

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)
)
Telecommunications Services) CG Docket No. 03-123
For Individuals with Hearing and Speech) CC Docket No. 98-67
Disabilities, and the Americans with) WC Docket No. 05-196
Disabilities Act)
_____)

PETITION FOR EXPEDITED RECONSIDERATION

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TABLE OF CONTENTS

SUMMARY.....	i
I. Introduction.....	1
II. The Public Notice Contains a Rule Change that Requires Notice and Comment Procedures.....	2
III. The New Restriction Significantly Impedes VRS Interoperability.....	5
IV. The Notice’s Action Undermines Functional Equivalency.....	10
A. Elimination of Toll Free Numbers for Point-to-Point Calls.....	11
B. Elimination of Toll Free Numbers for Dial-Around Calls.....	13
C. No Selection of 800 Provider.....	15
D. Requiring Business to Acquire New Numbers.....	15
V. The FCC’s Ruling May Negatively Impact Consumer Choice at Public Phones.....	16
VI. Conclusion.....	17

SUMMARY

On August 11, 2009, the FCC issued a Public Notice requiring all Internet-based (IP-based) toll free numbers used for IP-based telecommunications relay services (TRS) to be directed to each user's ten-digit geographic number in the North American Numbering Plan's 800 database in lieu of the national iTRS based TRS numbering database. This FCC action constitutes a rule change that was not appropriately promulgated through notice and comment procedures required by the Administrative Procedure Act.

If allowed to stand, the substantive change adopted in the August 11 Notice will (1) violate principles of video relay service interoperability; (2) undermine the Communications Act's mandates for functionally equivalent relay service by treating deaf users of toll free numbers different than hearing users of these numbers; and (3) impede VRS competition by perpetuating the near monopoly status of the dominant VRS provider. This is because the FCC's action will have the effect of eliminating the ability of deaf consumers and deaf-owned businesses to receive both 800 point-to-point calls between VRS users and incoming calls from hearing people when these calls are made through a provider other than these users' default providers. The effect of the rule change will be that VRS consumers will have incentives to use only the dominant provider, because this provider will have the largest universe of users to make and receive point-to-point calls. The ruling will also negatively impact the ability of VRS providers to compete for calls at public phones by removing 800 numbers from the iTRS database that some providers routinely have used to offer a dial-around option. Finally, it will force incoming hearing callers to use the provider selected by the 800 number user to handle their VRS calls, in violation of principles of interoperability.

Over the past several years, thousands of VRS users have come to rely on toll free numbers for their businesses. The FCC's action violates functional equivalency by eliminating the ability of these businesses to effectively compete with their hearing counterparts through a single 800 number that can be used by anyone wishing to call them. Such businesses will now be forced to either (1) obtain multiple numbers (800 numbers for accessing interpreters through alternative providers and ten-digit local numbers, to which those calls would be connected) or change their 800 number to a new one given out by their default provider. In either case, the businesses will imperil sustaining the customer base that they have worked so hard to develop.

To prevent this from occurring, the Commission should immediately withdraw its August 11 Public Notice, and continue allowing toll free numbers to be entered into the iTRS central database so that IP-based TRS consumers may continue using these numbers in a manner that is functionally equivalent to the way that voice telephone consumers use them. CSDVRS urges expedited action on this pleading given the imminence of the pending rule change.

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PETITION FOR EXPEDITED RECONSIDERATION

I. Introduction

CSDVRS, LLC, by and through counsel and pursuant to 47 C.F.R. §1.429, hereby submits this Petition for Reconsideration of the Public Notice (“Notice”) issued by the Federal Communications Commission (“FCC” or “Commission”) on August 11, 2009.¹ The FCC’s Notice requires, as of November 12, 2009, that all Internet-based (IP-based) toll free numbers used for IP-based telecommunications relay services (TRS) be directed to each user’s ten-digit geographic number in the Service Management System (SMS)/800 database, i.e, the centralized database for all toll free numbers in the North American Numbering Plan (NANP), rather than to the IP-based TRS numbering database used for mapping IP-based TRS 10-digit numbers to user IP addresses. As the Notice indicates, this change would eliminate the use of toll free dialing by deaf individuals who make point-to-point calls to one another and by hearing individuals who wish to dial-around to an 800 number, unless those calls are made via the user’s default provider. In both of these instances, calls will have to be directed to the user’s ten-digit geographic number

¹ Clarification Regarding the Use of Toll Free Numbers for Internet-Based *Telecommunications Relay Services*, CG Docket 03-123, CC Docket No. 98-67, WC Docket No. 05-196, DA 09-1787 (August 11, 2009) (“Notice”).

