

**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)

**REPLY COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)¹ is pleased to provide these reply comments in response to the Commission’s NPRM. USTelecom members support the provision of telecommunications relay services (TRS) through their substantial contributions to the Interstate TRS Fund (Fund) and their provision of TRS services. USTelecom reiterates its support for the Video Relay Service (VRS) program, which is bringing to people whose primary language is American Sign Language the benefits of telecommunications services that are functionally equivalent to those enjoyed by people without hearing and speech disabilities. It is vital that the VRS program continue to provide these clear benefits to the deaf and hard of hearing community. Therefore the Commission must take steps to ensure that its stewardship of the Fund is executed with vigilance and that costs and benefits are rightly balanced.

In light of the concerns expressed by a number of sources, including the FCC’s own Inspector General² and a Congressional staff report³ suggesting that there may be significant

¹ USTelecom is the premier broadband trade association representing service providers and suppliers for the telecom industry. USTelecom represents companies offering a wide range of services across communications platforms, including voice, video and data over local exchange, long distance, wireless, Internet and cable services.

² See Office of the Inspector General Semi-Annual Report to Congress (revised) (Dec. 2008) at 13-15 (finding an increased risk that unreasonable, unallowable, unnecessary and inaccurate costs were considered in the rate used to reimburse providers from the TRS Fund’), available at http://www.fcc.gov/oig/SAR_Revised_12242008.pdf and Office of the Inspector General Semi-Annual Report to Congress (Dec. 2007) at 13 (stating that “procedures for

overpayments to VRS providers, the Commission appropriately raised the issue in its NPRM. USTelecom believes that these concerns make it urgent to reexamine the current rate methodology and to conclude a rulemaking with all deliberate speed. This sense of urgency must be maintained throughout the rulemaking process to fulfill the statutory mandate of ensuring that the Fund is operating as efficiently as possible.

USTelecom commends the effort to revise the rate methodology quickly. Getting a new methodology online by July 1, 2010, when the current mechanism is set to expire, is essential. But to meet even that goal, the Commission must begin now. There is much work to be done. As soon as possible, the Commission should issue a further notice of proposed rulemaking that provides a comprehensive framework for comment including the factors that the Commission believes should be considered in adopting a new rate methodology. Equally important, the Commission should set a schedule that will allow for unforeseen delays and provide ample time to complete a rulemaking and arrive at a new rate methodology that will be implemented on July 1, 2010. USTelecom commends the Commission for initiating this process now. The interests of the disability communities that benefit from VRS and the interests of all consumers, who ultimately pay for the Fund, must be balanced to come up with the right rate methodology that ensures that functional equivalency is achieved at a reasonable cost.

Congress carefully calibrated its goals in the TRS program to take into account the constituencies of VRS recipients and the consumers who fund the program when it set out the Commission's mandate:

setting accurate reimbursement rates for service are significant management challenges for the FCC"). available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278589A1.pdf (last visited on 7/16/2009).

³ See "Deception and Distrust: The Federal Communications Commission Under Chairman Kevin J. Martin," Majority Staff Report, Committee on Energy and Commerce, U.S. House of Representatives at 4 (Dec. 2008) available at http://energycommerce.house.gov/index.php?option=com_content&view=article&id=1456&catid=71&Itemid=58 (last visited on 7/17/2009).

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 available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.⁴

The statutory language links the provision of TRS to efficiency, ensuring that a balance is struck between providing functionally equivalent telecommunications services and maintaining a reasonable Fund size. Under the statute, TRS services should be provided “to the extent possible.”⁵ This phrase encompasses both the technological feasibility and the economic realities that are part and parcel of a sustainable VRS program. The TRS Fund is not unbounded; nor should it be deemed to offer unlimited revenue to reimburse a provider for every outlay related to VRS, no matter how extravagant. Moreover, not only must TRS be “efficient,” but the “nationwide communications service” must remain “efficient” while funding TRS. This ensures that the demands of the Fund do not erode the availability of reasonably priced communications services for the consumers who bear the costs of the Fund.

The statute also limits what consumers of interstate telecommunications services can be required to pay to cover “the costs caused by interstate telecommunications relay services.”⁶ The Commission has applied the statute to reimburse providers for their “reasonable costs.” 47 C.F.R. § 604(c)(5)(iii)(E). That requirement is complicated by the fact that there is no traditional “market” for relay services because the relay component of the service is free to end-users. Irrespective of whether the Commission chooses a market-based mechanism, incentive-

⁴ 47 U.S.C. § 225(b)(1).

⁵ *Id.*

⁶ 47 U.S.C. § 225(d)(3)(B).

based model or an historical cost-based rate methodology as the basis for reimbursement, the rate methodology should result in reimbursements only for “reasonable costs.”

Some commenters have suggested that part of the rate methodology rulemaking process should involve a determination as to what categories of reimbursement are allowable.⁷

USTelecom agrees. It is simply not credible to proceed otherwise. Clarifying allowable expenses will also serve to set realistic limits on reimbursements and incentivize efficiency.

Unless the Commission delineates the reimbursable categories as part of a rulemaking process, any Commission action to limit costs in a particular area could run the danger of appearing arbitrary and capricious.⁸ USTelecom suggests that the Commission also decide whether there should be a limitation on what can be claimed within any particular category to be considered “reasonable.” The Commission must exercise its stewardship by providing clarity in the rules and guidance to the Administrator of the Fund and to providers.

