

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Structure and Practices of the Video Relay)	CG Docket No. 10-51
Service Program)	
_____)	

**PETITION OF SPRINT NEXTEL CORPORATION
FOR CLARIFICATION OR IN THE ALTERNATIVE LIMITED RECONSIDERATION**

Sprint Nextel Corporation ("Sprint"), on behalf of the Telecommunications Relay Service ("TRS") operations of its subsidiary, Sprint Communications Company L.P., hereby respectfully requests that the Commission clarify or in the alternative reconsider the *Declaratory Ruling* (DA 10-314) issued February 25, 2010 in the above-captioned docket in one respect. Specifically, Sprint asks the Commission to clarify or reconsider the finding by the Chief of the Consumer and Governmental Affairs Bureau under delegated authority "that VRS [Video Relay Service] calls made by or to a VRS provider's employee, or the employee of a provider's subcontractor are not eligible for compensation from the TRS Fund on a per-minute basis from the Fund, but rather as business expenses."

Sprint emphasizes that it does not question the Commission's authority under Section 225 of the Act to limit the types of calls eligible for compensation from the Fund. Moreover, in the wake of the well-documented activities engaged in by Viable and Purple by which they received millions of dollars from the TRS Fund for VRS calls that clearly were not eligible for reimbursement from the Fund, *e.g.*, deaf-to-deaf calls, Sprint believes that Commission action is necessary to protect the integrity of the Fund. Indeed, Sprint applauds FCC's efforts to ferret out and penalize wrongdoers since as one of two VRS providers contributing to the TRS Fund,

Sprint has a substantial interest in ensuring that its contribution is based on the costs of providing lawful TRS services.

Nonetheless, the ruling raises a number of questions as to its scope and applicability especially for providers, like Sprint, that offer all forms of Relay and employ a substantial number of deaf and hard-of-hearing individuals.¹ Sprint believes that these issues need to be resolved before Sprint and others providers can ensure that they are complying with the ruling. And pending such clarification the Commission should as a matter of prosecutorial discretion agree not to enforce the ruling at least against those providers that do not engage in highly problematic activities designed to pump up their reportable VRS minutes. Alternatively the Commission could address these issues in a rulemaking proceeding with the goal of adopting clear rules that ensure the Fund's integrity and that are not subject to interpretation.²

A. The Applicability and Scope of the Ruling Needs to Be Clarified.

Sprint believes that, notwithstanding the fact that the purpose of a declaratory ruling is to terminate a controversy or remove uncertainty, *see* 47 C.F.R. § 1.2, the declaratory ruling at issue makes matters extremely murky, not only for providers but especially for their deaf and hard-of-hearing employees. As stated, under the ruling, a provider would not be able to submit

¹ *Declaratory Ruling* at ¶ 1. The Bureau also determined that this ruling here “pertain[s] to all forms of TRS” even though the *Declaratory Ruling* was issued “in a new docket specifically relating to VRS.” *Id.* at fn 5. In this regard, Sprint would suggest that there is little or no justification for applying the ruling to relay services subject to the MARS plan, *e.g.*, TTY-based TRS, STS and PSTN-based Captel service, since the compensation rates established for these services are not based on the expenses submitted by the providers of these services but rather are based on the compensation rates paid by the states which are established through the competitive bidding process.

² Last October, Sorenson asked the Commission to institute a proceeding looking toward identifying and codifying in the rules the types of Internet-based TRS calls that may not be compensated by the Fund. *See Sorenson's Petition for Rulemaking filed October 1, 2009 in Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, (CG Docket No. 03-123).

for compensation the minutes generated by business-related VRS calls to or from an employee of a VRS provider. Such calls are made by and to deaf or hard-of-hearing individuals as well as hearing individuals. Instead the costs associated with such calls would be business expenses to be included in the provider's annual cost submissions to the Fund Administrator. The Bureau states that this ruling simply requires the provider to treat VRS calls the same way as it treats calls made by provider's hearing employees. *Declaratory Ruling* at ¶ 4.

