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January 5, 2010

VIA ELECTRONIC MAIL

Julius Genachowski, Chairman
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

RE: Payment Withholdings

Dear Chairman Genachowski,

I am writing to you today to address an ongoing issue concerning withholdings of payment for conference calls made through video relay services (VRS). As you are no doubt aware, the National Exchange Carriers Association (NECA) withheld payments to VRS providers for conference calls for August and September, 2009, ostensibly under the auspices that said calls were “all deaf” and therefore not compensable from the Interstate TRS Fund. We have learned that NECA will be withholding payment for conference calls in the October billing submission as well, and possibly for all billing cycles moving forward.

The FCC made clear in its order of September 18, 2009 that a compensable VRS call must have at least one hearing and deaf individual on the line.¹ To that end, CSDVRS has gone to great lengths to provide evidence with its billing submissions documenting that the calls had both hearing and deaf participants. Nonetheless, even with clear and indisputable evidence before it, NECA still refuses to reimburse for these legitimate conference calls. Subsequently, CSDVRS proposed several recommendations to the Commission concerning these calls including a Petition for Rulemaking² and an Ex Parte presentation (copy attached hereto).

¹ See, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, (Order), CG Docket No. 03-123, DA 09-2084, adopted and released September 18, 2009, paragraph 4.

² See, CSDVRS Petition for Rulemaking on Internal VRS Calls and VRS Conference Calls, CG Docket 03-123, November 17, 2009.

CSDVRS, like many businesses, strives to employ people that are deaf and hard-of-hearing in the spirit of the Americans with Disabilities Act. Over 50% of our non-interpreting employees are deaf or hard of hearing, and they constitute an invaluable component of our business. To that end, these individuals have a right to participate in conference calls, in a functionally equivalent manner, in the same way as their hearing counterparts. However, NECA, as mandated by the Commission, has refused to reimburse for such calls and in doing so has effectively denied them this right.

We recognize that the Commission is currently undertaking measures to weed out minute-generating fraud in the VRS industry, and CSDVRS certainly supports that effort. However, CSDVRS does not manufacture internal calls or conference calls simply to create billable minutes, and we have evidenced this to NECA in prior correspondence. Our records clearly show that any such calls billed by CSDVRS are legitimate calls made for legitimate business purposes, and in conformity with the law. Our low monthly volume of such calls clearly supports this contention, and in fact, we would submit that our percentage of internal calls and conference calls are a fraction of that of any other enterprise or government agency, including the FCC.

Recognizing that the FCC must undertake all reasonable efforts to eliminate VRS fraud, at the same time, those efforts should not subvert legitimate VRS usage nor deny rights to deaf and hard-of-hearing consumers. The hodgepodge of standing FCC orders have greatly confused the industry and consumers and undermined the ostensible intent of the ADA. As such, it is absolutely essential that the Commission issue clear and compelling decisions on the following:

Are conference calls with hearing and deaf participants billable?

Are internal conference calls with hearing and deaf participants billable?

Is NECA going to continue to withhold payment for conference calls with no clear guidance, reasoning, or legal basis for doing so (particularly in light of compelling evidence illustrating the legitimacy of such calls)?

CSDVRS has submitted solutions to NECA and the FCC with no reply. CSDVRS has presented extensive documentation proving the legitimacy of its conference calls and the FCC remains entirely silent while withholding payment. In doing so, the Commission is economically damaging a company with a history of service to the deaf community, and a company that internally has been several steps ahead of the FCC and others in the industry in establishing a code of ethics and other internal monitoring and enforcement mechanisms to prevent illegitimate calls. The payment withholding is undermining our ability to operate effectively and yet the Commission sits silent on these issues month after month as if operating by fiat.

Please make a clear decision on these calls and please consider the damage done to companies and to the deaf community when the FCC undertakes measures such as this withholding.

