPEECH SERVICES FOR INDIVIDUALS WITH HEARING AND SPEECH DISABILITIES	)	CG Docket 03-123
	)	
Public Notice and Notice of Proposed Rulemaking	)	
	)	

COMMENTS OF CSDVRS, LLC

VIDEO RELAY SERVICE COMPENSATION RATES

I. Introduction

CSDVRS, LLC, by and through counsel and pursuant to 47 C.F.R. §§1.415 and 1.419, hereby submits its comments to the Public Notice and Notice of Proposed Rulemaking (PN & NPRM) on video relay service (VRS) compensation rates issued by the Federal Communications Commission (FCC or Commission) on May 12, 2009 and published in the Federal Register on May 21, 2009.[1] CSDVRS requests the Commission to approve the compensation rates proposed by the National Exchange Carriers Association (NECA) for video relay service (VRS) for the period of July 1, 2009 through June 30, 2010. Given that these rates were based on the tiered rate methodology established by the FCC in 2007,[2] CSDVRS does not believe any additional modification to the rate is appropriate at this time. CSDVRS also proposes that the Commission withdraw its Notice of Proposed Rulemaking seeking comment on the need to recalculate the

[1] *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket 03-123, Public Notice and Notice of Proposed Rulemaking (May 12, 2009); 74 Fed. Reg. 23815 (May 21, 2009).
[2] *See 2007 TRS Cost Recovery Methodology Order*, 22 FCC Rcd at 20160-65, ¶¶ 47-56.

VRS rates for 2009-10, and recommends instead that the FCC seek comment on the appropriate rate structures and methodology to be implemented after July 1, 2010.

II. The VRS Rates Are Appropriate as Proposed by NECA

On May 1, 2009, NECA submitted its annual payment formula for the Interstate TRS Fund (Fund) for July 1, 2009 through June 30, 2010.[3] The per-minute compensation rates that were proposed in this formula were based on the rate calculations established in the 2007 Rate Methodology Order (2007 Rate Order).[4] Specifically, for VRS, NECA proposed the following tiered rates for 2009-2010: $6.7025 for the first 50,000 monthly minutes, $6.4352 for monthly minutes between 50,001 and 500,000, and $6.2372 for monthly minutes in excess of 500,000.[5] CSDVRS agrees that these VRS compensation rates proposed by NECA are reasonably in line with the overall costs of VRS operations as provided by CSDVRS.

CSDVRS submits that a further reduction in the VRS rate at this late date would be particularly devastating to small providers in this industry, in that such a reduction would impede the ability of these providers to fulfill the functional equivalency mandates of the Communications Act and significantly diminish the ability of these companies to effectively compete for VRS customers. In a market that continues to overwhelmingly be dominated by a single VRS provider, any action that further impedes competition should be avoided.

In November 2007, after more than a year of painstaking deliberations, the FCC established a tiered VRS compensation rate that would hold steady for a period of three years

[3] *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate (May 1, 2009).
[4] Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 (Nov. 19, 2007)(2007 Rate Order).
[5] PN and NPRM at ¶8.

(2007-2010). At that time, the Commission asserted its interest in adopting a predictable rate structure for VRS providers that would presumably ensure the sustained availability of VRS for deaf and hard of hearing users.[6] This rate methodology, especially the predictability afforded by the decision to keep the same rates consistent for a few years, has had many benefits, especially for smaller providers such as CSDVRS. Specifically, the stability in rates has allowed CSDVRS and other providers to effectively compete in an industry historically dominated by a single provider, as well as to innovate in ways that can best serve VRS consumers. For example, providers have relied on the consistency of these rates to implement, or develop plans to implement, new technological initiatives that include improved platforms for enhanced VRS services, improved consumer confidence, and automated conversation session tracking to ensure the integrity of the Fund. A sudden slashing of the rate at this point would have the effect of stifling technological growth and would likely contribute to a downgrade in the quality and availability of VRS, especially by smaller providers who cannot benefit from economies of scale.

Finally, the current rate methodology has allowed providers to adequately and appropriately staff their companies with qualified video interpreters (VIs). All providers are keenly aware that the salaries of VIs who have the necessary qualifications to provide VRS are steadily on the rise. Indeed, the U.S. Department of Labor confirms that specialized interpreters can earn more than $100,000 annually.[7] An unexpected reduction in the VRS rate would impede the ability of providers to pay appropriate wages to their qualified interpreters. This would have an especially hard impact on smaller providers, who need to compete for the best interpreters to stay in the industry.

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[6] In fact, throughout the 2007 Rate Order, the Commission emphasized the importance of having predictable rates. See e.g., 2007 Rate Order at ¶¶ 11, 66.

[7] *See e.g., Occupational Outlook Handbook, 2008-2009 Ed.*, Bureau of Labor Statistics, U.S. Department of Labor (2008).

The bottom line is that in November 2007, the FCC made a promise to VRS companies and consumers not to change the VRS rates for three years. Relying on that promise, small VRS providers crafted their annual budgets under the implicit and express understanding that the rate would not fluctuate more than .5% per annum in the three-year period.[8] A sudden and drastic cut to the rate other than the normative reduction proposed by NECA would seriously and adversely affect these providers, cause potential disruptions in their services, and ultimately undermine the quality of VRS provided by these companies to deaf consumers. The three-year plan has provided a predictable formula upon which small VRS providers have soundly planned their annual budgets, and has allowed these providers to offer competitive services that promote the mandate of functional equivalency. For the FCC to renege on this three year commitment would not only seriously threaten competition in the VRS industry, but if done impulsively, could undermine telecommunications access for deaf consumers.

The Commission seeks comment in the NPRM on whether providers should be reimbursed according to their "actual costs" for this final year of the three year rate plan.[9] However, the FCC cannot make this determination without first deciding *just what are* allowable costs deemed compensable by NECA. Indeed, nearly all of the rate proceedings that took place prior to the 2007 Rate Order left open a plethora of questions as to what constitutes these permissible costs. For example, the extent to which the FCC will permit compensation for research and development, as well as marketing and outreach, were never fully resolved. Basing the VRS rate on arbitrarily determined "actual" costs – and doing so in a rush to judgment without careful consideration of the impact on VRS quality and industry competition – could

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[8] *See* 2007 Rate Order at ¶ 47.
[9] PN & NPRM at ¶ 11.

result in denying legitimate expenses that are needed to achieve functional equivalency and preserve a competitive VRS marketplace.

III. The Commission Should Withdraw the Notice of Proposed Rulemaking and Open a New Rate Methodology Proceeding to Determine Rates Beginning July 2010

Based on the foregoing, a sudden reversal of the 2007 Rate Order's three-year tiered rate structure would not be equitable or reasonable at this time, and could have a particularly devastating impact on smaller VRS providers who are still struggling to secure a fair share of the VRS market. Accordingly, CSDVRS requests that the Commission approve NECA's proposed tiered rates for 2009-2010, withdraw its Notice of Proposed Rulemaking, and open a new proceeding that requests comment on the appropriate rate-setting methodology for the period commencing July 1, 2010. This will give the Commission, providers, common carriers, and consumers adequate time to assess the needs of the Fund and to address inconsistencies and/or inefficiencies in compensable costs.

Respectfully Submitted,

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