“because the user’s toll free number will not point to the user’s ten-digit number in the Internet-based TRS numbering directory.”²

CSDVRS submits that the action taken in this Notice is not a mere clarification of an existing FCC requirement, as the FCC claims it to be, but rather a rule change that the FCC has promulgated without notice and comment required by the Administrative Procedure Act.³ CSDVRS further submits that if allowed to stand, the substantive change adopted in the Notice would conflict with the Commission’s goals of achieving video relay service (VRS) interoperability, undermine the Communications Act’s functional equivalency mandate, and impede VRS competition in a market that continues to be predominantly controlled by a single VRS provider.

II. The Public Notice Contains a Rule Change that Requires Notice and Comment Procedures

Although the FCC has couched its recent decision to prohibit toll free numbers from being entered into the iTRS national database as a “clarification” and publicized such decision via a public notice, the FCC’s action amounts to a rule change that should have been subject to the notice and comment procedures required by the Administrative Procedure Act (APA).⁴

In its June Numbering Order, the FCC acknowledged that certain IP-based TRS users were using toll free numbers, and requested feedback from the public on the use of these

² Notice at 3.

³ 5 U.S.C. §553(b) states that “[g]eneral notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law.” Section 553(c) requires agencies to give the opportunity for interested parties to comment on those rules.

⁴ See generally, Sprint Corporation v. FCC, 315 F. 3rd 369 (DC Cir. 2003), overturning a Commission order for failure to provide notice to the public.

numbers, including any impact that they would have on 9-1-1 service.⁵ The comments received in response from both consumer groups and providers generally agreed that consumers should be able to continue having the option of using 800 numbers as an alternative to geographically appropriate numbers, so long as these numbers did not interfere with the provision of 9-1-1 access.⁶ Based on these submissions, the Commission ruled, in December 2008, that anyone with a toll free number would be permitted to continue using that number, so long as the number was directed to a ten-digit, geographically appropriate number assigned to that consumer.⁷ This routing requirement was put in place to ensure that all emergency calls would be directed automatically to appropriate PSAPs. The Commission added that the costs associated with obtaining and using these toll free numbers would not be compensable from the Interstate TRS Fund.⁸

No other restrictions were placed on the use of toll free numbers in the December Numbering Order. Accordingly, as written and adopted, that order would allow any deaf person to continue using these numbers (1) via relay or point-to-point dialing and (2) via the user's default provider or an alternative provider accessed by dialing around that provider. Since issuance of the 800 number ruling in December 2008, no petition has been filed seeking to overturn or modify its content, no reported ex parte presentations have been made seeking its

⁵ “Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,” *Report and Order and Further Notice of Proposed Rulemaking*, CG Docket No. 03-123, WC Docket No. 05-196, FCC 08-151, 23 FCC Rcd 11591, ¶111 (June 24, 2008) (“June Numbering Order”).

⁶ See e.g., *GoAmerica Further Notice Reply* at 6; *TDI Coalition Further Notice Comments* at ii–iii, 8–10; *Sorenson Further Notice Comments* at 9.

⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, *Report and Order and Further Notice of Proposed Rulemaking*, CG Docket. No. 03-123, WC Docket No. 05-196, FCC 08-275 (December 19, 2008) (“December Numbering Order”) at ¶32.

