

**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)	
)	
E911 Requirements for IP-Enhanced Service)	WC Docket No. 05-196
Providers)	

To: Chief, Consumer and Government Affairs Bureau

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

**COMMENTS IN SUPPORT OF CSDVRS PETITION FOR EXPEDITED
RECONSIDERATION**

October 27, 2009

Table of Contents

	<u>Page No.</u>
Summary.....	ii
I. The <i>Public Notice</i> Adopts a New Restrictive Rule Without a Notice and Comment Rulemaking Proceeding.....	2
A. Background.....	3
B. Discussion.....	3
II. The <i>Public Notice</i> is Inconsistent with Interoperability and Commission Requirements for Point-to-Point Videophone Calling.....	4
A. Background.....	5
B. Discussion.....	7
III. The <i>Public Notice</i> Violates the Functional Equivalency Requirements of Section 225 of the Act.....	9
A. Background.....	9
B. Discussion.....	11
IV. Limitations on Toll Free Number Abuse Should Be Reasonable and Should Not Be Harmful to Consumers.....	13
V. The <i>Public Notice</i> Must Be Rescinded Well In Advance of the November 12, 2009 Deadline.....	14
VI. Conclusion.....	15

Summary

The Consumer Groups support the Petition for Expedited Reconsideration filed by CSDVRS seeking reconsideration of the Commission's August 11, 2009 Public Notice implementing new requirements governing the use of toll-free numbers of Internet based Telecommunications Relay Services ("iTRS"). The Public Notice (1) adopts a new restrictive rule without a notice and comment rulemaking proceeding; (2) is inconsistent with principles of VRS interoperability adopted by the Commission and inconsistent with Commission requirements regarding point-to-point videophone calling; and (3) violates principles of functional equivalency. Implementation of the requirements set forth in the Public Notice will result in disruption of service to the severe detriment of those consumers who currently use toll free numbers.

Although the Consumer Groups do not condone the way some of the iTRS providers have been pushing toll free numbers on consumers, and would prefer that in general, consumers use geographically appropriate ten-digit NANP numbers, consumers should not be punished for the behavior of some of the iTRS providers. The Commission should instead address its concerns regarding toll free number abuse using methods such as those discussed in these comments that are reasonable and do not interfere with interoperability or otherwise adversely affect iTRS calling or videophone point-to-point calling.

To prevent disruption and harm to consumers who rely upon toll free numbers, the Consumer Groups request Commission action on the CSDVRS petition well in advance of the November 12, 2009 deadline for removing toll free numbers from the iTRS number database.

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**COMMENTS IN SUPPORT OF CSDVRS PETITION FOR EXPEDITED
RECONSIDERATION**

Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), through its undersigned counsel, Association of Late-Deafened Adults, Inc. (“ALDA”), National Association of the Deaf (“NAD”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”), American Association of the Deaf-Blind (“AADB”), and Hearing Loss Association of America (“HLAA”) (collectively, the “Consumer Groups”), hereby respectfully submit these comments in support of the Petition for Expedited Reconsideration filed by

CSDVRS, LLC on September 10, 2009,¹ seeking reconsideration of the Federal Communications Commission’s (“FCC’s” or “Commission’s”) August 11, 2009 Public Notice implementing new requirements governing the use of toll free numbers for Internet-based Telecommunications Relay Services (“iTRS”).²

As detailed below, the Consumer Groups support the Petition because the *Public Notice* (1) adopts a new restrictive rule without a notice and comment rulemaking proceeding; (2) is inconsistent with principles of VRS interoperability adopted by the Commission and inconsistent with Commission requirements regarding point-to-point videophone calling; and (3) violates principles of functional equivalency required by Section 225 of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 225. Implementation of the requirements set forth in the *Public Notice* will result in disruption of service to the severe detriment of those consumers who currently use toll free numbers. The Consumer Groups therefore urge the Commission to rescind its *Public Notice* sufficiently in advance of the November 12, 2009 deadline established in the *Public Notice* so that the iTRS database is not depopulated of toll free numbers to the severe detriment of those consumers who rely upon the toll free numbers.

