

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

In the Matter of)
)
Structure and Practices) CG Docket No. 10-51
of the Video Relay Service)
Program)
)
Comments of CSDVRS)
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COMMENTS OF CSDVRS, LLC

CSDVRS, LLC, (“CSDVRS”) by and through undersigned counsel, hereby submits its comments to the Notice of Proposed Rulemaking released by the Federal Communications Commission (“FCC” or “Commission”) on May 27, 2010 concerning proposed rules for the Video Relay Service (“VRS”) program.¹ CSDVRS lauds the Commission’s commitment to VRS and extols the May Order as a positive and definitive step in establishing clear rules and regulations for this vital service for deaf and hard-of-hearing people. CSDVRS herein addresses the declaratory ruling and the notice of proposed rulemaking portions of the May Order in kind and as permitted Commission rules the comment period.

I. DECLARATORY RULING

The Commission entered its declaratory ruling, without notice and comment, under the auspices of Section 553 of the Administrative Procedures Act.² Specifically, the Commission has amended 47 C.F.R. §64.604(c)(5)(iii)(I) for an interim period to require senior executives to certify compliance with the rules by attesting to the veracity of submissions to the National

¹ See, *In the Matter of Structure and Practices of the Video Relay Service Program*, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, CG Docket 10-51, FCC 10-88, (May 27, 2010)(hereinafter “May Order”).

² *Id* at ¶12.

Exchange Carriers Association (“NECA”) under penalty of perjury.³ The May Order seeks comments on whether the proposed rule should be made permanent.

CSDVRS supports incorporating this change as a permanent amendment to the rules. CSDVRS reminds the Commission that a senior executive must certify the provider’s annual submission to NECA anyway, but nonetheless believes the rule will serve as a stark reminder to providers of the necessity of transparency and veracity in their dealings with the Commission and NECA. Quite plainly this measure is aimed at weeding out fraud within the industry and bringing personal accountability to senior executives of VRS companies, and CSDVRS submits that a company that has nothing to conceal should not be concerned with this interim rule becoming a permanent fixture. CSDVRS would note, however, that any company [or its senior executives] that is intent on defrauding the Interstate TRS Fund (“the Fund”), will likely be little influenced by the ramifications of perjurious submissions when such a company clearly has far more sinister intentions in its operations.

II. NOTICE OF PROPOSED RULEMAKING (“NPRM”)

CSDVRS herein submits the entirety of its comments on Section V of the May Order, in kind and as raised in the NPRM. CSDVRS does not choose to bifurcate its comments as permitted as it believes the issues raised within the May Order demand immediate attention and consideration.

(A) LOCATION OF VRS CALL CENTERS

CSDVRS commends the Commission’s goal of ensuring that qualified American Sign Language (ASL) interpreters are utilized when providing video relay services. To that end,

³ *Id.* at ¶12, Appendix B.

CSDVRS supports the proposed rule mandating that VRS call centers be located within the United States.⁴ However, CSDVRS would submit that the Commission should clarify the definition of the “United States” to include all territories and outlying possessions.

CSDVRS further submits that the direct impact of this rule will force some providers to close VRS call center locations, as many as eight locations from one provider, which will inevitably create more demand for qualified interpreters. As such, CSDVRS would urge the Commission to consider the impact of this rule in the present rate setting process as providers will invariably seek to recruit qualified CAs from other sources (i.e. competing providers).

(B) VRS CAs WORKING FROM HOME AND COMPENSATION

The Commission has sought comment on the propriety of VRS Communications Assistants (“CAs”) working from home and their compensation rates.⁵ CSDVRS submits that CAs that work from secure remote home offices are a compliment to a nation-wide network of call centers and that this practice should be permitted subject to certain restrictions. In regard to compensation, CSDVRS believes compensation of CAs should be based on any format that does not incent improper behavior and illegitimate billing of the Fund.

CSDVRS first would state that it holds its CAs to a very high standard, both operationally and professionally. This includes mandating that all CAs sign and adhere to the company a code of ethics, in addition to adhering to their professional code that is incidental to their certification (all CAs at CSDVRS are certified). CSDVRS would also like to raise a point with the Commission in that CAs in the industry seem to be receiving a “black eye” based on the behavior of a very small group of wrongdoers. CSDVRS firmly believes that the CAs that were

⁴ *Id.* at ¶18, Appendix C.

⁵ *Id.* at ¶¶19-21.

involved in any wrongdoing or fraud against the Fund did so at the direction of the principles in the company. Of course, this does not excuse any willful misconduct by a CA, but CSDVRS believes that the Commission is pursuing the proper course of action in targeting the principles of the companies who intentionally defraud the industry or otherwise interpret a lack of specific rules as a free license to create their own rules that would not pass any reasonable person's standard of fairness and honesty.

(1) At-Home Interpreting

CSDVRS first submits that a provider should not be permitted to solely utilize at-home CAs to provide VRS. At-home interpreting should be a cost effective solution to expand and complement an existing network of call center locations, and not the sole solution to the provision of VRS. Second, at-home interpreting must carry with it the same technological and confidentiality requirements of standard call center operations (i.e. identical equipment, identical operational environment, etc.). Third, at-home CAs should be highly knowledgeable interpreters with several years of experience working in a traditional VRS call center. Finally, a provider that utilizes at-home CAs, must be able to supervise and account for the interpreting activities of the CA.

The CA working from home accomplishes many goals set forth by the Commission, and furthers the interests of provider and the community served. Examples of these goals include meeting the service level objective set forth by the FCC of 80% of calls being answered within 120 seconds (the 80/120 rule), minimizing costs and allowing interpreters to remain in their home city location to provide support to local live interpreting situations thereby expanding the pool of qualified interpreters available to provide video interpreting services.