⁸ *Id.* at ¶¶53.

clarification, and no public discussions have been initiated by the FCC to suggest any problem with the rule's utility or application. Indeed there is nothing in the public record to suggest that the Commission was ever contemplating a revision to its 800 number policy, or to place interested stakeholders on notice of any Commission plans to change its ruling before the FCC unexpectedly and on its own motion took this action on August 11, 2009. Even worse, the Commission undertook this change without any assessment of the impact that it would have on consumers or providers, and scarcely articulated a rationale for its action, other than noting its general interest in reducing the use of toll free numbers and unsupported statements that a revision to this rule is necessary to achieve functional equivalency.⁹

Nor is the substantive change directed by the Notice, by any means, innocuous. As discussed more fully below, the restrictions now imposed on the use of toll free numbers will significantly alter the manner in which VRS consumers may use toll free numbers to the consumers' detriment, and render useless many of the benefits these individuals have been able to derive from these numbers. The FCC's action will be especially damaging to deaf-owned businesses that have come to rely upon these numbers for their sales and marketing. Significantly, by effectively denying people who are deaf access to toll free numbers to the same extent that hearing people have such access, the FCC's new edict will violate principles of functional equivalency.

⁹ For example, the Commission has articulated no safety concerns associated with its rule change, nor could it, given the FCC's requirement for all CPE distributed by VRS providers to be associated with a geographically correct 10-digit local number. Nor are there any cost-based reasons for disallowing 800 numbers to be provisioned to the central iTRS database. The costs associated with obtaining ten-digit geographically appropriate numbers are significantly higher than any costs associated with toll-free numbers. In CSDVRS' experience, the initial cost of purchasing a local number is \$10-15, with a monthly recurring of \$1-2. By contrast, an 800 number initially costs \$0, with a recurring monthly cost of \$0.1.

At a minimum, the Commission is bound by the APA to implement notice and comment procedures before making such a substantive alteration to its rules.¹⁰ As more fully explored below, however, even with notice and comment, the change contained in the Commission's Notice would not withstand judicial scrutiny because it unfairly treats VRS users differently than voice telephone users, in violation of Section 225 of the Communications Act.

III. The New Restriction Significantly Impedes VRS Interoperability

Although the action taken in the FCC's Notice will permit IP-based users to continue being assigned 800 numbers, an individual will only be able to continue receiving calls to those numbers from hearing people if those incoming calls are routed through the user's default provider. Such action flies in the face of the FCC's 2006 Declaratory Ruling on interoperability, in which the Commission ruled against provider practices that resulted in blocking calls to and from other VRS providers.¹¹ That ruling made unequivocally clear that all VRS consumers needed to be able to place a VRS call through any VRS provider, and that all VRS providers were required to receive calls from, and make calls to, any VRS consumer.¹²

Among other things, the FCC's Interoperability Ruling was a response to aggressive marketing practices by the dominant provider, which were keeping other providers from effectively competing in the VRS market. Prior to the ruling, the dominant provider had

¹⁰ Although the Commission is permitted to act on its own motion to "set aside any action made or taken by it within 30 days from the date of public notice of such action . . .", a far longer period of time – eight months – have passed between the release of the December Numbering Order and the release of the Commission's Notice. *See* 47 C.F.R. § 1.108 (2001). And while there is some judicial doctrine suggesting that this thirty-day deadline may be tolled by pending motions for reconsideration, as noted above, no such petitions have been filed with respect to this issue. *Sprint Corporation v. FCC*, 315 F. 3rd 369 (DC Cir. 2003), citing *Central Florida Enterprises v. FCC*, 598 F.2d 37, 48 n.51 (D.C. Cir. 1978).

¹¹ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Declaratory Ruling and Further Notice of Proposed Rulemaking, CG Docket No. 03-123, FCC 06-57 (May 9, 2006) ("Interoperability Ruling").

