Before the

Federal Communications Commission

Washington, DC 20054

In the Matter of	)	
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Telecommunications Relay Services And Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
Structure and Practices of the Video Relay Service Program	)	CG Docket 10-51

COMMENTS OF AT&T, INC. ON NECA INTERSTATE TRS FUND SUBMISSION FOR 2010-2011 FUND YEAR

AT&T Inc. ("AT&T"), on behalf of its telephone companies, files these Comments pertaining to National Exchange Carrier Association, Inc.'s ("NECA") submission on the payment and revenue requirements for the 2010-2011 Interstate Telecommunications Relay Service ("TRS") Fund year.[1]

DISCUSSION

On April 30, 2010, NECA, the administrator of the Interstate TRS Fund, submitted to the Federal Communications Commission ("Commission") its proposed compensation rates, demand projections, projected fund size and proposed carrier contribution factor for the period July 2010 through June 2011, in accordance with section 64.604 of the Commission's rules.[2] In its submission, NECA proposes compensation rates for TRS, except for Video Relay Service ("VRS"), based on the rate calculation methodologies established in the Commission's *2007 TRS*

[1] NECA, *Payment Formula and Fund Size Estimate Interstate Telecommunications Relay Services (TRS) Fund for July 2010 through June 2011* (filed April 30, 2010) ("NECA 2010 Rate Filing").

[2] 47 C.F.R. §64.604 (c)(5)(iii)(H).

Rate Methodology Order.[3] For VRS, NECA presents alternative calculations for determining an interim VRS rate for the 2010-2011 Fund year. The alternatives include continuing the current methodology of establishing tiered rates using projected costs and a new methodology whereby rates are established using weighted averages of VRS providers' *actual* historical costs.

NECA also questions the effectiveness of continuing to fund speech-to-speech ("STS") outreach through a per minute rate additive. In anticipation of a surplus in the Interstate TRS Fund at the end of the 2009-2010 fund year, NECA presents the Commission with alternatives for allocating the surplus.

AT&T submits that the Commission should continue to set VRS rates with a multi-tier, multi-year methodology based upon projected costs. The Commission should also replace its current model for STS outreach with a model whereby the outreach funds are placed into a single fund for a nationwide STS education campaign. Lastly, the Commission should ensure that any surplus in the Interstate TRS Fund in excess of one month's projected distributions is refunded to the common carriers to which the funds are attributable, either by repayment or credit toward the 2010-2011 fund year.

A. The Commission Should Continue with Multi-Tier, Multi-Year VRS Rates Based Upon Projected Costs.

In the *2007 Cost Methodology Order*, the Commission emphasized that it was interested in adopting a methodology that would result in more predictability for TRS providers and be consistent with the principle that providers are entitled to their "reasonable" actual costs of providing service.[4] The Commission should remain committed to these goals, which bring

[3] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 (Nov. 19, 2007) ("*2007 Cost Methodology Order").*

[4] *2007 Cost Methodology Order*, at ¶11.

stability and innovation to the VRS industry. Continuing with the methodology set forth in the *2007 Cost Methodology Order* provides the Commission with the best means to achieve those goals, while reducing the risk of financial distress to VRS providers that would otherwise result from NECA's alternative rate proposals.

1. Multi-Tiers Rates More Accurately Reflect Different VRS Provider Costs.

Unlike traditional TRS, one provider has an overwhelmingly dominant market share position in VRS. That provider's costs are generally lower than the costs of smaller TRS providers, as it benefits from efficiencies absent with smaller VRS providers. Thus, including the dominant provider's cost data in a weighted average calculation to determine the VRS rate for smaller VRS providers would severely understate the compensation needed to reimburse those smaller VRS providers for their real costs of providing the service. Indeed, prior to 2008, the dominant provider's VRS minute and cost projections drove VRS rates.[5]