CSDVRS submits that many opportunities are afforded by home interpreting. On a very small scale, CSDVRS has initiated a Secure Virtual Call Center (“SVCC”) program for at-home CAs, directly overseen by an Operational Manager, and it has been very successful.

Under the CSDVRS Secure Virtual Call Center program, every CA selected to join the program is a certified member of the Registry of Interpreters for the Deaf (RID), bound by the RID Code of Professional Conduct, CSDVRS Confidentiality Agreement and CSDVRS Code of Ethics, and has at least three (3) years of experience working in a CSDVRS call center. All CSDVRS at-home CAs are remotely monitored periodically, without their knowledge, by the Operational Manager to ensure adherence to all rules.⁶ Stringent guidelines regarding their environment, security, and non-disclosure of their secure remote offices are in effect at all times. For example, all SVCC locations must be in separate locked rooms and maintain identical security parameters as traditional multi-person call centers. Technology allows for the CA to function effectively as a consistent part of the CSDVRS network of call centers. CAs working in SVCC can process any type of VRS call inclusive of 911 calls, and also have the ability to transfer a fully connected VRS call to or from a call center should they no longer be able to support the call. SVCC CAs can also transfer calls to a supervisor or customer service to handle any customer concerns. The call routing and skill set technology gives no preference to a CA in a standard call center versus a CA working from a secure remote home office. Per FCC regulations, CSDVRS calls are routed to the next available CA who has been idle the longest, and this may include an SVCC CA. Every function undertaken and button pushed on the CA’s SVCC workstation is documented electronically and can be reviewed by the direct manager or upper management for any suspicious activity. To that end, the CSDVRS SVCC program

⁶ CSDVRS maintains software that allow it to monitor SVCC locations to remotely view the call while in process without the knowledge of the CA or call participants.

involves daily management and review of SVCC operations to ensure the legitimacy of all calls and operational standards: every CA is identified in automatic reporting tools and compared to CAs working in call center locations for anomalies in results. Under the CSDVRS program, quality of service is a determining factor in the longevity of any CA's continued participation in SVCC. Expectations from the program include efficiency, confidentiality and meeting mandatory minimum standard service provisions at all times.

In regard to tracking and treatment of at-home CAs, CSDVRS would propose that the secured remote home offices be compiled into a call center labeled a 'Virtual Call Center' location, and within the virtual call center location that the individual home office locations be identified by the requirement of Section V.E.3.

CSDVRS submits that its SVCC program is a fully functional model for at-home interpreting and that the Commission should allow CAs to work from home under similar exacting conditions. Indeed, a strong and well-supervised secure remote home office program is a solution that can be successful for all providers, as it has been for CSDVRS, provided it is properly implemented. At-home interpreting allows for flexibility for both the CA and the provider, allowing each to maximize use of time and resources. The use of secure remote home offices also allows for call centers to power down during off hours, saving the provider (and ultimately the Fund) monetary resources spent in keeping a call center office open and operational during down times. At-home interpreting supports a provider's efficiency, allows for increased employment of CAs in more rural environments, and is also conducive to a CA's personal safety when they might otherwise have to commute to a call center at night or in poor weather conditions. The program also has the added benefit of being a 'green' program insofar as CAs participating in the program need not expend energy resources to get to and from their

place of employment. SCVV also achieves a critical goal of keeping interpreters in the community and fosters the employment of interpreters in low-density rural communities. CSDVRS submits that at-home interpreting ultimately inures to the support of the functional equivalency mandate of the Americans with Disabilities Act (“ADA”) as its operational support assists providers in meeting their obligations under the Act.

In accordance with the foregoing, CSDVRS believes that secure at-home interpreting should be permissible under Commission rules subject to the following parameters:

1. The virtual call centers must be a supplement to a provider’s existing traditional call centers and may not be used in their stead.
2. CAs involved in at-home interpreting, in addition to meeting standard certification requirements, must have a minimum of three years interpreting work experience in a traditional call center and be bound by the provider’s code of ethics.
3. The at-home location must be secure (locked and isolated from outside noises and distractions), and in a separate room within the home. Additionally, the location must exactly mimic the environment of the provider’s traditional call centers (i.e. color and lighting must be identical).
4. The provider must be able to remotely monitor calls for anomalous calls inclusive of a blind inclusion into a call for direct monitoring of call.
5. The at-home interpreting call routing must be in a “round robin” pattern to ensure calls are not directed to a specific CA/at-home location

6. At-home calls must be fully transferrable in a seamless manner equivalent to a transfer in a multi-person call center.

CSDVRS believes that if at-home interpreting is expressly permitted, with these minimum standards, providers will be able to supplement their resources, improve their operational efficiency, and ultimately better serve the deaf and hard-of-hearing communities that they serve. The largest cost challenge and community challenge in VRS is interpreting. The Commission must surely recognize that interpreting costs are not going down, and specifically allowing secure at-home interpreting as a complementary option for providers will ultimately inure to the benefit and health of the Fund. Indeed, providers are faced with several challenges in available community (on-site) interpreting as interpreters migrate to larger markets where VRS call centers are located. Secure at-home interpreting keeps these interpreters in the communities they serve and allows them to be available for on-site interpreting.

(2) CA Compensation

In regard to CA compensation, CSDVRS firmly espouses that CA compensation should not incent a CA to take actions for the sole purpose of receiving bonuses such as working through breaks or staying longer than originally scheduled. Most of all, CA compensation should never be tied to any minute-pumping scheme or other illicit plan. CSDVRS has implemented specific reimbursement plans for its CAs that allows for efficient and productive interpreting services and which protects the Fund from overbilling in regard to interpreting costs inherent in the rate.