I. The *Public Notice* Adopts a New Restrictive Rule Without a Notice and Comment Rulemaking Proceeding.

Without the use of the notice and comment procedures as required by Section 553 of the Administrative Procedures Act (“APA”), 5 U.S.C. § 553, the *Public Notice* for the first time

¹ “Petition for Expedited Reconsideration” of CSDVRS, LLC, CG Docket No. 03-123 (Sept. 10, 2009)(“Petition”).

² “Clarification Regarding the Use of Toll Free Numbers for Internet-Based Telecommunications Relay Services,” Public Notice, CG Docket No. 03-123, DA 09-1787 (rel. Aug. 11, 2009) (“*Public Notice*”).

prohibits populating the iTRS database with toll free numbers, even though there was nothing in *iTRS Numbering II*³ prohibiting such activity.

A. Background

When the Commission issued *iTRS Numbering II*, the Commission concluded that iTRS users should transition away from exclusive use of toll free numbers to ten-digit, geographically appropriate numbers. The Commission stated:

[W]e require Internet-based TRS providers to have assigned ten-digit, geographically appropriate numbers to all current holders of toll free numbers who wish to continue using those toll free numbers. An Internet-based TRS user may retain a current toll free number or obtain a new toll free number so long as that toll free number is directed to the ten-digit, geographically appropriate number.⁴

In short, the Commission directed that toll free numbers be directed to ten-digit geographic numbers. This is ordinarily accomplished through use of the Service Management System (“SMS”)/800 database. The Commission said nothing further other than to clarify that the use of toll free numbers is not compensable from the Interstate TRS Fund. Specifically, *iTRS Numbering II* said nothing about prohibiting populating the iTRS numbering directory with toll free numbers *in addition to* directing those numbers to the SMS/800 database. Nor can one reasonably infer from the text of *iTRS Numbering II* that there was any such prohibition.

B. Discussion

Even though *iTRS Numbering II* said nothing about prohibiting populating the iTRS numbering directory with toll free numbers *in addition to* directing those numbers to the SMS/800 database, the Commission issued the *Public Notice* prohibiting such activity. This

³ *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, Second Report and order and Order on Reconsideration, 24 FCC Rcd. 791 (2008).

⁴ *Id.* at ¶ 32.

Public Notice was issued *sua sponte*. No one asked for it; nor is there a public record to reflect the Commission making any effort to vet the *Public Notice* with anyone. On the other hand, in full reliance on what was required by, and what was not prohibited by, paragraph 32 of *iTRS Numbering II*, the iTRS database was being populated with toll free numbers *in addition to* directing those numbers to the SMS/800 database. As a result, the *Public Notice* was a complete surprise.

In short, the *Public Notice* adopts a new restrictive rule without first engaging in a notice and comment rulemaking proceeding as required by Section 553 of the APA. Even though Section 553(b)(3)(A) provides exceptions for notice and comment procedures, none of the exceptions listed in Section 553(b)(3)(A) apply. The *Public Notice* does not qualify as an “interpretive rule” because it is not an interpretation of an already existing rule. The requirement specified in *iTRS Numbering II* paragraph 32 sets forth an affirmative obligation to direct toll free numbers to geographic numbers. Nowhere does paragraph 32 prohibit populating the iTRS database with toll free numbers as an additional activity. Since the additional activity does not in any way interfere with the affirmative obligation, there is no reasonable way the affirmative obligation could be interpreted to prohibit the additional activity.

Nor can the *Public Notice* be construed as a “general statement of policy” because it is not general at all. It provides a very specific prohibition for the first time. Other exceptions dealing with agency organization, procedure or practice clearly do not apply to the *Public Notice*.

II. The *Public Notice* is Inconsistent with Interoperability and Commission Requirements for Point-to-Point Videophone Calling.

