

**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)	

**SUPPLEMENT TO PETITION FOR EMERGENCY STAY;
REQUEST TO RETURN TO THE STATUS QUO ANTE**

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 supplement their Petition for Emergency Stay filed on October 27, 2009 (“Stay Petition”) and request that (1) the Federal Communications Commission (“FCC” or “Commission”) immediately stay implementation of the requirements delineated in its August 11, 2009 Public Notice implementing new requirements governing the use of toll-free numbers for Internet-based Telecommunications Relay Services (“iTRS”);¹ and (2) order a return to the status quo ante. As detailed below, an immediate stay of the *Public Notice* and a return to the status quo ante are required because in the course of implementing the requirements set forth in the *Public Notice* by

¹ “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*”).

November 12, 2009, at least one of the iTRS provider has removed all of its toll free numbers from the iTRS database, resulting in disruption of service to the severe detriment of people who are deaf, hard of hearing, deaf-blind or have speech disabilities who currently use toll free numbers.

Standard for Grant of a Stay

In the Stay Petition, the Consumer Groups demonstrated that they met the standard established by the United States Court of Appeals for the D.C. Circuit that “[a]n order maintaining the *status quo* is appropriate when a serious legal question is presented, when little harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant.”² This standard requires the Commission to examine “whether: (1) petitioners are likely to succeed on the merits; (2) petitioners will suffer irreparable injury absent a stay; (3) a stay would substantially harm other interested parties; and (4) a stay would serve the public interest.”³

Success on the Merits

The Consumer Groups showed that there was ample justification for stay because of the high likelihood of success on the merits of the underlying Petition for Expedited Reconsideration filed by CSDVRS, LLC on September 10, 2009 (“CSDVRS Petition”), as supported by the Consumer Groups in their Comments filed on October 27, 2009 (“Consumer Group Comments”). The *Public Notice* (1) violated Section 553 of the Administrative Procedures Act (“APA”), 5 U.S.C. § 553, because it adopted a new restrictive rule without notice and comment

² *Washington Metropolitan Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977) (“*Holiday Tours*”). See also, *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

³ *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958), as modified in *Holiday Tours* at 843.

rulemaking procedures and does not provide a clear rationale for the action taken; (2) was inconsistent with the VRS interoperability requirements adopted by the Commission in the *Interoperability Order*⁴, *iTRS Numbering I*⁵, and *iTRS Numbering II*⁶ because it resulted in “walled gardens” in which point-to-point video calls could not be placed to toll free numbers in instances where the two parties to the call used different default VRS providers; and (3) violated the functional equivalency requirements of Section 225 of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 225, because as a result of the *Public Notice*, people who are deaf, hard of hearing, deaf-blind or have speech disabilities can not make point-to-point video calls via toll free numbers if each party uses different default providers. This is not functional equivalency because people using voice telephone service enjoy the ability to call ANY toll free number, regardless of the service providers used by each party.

Irreparable Harm in the Absence of a Stay and Return to the Status Quo Ante

The Consumer Groups also explained in the Stay Petition that they would be irreparably harmed if a stay were not granted because the iTRS database was already populated with toll free numbers, and people who are deaf, hard of hearing, deaf-blind or have speech disabilities already enjoyed the ability to place point-to-point calls to toll free numbers, even if the two parties to the

⁴ *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).

⁵ *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*”).

⁶ *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) (“*iTRS Numbering I*”).

call used different default iTRS providers (as is the case for voice telephone customers who do not utilize the same service provider). The Consumer Groups reiterate that many people who are deaf, hard of hearing, deaf-blind or have speech disabilities using toll free numbers are now cut off from receiving calls because they gave their toll free numbers, not their geographic numbers, to many of their family, friends and business contacts. To prevent serious disruption in service, the Consumer Groups requested that a stay be granted well in advance of the November 12, 2009 deadline to avoid toll free numbers being removed from the iTRS database.

Notwithstanding the unlawfulness of the *Public Notice*, and notwithstanding the irreparable harm that would result if a stay were not granted, the Bureau completely ignored the Stay Petition and unconscionably failed to take any action. As a direct consequence, at least one large VRS provider has indeed removed the toll free numbers that it assigned to its customers from the iTRS database. This totally preventable harm to people who are deaf, hard of hearing, deaf-blind or have speech disabilities will be ongoing unless and until the Bureau grants the relief requested herein.

Unfortunately, the Bureau's inexcusable failure to act on a timely basis has resulted in additional difficulties. Had the Bureau acted on a timely basis, a simple grant of the Stay Petition would have preserved the status quo. Now, however, the status quo has been disrupted due to the removal of toll free numbers from the iTRS database by one of the large iTRS providers. Therefore, an order for stay must be issued immediately and must also include an order to return to the status quo ante. In other words, an order for stay must include an ordering clause directing any iTRS provider that has removed toll free numbers from the iTRS database to reinstate those toll free numbers in the iTRS database immediately. It is the understanding of the

Consumer Groups that the return of the toll free numbers to the iTRS database is an administrative task that can be accomplished by means of a program feed.

No Substantial Harm to Other Parties

In weighing the requirement on iTRS providers to undertake a program feed as compared to the serious disruption in calling capability of people who are deaf, hard of hearing, deaf-blind or have speech disabilities, the serious harm to consumers caused by not granting a stay far outweighs the need to carry out an administrative task by some iTRS providers. Therefore, the Consumer Groups submit that a stay would not substantially harm any other interested parties.

The Public Interest

In examining the public interest, the Consumer Groups explained in the Stay Petition that the general public would experience harm if a stay is not granted because people who are deaf, hard of hearing, deaf-blind or have speech disabilities would no longer be able to make video point-to-point calls to toll free numbers without having the same default VRS provider. This has already caused great confusion and inconvenience to people who are deaf, hard of hearing, deaf-blind or have speech disabilities.

Grant of a stay and order to return to the status quo ante would prevent further harm while giving the Bureau a chance to consider the merits of the CSDVRS Petition. Because (1) the Consumer Groups are likely to prevail on the merits, (2) people who are deaf, hard of hearing, deaf-blind or have speech disabilities are suffering and will continue to suffer significant, immediate and irreparable harm unless and until a stay and return to the status quo ante is granted, and (3) other interested parties would not be substantially harmed, a grant of a stay and return to the status quo ante would serve the public interest. Therefore, since all factors

favor a stay and return to the status quo ante, the equities favor a grant of a stay and return to the status quo ante by the Bureau.

Conclusion

For the reasons discussed herein, the Bureau should stay the effectiveness of the *Public Notice* and order a return to the status quo ante pending Bureau action on the CSDVRS Petition.

Respectfully submitted,

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