

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Structure and Practices )  
of the Video Relay Service )  
Program )  
 )  
Petition for Rulemaking )  
\_\_\_\_\_ )

CG Docket No. 10-51

**PETITION FOR RULEMAKING**

CSDVRS, LLC (“CSDVRS”), by and through undersigned counsel and pursuant to FCC Rule Section 1.401 *et seq.*, hereby petitions the Federal Communications Commission (“FCC” or the “Commission”) to institute a rulemaking proceeding to amend 47 C.F.R. §64.604, or add a new subsection to Title 47, Part 64, to allow for a cost-recovery methodology for in-house interpreters within VRS companies. Current regulations prohibit the billing of VRS calls that are generated by a VRS provider, its employees, or subcontractors. CSDVRS submits that this blanket prohibition is not only a burden to companies that employ significant numbers of deaf employees, but also is contrary to the spirit of the Americans with Disabilities Act (“ADA”).

**1. Background**

On February 25, 2010, the Commission issued a Declaratory Ruling concerning the compensability of certain types of VRS calls.<sup>1</sup> Specifically, the February Ruling stated that VRS calls made by or to a VRS provider’s employee, or the employee of the provider’s subcontractor,

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<sup>1</sup> See, *In the Matter of Structure and Practices of the Video Relay Service Program*, CG Docket 10-51, DA 10—314, February 25, 2010. (“February Ruling”).

are not eligible for reimbursement from the Interstate TRS Fund (“the Fund”).<sup>2</sup> The purported reason for the disallowance was that the costs of such calls are part of a provider’s ordinary business expenses and are already built into the per-minute VRS compensation rate.<sup>3</sup> On March 10, 2010, CSDVRS filed a detailed *ex parte* commentary on the February Ruling specifically addressing this matter.<sup>4</sup> To follow on that *ex parte*, CSDVRS is hereby petitioning the Commission to mandate a cost-recovery methodology for the direct interpreting expenses of VRS providers since the internal use of VRS has been categorized as non-compensable.

## **2. Direct Interpreting Expenses**

As delineated in the CSDVRS *ex parte*, there exist several challenges to the Commission’s blanket prohibition of internal VRS calls.<sup>5</sup> CSDVRS believes that the Commission must ensure that its rulings are in tune with the spirit of the ADA and thereby ensure that the interests of the deaf and hard of hearing in the workplace are protected. To that end, in congruence with any forthcoming modifications or clarifications to the February Ruling, CSDVRS proposes that the Commission allow for the compensation of a VRS provider’s direct interpreting expenses incurred for the communications needs of the provider’s deaf employees.

By way of example, CSDVRS maintains a workforce of over 60% deaf or hard of hearing individuals. Naturally, these individuals must interact with hearing employees concerning day-to-day business operations. In light of this, CSDVRS maintains full time in-house interpreters whose sole responsibility is to allow for this interaction at its corporate headquarters. For remote employees, or employees situated on other floors, VRS would seem the logical answer for any provider, but in light of the February Ruling, providers will not be reimbursed for their internal

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<sup>2</sup> *Id.* at ¶3.

<sup>3</sup> *Id.* at ¶4.

<sup>4</sup> *See*, CSDVRS *Ex Parte*, CG Docket 10-51, March 10, 2010. (“CSDVRS *ex parte*”)

<sup>5</sup> *See generally*, CSDVRS *ex parte* (discussing how the blanket prohibition on internal VRS calls may be subversive to the spirit of the Americans with Disabilities Act and a financial burden on VRS companies that employ significant numbers of deaf employees).

calls. As a solution, CSDVRS intends to offer internal live interpreting for deaf-to-hearing communications. By design, the solution will allow a deaf employee in the workplace to use an in-house interpreter and communicate with the remote employee over a videophone without the need to bill the Fund. Similarly, a hearing employee communicating with a remote deaf employee would utilize an in-house interpreter by way of a point-to-point call with the interpreter live and in the room with the hearing employee. While certainly effective, this solution is not without its expenses.

Given the communication demands of modern business, VRS providers with substantial numbers of deaf or hard of hearing employees, such as CSDVRS, will be compelled to hire additional interpreters in order to meet their internal communication demands. CSDVRS concurs that the expense was built into the rate, but as cited in the March 10 ex parte, it was also factored into the minute projection. Moreover, it puts a provider that hires deaf employees at a financial disadvantage once the rate is set. CSDVRS would therefore propose that the Commission institute a rulemaking proceeding to allow providers to recover their direct interpreting expenses. The expenses should constitute the expenses of internal direct interpreting costs. Direct interpreting cost would be defined as the actual cost of the interpreter only, and should be submitted as a separate line item in a provider's monthly submission to NECA. CSDVRS would recommend an "hours worked" submission that is equal to the actual hourly salary of the interpreters. This will allow providers to maintain their deaf and hard of hearing staff and ensure their productivity, and at the same time support the integrity of the Fund and sustain the purpose of the ADA with the continued employment of deaf and hard of hearing people. Further, CSDVRS would submit that this reimbursement method should be an ongoing requirement that survives future rate setting exercises. As a permanent solution, reimbursement for direct

interpreting costs will ensure that VRS companies will be able to continue to hire deaf employees without the challenge of additional expenses. As stated above, if direct interpreting costs were made a part of the rate, this would only favor a company that hires more hearing employees to the direct detriment of the Fund.

### 3. Conclusion

CSDVRS would submit that the foregoing is a necessary and proper means to effectively address the issue of internal interpreting needs of VRS providers. Accordingly, CSDVRS would respectfully request that the Commission initiate a rulemaking proceeding to implement the offered solution. Given the magnitude of the February Ruling, CSDVRS believes this measure represents an equitable solution for VRS providers and the Commission, and that rapid implementation will protect the deaf and hard of hearing people in the workplace, the VRS industry as a whole, and ultimately inure to the integrity of the Fund.

Respectfully Submitted,

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