In the *2007 Cost Methodology Order,* the Commission recognized this fact and adopted a multi-tiered approach that calculated VRS rates based upon the weighted average projected costs of VRS providers with similar market share and costs. The Commission concluded that using three tiers based upon market share promoted competition among VRS providers, allowed newer providers to cover their costs, and did not over-compensate the larger providers.[6] Despite the passage of three years, the situation remains much the same, with a single dominant VRS provider joined by many smaller providers. The same public interest benefits that led the Commission to adopt a tiered methodology for VRS rates—competition and the appropriate level of compensation for VRS providers—are more compelling than ever. AT&T encourages the

[5] 2007 Cost Methodology Order, at ¶52.

[6] 2007 Cost Methodology Order, at ¶53.

Commission to continue with this three tiered approach for setting VRS rates, which recognizes the different financial positions of the different VRS providers.

2. Multi-Year Rates Provide Stability and Predictability for VRS Providers.

In the *2007 Cost Methodology Order,* the Commission adopted a multi-year rate methodology for VRS, in part, to provide the consistency that is necessary for planning and budgeting.[7] While straightforward, this principle cannot be overstated. With the benefit of planning, VRS providers can budget their costs, make long-term investments in their VRS business, and allocate money to programs and technologies to improve efficiencies and reduce future costs. Without this ability, VRS providers will have difficulty surviving, as they will struggle to raise needed capital, attract a capable workforce, and invest in new technologies.

Indeed, the Commission's reliance on a multi-year cost methodology over the past three years supports this position. It is no mere coincidence that the past three years have seen significant advances within the VRS industry, such as ten-digit numbering for relay users, automatic 9-1-1 transfer and connections, mobile video-mail, new video hardware and software, and functionally-equivalent features for dialing and connections. These changes were possible because VRS providers could rely on the stability of the VRS rates. This stability allowed VRS providers to plan not only for reimbursable costs, but for non-reimbursable costs, such as through raising capital. The stability generated by that three-year plan advanced the mandate of the Americans with Disabilities Act to narrow the functional equivalency gap in communications for deaf and hearing impaired Americans. For that reason, the Commission should continue a multi-year rate cycle.

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[7] *2007 Cost Methodology Order at ¶56.*

3. VRS Rates Should be Based Upon Projected Costs.

Under Section 225 of the Communications Act, TRS providers are entitled to reimbursement for their reasonable costs of providing TRS.[8] Commission rules likewise direct NECA to design TRS rate formulas that reimburse TRS providers for the reasonable costs of providing interstate TRS.[9] Yet, as an alternative methodology, NECA presents the option of calculating VRS rates based upon VRS providers' historical costs rather than projected costs, resulting in substantially reduced VRS rates. These reduced VRS rates would not adequately compensate VRS providers for actual costs incurred in providing the service, as they overlook increases in costs that tend to occur over time, such as payroll, health insurance, taxes, leased property, outreach, and, with the Commission's recent ruling, interpreting services for employees.[10] Any business that cannot recover its costs will not long survive.

Moreover, limiting reimbursement to historical costs discourages investments in and development of new technologies that would reduce the functional equivalence gap for deaf and hard of hearing Americans. While the proposed VRS rates include a component for invested capital, that allocation is insufficient if it is based upon a rate that is almost 50% of the current VRS rate. VRS providers will simply be too cash strapped to continue innovating. Such a result violates the tenets of the Commission own rules: "No regulation . . . is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to person with disabilities." Yet, that is a very real prospect of reliance on historical costs.

[8] 47 U.S.C. §225(d)(3).

[9] 47 C.F.R. §64.604(c)(5)(ii).

[10] *See Structure and Practices of the Video Relay Services Program*, Declaratory Ruling, CG Docket 10-51 (Rel. Feb. 25. 2010) (VRS 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.)

