

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
)
Telecommunications Relay Services and Speech-) CG Docket No. 03-123
to-Speech Services for Individuals with Hearing)
and Speech Disabilities)

COMMENTS OF STI PREPAID, LLC

STi Prepaid, LLC (“STi Prepaid”)¹ respectfully makes this submission to the Federal Communications Commission (“Commission”) in response to the National Exchange Carrier Association’s (“NECA”) *2010 TRS Rate Filing*,² concerning the proposed annual payment formula for and size of the Telecommunications Relay Service (“TRS”) Fund in 2010-11. The proposed payment methodology and revenue base improperly encompass international revenues. The inclusion of international revenue in the contribution calculation imposes a special hardship upon carriers whose international revenues comprise a significant proportion of their total revenues. STi Prepaid urges the Commission to reject the *2010 TRS Rate Filing* to the extent that the determination of the 2010-2011 contribution factor has been based upon the inclusion of the inter-

¹ STi Prepaid is a leading provider of long-distance wireline and wireless telecommunications services. STi Prepaid’s principal products are international prepaid telecommunications services, which are sold in conventional retail locations via cards, with wireless equipment, or through STi Prepaid’s website, www.stiprepaid.com.

² *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate* (filed April 30, 2010) (“*2010 TRS Rate Filing*”).

national revenues of such carriers.³ In addition, the Commission should adopt the proposed historical cost current tier methodology for Video Relay Service (“VRS”) providers, which will not only better reflect their actual expenses, but reduce the size of the Fund to a more reasonable level.

International revenues are properly excluded from the TRS revenue base, per the Congressional directive that the TRS Fund draw *only* from intrastate and interstate revenue sources.⁴ Analogous Commission regulations, concerning universal service support mechanisms, attest to the propriety of excluding a carrier whose revenues are chiefly derived from international sources from Fund contributions.⁵ Assessing TRS contributions on carriers like STi Prepaid, whose revenues are derived almost entirely (approximately 97 percent) from international sources, in the same manner as those whose revenues are derived from interstate sources is discriminatory and violates the bedrock principle of competitive neutrality.⁶ Six years ago, STi Prepaid’s predecessor company, Telco Group, Inc., explained this inequitable method of assess-

³ See *id.* at 6 (“Interstate telecommunications common carriers contribute to the TRS Fund on the basis of their relative share of interstate and international end user revenues”).

⁴ See 47 U.S.C. § 225(d)(3)(B).

⁵ Universal service support mechanisms limit the contribution of an entity “whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues” to one based solely on its interstate revenues. 47 C.F.R. § 54.706(c); see 47 C.F.R. § 54.709.

⁶ See, e.g., *High-Cost Universal Service Support*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, ¶ 126 (2008) (noting need to “meet our principle of competitive neutrality” in the development of new service platforms); *Federal-State Joint Board on Universal Service*, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, ¶ 43 (2002) (holding that even non-PSTN service providers “should contribute based on the principle of competitive neutrality”); *Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, ¶ 1 (2002) (seeking to improve competitive neutrality “by modifying the existing revenue-based methodology”).

ment in a Petition for Declaratory Ruling.⁷ The Commission denied this petition in a ruling released May 16, 2006.⁸ These arguments were renewed in an Application for Review dated June 26, 2006⁹ and an Application for Review dated June 4, 2009.¹⁰ It is now nearly four years later, and the Commission still has not issued a ruling.¹¹

The consequences of this discriminatory method of contribution assessment, and the Commission's concomitant delay in ruling upon STi Prepaid's filings for review, has been exacerbated by the explosive growth of the TRS Fund. During the 1990s, the Fund hovered in the range of \$25-\$50 million, but grew to approximately \$100 million in 2000 and \$500 million in 2005.¹² Last year, the Fund swelled to \$981 million, nearly reaching the \$1 billion mark.¹³

⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Telco Group, Inc., Petition for Declaratory Ruling, or in the Alternative, Petition for Waiver (filed July 26, 2004).

⁸ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling, 21 FCC Rcd 5247 (rel. May 16, 2006), *reconsidered in* Declaratory Ruling on Reconsideration, 21 FCC Rcd 5962 (rel. May 25, 2006).

⁹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Telco Group, Inc., Application for Review (filed June 26, 2006).