At CSDVRS, any CA who works through a break or remains at their post past their scheduled time is compensated at their normal rate structure (subject to overtime laws).

CSDVRS believes that incenting behavior that encourages CAs to work systematically beyond established parameters is not only a bane to the integrity of the Fund and the stability of the VRS industry, but also detrimental to the health and safety of the CA. For this reason, CSDVRS maintains an established overtime policy whereby a CA may not work over 40 hours per week unless authorized by upper management, and never during consecutive weeks. Encouraging and rewarding overworking not only is potentially injurious to the well-being of the CA, but also presents a possible degradation in the quality of services being provided. Because of this, CSDVRS monitors specific Key Performance Indicators (“KPIs”) to measure operational performance. Specifically, CSDVRS monitors the following KPIs: occupancy, utilization, answer times, handle times and talk times. CSDVRS believes its KPIs represent a reasonable standard as to how the industry KPIs should appear, and that utilizing these KPIs in a statistical study can reveal fraud in the industry. CSDVRS submits that with stringent oversight and monitoring, fraud can be prevented regardless of how the CA is compensated.

(C) PROCEDURES FOR SUSPENSION OF PAYMENT

In the past year, NECA and the Commission have suspended payment to providers for certain VRS minutes deemed questionable or illegitimate. CSDVRS applauds the efforts of the Commission and NECA in carefully scrutinizing the minutes submitted for payment by providers. However, CSDVRS is troubled by the methods through which these efforts have been undertaken; specifically, withholding of payment for questionable minutes before a provider is afforded the opportunity to explain any anomalies. In the May Order, the Commission has sought comment on new rules addressing procedures for the suspension or withholding of payments.⁷

⁷ May Order at ¶¶23-24

In a prior petition, CSDVRS raised the due process concerns addressed in the instant NPRM.⁸ In the CSDVRS November Petition, it was pointed out that the U.S. Supreme Court has delineated long-standing rules on due process of law.⁹ More particularly, the Court has held that before property can be taken under the edict of an administrative office[r], the appellant is entitled to a fair hearing upon the fundamental facts.¹⁰ Under the current circumstances through which provider payments are withheld, CSDVRS submits that the Commission is appearing to obviate over a century worth of U.S. Supreme Court case law concerning substantive and procedural due process. Accordingly, CSDVRS suggested in its November Petition that the Commission take appropriate steps to ensure the rights of providers are not precluded in the Commission's pursuit of wrongdoing in the VRS industry.

The NPRM of the May Order has addressed CSDVRS's concerns. Specifically, the NPRM suggests that providers be given: (1) timely notice, (2) an opportunity to respond, and (3) a final determination.¹¹ CSDVRS wholly supports the Commission's addition of these rules as such rules are clearly in line with Commission precedent.¹² CSDVRS would also submit, however, that the Commission must establish clear timelines for the process to be carried out, lest the review be dragged on for months/years (thereby effectively undermining due process anyway). CSDVRS submits that the process consist of specific time intervals to allow each party adequate time to respond and review, and in no event should any withholding proceeding exceed ninety (90) days in length. As delineated in the November Petition, CSDVRS suggests that the new rules follow the television standard whereby NECA would issue a Notice of Inquiry on

⁸ See, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CSDVRS Petition for Rulemaking on Internal VRS Calls and VRS Conference Calls, CG Docket 03-123 (November 17, 2009) ("November Petition").

⁹ *Id.* at p. 15

¹⁰ *Id.* citing to *Southern R. Co. v. Commonwealth of Virginia ex rel Shirley*, 290 U.S. 190 (1933).

¹¹ See, May Order at ¶24.

¹² See, CSDVRS November Petition at p. 15 (citing to Commission precedent concerning payment withholding procedures offered to television broadcasters under 47 C.F.R. §1.80, *et seq.*).

questionable minutes, the provider would have thirty (30) days to respond, and NECA would then have sixty (60) days to either issue full or partial payment and/or a Notice of Apparent Liability for Forfeiture (“NALF”) which should have a comprehensive and detailed explanation as to why any/all payment will be withheld. To that end, the Commission should ensure that these rules allow NECA to withhold funds *after* the 90 day review and issuance of a NALF, and not during the review period. Such a process would that ensure due process is followed, representing a fair and equitable means for providers to explain any anomalies in their billing, and contemporaneously shield the Commission from any legal actions which could result from the current process.

Necessarily, implementing these new procedural rules will require NECA to be equipped with the personnel and tools to conduct such reviews. However, given the longstanding interaction [presumably] all TRS providers have with NECA, CSDVRS does believe that any further changes in the rules are necessary to accomplish this goal. The Commission simply must ensure that NECA complies with the new mandates.

(D) SPECIFIC CALL PRACTICES

(1) International VRS Calls

The Commission has made clear that VRS calls that originate and terminate outside of the United States are specifically not compensable from the Fund.¹³ To that end, the Commission now seeks comment on the most efficient means of ensuring this does not occur in order to eliminate fraud and misuse of VRS for international calls.¹⁴ CSDVRS recommends that the

¹³ See, *Structure and Practices of the Video Relay Service Program*, Declaratory Ruling, CG Docket 10-51, DA 10-314 (February 25, 2010).

¹⁴ May Order at ¶¶27-29.

Commission employ three rules to implement effective international-to-international call tracing to ensure that only legitimate VRS calls that originate or terminate overseas are compensated.

First, the Commission should require enhanced call detail records (“CDR”) for all VRS calls. Currently a CDR contains either the telephone number or the IP address information on each leg (VRS user and Hearing user) of the VRS call. The CDR should be enhanced to allow the capture of both the Telephone number, IP address information and country location of the IP address for each leg of the call, if available. This will allow for more detailed analysis of CDRs and calling patterns by both the VRS provider and the FCC.