USTelecom also believes that outreach provides an important public benefit to all potential users of TRS, and that the Commission should institute an orderly method of conducting outreach through an independent provider to ensure that outreach is planned, consistent and targeted. Simply reimbursing all providers for any outreach costs without Commission planning, oversight and targeting runs significant risk of over-saturation in publicizing some forms of TRS and a lack of outreach on others.

⁷ See Comments of the Telecommunications for the Deaf and Hard of Hearing, Inc.; Association of Late-Deafened Adults, Inc.; National Association of the Deaf; Deaf and Hard of Hearing Consumer Advocacy Network; California Coalition of Agencies Serving the Deaf and Hard of Hearing; American Association of the Deaf-Blind; and Hearing Loss Association of America (June 26, 2009) at 9-13; *see also* Comments of Sorenson Communications Inc. (July 6, 2009) at ii..

⁸ See *Sorenson Communications, Inc. v. FCC*, Nos. 08-9503, 08-9507, 08-9545, 08-9547, 08-9550, 2009 WL 1561430 (10th Cir. June 4, 2009).

There have been numerous allegations that the program is riddled with fraud.⁹ The Commission must immediately step up its enforcement efforts to stamp out fraud, waste and abuse wherever it occurs. It has been suggested that the lack of clarity regarding what activities are reimbursable may be contributing to fraud in the VRS program.¹⁰ For example, in his comments, Ed Bosson provides a long list of questionable practices that he believes are substantially increasing the total minutes of use for which VRS providers are being reimbursed.¹¹ In light of these allegations, USTelecom suggests that there must be a baseline determination on whether these practices are reimbursable. If there is greater clarity on allowable reimbursements and what constituted legitimate minutes of use, it will help to eliminate the “manufactured minutes” which Bosson suggests account for a significant portion of the VRS minutes billed.¹² If “manufactured minutes” are a substantial portion of the minutes of use being billed, then rate calculations based on demand would be skewed. Moreover, lax oversight and generous

⁹ See Letter from the Directors of the National Association for State Relay Administration to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 2008)(detailing fraudulent schemes for claiming minutes of use); Comments and Petition for Declaratory Ruling of Sorenson Communications, Inc., CG Dkt. No. 03-123 pp. 1-9 and Exhibits A-C (April 24, 2009)(detailing various schemes for racking up minutes of use by providing free conferences for adults and free story readings to induce people with hearing disabilities to call in to the provider and passively listen to the material being offered); see also, Letter from Ed Bosson to Michael Copps (May 28, 2009) (on file in CG Docket No. 03-123) at 1 (*Bosson Letter*) (“[S]trong actions are needed from the Federal Communications Commission if VRS is to remain a viable public service.”).

¹⁰ Letter from Ruth Milkman, Counsel to Sorenson Communications, to Marlene H. Dortch, Secretary, FCC at 1 (Nov. 25, 2008).

¹¹ *Bosson Letter* at 2-3 (providing as examples of fraud: “VRS Provider(s) paying a person with hearing loss to make VRS calls to its own VRS call centers, with kickback payments tied to minutes incurred. Alternatively, persons with hearing loss are also paid by Providers on an hourly basis to place calls all day long to a pre-supplied list of phone numbers that provide information or news. Some providers pre-supply those callers with business numbers that have long wait times to connect to a live person. VRS providers forcing its management personnel who have hearing loss and can sign to make multiple video conference calls every day (even though they can have meetings in conference rooms and use their own interpreters instead of utilizing VRS). VRS provider creating a to-do list for selected staff to make irrelevant and pointless VRS calls. VRS provider contract with a telemarketer to make their marketing/sales calls through VRS provider in return for some kickback funds. VRS provider advertising on a website for phone-in classes where persons with hearing loss can call and “listen” to lectures using VRS. VRS provider using its deaf salespersons to make VRS calls where they based. Return of Investment on number of VRS minutes, not based on the sales hits”).

¹² *Id.* at 2-3 and n. 3 (Bosson defines “manufactured minutes” as “reimbursable minutes created for the sole purpose of artificially ramping up VRS minutes with calls placed at the direction of (or designed by) VRS providers”).

payments would also encourage less reputable operators to enter the pool of VRS providers, creating further distortions in the system.¹³

As steward of the VRS program, the Commission has the statutory mandate to balance facilitating the provision of functionally equivalent telecommunications services with running the VRS program in the most efficient manner possible. By issuing a thoughtful NPRM that explores and helps to resolve these issues, the Commission can discharge its responsibilities in a timely and equitable manner. USTelecom pledges to work with the Commission and with all other stakeholders to bring this rulemaking to closure well before the deadline for a new rate methodology in 2010.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



By: _____

Genie Barton
Jonathan Banks

Its Attorneys

607 14th Street, NW, Suite 400
Washington, D.C. 20005
202-326-7300

July 20, 2009

¹³ For example, uncertified providers are providing VRS by teaming with certified providers to whom they pay a fee to process their minutes of use. The Commission lacks direct control over such providers to ensure the quality of the service they are providing. *See, e.g.*, Petition for Rulemaking of GoAmerica, Inc., CG Dkt. No. 03-123 (Jan. 23, 2009)(Purple Petition) (suggesting that “the ‘back door has been left open’ for unqualified and uncertified entities to act as relay service providers without adequate oversight through so-called ‘white labeling.’ This is the process where entities that are not certified relay providers offer Internet-based relay (generally VRS), and bill for the service through certified providers. . . .The existence of this ‘grey market’ in Internet-based relay inherently poses risks to the integrity of the relay program.”)