The treatment of such VRS calls as business expenses would also apply to "personal or non-business related calls at the workplace" since such treatment "would be consistent with standard business practice." *Id.* at fn. 13. On the other hand, "[p]ersonal or non-business related VRS calls placed by employees outside the workplace would not be business expenses of the provider and therefore, would be compensable from the Fund on a per-minute basis." *Id.*

In theory, using the "workplace" to determine whether a personal or non-business related VRS call made by or to a provider's employees may make sense. The difficulty here is that the term "workplace" is not defined and in today's world of laptops, wireless phones, Wi-Fi and Wi-Max access to the Internet, etc., an employee's "workplace" is not limited to the desk and office provided by her employer. Employees can and do work at their homes; at the locations of their clients and vendors; in hotel rooms; at coffee houses; at airports; and even at resorts while on vacation. Moreover, the concept of normal business hours, defined by an eight-hour work day five days a week, is rapidly disappearing since employees will work from a non-office location, late into the night, before the "crack of dawn," and on weekends.

Given America's "work-from-anywhere" and "at-any-time" society, using the "workplace" and a "normal work day" for deciding how to classify a VRS call made by or to a provider's employee as a business expense or one compensable from the Fund appears to be

unrealistic. Similarly classifying such calls on the basis of whether they were made using equipment furnished by the provider or using the employee's own equipment makes little sense. Using such criteria to determine whether a VRS call made by a provider's employee was a business expense or a call compensable from the Fund may do little to dampen the incentive for certain providers to engage in illegal practices in order to receive compensation from the Fund. Such unscrupulous providers would simply hire individuals to make VRS calls from their homes, using their own equipment at times outside what may be considered normal business hours.

On the other hand, broadening the concept of workspace and work hours to reflect today's reality raises a number of questions for legitimate VRS providers and their employees as to how they would comply with the ruling. For example,

- Would a deaf or hard-of-hearing employee working from home using her own VRS equipment to make business calls during "normal business hours" (which of course the Commission would have to define) be required to record the number of minutes she was on the call so that the provider could deduct the minutes from the total it submits to the Fund Administrator?
- How should the provider classify personal calls made by its deaf or hard-of-hearing employee from home using his own VRS equipment during so-called "normal business hours?" Again would the deaf or hard-of-hearing employee be required to track the number of minutes generated by such personal calls?
- If a hearing person called the provider's employee again during "normal business hours" through the VRS service offered another provider's service, would the called employee have to report the number of minutes generated by the call to the provider whose service is being used so that the provider could deduct the minutes from the total number of minutes submitted to the Fund Administrator? Would the employee have to ensure that the provider did not seek compensation from the Fund for such minutes?
- Should the provider assume that all VRS calls made by the provider's deaf or hard-of-hearing employee using the equipment furnished by the provider are "business-related" calls?
- Would compliance issues implicate privacy and discrimination concerns?

Sprint believes that the Commission must provide guidance with respect these and other real-life scenarios if the VRS providers are to make a good faith effort to comply with the Bureau's ruling at issue. Stated differently, the Commission must clarify its ruling before it seeks to enforce such ruling.

B. Relay Calls to a Provider's Customer Service

The Bureau's ruling also applies to VRS and other Relay calls to a provider's customer service. *Declaratory Ruling* at ¶ 5. Sprint already complies with this aspect of the ruling since it does not seek reimbursement on calls made by relay customers to its Relay Customer Service to resolve relay-related issues. Nonetheless Sprint requests one clarification or modification in the rule.³

Specifically, Sprint has been offering wireless devices and service plans to the deaf and hard-of-hearing community since 2006. And just like wireless users in the hearing community, deaf and hard-of-hearing wireless users may encounter a problem with their devices or with their plan which has nothing to do with their relay services but which requires a call to Sprint's customer service. To improve its deaf and hard-of-hearing wireless customers' interaction with customer service, Sprint has established Video Customer Service (VCS) to offer point-to-point video support.⁴ VCS has enabled Sprint to resolve the customer's problem on the first call in a significant majority of cases. However, on occasion the Sprint VCS customer service representative cannot resolve the problem. This is especially the case if the deaf or hard-of-hearing individual who uses a Blackberry is experiencing a technical problem with his device. In

³ The clarification/modification is likely to apply only to Sprint.

⁴ The VCS customer care representatives are also deaf or hard-of-hearing.

such cases, the Sprint VCS customer service representative will contact a Sprint's Blackberry technicians through VRS for additional support to resolve the customer's issue.