Second, the Commission should require automated systems to accurately collect call signaling information for accurate CDRs. CSDVRS recommends that the Commission require all VRS providers to use automated systems capable of collection and analysis of the call signaling information to accurately determine the telephone number and/or the IP address information on each call leg and generate an automated CDR. The systems must be capable of capturing the call signaling information from both the video phone and the upstream telephony provider to assemble an accurate CDR about the VRS call. VRS providers that have these systems are able to review calls and more easily spot anomalous calls on a daily, weekly and monthly basis.

Third, the Commission should require providers to track geo-location of IP addresses at the time of the call, specific to at least the country level. The telephone number, by default, provides geographic information via area code and country code information to allow for determination of the location (international or domestic) of the specific call leg. CSDVRS has developed and deployed this system using commercial off the shelf geo-location software programs, so it is entirely feasible for all providers to comply with this rule. CSDVRS stresses

that geo-location of the IP address must be done at the time of call and not afterward as the IP address can be easily moved across borders. To that end, the geo-location must also be updated at least monthly to properly track IP addresses. CSDVRS believes VRS providers armed with this information are able to implement systems to regularly review, identify, and terminate international-to-international calls on a regular basis.

(2) VRS Calls in Which the Caller's Face Does not Appear on the Screen; Use of Privacy Screens; Idle Calls

The NPRM seeks specific comment on the use/misuse of privacy screens in VRS calls, and similarly how CAs should address idle calls or blank screens.¹⁵ CSDVRS addresses each herein below, but would caution the Commission not to overstep its bounds with this rulemaking and implement a rule or set of rules that is contrary to the functional equivalency mandate.

First, concerning privacy screens, CSDVRS submits that a privacy screen should never be used by a CA in a VRS call. Accordingly, CSDVRS would urge the Commission to adopt a rule prohibiting the use of privacy screens to block the customer's view of a CA. CSDVRS believes that while a CA is engaged in providing VRS, the customer should have access to the CA at all times. Contrarily, CSDVRS submits that in the interests of functional equivalency, a VRS consumer should be able to use a privacy screen for limited purposes during a call (much like a hearing person can use a "on hold" feature), but the CA should have reasonable discretion to disconnect the call after a certain period if the caller's face is not visible.

Second, concerning blank screens or the use of privacy screens by VRS consumers, CSDVRS supports the permissive proposal of Sorenson in this regard. In a prior petition,

¹⁵ May Order at ¶31-32.

Sorenson suggested that the Commission adopt a permissive rule that allows a CA to disconnect a call when the caller's face is not on screen for two minutes (either for use of a privacy screen or a blank screen).¹⁶ In the May Order, the Commission tentatively adopted a mandatory rule *requiring* the CA to disconnect after two minutes.¹⁷ CSDVRS supports the Commission's effort to reduce fraud by requiring a CA to disconnect such a call after two minutes, but given the functional equivalency mandate, CSDVRS cannot support a mandatory disconnection of the call, and instead urges the Commission to espouse the original proposal of Sorenson and implement a permissive rule. In addition to this, and to assist the Commission in reducing fraudulent billing of minutes, CSDVRS recommends that the Commission supplement this rule to require that no outbound audio call can be placed by a CA until the video connection is fully established with the inbound VRS caller. If the video call cannot be fully established, then those calls can be terminated at the one or two minute mark if the inbound video has a blank screen. In the event the inbound video call is a 911 call that is answered with a blank screen, the CA should process the call to the appropriate PSAP and relay what information, if any, the CA is able to relay to the emergency call center representative.

Lastly, concerning idle calls, CSDVRS does not support the termination of legitimate calls that become idle. Indeed, requiring this rule would be contrary to the goals established for functional equivalency insofar as a hearing caller could certainly go "idle" on call and would not be disconnected. An example might be where a caller steps away from the phone for any normative purpose (answering the door, search for something in their home/office, etc.), and will still be connected when s/he returns to the phone. VRS callers must be afforded this same access

¹⁶ See, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Sorenson Communications Petition for Rulemaking, CG Docket 03-123 (October 1, 2009).

¹⁷ May Order at ¶31.

under the functional equivalency mandate. As such, CSDVRS submits that there must not be any rule requiring the disconnection of calls if the call is idle for two minutes or more. Functional equivalency demands that only the parties to a call should be permitted to disconnect. Accordingly, enacting the permissive rule suggested by Sorenson, or even a compulsory rule in this regard flies in the face of Section 225 of the Communications Act and places CAs in the inappropriate role of policing VRS calls. CSDVRS can certainly appreciate the intent of the suggested ruling (i.e. to reduce fraud), but the proposed rule on idle calls undermines equal access to telecommunications, pits CAs against the community which the providers serve, and could ostensibly subject any VRS call two minutes or longer to heightened scrutiny and review by NECA.

(3) Calls Involving Remote Training

The Commission has sought comment on the compensability of VRS calls involving remote training that are provider-involved.¹⁸ CSDVRS supports the Commission's position in this regard and agrees that provider-involved or promoted VRS calls that enable a person to participate in remote training using VRS should not be compensable from the Fund. CSDVRS would urge the Commission, however, to explicitly define the parameters of this rule. Specifically, CSDVRS submits that the new rule should only apply to those calls where a VRS provider, its affiliates, or subcontractors, is involved in the scheduling, hosting/generating, and/or promoting of the remote training. Thus, contrarily, any remote training program where the VRS provider has no involvement in the program should be compensable (i.e. a third party company hosting a webinar for their employees for training purposes and a deaf employee of that company uses VRS to attend that training program). CSDVRS submits that based upon its own records,

¹⁸ May Order at ¶¶33-35

the volume of these types of calls are minimal and that industry statistical analyses would expose any violations of the rules.

