Federal Communications Commission
Washington, D.C. 20554

February 3, 2010

DA 10-225

William Banks
CSDVRS, LLC
600 Cleveland Street, Suite 1000
Clearwater, FL 33755

Re: CSDVRS's request for payment of VRS minutes containing incomplete call record data from December 2008 to April 2009 (CG Docket No. 03-123)

Dear Mr. Banks:

By this letter, the Consumer and Governmental Affairs Bureau (Bureau) grants CSDVRS's request for payment of Video Relay Service (VRS) calls from December 2008 through April 2009 for which CSDVRS's billing platform failed to capture call conversation time. We therefore direct the National Exchange Carriers Administration (NECA), the Interstate TRS Fund Administrator, to remit payment of **[REDACTED]** to CSDVRS within 10 business days of the date of this letter.

On March 10, 2009, CSDVRS sent a letter to the Bureau's Disability Rights Office (DRO) seeking advice on how they might be compensated for VRS minutes for which their billing platform failed to capture conversation time.[1] CSDVRS noted that it implemented a new billing platform in December 2008, and as a result was unable to capture the conversation time for approximately **[REDACTED]** percent of its calls. On June 24, 2009, CSDVRS sent a second letter to DRO confirming that they had resolved the call data issue and that a redundancy system has been implemented to prevent similar problems from occurring in the future.[2] In this letter, CSDVRS provided a list of the total session minutes from December 2008 through April 2008 for which conversation minutes were lost and for which CSDVRS seeks payment. After NECA reviewed the list, NECA and CSDVRS agreed with the following data:

| | |
|---|---|
| December 2008: | **[REDACTED]** minutes |
| January 2009: | **[REDACTED]** minutes |
| February 2009: | **[REDACTED]** minutes |
| March 2009: | **[REDACTED]** minutes |
| April 2009: | **[REDACTED]** minutes |
| **TOTAL:** | **[REDACTED] minutes** |

Although CSDVRS did not capture the conversation time for these calls, it did capture the session time. CSDVRS therefore requests that the Commission apply a utilization rate to the session minutes to

[1] Letter from William Banks, General Counsel, CSDVRS, to Thomas Chandler, Chief, Disability Rights Office dated March 10, 2009 (CG Docket No. 03-123).

[2] Letter from William Banks, General Counsel, CSDVRS, to Thomas Chandler, Chief, Disability Rights Office dated June 24, 2009 (CG Docket No. 03-123).

estimate compensable conversation minutes. CSDVRS suggested three alternative approaches to estimating conversation time:

1. A rate based on the average monthly utilization rates of all VRS providers for calendar year 2008;
2. A rate based on the CSDVRS's utilization rate for the other minutes it billed NECA for the same months; or
3. A rate based on CSDVRS's average utilization rate for its calendar year 2008 minutes.

We conclude that applying the average monthly utilization rate of all VRS providers for calendar year 2008 – 69.6 percent[3] – is most appropriate in these circumstances. Although this percentage is slightly less that those calculated based solely on CSDVRS's data, we find this to be the most equitable resolution given the lack of actual data. As a result, we apply the VRS industry's average utilization rate for calendar year 2008 of 69.6 percent to the **[REDACTED]** session minutes at issue, which results in **[REDACTED]** conversation minutes (rounding up from**[REDACTED]**).

Because CSDVRS's total minutes for the months at issue fall in the **[REDACTED]** tier, we apply the **[REDACTED]** rate of **[REDACTED]** to these conversation minutes. Multiply the **[REDACTED]** conversation minutes by the **[REDACTED]** rate results in a total amount owed of **[REDACTED]**. The Bureau directs NECA to remit payment of **[REDACTED]** to CSDVRS within 10 business days of the date of this letter.

In reaching this result, we grant a limited waiver of the Commission's rule, 47 C.F.R. §64.604(c)(5)(iii)(E), which requires that "all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments," and that compensable minutes are "minutes of use for completed ... calls ... beginning after call set-up and concluding after the last message call unit" (*i.e.,* conversation time).[4]

Accordingly, IT IS ORDERED that, pursuant to the authority granted by sections 1, 4(i), 4(j), 5, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155 and 225, and pursuant to the authority delegated in sections 0.141., 0.361, and 64.604 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361 and 64.604, the Interstate TRS Fund Administrator SHALL REMIT **[REDACTED]** to CSDVRS, attention William Banks, General Counsel, 600 Cleveland Street, Suite 1000, Clearwater, FL 33755 within 10 days of the date of this letter.[5]

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[3] This percentage is based on data we received from the Fund administrator.

[4] 47 C.F.R. § 64.604(c)(5)(iii)(E). Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). We find that CSDVRS's explanation for not complying with this rule for the limited number of minutes at issue here is sufficient to warrant a waiver. We also note that CSDVRS has corrected the underlying problem.

[5] CSDVRS's June 24, 2009, letter (see note 2, *supra*) requests that data pertaining to its minutes of use be treated as confidential under the Commission's rules. As a result, the version of this letter filed in the docket will have the company's proprietary commercial and financial information redacted.

If you have any questions concerning this matter, please contact Gregory Hlibok, Disability Rights Office, Consumer and Governmental Affairs Bureau, FCC, at (202) 550-5158 (voice or videophone), or Gregory.Hlibok@fcc.gov.

Sincerely,

Joel Gurin
Chief, Consumer and Governmental Affairs Bureau