

January 21, 2010

Via Electronic Filing

Chairman Julius Genachowski  
Commissioner Michael J. Copps  
Commissioner Robert M. McDowell  
Commissioner Mignon Clyburn  
Commissioner Meredith Attwell Baker  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: *Ex Parte* – Compensable Minutes Petitions and Needed Clarifications in CG  
Docket No. 03-123

Dear Chairman Genachowski and Commissioners Copps, McDowell, Clyburn, and Baker:

On behalf of the undersigned providers of video relay service (“VRS”), we urge you to take prompt action to protect the integrity of the Telecommunications Relay Service (“TRS”) Fund and the TRS program. Specifically, we urge you to (1) issue a notice of proposed rulemaking to establish clear rules specifying those Internet-based relay calls which may – and may not – be compensated by the TRS Fund; and (2) in the interim, clarify the specific procedures the Commission and NECA are to use in determining to withhold payment for any VRS minutes under review for compensation.

Despite the growing public attention on allegations of waste and abuse concerning TRS and the Commission’s rule requiring it to place petitions for rulemaking on public notice “promptly,”<sup>1</sup> the Commission has taken no action on a number of pending requests urging the Commission to clarify what relay calls are compensable and what marketing practices are appropriate. On August 12, 2009, Purple Communications, Inc. filed a Petition for Rulemaking asking the Commission to adopt rules clarifying that certain types of TRS calls are compensable.<sup>2</sup> On September 11, eight consumer groups asked the Commission to place the petition on public notice “as early as possible.”<sup>3</sup> Similarly, on September 28, 2009, the Registry

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<sup>1</sup> 47 C.F.R. § 1.403.

<sup>2</sup> Purple Communications, Inc., Petition for Rulemaking to Clarify Relay Rules (Aug. 12, 2009), attached to letter from Thomas J. Navin, Wiley Rein, to Marlene H. Dortch, FCC Secretary, CG Docket No. 03-123 (Aug. 17, 2009). *See also* Letter from Tony Coelho to Chairman Genachowski, CG Docket 03-123 (August 12, 2009). Some ten months earlier, The National Association for State Relay Administration (“NASRA”) made a similar request for clarification of compensable relay calls. *See Ex Parte* Comments of the National Association of State Relay Administration, CG Docket 03-123 (November 10, 2008).

<sup>3</sup> Letter from Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc., American Association of Deaf-Blind, Association of Late-Deafened Adults, Inc., Hearing Loss Association of America, Deaf and Hard of Hearing Consumer Advocacy Network, and American Association of People with Disabilities (“Consumer Groups”) to Chairman Genachowski, CG Docket No. 03-123, at 1 (Sept. 11, 2009). *See also* Consumer Group’s Application for Review, CG Docket No 03-123 (October 19, 2009) (requesting review of the Consumer and Governmental Affairs

of Interpreters for the Deaf joined the consumer groups in asking the Commission to “place the filing on public notice as soon as practicable so that the voices of all stakeholders can be heard in this process.”<sup>4</sup> On September 2 and November 17, CSDVRS filed petitions addressing similar issues and urging the Commission to take action.<sup>5</sup> On October 1, Sorenson Communications, Inc. filed a detailed set of proposed rules as part of a Petition for Rulemaking.<sup>6</sup> Providers have urged the Commission to adopt rules which would clarify what Internet-based relay calls are compensable, establish new mandatory minimum standards to help prevent the billing of non-compensable calls to the Fund, and empower providers to take certain steps to prevent non-compensable calls. The Commission has taken no action to seek comment on any of the issues raised in these pleadings.

The undersigned providers urge the Commission to adopt rules that give providers and the Fund Administrator clear guidance on how to distinguish legitimate TRS calls from illegitimate calls. This guidance is separate and distinct from the determination the Commission will need to make in establishing VRS rates for the period after June 30, 2010. These matters should be addressed directly and promptly by issuing a Notice of Proposed Rulemaking proposing and seeking comment on specific rules delineating compensable relay calls, as well as the other issues addressed in the petitions filed by providers and relay stakeholder organizations.