(E) DETECTING AND STOPPING THE BILLING OF ILLEGITIMATE CALLS

(1) Automated Call Data Collection

Given the potential for fraudulent minutes being billed to the Fund based on inaccurate CDRs, in May 2009 CSDVRS submitted a petition requesting the Commission to mandate automated minute tracking.¹⁹ The Commission now seeks comment on its tentative conclusion to require automatic capture of VRS conversation time.²⁰

CSDVRS reiterates the points raised in its Data Collection Petition, and further recommends that the Commission require every VRS provider, as a condition of certification, be required to have an automated CDR system to automatically record not only compensable conversation time but also session time and other call data reported to the administrator, to at least the nearest second. CSDVRS also reiterates that the Commission should require all VRS providers to use automated systems capable of detail collection and analysis of call signaling information to accurately determine the telephone number and/or the IP address information and country location of the IP addresses at the time of the call when applicable. This additional information should be included in the automated CDR. VRS providers that have these systems are able to review calls and more easily spot anomalous calls and calling patterns on a daily, weekly and monthly basis.

¹⁹ See, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CSDVRS Petition for Clarification or Rulemaking on Automated Data Collection, CG Docket 03-123 (May 22, 2010) (“Data Collection Petition”).

²⁰ May Order at ¶37

To augment its Data Collection Petition, CSDVRS submits that the Commission must define an automated system as a system that prohibits human intervention in the start or termination of data collection for call detail record. CSDVRS has learned of providers using “partially automated” systems where one end of the call is determined when the CA strikes a specific keyboard key determining the start or the end of a call. Similarly, in such systems, CAs might forget to trigger the termination of a call and then attempt to make up the difference on the next call. CSDVRS believes that in an age of automation this is simply unacceptable and speaks further to the need for automated systems and requirements to become a certified provider.

(2) Data Filed with the Fund Administrator to Support Payment Claims

The Commission seeks to implement a supplementary rule to the statutory minimum standards for VRS²¹ to account for certain call data information.²² CSDVRS is in agreement with the Commission’s position that would require call detail records (“CDR”) to include, at a minimum: (1) the call record ID sequence; (2) Communications Assistant ID; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number or IP address; (6) outbound telephone number or IP address; (7) total conversation minutes; and (8) total session minutes. CSDVRS submits that items 5 and 6 should be amended to read: “...telephone number ***and*** IP address, if available”, and country location of the IP address at the time of the call, and that such inclusion would assist the provider and NECA in confirming that a call does not originate and terminate from an international location. Again, in consideration of the international-to-international call scenario, CSDVRS cautions the Commission that the geo-location associated with IP addresses is a rapidly changing paradigm. Where one IP address

²¹ 47 C.F.R. §64.604(c)

²² May Order at ¶¶38-41

might reflect a New York geo-location one week, it might identify North Carolina the next week, and an overseas locale the following week. To combat this issue, CSDVRS updates geo-location for IP addresses on a weekly basis, and would urge the Commission to require such systematic updates by all providers.

In regard to supplying speed of answer reporting compliance, and electronic data submission, CSDVRS wholly supports the Commission's conclusion that the rules should be amended to require these submissions and that they should be in electronic format. This rule will memorialize decreased burdens on providers (who generally provide the data anyway) in compiling the information, as well as to NECA in analyzing and examining the call data.

(3) Requiring Providers to Submit Information about New and Existing Call Centers

Given the ever-shifting face of call center locations, the Commission has requested comment on whether a rule should be implemented to require providers to disclose the locations of their existing call centers, and to provide information on new centers within 30 days.²³ CSDVRS believes that the current requirements are sufficient, but recognize that additional requirements may provide important information to NECA. Currently, each VRS provider must obtain a unique Center ID in order to submit calls handled by that specific call center to NECA for reimbursement. The information currently provided to the NECA includes both the actual call center location and the identity and location of its corporate parent, and the corporate parent's contact information (phone and email).

²³ *Id.* at ¶¶42-44

CSDVRS does not dispute the usefulness of knowing both a call center's size and the identity of each call center's on-site general manager. However, CSDVRS submits that requiring contact information for the on-site general manager could potentially lead to inquiries that would interfere with operations. Furthermore, while a call center manager may be well-versed in VRS practices and rules, and also corporate expectations regarding such matters as occupancy and utilization, they are often less aware of continually evolving interpretations and needs of the Fund Administrator. Furthermore, CSDVRS believes a quarterly submission would be sufficient to adequately track and obtain call center information without increasing the VRS providers' administrative burden, and would in no way effect either the quality of service or the legitimacy of minutes. Accordingly, CSDVRS does not support the proposed amendment that providers update their most recent quarterly filings within thirty (30) days of opening or closing a call center.

In regard to further comment on the matter, the Commission proposes that providers identify the number of CAs and CA managers at the call centers, and the name and contact information for the managers of the call center.²⁴ CSDVRS takes no issue with such a requirement, but would ask the Commission to define "CAs" as whether the term includes full-time or equivalent CAs/CA Managers, part-time or occasional CAs/CA Managers, or simply any individual that provides interpreting services or CA management services in a provider's call center.

(4) Requiring Service to be Offered in the Name of the Provider Seeking Compensation from the Fund; Revenue Sharing Schemes

²⁴ May Order at ¶43.

The Commission seeks further comment on “white label” VRS providers as first addressed in a petition for rulemaking by GoAmerica (now part of Purple Communications) in January 2009.²⁵ CSDVRS offered its initial comments in a responsive pleading to the Commission the following May.²⁶ CSDVRS herein reiterates points raised in its Reseller Comments and also urges the Commission to sufficiently differentiate between a “white label” and a VRS reseller.