On rare occasions the VCS customer service may need to contact Blackberry technical support directly. It does so through VRS. The VCS customer service representative stays on the call to ensure that the problem being experienced by the deaf or hard-of-hearing customer is properly explained to the Blackberry technical support representative. Since such VRS calls involves a call to a non-Sprint employee, Sprint believes that it should be entitled to submit the VRS minutes generated by calls between the customer and Blackberry technical support to the Fund Administrator for compensation. If Sprint's belief here is wrong, it will be forced to tell the customer to hang up and contact Blackberry technical support directly either through Sprint's VRS service or through the VRS service of another provider. Not only would this be frustrating to the customer but it may well increase VRS usage (and hence the number of minutes compensable from the Fund) since the customer will have to start from scratch in explaining his problem to the VI and through the VI to Blackberry technical support.

C. The Bureau's Belief that the Ruling is Necessary to Prevent Double Recovery is Unsupported.

Although not entirely clear, the Commission's rationale for the declaratory ruling at issue appears to be based, at least in part, on the assumption that providers have already included the costs associated with such calls in their annual submissions to the Fund Administrator. *See Declaratory Ruling* at ¶ 4 ("... the cost associated with providing telephone service for use by employees is properly reflected in the VRS compensation rate."); and at ¶ 3 ("... the costs of such calls are business expenses that can and should be included in the providers' cost data submitted to the Fund administrator for purposes of setting VRS compensation rates."). Thus, the Commission concludes that "to permit providers also to be compensated from the Fund for

such calls on a per-minute basis would result in double recovery from the Fund.” *Id.* at ¶ 4. The Commission, however, offers no evidence for its apparent view that providers have included the costs incurred by their employees’ use of VRS in their annual cost submissions for VRS.

The Commission also states that even if VRS providers did not include such costs in their annual cost submissions, they should have done so since “[t]he Relay Services Data Request form submitted annually by providers to identify, among other things, business costs and expenses that ultimately determine the compensation rate specifically requests that providers identify costs related to telecommunications expenses.” *Id.* at ¶ 4. The difficulty with this statement is that the instructions in the “Relay Services Data Request” are not a model of clarity.

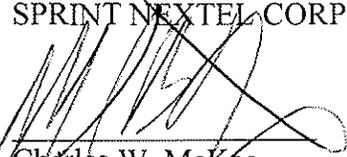
The Commission cites the definition of “telephone service expenses” set forth in Section I.A.1 of the form and the definition of “telecommunications services” as set forth in I.B.4 of the form as informing providers that they are to include the costs of VRS calls made to or by their employees. *Id.* But the language in these provisions simply cannot be reasonably interpreted as putting providers on notice that they were to include the costs of VRS calls to and from their employees in their cost submissions to the Fund Administrator. The definition of “telephone service expenses” is in the Section labeled “Utilities” and refers only to the costs of providing toll free service to the providers’ relay centers and the costs of obtaining local and foreign exchange services provided by the local exchange carrier. The definition of “telecommunications services” refers to activities engaged in by the relay provider to maintain the network and manage the traffic flowing over the network.

The Bureau also suggests that providers could have included the costs of calls to and from their employees in the “operations support,” “human resources” or marketing/advertising/outreach categories. However, the types of costs listed in the definitions

as reportable in these categories – and the list is rather specific – do not include the costs associated with relay calls made by or to the employees of a providers. The fact that the Bureau apparently felt compelled to rely on several provisions in the Relay Services Data Request instructions instead of simply asking the Fund Administrator to determine whether relay providers included the costs of relay calls made by and to their deaf and hard-of-hearing employees to support its “double recovery” theory does not demonstrate the strength of its theory but rather its weakness. Plainly, the Commission needs to amend the instructions to specify the category of costs to which providers are to assign the expenses of relay calls made to and from their employees.⁵ Until it does so and until providers have the opportunity to amend their cost submissions so as to include those costs, providers such as Sprint that have not engaged in highly problematic activities designed to increase their number of minutes should be paid the monies owed on the minutes they have submitted.

Respectfully submitted,

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⁵ The Commission will also have to determine how providers are to estimate the number of relay calls its employees will make or receive so as to calculate the costs incurred.