In the *2007 Cost Methodology Order*, the Commission considered, and wisely rejected, the option of using historical costs to calculate VRS rates. The result has been healthy growth in VRS over the last three years, an increase in the number of competitors offering VRS, and substantial innovation that has benefited VRS users. Although VRS rates may legitimately need to be reduced from current levels, AT&T is concerned that deviating from the tried and true formula of using projected costs to calculate VRS rates would result in significant turmoil in the VRS industry and cause some VRS providers to experience extreme financial hardship, all to the detriment of VRS users. In a recent statement to the VRS community, Commission staff indicates that "[t]he FCC continues to believe that VRS is the most functionally equivalent form of relay for people who communicate using American Sign Language ("ASL")."[11] AT&T agrees and appeals to the Commission to continue using projected costs to set VRS rates and thus, avoid jeopardizing the progress that has been made in extending the functionally equivalent VRS service to ASL users.

B. Funding for STS Outreach Should be Pooled and Distributed for a Single Campaign.

In the NECA 2010 Rate Filing, NECA notes that the demand for STS continues to decline and questions whether the outreach additive applied to each STS provider's per-minute rate is effectively educating consumers about STS.[12] The answer to that question is answered by its predicate—demand for STS continues to decline because the outreach is not effective. AT&T encourages the Commission to follow NECA's advice to revisit the issue and develop a more effective way to inform speech impaired users about the availability of STS.

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[11] Joel Gurin, Bureau Chief, and Karen Peltz Strauss, Deputy Bureau Chief, *A Message from the FCC's Consumer and Governmental Affairs Bureau to the VRS Community* (posted May 10, 2010), *accessible at* http://www.nad.org/blogs/bobbie-bethscoggins/fcc-public-notice-new-vrs-rates-nad-file-comments.

[12] NECA 2010 Rate Filing, at p. 11.

AT&T is on record as advocating a national STS campaign with the funds that are already earmarked for STS outreach.[13] AT&T reiterates that aggregating the STS outreach funds would be far more effective at educating speech impaired users on the value of STS service than allocating the same funds among seven different providers. Simply put, a national STS education campaign would be much more efficient and garner more value for the same money than the piecemeal educational efforts that seven different TRS providers can muster, regardless of how well their plans are executed or intentioned. As NECA points out, the Interstate TRS Advisory Council obviously agrees, as it recently passed a resolution recommending that the Commission redirect the $1.13 per minute outreach additive for STS outreach to a single fund for nationwide marketing outreach to promote STS. AT&T encourages the Commission to utilize this simple reallocation of existing funds to reform STS outreach.

C. Any Interstate TRS Fund Surplus in Excess of One Month's Distributions Should be Refunded to the Common Carriers that made the Contribution.

NECA anticipates that the Interstate TRS Fund will have a surplus of approximately $276 million at the end of the 2009-2010 plan year and presents the Commission with alternatives for allocating the surplus, including rolling the surplus into the Interstate TRS Fund for the 2010-2011 fund year.[14] AT&T agrees with NECA that the Commission should include a surplus of one month's projected distributions in each year's funding requirement. To the extent that the surplus from the 2009-2010 fund year exceeds one month's projected distributions for the 2010-2011 fund year, the Commission should ensure that that excess surplus is refunded to the common carriers to which the funds are attributable. Each common carrier's allocation could be repaid directly to the carrier. Alternatively, the excess surplus could be rolled into the 2010-

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[13] Ex Parte Letter from Toni Acton, Director, AT&T Services, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, CG Docket 03-123 (filed July 10, 2009).

[14] NECA 2010 Rate Filing, at pp. 28-29.

2011 fund year and each common carrier's contributions for the 2010-2011 fund year credited by the amount of the carrier's allocation. It would be inequitable for a surplus to not be allocated back to the common carrier that made the contributions. Allocating the surplus in the manner proposed by AT&T is also consistent with the manner in which NECA and the Commission have, in the past, sought additional contributions for the Fund when underfunded.

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Respectfully submitted,

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