CSDVRS would first remind the Commission that revenue sharing arrangements have been in place since the beginning of VRS regardless of whether the entity was certified by the FCC or a State Relay Commission. For example, telecom giants AT&T and Sprint-Nextel do not possess facilities or platforms to support VRS, but nonetheless bill the Fund as certified TRS providers and share revenue with companies that provide interpreters and other resources.

As a certified provider, CSDVRS currently maintains several billing relationships which it appropriately labels its Value Added Reseller (“VAR”) program. The concept of a reseller is pervasive in all product and service distribution models in the United States, and VRS is no different. The Commission is certainly aware that the purpose of a reseller is to expand the marketability and reach (outreach) of a product at a lesser cost than building a direct marketing and sales channel. Almost all products consumers buy today are bought indirect through a reseller and very often that reseller uses a private label relabeling of the product. Using Value Added Resellers is an important part of the strategy of CSDVRS as it strives to spread VRS to more deaf and hard of hearing consumers nationwide. Indeed, it would be detrimental not only to

²⁵ May Order at ¶¶45-48 citing *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, GoAmerica, Inc. Petition for Rulemaking, CG Docket 03-123 (January 26, 2009).

²⁶ See, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CSDVRS Reply Comments, CG Docket 03-123 (May 8, 2009)(“Reseller Comments”).

CSDVRS, but to the entire deaf and hard-of-hearing community if its VAR program were terminated.

In regard to “white label” arrangements, CSDVRS submits, as it did in its Reseller Comments, that an outright ban to these arrangements is detrimental to the VRS industry, chokes off competition, and prevents new entrants to the marketplace. Moreover, in order to adequately address the “white label” issue, CSDVRS submits that it is absolutely vital that the Commission differentiate between a hollow “white label” (as assumed and presented by GoAmerica), and a sustainable reseller or subcontractor (such as a CSDVRS VAR). CSDVRS agrees that it is vital that all entities involved in VRS are held to exacting standards, and thus appropriate rules must be enacted in consideration thereof.

First, in regard to resellers, CSDVRS submits that a reseller of VRS should be identified under 47 C.F.R. §64.604 as an entity that meets the majority of the statutory minimum requirements to be a stand-alone VRS provider, but lacks FCC or State Relay certification to bill the Fund and/or requires technological or operational support (i.e. platform, call overflow, etc.) from a certified provider. To that end, CSDVRS would suggest that the Commission amend its rules to require VRS resellers to meet the following criteria:

1. The reseller must be a recognizable and duly organized corporate entity with directors/executives accountable for corporate acts.
2. The reseller must maintain operational facilities including corporate offices and at least one functioning call center (they cannot exist solely as a “white label” which simply adds a different mark to an identical product). For example, all CSDVRS Value Added Resellers are incorporated interpreting agencies that utilize their interpreters to staff their

call centers. This arrangement not only assigns corporate responsibility to the reseller, but also expands the pool on interpreters available for VRS.

3. Unless it is independently certified by the FCC, the reseller cannot be permitted to process minutes and create call detail records with one company, and then bill with another. As such, the certified billing provider must have a 100% automated end-to-end system for call detail records and a geo-location system to stop international to international calls. The billing provider must also be the same provider that generates the call detail record.
4. The reseller must maintain a proper web site and interactive voice/video response system (“IVVR”) on the video leg of its calls that discloses which certified provider is supporting its operations.
5. The reseller must generate and implement a code of ethics that reflects adherence to Commission rules. The code of ethics should be executed by all employees, agents, and subcontractors of the reseller.
6. The reseller must register with the Commission or NECA, identify its certified provider partner, and provide specific details of its operations in conjunction with the requirements of these rules.
7. The reseller must agree to complete audits by its certified provider partner and/or by NECA upon reasonable notice.
8. The CEO, CFO or equivalent corporate officer of the reseller must attest to the veracity of billing submissions (as is required for certified providers under the instant Declaratory Ruling).

CSDVRS would also suggest that the reseller and associated call centers be identified separately on the certified provider's billing record so as to allow more efficient review and analysis by NECA.

Second, in regard to those entities that do not possess the corporate, operational, and organizational structure to meet the above rules, and ostensibly would be deemed true "white labels", CSDVRS believes the Commission should rightly prohibit any type of operation that does not meet the standards delineated above for resellers. However, CSDVRS submits that in prohibiting hollow "white labels", the Commission should carve out a narrow exception for alternate labels used in marketing the services of certified providers. For example, CSDVRS owns several URLs or .TV labels (CSDVRS.TV, ZVRS.TV, USAVRS.TV and HOLAVRS.TV). Purple Communications and Snap!VRS have similar URLs that are different from the actual name of the companies, but the URLs are directed to them. Provided there is no revenue sharing with third parties that is in anyway tied to minutes generated, and the alternate labels conspicuously notify consumers that the label is a brand of the certified provider (i.e. on the label's website and IVVR), CSDVRS submits this type of sub-branding would be appropriate. Otherwise, CSDVRS wholly supports the elimination of nominal and skeletal enterprises that exist solely to reap financial benefit from the Fund and are not otherwise sustainable and/or identifiable operations.

(5) Whistleblower Protections for VRS CAs and Other Provider Employees

The Commission seeks particular comment on whether there should exist a whistleblower protection rule for employees and subcontractors of TRS providers.²⁷ Insofar as CSDVRS

²⁷ May Order at ¶50.

already maintains an internal standing policy in this regard, and that instituting such a rule would be keeping in the spirit of the Federal Whistleblower Protection Act,²⁸ CSDVRS wholly supports the implementation of this rule. As the Commission noted in the May Order, Sorenson Communications has already proposed language for a new whistleblower rule.²⁹ CSDVRS believes the language suggested by Sorenson is fitting and appropriate, but the Commission must also consider the proper role of Communication Assistants (CAs) as it deliberates this proceeding.