In addition, the undersigned providers stress that the inaction described above coupled with the withholding without any public guidance from the FCC of compensation for VRS calls by NECA pending “reviews” of indeterminate length (1) have significantly harmed providers and consumers. In addition, these actions are contrary to the Commission’s previous and laudable commitment (confirmed in the adoption of the three-year tiered rate methodology for VRS) to a stable and predictable rate approach. The Commission was clear in adopting the three-year tiered rate methodology that providers needed to be able to rely on a stable funding mechanism to guide their investment in the service and make long term business decisions to promote innovation and provide enhanced functional equivalent offerings to consumers. As a result, VRS providers are placed in the impossible position on the one hand of being obligated by the TRS rules to continue to process all calls as they are received and to incur the expenses associated with such calls; yet, on the other hand providers are being denied compensation for the costs they incur to handle those calls. In some cases, the repercussions have been particularly dire. Several providers have been forced to the brink as the revenues withheld by NECA pending

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Bureau’s Order, DA 09-2084 (September 18, 2009); Letter from Timothy P. Beatty, Chief, Independent Living & Assistive Technology Section, California Department of Rehabilitation, CG Docket 03-123 (November 2, 2009); Letter from Congresswoman Lynn Woolsey to Chairman Genachowski (October 27, 2009).

<sup>4</sup> Letter from RID Executive Director Clay Nettles and RID President Cheryl Moose to Chairman Genachowski, CG Docket No. 03-123 (Sept. 28, 2009).

<sup>5</sup> CSDVRS Request for Expedited Clarification on Marketing Practices, CG Docket No. 03-123 (Sept. 1, 2009, filed Sept. 2, 2009); CSDVRS Petition for Rulemaking on Internal VRS Calls and VRS Conference Calls, CG Docket No. 03-123 (Nov. 17, 2009).

<sup>6</sup> Petition for Rulemaking of Sorenson Communications, Inc., CG Docket No. 03-123, RM No. 09-\_\_\_, EB Docket No. 09-\_\_\_ (Oct. 1, 2009).

reviews are needed to pay salaries and other essential operating expenses. The result is less competition in the VRS marketplace and reduced innovation and service quality for consumers, all contrary to the requirements of the Americans with Disabilities Act (“ADA”) and the Commission’s own precedent.

The undersigned providers understand the need for NECA and the Commission to review provider submissions. We fully support the increased focus and scrutiny necessary to avoid compensating illegitimate minutes. At the same time, however, it is critical that the Commission and NECA understand that a fully transparent and prompt review process is essential not only to satisfy the TRS rules, the dictates of the Administrative Procedure Act (“APA”) and the ADA, and fundamental due process, but equally importantly to enable VRS providers to run their businesses and continue to serve consumers with high quality service. In this regard, providers note that even though last year NECA significantly increased the amount of time it takes every month to review and compensate providers for submitted minutes so as to allow for such greater focus and scrutiny,<sup>7</sup> in many cases minutes have been withheld for periods *well beyond* even this extended review period -- often for many months more. In most of these cases, providers have been given no notice of NECA’s or the Commission’s need for additional time for review, or any explanation of the concerns or focus of the review, nor any sense as to when the review would be completed. In other cases, providers have not been paid even for costs for which there have been *no* suggestions by NECA or the Commission that any problem exists or that any review is underway. This is the case, for example, with millions of dollars in reimbursement associated with providers’ significant expenditures to comply with the Commission’s new ten-digit numbering requirements. Although the Commission established a separate reimbursement process for these required expenses, some providers have still not received hundreds of thousands of dollars in reimbursement for these expenses even though they were incurred in some instances more than one year ago.

This is an urgent situation that requires immediate attention and redress by the Commission and NECA. As a first step, the undersigned providers strongly urge the Commission to immediately issue a public notice explaining its procedures and timing for reviewing VRS minutes, particularly when withheld compensation may be involved. While this should also be a topic of the NPRM requested above, in the interim, to minimize further harm to consumers and providers and to bring this process into compliance with the Commission’s rules and with the APA (as well as the ADA), the undersigned providers also respectfully urge the Commission to immediately adopt the following process: If NECA and the Commission’s review process is not completed within the extended 6 week review period specified in NECA’s March 31, 2009 letter to providers, then NECA will promptly issue compensation for such minutes to the provider. While in these cases the Commission could, if necessary, make clear to

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<sup>7</sup> See Letter to all Interstate TRS Providers from John Ricker, Director, Universal Service Program Support, NECA, March 31, 2009 (explaining that, in order to comply with FCC Managing Director’s directives to review all TRS minutes submitted to “ensure that the minutes submitted are legitimate and that the correct amount of funds are disbursed, and to detect call patterns that suggest fraud,” NECA was significantly extending (from approximately 2 weeks to approximately 6 weeks) the period before which it would issue compensation to TRS/VRS providers).



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cc: Marlene H. Dortch  
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