¹⁰ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, STi Prepaid, LLC, Application for Review (filed June 4, 2009) ("2009 Application for Review").

¹¹ It appears Commission attention to this matter may not be forthcoming without action required in response to a Petition for Mandamus. On December 1, 2009, STi Prepaid brought this matter directly to representatives of the Consumer and Governmental Affairs Bureau and Office of General Counsel, reminding them of the statutory mandate, 47 U.S.C. § 155(c)(4), that compels the Commission to act on its Application for Review, "[p]ending at the FCC since June 26, 2006" and "[r]enewed June 4, 2009." Letter from Chérie R. Kiser to Marlene H. Dortch, Secretary, Federal Communications Commission, Re: CG Docket No. 03-123, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Notice of Ex Parte Presentation, at 1 (Dec. 1, 2009), with attached presentation.

¹² Sources for these figures are available at FCC, TRS Docket History, http://www.fcc.gov/cgb/dro/trs_history_docket.html.

¹³ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing*

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While this year’s proposal seeks to decrease the size of the Fund, it does not cure the discriminatory method of contribution assessment. International carriers’ business operations have suffered with the Fund’s expansion - as STi Prepaid observed in its 2009 Application for Review, the Fund’s growth has so multiplied in recent years as to become a significant impediment to its ability to conduct business in the United States.¹⁴

STi Prepaid urges the Commission to undertake prompt reform of the existing TRS contribution assessment methodology, according to its unlawful foundation and competitively disruptive effects.¹⁵ In the short term,¹⁶ the Commission should, at a minimum, adopt NECA’s proposed historical cost current tier methodology for establishing VRS rates for the upcoming year. In contrast to the questionable data undergirding the projected cost methodology,¹⁷ the historical cost methodology rests on “actual costs . . . [that are] reasonable and consistent with the per-minute costs reported for 2007 and 2008.”¹⁸ Applying a current tier structure to this methodol-

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and Speech Disabilities, CG Docket No. 03-123, Order, 24 FCC Rcd 8628 (rel. June 26, 2009).

¹⁴ See 2009 Application for Review at 4.

¹⁵ See 1998 Biennial Regulatory Review — Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, Report and Order, 1999 WL 492955, at n.132 (July 14, 1999) (explaining that Commission’s intent to administer TRS Fund in competitively neutral fashion advances pro-competitive, de-regulatory national policy goals announced by Congress).

¹⁶ As STi Prepaid explained in its 2009 Reply Comments in this docket, the tiered VRS rate structure should ultimately be restructures as a volume discount that favors startups who may initially have a low call volume. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Comments of STi Prepaid, LLC, at 4 (filed July 20, 2009) (“2009 TRS Reply Comments”).

¹⁷ As NECA explained, the projected cost tiers methodology contain “questionable data” from one provider in which its “costs contain unreasonable and unsubstantiated growth in headcount.” *2010 TRS Rate Filing* at 20.

¹⁸ *Id.* at 22.

ogy takes into account “the current differential between the three tiers but use[s] actual costs.”¹⁹ Not only will this approach minimize the threat of VRS rate inflation,²⁰ but reduce the size of the Fund to approximately \$280.8 million.²¹ While only a partial solution to the inclusion of international rates in the TRS Fund contribution methodology, it will nonetheless lighten the ponderous burdens borne by international carriers like STi Prepaid per the status quo.

Absent a statutory basis for TRS Fund collection on international revenues, the current methodology is not merely invalid, but inequitable and competitively harmful. The Commission should reject the NECA filing to the extent that the TRS contribution factor is based upon international revenues, and pursue comprehensive reform of the Fund payment methodology.

Respectfully submitted,

STi PREPAID, LLC

/s/ Chérie R. Kiser

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¹⁹ *Id.* at 24.

²⁰ *See, e.g.*, 2009 TRS Reply Comments at 2-3. STi Prepaid explained that the preliminary rates approved by the Commission for the 2009-10 funding year, measured against NECA’s estimated VRS provider costs, would guarantee VRS providers a profit margin of 40-50 percent for their service.

²¹ *See 2010 TRS Rate Filing* at 29, Ex. 2h. If the anticipated surplus following the June 2010 payment period is allocated in part to the current Fund year, then the Fund will total approximately \$469.8 million. *See id.* at Ex. 2f.