The Commission needs to be wary of the particular concerns and obligations of CAs as it implements a new whistleblower rule (or in any other proceeding for that matter). Plainly, CAs are the “front line” of the VRS industry and are the parties most likely to be exposed to and/or used in fraudulent schemes against the Fund. To that end, of course, CAs should be afforded all of the protections of the proposed whistleblower rule, but on the same token, the Commission is no doubt aware that certified CAs are strictly bound to ethical rules imposed by their certification and credentialing agencies, and are likewise required to uphold the confidentiality requirements of the Communications Act.³⁰ As such, in enacting a whistleblower rule, the Commission must ensure that a CA, or the provider employing the CA, is not subject to retributions for violations of confidentiality rules if a CA makes a good faith and bona fide disclosure, based upon information learned while interpreting, which later proves to be unfounded. Incorporating such language will serve the Commission’s laudable goal of implementing an industry whistleblower statute, and at the same time consider the limitations and obligations of interpreters as conduits to communication in a VRS call.

²⁸ See, Whistleblower Protection Act of 1989, P.L. 101-12, 103 Stat 16 (1989).

²⁹ See, May Order at p. 21, N. 93.

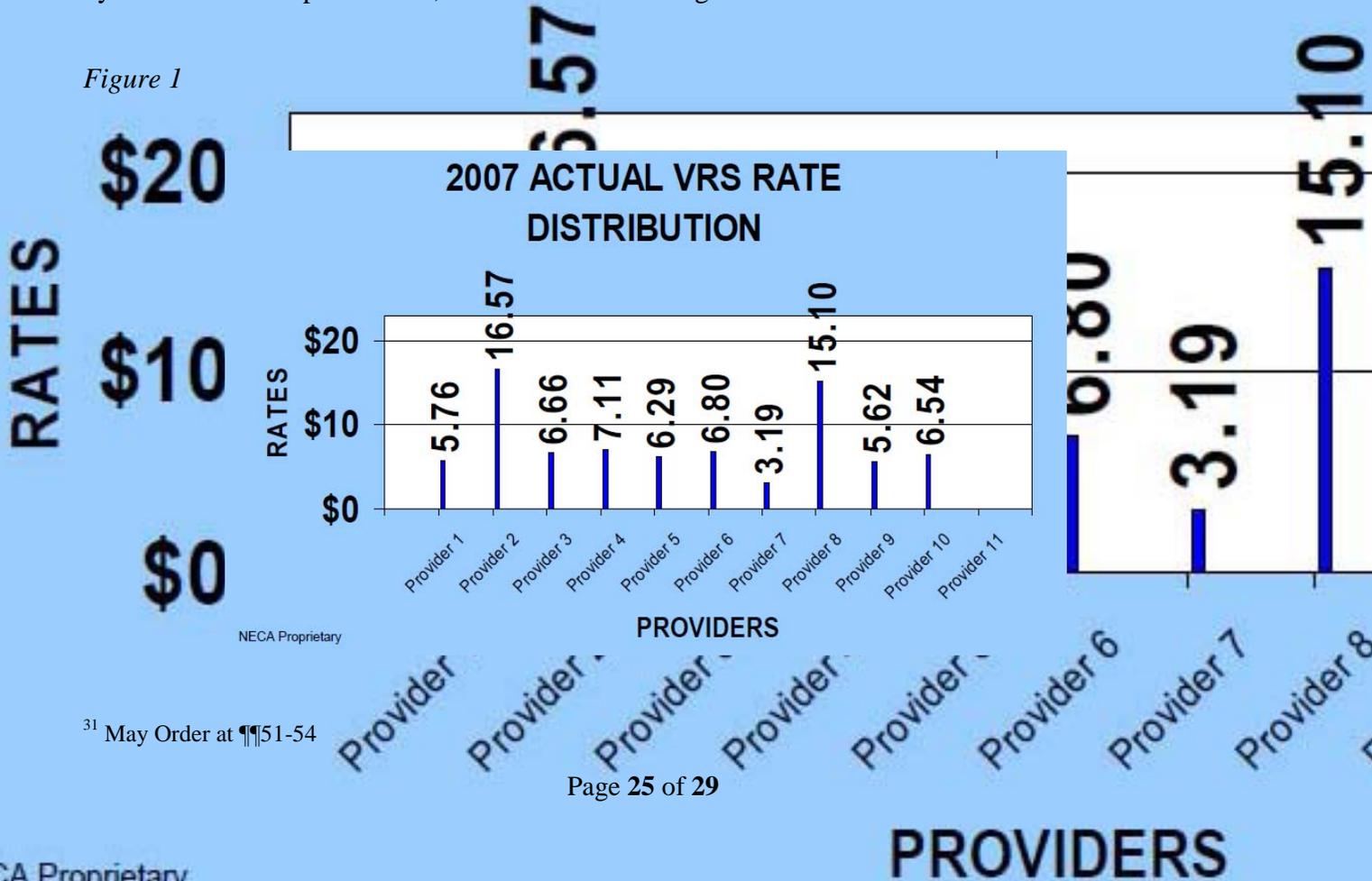
³⁰ See, 47 U.S.C. §705.

(6) Transparency and the Disclosure of Provider Financial and Call Data

In light of recent consumer group inquiries, the Commission has sought comment on whether VRS providers should be compelled to make public their cost and demand data.³¹ While CSDVRS can appreciate the ostensible purpose of publicizing certain provider information, and agrees that limited transparency is appropriate, CSDVRS does not condone blanket disclosure of the entirety of a provider’s financial and call data.