¹² *Id.* at ¶34.

captured its share of the market by using a marketing scheme that allowed its customers to communicate with one another and with it more easily than they were able to communicate using other VRS providers.¹³ It did this by using a closed network and lightweight directory access protocol (LDAP) that blocked VRS calls on all other provider networks and only allowed point-to-point calls between video devices registered to that network.¹⁴ Notwithstanding repeated attempts to get the FCC to strike down these restrictive practices, it took until 2006, two to three years after these practices were first brought to the FCC's attention, for the Commission to issue its Interoperability Ruling. That period provided the necessary time for the dominant provider to build its relay market to a near monopoly status, which it achieved by enticing consumers to acquire free video devices that could only be used for point-to-point communication within the provider's closed network. By steadily and effectively broadening the universe of such individuals, and keeping this entire universe away from the reach of its competitors, the dominant provider created a "network effect" phenomenon that it leveraged to drive up its market position, a position that remains intact. Indeed, the dominant network at the time of the interoperability ruling remains the dominant provider now.¹⁵

When the Commission finally banned restrictive blocking practices in 2006, it declared such practices to be "inconsistent with the functional equivalency mandate, the public interest,

¹³ California Coalition of Agencies Serving the Deaf and Hard of Hearing, Petition for Declaratory Ruling on Interoperability, CC Docket No. 98-67, CG Docket No. 03-123 (filed February 15, 2005) ("Interoperability Petition") at 3.

¹⁴ The LDAP resided on the provider's server for its equipment only and had an "authentication" service that only allowed access to authorized users.

¹⁵ At the time that consumers first filed their petition for interoperability in 2005, it was estimated that the dominance enjoyed by this one provider hovered around 70 percent of the VRS market. Instead of getting smaller, this dominance is now estimated to be approximately 80 percent.

and the TRS regime as intended by Congress.”¹⁶ It stated that if a consumer were forced to become dependent on a single provider, and there was a long wait time, the call would effectively be blocked.¹⁷

The FCC further concluded that call blocking could not be permitted because this practice “adversely affect[ed] the ability of hearing person[s] to successfully initiate VRS calls.” Specifically, the Commission explained that:

If a hearing person is limited to calling a deaf person through one provider’s service, the choices of the hearing person are constrained by an arrangement to which he or she is not a party and likely does not even know about. . . . This not only discourages VRS calls initiated by hearing persons, but again is inconsistent with TRS as a service that must be available to give persons with hearing and speech disabilities access to the telephone system, regardless whether the person with a disability or the voice telephone user initiates the call.¹⁸

The need for interoperability in the VRS market for both deaf and hearing VRS users remains as strong now as it did in 2006, when this policy was first adopted by the FCC. Indeed, because, under the ten-digit numbering system, VRS consumers are effectively being forced to make their default provider the same company that has supplied their video equipment, and because the dominant provider distributed videophones to the overwhelming majority of VRS users before other providers were in a position to do so, the vast majority of VRS consumers have selected the dominant provider as their default provider. This is likely to remain the case for the foreseeable future because nothing in the Commission’s numbering orders or pending porting requirement would enable consumers to port these videophones away from the dominant provider in a manner that allows them to retain all of the features of these devices. As noted in

¹⁶ Interoperability Ruling at ¶29.

¹⁷ *Id.* at ¶31.

¹⁸ *Id.* at ¶33.

various industry and consumer pleadings on this point, without the ability to enjoy all of the features of a video device after it is ported, no one is going to want to port that device.¹⁹

The only way for other providers to effectively compete and enable consumers to choose their services for inbound hearing calls has been to purchase and distribute 800 or ten digit numbers, and suggest to the recipients of these numbers that they dial around to their relay services. The FCC has recognized the importance of allowing such “dial-around” calls as a means of ensuring provider interoperability. Specifically, in its June Numbering Order, the FCC stated: “[I]n keeping with the *Interoperability Declaratory Ruling and FNPRM*, calls made to and from an Internet-based TRS user will be handled by the default provider, unless the calling Internet-based TRS user specifically “dials around” in order to utilize an alternative provider.” A footnote to that declaration emphasized the importance of safeguarding such interoperability: “Although VRS and IP Relay providers will be the default providers for Internet-based TRS users under this *Order*, nothing in this *Order* detracts from a TRS provider’s interoperability obligations.”²⁰

Notwithstanding such clear affirmation of the need for interoperability, the Commission’s new restriction on toll free numbers will have the effect of impeding such consumer choice and perpetuating – if not exacerbating – the dominant provider’s position in the VRS market – both

¹⁹ See, e.g., Petition for Rulemaking on VRS Equipment Porting, filed by CSDVRS, LLC, Snap Telecommunications, Sprint-Nextel, and Viable (April 14, 2009); Joint Comments of 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 (May 11, 2009).