There is certainly fraud in the VRS industry, and we applaud all efforts to eliminate it. However, it would seem the FCC is willing to “throw out the baby with the bath water” as it seeks a solution to the problem. There are great people and great companies that have changed the lives of deaf people through this wonderful service and have done so in legitimate fashion and in compliance with the law. Punishing providers that operate by the rules while pursuing the wrongdoers is entirely inequitable. While the FCC works with the Department of Justice to prosecute fraudulent operators, we would ask that the Commission stop penalizing the legitimate operators in its investigations and prosecutions. Most importantly, the Commission must give the industry some clear direction answering the questions highlighted above.

Thank you for your time and attention to these most urgent matters.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "W. Banks", with a long horizontal flourish extending to the right.

William Banks
General Counsel

Cc: Commissioner Michael Copps
Commissioner Robert McDowell
Commissioner Mignon Clyburn
Commissioner Merideth Baker

Att: November 9, 2009 Ex Parte presentation

Compensable VRS Calls and Eliminating Industry Fraud
Summary of Proposed Rules to be Submitted by CSDVRS

PROPOSED RULE	RESULT
<p>Option 1: VRS providers should be reimbursed for internal VRS conference calls at a rate equal to the current NECA rate less 25%</p> <p>Or</p> <p>Option 2: VRS providers should be compelled to utilize the services of their competitors to process their internal VRS conference calls</p>	<p><i>Reduced pecuniary incentive will reduce the incident of fraudulent VRS calls or minute pumping by providers. All internal conference calls generated by a provider would be legitimate calls made for valid business purposes.</i></p>

PROPOSED RULE	RESULT
<p>Option 1: Deaf-to-deaf conference calls made through VRS should be allowable and compensable.</p> <p>Or</p> <p>Option 2: Providers should be required to implement multipoint control unit (MCU) functionality to handle deaf-to-deaf conference calls. The costs for implementation should be reimbursed from the Fund, and operational costs should be remunerated at \$2.00 per minute (a minimum "break even" amount).</p>	<p><i>Allowing deaf-to-deaf conference calls in the rules will bring VRS more in line with the functional equivalency mandate inasmuch as the Regulations require providers to process <u>any</u> type of call normally processed by telecom carriers. Either option will permit deaf people to utilize the same services accessible to hearing people. All deaf conference calling as a e form of VRS can be likened to VCO-to-VCO usage where two deaf people are on a valid and compensable call.</i></p> <p><i>MCU implementation would obviate the need to include deaf-to-deaf conference calling as a compensable form of regular VRS, and would instead promote functional equivalence through a mutually accessible video bridge. This option would eventually save the Fund considerable resources.</i></p>

PROPOSED RULE	RESULT
<p>Prohibit Compensation for Customer Support through VRS. Allow a six-month phase out period for all providers to comply.</p>	<p><i>Disallowance of compensation for a provider's usage of its own VRS for its customer service functions, including technical related calls, will eliminate illegitimate service calls and minute pumping. Moreover, providers would be encouraged to hire more deaf and hard of hearing individuals to handle incoming customer service calls. This is entirely within the scope and spirit of the ADA.</i></p>

PROPOSED RULE	RESULT
<p>Define "internal" and "external" VRS calls and impose penalties on evaders.</p> <p>An "internal" call should be defined as any call generated by a provider in its ordinary course of business, or in furtherance thereof, through any of its fiduciaries, including, but not limited to: shareholders, owners, officers, employees, contractors, agents, vendors, suppliers, or other contracted parties (foreign or domestic).</p> <p>An "external" call should be defined as any call generated by a party that chooses to utilize that provider on their own volition. External calls should be presumed valid.</p> <p>Any provider that attempts to evade the rules by utilizing third parties to place or process illegitimate calls should be fined and penalized.</p>	<p><i>Defining the 'internal vs. external' parameters in the context of the regulations will broaden the reach of the FCC rules to extend to affiliate VRS organizations, subcontractors, white labels, or other independent entities. This will have the effect of curtailing the fraudulent use of third party entities to create illegitimate minutes. This will obviate unlawful behavior, provide the FCC with more oversight, enhance integrity of the Fund, and protect the interests of deaf and hard of hearing consumers.</i></p>