The *Public Notice* directly conflicts with Commission requirements for interoperability and point-to-point videophone calling, and reestablishes VRS provider “walled gardens” that the iTRS interoperability and numbering proceedings were designed to correct.

A. Background

In the *VRS Interoperability Order*⁵ the Commission established general principles of interoperability, stating: “All VRS consumers should be able to place a VRS call through any of the VRS providers’ service, and all VRS providers should be able to receive calls from, and make calls to, any VRS consumer.”⁶ At the time the order was adopted, several providers supplied consumers with “proxy” numbers. These are numbers that resemble telephone numbers, but are proprietary to the provider issuing them.

With proxy numbers, “a person desiring to call a VRS consumer via the consumer’s proxy number can only use the services of the VRS provider that generates the number.”⁷ One problem with proxy numbers is that each provider ends up with a “walled garden” where the customers can make point-to-point video calls to the other customers of that provider, but cannot make a point-to-point video call to a customer of another provider. In addition, for a voice telephone user to place a VRS call to a person with a videophone using a proxy number, the caller must use the VRS provider of the called party. In addition to being a barrier for consumers placing point-to-point calls, this situation tends to unfairly favor larger providers over smaller providers. Obviously, customers want to be in the walled garden where they can call the largest number of people -- hence they gravitate to the largest walled garden. Recognizing this problem, the Commission sought comment on establishing a numbering system that would permit universal VRS calling.⁸

⁵ *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 (2006).

⁶ *Id.* at ¶ 1.

⁷ *Id.* at ¶ 46.

⁸ *Id.* at ¶¶ 47-50.

In response to the comments that were filed, the Commission adopted a system for assigning ten-digit geographic North American Numbering Plan (“NANP”) to iTRS users. The Commission stated: “The numbering system adopted herein will further the functional equivalency mandate by ensuring that Internet-based TRS users can be reached by voice telephone users in the same way that voice telephone users are called.”⁹ In other words, just as voice telephone users can be reached by dialing a NANP number without regard to the service provider of the calling party, *iTRS Numbering I* established that videophone and other iTRS users can be reached by dialing a NANP number without regard to the service provider of the calling party.

The Commission was also concerned about the ability of VRS users to be able to directly call each other via point-to-point calls. While recognizing that “. . . point-to-point calls between VRS users are not relay calls . . . compensable from the [Interstate TRS] Fund,”¹⁰ the Commission found that point-to-point calls “. . . constitute an important form of communication for many VRS users, and *any loss of such basic functionality is simply not acceptable.*”¹¹ The Commission further recognized:

[F]acilitating point-to-point calls furthers the purposes of section 225 itself. Section 225(b)(1) directs the Commission to ensure that relay services are available “[i]n order to carry out the purposes established under section 1, 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.” While that section refers to relay services, point-to-point services even more directly support the named purposes: they 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

⁹ *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 ¶ 1 (2008) (footnote omitted) (“*iTRS Numbering I*”).

¹⁰ *iTRS Numbering II*, 24 FCC Rcd. at ¶ 65.

¹¹ *Id.* (footnote omitted) (emphasis added).

routing; and they increase the utility of the Nation's telephone system in that they provide direct communication. . . .¹²

Finding that it has ancillary authority pursuant to Sections 1, 225 and 255 of the Act,¹³ the Commission clarified that “. . . all default providers must support the ability of VRS users to make point-to-point calls without the intervention of an interpreter.”¹⁴ It added that “. . . all providers must ensure that their devices are capable of making calls after a change in default provider, including point-to-point calls to other VRS users.”¹⁵

B. Discussion

The *Public Notice* directly conflicts with these interoperability and universal numbering rulings. As explained by CSDVRS in the Petition and by Purple Communications, Inc. (“Purple”) in its Comments in Support of Petition for Expedited Reconsideration filed on October 19, 2009 (“Purple Comments”), (1) a VRS caller attempting to place a point-to-point call using a toll free number to another VRS user can do so only if the same default provider is used, (2) but the same consumer would be unable to place the point-to-point call to another VRS customer using a different default provider. As a result, the *Public Notice* reinstates the walled garden that the Commission worked so hard to eliminate through its enactment of the *Interoperability Order*, *iTRS Numbering I*, and *iTRS Numbering II*.