²⁰ June Numbering Order at ¶43, citing *Interoperability Declaratory Ruling and FNPRM*, 21 FCC Rcd 5442. See also *Id.* at ¶61, in which the FCC made clear that “every Internet-based TRS provider must ensure that all CPE they have issued, leased, or otherwise provided to Internet-based TRS users delivers routing information or other information only to the user’s default provider, *except as is necessary to complete or receive ‘dial around’ calls on a case-by-case basis*” (emphasis added), codified at 47 C.F.R. §64.611(e)(1).

by denying the ability to dial around to 800 numbers and by enabling point-to-point dialing to 800 numbers only when using the default provider. Indeed, it is important for the Commission to understand that while the new ruling will eliminate point-to-point dialing of 800 numbers for callers using the toll free number through a provider other than the user's default provider, in fact, these numbers will continue to work with one's default provider – through routing within that provider's internal database of all of its customers. The impact of this arrangement will be similar to that of the dominant provider's original closed LDAP – an exclusive system whereby callers can make calls to each other within the closed network of that provider, but not between individuals using two different providers. If this occurs, businesses using toll free numbers will be more likely to choose the dominant provider because that provider will have the largest possible universe of users who could dial their 800 numbers. In this manner, the FCC will be contributing to the same type of network effects that helped to preserve the dominant provider's market control for so long – in contravention of the goals of using a NANP-based numbering system, which the Commission adopted to eradicate proxy telephone numbers that were only usable within the dominant provider's network.

Over the past several years, thousands of VRS consumers have come to rely on toll free numbers given out by alternative (non-default) providers for both business and personal calls.²¹ Yet, under the FCC's new ruling, the only way that these individuals will be able to receive toll free calls in the future will be to have these calls transmitted through their default provider, which, in approximately 80 percent of the time, will again be the dominant provider. In essence,

²¹ CSDVRS has distributed over 20,000 toll-free numbers to deaf businesses and consumers. The vast majority of these deaf consumers have videophones from the dominant provider. Even when these customers select the dominant provider as the default provider, they may continue to dial-around using CSDVRS. The primary reason for having to process calls in this fashion is that the dominant provider removes the enhanced features from its video devices when a consumer selects an alternative provider as his or her default provider.

then, what the Notice does is to provide added incentive for these individuals to stay with that dominant provider (which already has the advantage of having captured these individuals through the distribution of exclusive, feature-rich equipment that now cannot be ported to other networks), so that they can continue using 800 numbers for their incoming and point-to-point calls. This not only is anti-competitive; it contravenes the FCC's interoperability ruling and all subsequent rulings protecting principles of interoperability, including the June and December 2008 Numbering Orders.

Consumers who brought the petition on interoperability had urged the FCC not to "allow the NECA fund, which is supported by the entire population of interstate telephone subscribers and administered by the federal government, to be used to subsidize such restrictive practices."²² CSDVRS now urges the Commission not to allow the new restriction on toll free numbers to accomplish this same result.

IV. The Notice's Action Undermines Functional Equivalency

Over the past several years, large numbers of deaf entrepreneurs who operate small businesses – from Mary Kay, Amway, and Tupperware to lawn, plumbing, accounting, and financial services – have come to rely on the toll free numbers distributed by VRS providers to market their services and receive calls into those businesses. In tough economic times, these toll free numbers have helped to keep these businesses afloat – offering them an easy, attractive way to receive calls from both deaf and hearing customers. But the FCC's new ruling threatens the economic viability of these businesses and discriminates against their ability to compete with hearing businesses that have toll free numbers, by eliminating their ability to use toll free numbers for both point-to-point (when not using the default provider) and dial-around calls.

²² Interoperability Petition at v-vi.