CSDVRS feels that limited transparency to provider data can be accomplished in a way that would provide consumer groups, as well as other providers, a means to analyze and comment on the rate setting process, and at the same time would maintain provider confidentiality. Specifically, overall calculations of costs data presented in an anonymous fashion would be adequate for such analyses. By way of example, *Figure 1* below was provided by NECA at the September 18, 2008 NASRA meeting:

Figure 1



³¹ May Order at ¶¶51-54

The data in this table presented an overall “allowable” per-minute cost of providing VRS for ten companies based on information submitted to NECA and represented actual allowable costs for VRS. The calculations did not take into account disallowed costs, inclusive of videophone equipment.

In the interests of equity and disclosure, CSDVRS would implore the Commission and NECA to divulge, in the same format as in *Figure 1*, total provider costs - inclusive of non-allowable costs - and the basis for the disallowance of those costs. CSDVRS submits that implementing and limiting transparency so as to only permit public disclosure of the actual rate distribution (with the notations included for all costs), similar to *Figure 1* above, will allow any party that seeks to comment on a rate proceeding all of the data necessary to fashion an informed commentary. Providers would be assured that their overall cost submission and the specifics submitted to NECA would remain confidential, yet consumer groups, other providers, or any party seeking comment will be able to analyze the most pertinent data. Should the Commission deem that further public extrapolation on the costs data is necessary and appropriate, CSDVRS submits that breaking out the costs by tier may be beneficial but that no further publicity of data nor expansion of information would be apposite to the professed purpose of disclosure. To that end, CSDVRS asserts that providing more information than that provided in *Figure 1* above would only cause confusion and dilute meaningful commentary in future rate setting exercises. Lastly, CSDVRS would caution the Commission that mandatory disclosure of the whole of a provider’s financial and call data could raise justiciable issues in regard to professional confidentiality rules and constitutional privacy protections.

(7) Provider Audits

As noted in the Declaratory Ruling, the Commission may suspend payments to providers that do not submit to audits, and the Commission seeks comment on whether more stringent auditing rules should be implemented.³² CSDVRS believes that provider audits are reasonable in light of the fraud and provider miscalculations regarding costs that have occurred within the industry, and therefore supports the Commission's efforts to heighten the rules in this regard. CSDVRS submits that the Commission should undertake the audits when they will be most effective for the Commission's purposes, and least burdensome to the providers. As such, the Commission should conduct audits in consideration of each provider's annual accounting cycle, and certainly in the wake of the federal government's non-extended corporate taxation deadline.

A financially prudent provider will have its books completed during the first quarter of the subsequent year. Performing the audit during the second quarter would allow the provider to have already made any necessary accounting adjustments and have the benefit of simultaneously preparing schedules for both its financial audit and the Commission's audit, which will likely contain the same data in many instances. CSDVRS submits that the Commission should provide a comprehensive and specific listing of necessary information annually to the providers, as well as direction regarding what types of information is appropriate.

It bears mentioning that CSDVRS believes that the gathering of historical costs should also be more closely aligned with traditional accounting classifications and include all costs necessary to provide the service. Historical costs gathered within the Data Collections Forms Demand Data both exclude certain costs necessary to provide VRS and also are open to

³² May Order at ¶55.

misinterpretation, as evidenced by the wide variances in costs provided by VRS Providers, specifically within Tier 1 (< 50,000 minutes per month) in which costs ranged from approximately \$2 per minute to approximately \$18 per minute. The resources devoted to restating and regrouping costs to accommodate the classifications within the Data Collection Forms are considerable, and smaller providers may not have the manpower or acumen to properly interpret such a request.

Ultimately, CSDVRS welcomes audits to insure that minutes are properly accounted for and meet appropriate requirements for payment from the Fund and supports the implementation of a new rule mandating same. CSDVRS expends considerable time and resources in an effort to adhere to the payment submission rules and believes all providers should welcome such scrutiny from their primary revenue source to ensure the integrity of the Fund is maintained. CSDVRS submits that a provider's failure to comply on any level with a NECA audit should result in substantial financial penalties, including withholding of compensation (subject to due process rules). Audits should be scheduled at the convenience of the provider so as not to interfere with daily operations, but providers must submit to an audit within a reasonable specified number of days following demand; CSDVRS would suggest a sixty (60) day notice.

(8) Record Retention

The Commission has sought comment on how long providers should be required to retain their CDR and other records and has suggested a mandatory five (5) year retention.³³ CSDVRS supports the Commission's proposed rule on this matter. CSDVRS would further suggest that in the interests of efficiency and expedient delivery of records to the Commission upon request, that

³³ May Order at ¶¶56-57, Appendix C.

the record retention mandate should require all provider records be maintained in electronic format.

(9) Provider Certification Under Penalty of Perjury

As delineated hereinabove at Section I, CSDVRS supports the interim rule becoming a permanent fixture in the Code of Federal Regulations. Although individuals or entities that may have intentional designs on defrauding the Fund would likely be little influenced by the new rule, it nonetheless represents a commendable extension of accountability of provider executives before NECA and the Commission, and will act to ensure that provider billing records are adequately reviewed and analyzed before submission to NECA.

III. CONCLUSION

CSDVRS praises the Commission’s manifest dedication to the VRS industry in the instant proceeding, and lauds the obvious devotion of Commission manpower that the generation of the May Order required. CSDVRS eagerly looks forward to final implementation of the new rules, and stands prepared to assist the Commission in any way possible to assure the most equitable and seamless application of these new rules to this most vital telecommunications service.

Respectfully Submitted,

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