As explained by Purple, if the two VRS customers utilize different default providers, either the call will not go through, or the call will be handled as a relay call with two interpreters. Each interpreter would be signing with a VRS user, and the two interpreters would end up communicating with each other by voice. Either result is unacceptable to consumers. If the call

¹² *Id.* at ¶ 67 (footnote omitted).

¹³ 47 U.S.C. §§ 151, 225 and 255. *See iTRS Numbering II*, 24 FCC Rcd. at ¶¶ 66-67.

¹⁴ *iTRS Numbering II*, 24 FCC Rcd. at ¶ 65.

¹⁵ *Id.* (emphasis in original).

does not go through, the consumers are deprived of the opportunity to complete a call in violation of Section 225 of the Act and *iTRS Numbering II* paragraph 65 which, as discussed above, states that any loss of the functionality of point-to-point calls “is simply not acceptable.”¹⁶ If the call is completed using two interpreters, it would be a wasteful use of the Interstate TRS Fund, because had the call been a point-to-point call, it would have cost the Interstate TRS Fund nothing. Moreover, the resultant two-interpreter call would violate *iTRS Numbering II* paragraph 67, which makes it clear that point-to-point services more directly support the purposes of Section 225 of the Act than relay calls between two videophone users.

The final paragraph of the *Public Notice*, which suggests that a VRS user wishing to make a point-to-point call can dial the ten-digit geographic number of the called party is of little consolation to a consumer who has been given a toll free number, has notified his or her family and friends of the toll free number, has not given out to anyone the associated ten-digit geographic number, and may not even know the associated ten-digit geographic number. That person will be cut off from everyone except those who are part of the same walled garden.

Although the Consumer Groups have advocated that iTRS providers should give out ten-digit geographic numbers to their residential users, and still prefer ten-digit geographic numbers over toll free numbers for residential users, the fact remains that some providers are still supplying toll free numbers to their residential users, and the toll free numbers are the numbers that those users know and have given out to their family and friends. Although the Consumer Groups do not condone the way some providers have pushed toll free numbers on consumers, those consumers should not be punished and cut-off from the world as a result of what the

¹⁶ *Id.*

providers have done, particularly when the punishment is the result of a new restrictive rule adopted without notice and comment rulemaking procedures.

iTRS Numbering II specifically permits the optional use of toll free numbers that point to ten-digit geographic numbers.¹⁷ The *Public Notice* suggestion that ten-digit geographic numbers rather than toll free numbers must be used for point-to-point calling directly contradicts the permissive use of toll free numbers discussed in *iTRS Numbering II*.

III. The Public Notice Violates the Functional Equivalency Requirements of Section 225 of the Act.

A voice telephone user may call the toll free number of another voice telephone user without restriction. Congress and the Commission have gone through great lengths to make sure that there are no walled gardens making it more difficult (or even impossible) for a customer of one provider to call the toll free number of another provider as compared to a customer calling the toll free number of a customer of the same provider. Yet, once the *Public Notice* takes effect, it will be impossible for the users of one default provider to make point-to-point video calls to the toll free numbers of the users of another default provider. Simply put, this is not functional equivalency.

A. Background

Section 225(a)(3) of the Act defines TRS as:

. . . [T]elephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual *in a manner that is functionally equivalent* to the ability of an individual who does not have an hearing impairment or a speech impairment to communicate using voice communication service by wire or radio.

¹⁷ *Id.* at ¶ 32.

47 U.S.C. § 225(a)(3) (emphasis added). Recognizing that a relay service cannot be technically identical to voice communications services, Congress used the words “functionally equivalent” to convey the concept that TRS must provide the same function as voice telephone service.