The FCC claims that its decision to no longer allow toll free numbers to be entered into the central iTRS database is functionally equivalent in that “Internet-based TRS users can acquire and use toll free numbers in a manner that is comparable to the manner in which voice telephone users can acquire and use such numbers.”²³ While acknowledging that its new ruling will force callers wishing to place point-to-point and dial-around calls to dial a VRS user’s ten digit number, the FCC goes on to justify its decision because (1) point-to-point calls over the Internet are not subject to toll charges and (2) dial-around calls can be placed by dialing the toll free number of the alternative provider. As shown below, these justifications cannot withstand analysis. An action that nullifies so many of the benefits of toll free numbers for deaf consumers cannot be deemed to be functionally equivalent.²⁴

A. Elimination of Toll Free Numbers for Point-to-Point Calls

The effect of the FCC’s decision – which will be to require point-to-point calls to businesses to be directed only to geographically appropriate ten-digit numbers when not using one’s default provider – treats deaf business owners differently than hearing business owners. Hearing-owned businesses may have a single toll free phone number by which all of their customers can reach them. If the Commission prohibits use of the 800 number in the iTRS database, this will effectively remove the ability of business owners to advertise the same 800 number to all of their deaf customers that they are marketing to their hearing customers. Rather, those 800 numbers will be usable only by other individuals who also use the deaf business

²³ Notice at 2-3.

²⁴ The Commission is under an obligation to ensure that TRS is provided “in a manner that is functionally equivalent to the ability of an individual who does not have a [hearing or speech disability] to communicate using voice communication services.” 47 U.S.C. §225(a)(3)(c), and has abided by principles of functional equivalency throughout its orders. See June Numbering order at ¶15, citing *2004 TRS Report & Order*, 19 FCC Rcd at 12547–48, ¶189; *2000 TRS Order*, 15 FCC Rcd at 5152, ¶23.

owner's default provider. Deaf entrepreneurs, like hearing entrepreneurs, should be permitted to advertise their businesses to everyone with one dedicated toll free number to achieve functional equivalency.

This is not the first time that the FCC has had to consider the merits of point-to-point dialing by VRS users. When last addressing the extent to which safeguards were needed to preserve such dialing, the Commission concluded that “any loss of such functionality is simply not acceptable.”²⁵ Specifically, in the December Numbering Order, the Commission unequivocally confirmed provider responsibilities to handle all point-to-point calls between video communication users:

[P]oint-to-point services . . . are more rapid in that they involve direct, rather than interpreted, communication; they are more efficient in that they do not trigger the costs involved with interpretation or unnecessary routing; and they increase the utility of the Nation's telephone system in that they provide direct communication.²⁶

The Commission went on to explain that preserving point-to-point dialing was not only required to achieve the objectives of section 225, which requires functionally equivalent TRS, but also section 255, which requires telecommunications manufacturers and service providers to make their equipment and services accessible to and usable by people with disabilities.²⁷ These sections, the FCC explained, “contain clear statements from Congress that it intended persons with disabilities to have the fullest possible access to the Nation's communications system. Requiring point-to-point communications capabilities serves these goals.”²⁸ To now pull the rug

²⁵ December Numbering Order at ¶65.

²⁶ *Id.* at ¶67.

²⁷ 47 U.S.C. § 255(b).

²⁸ December Order at ¶67. The Commission added that section 1 of the Act, requiring the FCC to make available “so far as possible, to *all* the people of the United States . . . a rapid, efficient, Nation-wide . . . wire and radio communications service” also would be met by facilitating direct communication via point-to-point calls. *Id.*, citing 47 U.S.C. §151. The Commission relied on

out from businesses that are trying to use toll free numbers for such point-to-point dialing could not, by any stretch of the imagination, be considered functionally equivalent.