Moreover, the mere providing of the same function as voice telephone service is not enough for TRS to be “functionally equivalent.” TRS must also be equivalent. The American Heritage College Dictionary defines “equivalent” as:

- 1.a. Equal, as in value, force or meaning. b. Having similar or identical effects.
2. Being essentially equal, all things considered.

American Heritage College Dictionary, Third Edition 1993. These definitions compel the concept that TRS must be as equal to voice telephone service as reasonably possible. This concept is buttressed by Section 225(d)(2) of the Act, which requires the Commission to “. . . ensure that regulations prescribed to implement this section encourage . . . the use of existing technology and do not discourage or impair the development of improved technology.” 47 U.S.C. § 225(d)(2).

In enacting Section 225(d)(2), Congress fully understood the changing nature of technology, and that the technology available in 1990 would be surpassed by new technologies that would bring TRS ever closer to functional equivalency. In other words, functional equivalency is a dynamic concept that is not frozen by the technology available in 1990. As the Commission explained: “[S]ection 225 encourages TRS providers and the Commission to be innovative in improving TRS consistently with the functional equivalency mandate.”¹⁸

The dynamic nature of functional equivalency is consistent with other provisions of the Act as well. Section 7(a) of the Act unequivocally states: “It shall be the policy of the United

¹⁸ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Americans with Disabilities Act of 1990*, CC Docket No. 98-67, CG Docket No. 03-123, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 18 FCC Rcd. 12379 at ¶ 21 (2003) (“2003 TRS Second Report and Order”).

States to encourage the provision of new technologies and services to the public.” 47 U.S.C. § 157(a). There is no question that the Commission must embrace new technologies and services to further this very clear Congressional directive when making Commission policy decisions. Moreover, Section 255(c) of the Act states: “A provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.” 47 U.S.C. § 255(c). This section of the Act demonstrates the clear objective of Congress that all types of telecommunications services shall be made available to people with disabilities.

Taken together, these various provisions of the Act show a very clear directive on the part of Congress to make available to people with disabilities, using the very best technologies that are available, all of the same types of services that are already available to people without disabilities, in a manner that is as functionally equivalent as possible. In recognition of this functional equivalency mandate, as discussed earlier, the Commission specifically required in *iTRS Numbering II* that providers support the ability of VRS users to make point-to-point video calls without the intervention of an interpreter.

B. Discussion

The *Public Notice* adopts a new and very restrictive approach to functional equivalency based on the idea that if two services are technically provided in the same way, then they are functionally equivalent. On the theory that since toll free numbers given to voice telephone users are directed to ten-digit geographic numbers in the SMS/800 database and are not put in the iTRS database, then iTRS toll free numbers should not be put in the iTRS database *in addition to* being directed to ten-digit geographic numbers in the SMS/800 database. This view of

functional equivalency is extremely narrow-minded and contrary to the clear intent of functional equivalency as required by the Act.

Toll free voice telephone numbers are not put in the iTRS database *in addition to* being directed to ten-digit geographic numbers in the SMS/800 database because there is never a need to use the iTRS database to complete a call to a toll free voice telephone number. On the other hand, a point-to-point video call placed by a customer with one default VRS provider to the toll free number of a customer of another default VRS provider *cannot be completed* without the toll free number being in the iTRS database *in addition to* being directed to ten-digit geographic numbers in the SMS/800 database. As a result, if the use of the toll free numbers is managed in a way that is technically equivalent, the consumer using a videophone does not enjoy the same services as enjoyed by the consumer using a voice telephone.

To define functional equivalency based upon technical routing makes no logical sense. TRS calls are routed in very different ways than voice calls. If technical routing were used to define functional equivalency, there would be no TRS, because TRS by definition requires relay, and relay services require very different technical solutions than the technical solutions used in the public switched telephone network.

The whole point of functional equivalency is for people with disabilities to receive service that is as equivalent to the service received by people without disabilities as is technically feasible. This means that the technical method of delivery may need to be different to achieve functionally equivalent services. In short, functional equivalency is defined by the service being accessible regardless of the manner in which it is provided.

Because implementation of the *Public Notice* will result in a videophone user being unable to place a call to a toll free number of a videophone user who does not have the same

default VRS provider, the use of toll free numbers is not functionally equivalent to a voice telephone user, who can place a call to a toll free number of any other voice telephone user with a toll free number without restriction.

Moreover, in the case of a business with a videophone that needs a toll free number for business reasons, implementation of the *Public Notice* will result in a number ghetto for people with videophones. Since a videophone user with a VRS default provider different from the VRS default provider of the business with the videophone cannot call the business on its toll free number, the business will have to print business cards with two numbers -- the toll free number for voice telephone users, and the ten-digit geographic number for videophone users. This number ghetto for videophone users is not functional equivalency.

IV. Limitations on Toll Free Number Abuse Should Be Reasonable and Should Not Be Harmful to Consumers.

As discussed above, the *Public Notice* will have a serious harmful effect on those consumers who rely upon toll free numbers. However, like the Commission, the Consumer Groups do not condone the way some of the iTRS providers have been pushing toll free numbers on consumers, and would prefer that in general, consumers use geographically appropriate ten-digit NANP numbers. Of course, just as businesses with voice telephone service utilize toll free numbers for various business reasons, the Consumer Groups support the use of toll free numbers by businesses with videophones to the extent the toll free numbers serve a business purpose.

For this reason, the Consumer Groups urge the Commission to address its concerns regarding toll free number abuse in ways that are reasonable and do not interfere with interoperability or otherwise adversely affect iTRS calling or videophone point-to-point calling. For instance, the Commission could require the iTRS providers to survey their customers who

have toll free numbers and take back the toll free numbers of those consumers who respond by saying that they are not using their toll free numbers.

On an ongoing basis, although iTRS providers must continue to have the freedom to inform customers of the availability of toll free numbers, the Commission can prohibit providers from disseminating misleading information regarding the alleged benefits of toll free numbers to residential users. For example, the Commission can require that providers inform all consumers who are considering taking toll free numbers that point-to-point video calls from ten digit geographic numbers are already toll free since they utilize the Internet. The Commission could also require that the providers assign new toll free numbers only when specifically requested by the customer. Of course the Commission must engage in notice and comment procedures prior to the enactment of either proposed reform.

V. **The *Public Notice* Must Be Rescinded Well in Advance of the November 12, 2009 Deadline.**

It is the understanding of the Consumer Groups that the iTRS database has already been populated with a substantial number of toll free numbers. As discussed earlier, there are a number of consumers who utilize these toll free numbers, who have given their toll free numbers, and not their geographic numbers, to their family and friends, and who may not even know their own ten-digit geographic numbers. If the *Public Notice* were to take effect on November 12, 2009, these consumers will be cut off from video point-to-point calling by callers with different default VRS providers. In other words, once the *Public Notice* takes effect, there would be many consumers who will suffer serious disruption and potential harm. To prevent this injustice, the Consumer Groups urge the Commission to rescind the *Public Notice* sufficiently in advance of the November 12, 2009 deadline so that the toll free numbers will not be depopulated from the iTRS database.

VI. Conclusion

If the *Public Notice* becomes effective, it will result in serious disruption and harm to many consumers who rely upon toll free numbers, have given those toll free numbers to their family and friends, and who may not even know their own ten-digit geographically appropriate numbers. The *Public Notice* (1) violates the APA because it adopts a new restrictive rule without a notice and comment rulemaking proceeding; (2) directly conflicts with the interoperability requirements of the *Interoperability Order*, *iTRS Numbering I*, and *iTRS Numbering II*; and (3) violates the functional equivalency requirements of Section 225 of the Act. The Consumer Groups respectfully request that the Commission rescind the *Public Notice* sufficiently in advance of the November 12, 2009 deadline to avoid removal of the toll free numbers from the iTRS database.

Respectfully submitted,

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