B. Elimination of Toll Free Numbers for Dial-Around Calls

As noted above, the FCC has suggested that individuals who still wish to receive dial-around calls via their 800 numbers may still do so by having callers dial the toll free numbers of their alternative (non-default) providers. But this suggestion – that businesses relinquish their unique 800 numbers (e.g., 1-800-PLUMBER) and instead rely on a common 800 number supplied by their VRS providers – eviscerates the purpose of toll free numbers. An example can illustrate this point:

Suppose there are two flower shops, located in neighboring communities. Flower Shop A is owned by a hearing person and secures the toll free number: 800-NY-BLOOM. Flower Shop B is owned by a deaf person and secures the toll free number: 800-NJ-BLOOM. Because the businesses are located across the Hudson River from one another, their clientele overlaps. Each spends significant time and resources advertising these “vanity” toll free numbers for their sales and marketing – in phone directories, on their websites, on their business cards, in newspaper supplements, and on their delivery trucks. The beauty of each of their numbers prior to implementation of the Notice is that they can be called by anyone, at anytime, regardless of the telephone providers that their incoming callers choose to use. This is despite the fact that Flower Shop B is using a video device from its default provider, but obtained its 800 number from an alternative VRS provider.

Should the FCC’s Notice go into effect, if Flower Shop B it wants to continue receiving calls from its preferred provider (yet continue to use its existing video phone with all its

its ancillary jurisdiction under these three sections – 1, 225, 255 – to require all default providers to ensure that their videophones can make point-to-point calls after a change in default provider.

features), it must publish a new 800 number for hearing callers to dial (i.e., its preferred VRS provider's 800 number) and then have them ask that provider's video interpreter (VI) to dial the business's geographically appropriate ten digit number. For example, if the business chooses to use CSDVRS as its preferred provider, on its website, on its business cards, in newspaper supplements, and on its trucks, it will have to list the following:

- 888-888-1116 – for hearing people to reach a CSDVRS interpreter
- 10-digit number – for those same hearing people to give to that interpreter, who will then connect them with the flower business.

Not only will redoing all of its advertising materials force Flower Shop B to incur considerable time and expense, the forced change in phone numbers and the complications associated with directing certain people to dial two numbers through a VI may be just enough to drive those customers to Flower Shop B's competitor, who still has one easy, toll free number to remember. This defeats one of the main purposes of the FCC's new numbering system: to facilitate dialing of incoming calls so that hearing people are more likely to use relay services to contact people who are deaf, hard of hearing, or speech disabled. Again, this is not functional equivalency.

It is also incorrect for the FCC to assume that the Notice achieves functional equivalency under the theory that hearing people are also denied the ability to dial around to a different provider than the one selected by a business when they make 800 calls to that business. In fact, in every call made over the PSTN, there are *two* providers handling the switching needed to complete that call, the one chosen by the caller and the one used by the entity being called. When making a call to an 800 number, hearing people may *always* select their own carrier – e.g., Sprint, AT&T or Verizon – regardless of the carrier chosen by the party they are calling. Thus, in the above scenario, while a hearing person could not dial around the provider that gave Flower

Shop A its 800 number, such individual does not need to be concerned about which provider he, himself is using in order to ensure that his toll free calls will reach their business destination. By contrast, under the FCC's new ruling, if a hearing person prefers to use ABC-VRS provider to call the 800 number of Flower Shop B and that business has chosen XYZ-VRS provider to be its default provider (or has been forced to choose that provider to keep its equipment), the call will not go through. Rather, the hearing person will have to figure out that he first has to dial 888-888-1116 to reach a VI, and then give the VI the ten digit number of Flower Shop B to place his order. Discouraged, the hearing person will go back to the phone directory and find the next closest flower delivery shop, which happens to be 800-NY-BLOOM.²⁹

C. No Consumer Choice in the Selection of 800 Providers

Hearing-owned businesses are able to select 800 number services from multiple telephone carriers – i.e., they are not locked into the same wireline or cell phone provider that they have chosen to provide their telephone service. Forcing deaf-owned businesses to use the same provider for both their 800 and local ten digit number service abridges the freedom of these businesses to choose a separate provider for 800 service, another way in which the FCC's action conflicts with mandates of functional equivalency.

D. Requiring Business to Acquire New Numbers

Toll free numbers are owned by providers, not consumers. The only way for consumers and businesses to keep receiving calls via the original toll free number that they received from an alternative (non-default) provider would be for the VRS provider who had supplied those numbers to continue paying for switched 800 service that will connect those numbers to the

²⁹ One way for the FCC to preserve inbound dial-around calls in this instance would be to allow multiple local default numbers per videophone. In the case above, an alternative provider could then provide the business with a second number for its device, and thereby continue routing its 800 number calls through its service.

users' local ten-digit numbers. Yet reality dictates that no provider could or would continue supporting 800 switched service in this situation, because it would mean that the provider would be funding and providing engineering support for a toll free service to facilitate VRS calls that are directed to its competitor. The more likely scenario will be that the original provider that owns the business's 800 number will have to terminate that number.³⁰ Thus, if the Notice goes into effect, the only way the business will be able to continue using a single, vanity 800 number (1-800-NJ-BLOOM, in the example above) for all incoming relay calls would be to change its toll free number to one supplied by the distributor of its video equipment. The forced change in numbers will cause many deaf entrepreneurs to lose much of their customer base that they worked so hard to build up.³¹

V. The FCC's Ruling May Negatively Impact Consumer Choice at Public Phones

Prior to ten-digit numbering and the implementation of the national iTRS central numbering database, in order to dial around to an alternative provider on a private or public videophone, an individual would have to use the provider's URL (e.g., ZVRS.TV or CSDVRS.TV). With the advent of ten digit numbering, however, several VRS providers, including CSDVRS, have marketed toll-free numbers for consumers to dial around to their services; the toll-free number connects the user directly to the alternative providers' interpreters. With respect to CSDVRS, the use of a single toll free number for both deaf and hearing people

³⁰ This is particularly unfortunate if the deaf business has been advertising this number for years. Of course, a way to avoid this would be to require the dominant provider to port the enhanced features on its video device when a consumer chooses an alternate default provider. Then, providers who gave out the 800 numbers could give consumers the option of using them as their default providers without fear of losing enhanced features.

³¹ This would also compel the commercial venture to incur additional costs associated with the change in such phone numbers, including costs for new business cards, stationery, and other marketing and sales materials.

for this purpose (888-888-1116) has simplified dialing for all VRS consumers, as this number is the same regardless of whether calls are made via the Internet or the PSTN.

Neustar has indicated that as of November 12, it will delete *all* 800 numbers from the iTRS database. If these toll free *provider* numbers are removed, a commonly used method of dialing around to a provider of one's choice will be lost. This will not only create a hardship for providers who have expended resources marketing these numbers, it will again help to sustain the dominance of the single largest provider, because it is that provider that has been in the best financial position to equip most public locations, such as universities, K-12 schools and libraries, with its video equipment.

VI. Conclusion

The FCC has effectuated a rule change that will, if allowed to stand, (1) substantially reduce the utility of toll free dialing for people who are deaf in violation of principles of functional equivalency; (2) limit consumer choice in violation of the Commission's Interoperability Ruling; and (3) have the effect of expanding the near-monopolistic control of the VRS market by the dominant VRS provider. Even worse, the FCC has taken this action under the guise of a "clarification" without following proper APA notice and comment procedures.

The Commission's efforts to promote the use of local ten-digit numbers over toll free numbers should not be taken at the expense of functional equivalency, consumer choice and competition. Moreover, any change to the toll-free number rules must be undertaken through proper administrative agency processes, and not through agency fiat. In light of the foregoing, CSDVRS urges the Commission to immediately withdraw the Public Notice issued on August 11, 2009, and allow toll free numbers to be entered into the iTRS central database so that IP-based TRS consumers may continue using these numbers in a manner that is functionally

equivalent to the manner in which voice telephone consumers can use them. Given that the FCC's numbering rulings are scheduled to go into full effect by November 12th and it will take Neustar time to prepare the iTRS database before that time, it is critical that the FCC issue a ruling on this petition on an expedited basis. If the Commission fails to do so, thousands of individuals who have come to rely on toll free numbers may suddenly find those numbers rendered useless overnight.

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