

**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)	
)	

COMMENTS OF PAH! VRS AND INTERPRETEL, LLC

PAH! VRS and Interpretel LLC, unaffiliated video relay services providers and new market entrants, hereby respond to the Commission’s May 27, 2010 *Declaratory Ruling, Order and Notice of Proposed Rulemaking* in the above captioned proceeding.¹ PAH! VRS and Interpretel LLC (collectively, “the Companies”) share a common interest in supporting and contributing to the development of a vibrant, meaningfully competitive, video relay services (“VRS”) market that offers the public diversity in the availability of functionally equivalent relay services. The Companies readily recognize that the realization of their shared commercial interests comes not only from their focus on the professional provision of relay services to the public, but on the effective provision of reliable, responsible, and compliant services that meet and ultimately exceed the Commission’s Mandatory Minimum Standards (“MMS”), under an unambiguous, stable regulatory environment.

¹ See, e.g. *In the Matter of Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, *Declaratory Ruling, Order and Notice of Proposed Rulemaking*, FCC 10-88 (rel. May 27, 2010) [“NPRM”]

Over the course of the past few years, the VRS industry has witnessed a dramatic increase in technological advances and competitive entry² that have effectively changed the VRS and regulatory landscape. With these new technological advancements and opportunities, have also come new questions regarding how the existing regulatory framework applies to situations and circumstances that simply did not exist, could have existed, or could have been contemplated as recently as five years ago.

Despite the Commission's best efforts to address these interpretive matters, the Companies have witnessed increasing instances of ambiguity regarding applicability of existing rules and Commission orders to changing conditions. It is this same ambiguity that the Companies believe has been exploited by some to "interpret" the regulatory framework in an entirely unintended manner strictly for personal gain, to the detriment of the public and reputation of the entire relay services industry. In the absence of clearly articulated regulations and policies, such ambiguity and the resulting regulatory uncertainty, have further undermined new technological investments and effectively, for now at least, precluded competitive entry, as the Companies can attest from personal experience.

The Commission's *Declaratory Order* and NPRM now offer the potential for a clear and unambiguous approach that will achieve the Commission's goals of enabling VRS to "continue

² That the Companies can exist at all, is testament to the Commission's foresight in creating new market opportunities to better serve the Deaf Community and public through a federal Telecommunications Relay Service Fund ("Fund") eligibility certification process. *See, e.g. In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Order on Reconsideration, FCC 05-203 (rel. December 12, 2005)[*"Report and Order"*]. "[w]e amend the TRS regulations to permit common carriers seeking to offer VRS and IP Relay and receive compensation from the Interstate TRS Fund to apply to the Commission for certification as an entity providing these services in compliance with the TRS rules, and therefore eligible for compensation from the Fund. This certification procedure will permit common carriers desiring to offer VRS or IP Relay, and not the other forms of TRS, to do so without having to meet one of the existing eligibility criteria set forth in the rules."

as a vibrant service for persons who are deaf or hard and hearing...” that remains a “sound and robust service, consistent with Congress’ mandate that [relay services] be made widely available and incorporate new technologies.” The Companies commend the Commission for its bold actions in redirecting VRS into its intended role by reestablishing regulatory certainty, preserving the Fund’s integrity, and preserving the original competitive opportunities established under the *Report and Order*. With the foregoing in mind, the Companies respond to the Commission’s *Declaratory Ruling* and NPRM.

I. INTRODUCTION

PAH! VRS ("PAH") is a VRS company that has been processing VRS calls since 2008. Company principals and associates have long-standing VRS experience and are deeply rooted in the Deaf Community. PAH's sole reason for existence is to focus on the service side of VRS rather than the technology aspects. PAH has been providing VRS to hundreds of subscribers through an eligible provider during the year and a half pendency of its application for Fund eligibility before the Commission.

Interpretel LLC³ is a newly organized relay services provider comprised of individuals with significant senior level VRS industry and business experience with ties to the Deaf community. Interpretel LLC is dedicated to meeting the relay needs of the public using advanced technology, and realizing the promise of competitive entry envisioned by the Commission through its *Report and Order*.

³ Interpretel LLC is applying to the Commission for Fund eligibility.

The Companies have a vested interest in this matter. Though unaffiliated, they share with each other and the Commission a common vision of a relay services market comprised of reputable providers under a regulatory framework that maintains the integrity of the Fund, the integrity of the market, ensures compliance, and regains public and Commission confidence and trust in the provision of relay services as originally intended. The new interim rule and direction of the proposed rules take an important and badly-needed step toward this end, while reestablishing regulatory certainty that has been lacking. The Companies applaud the Commission for now proposing a comprehensive regulatory framework that meets these aims.

As discussed herein, the Companies support the Commission's interim rules, and agree that the rules should be made permanent. The Companies also address the proposed rules and attendant considerations that should be incorporated into the final resultant regulations.

II. NEW, EXPLICIT RULES HAVE BEEN NEEDED TO RESOLVE THE GROWING UNCERTAINTY ARISING FROM TECHNOLOGICAL ADVANCEMENTS AND TO REESTABLISH REGULATORY CERTAINTY.

Two separate forces have ostensibly precipitated this rulemaking; 1) the evolution of technology; and 2) the abuse perpetrated by certain individuals for personal gain.⁴ Certainly every issue addressed in the NPRM can trace its existence in one form or another to the regulatory uncertainty that has simmering over the past few years.

Technological advances in the provision of relay services and capabilities based on explosive Internet technology and applications have been primarily contributors to a growing uncertainty over how the existing regulatory framework should apply in certain circumstances.

⁴ NPRM at 2.

The proliferation of provider employee-initiated calling, created opportunities for translation as compensable calls. In the absence of explicit guidance or regulation, arguably employee-initiated calling could formerly have been interpreted as being consistent with the general tenant of functional equivalency regardless of the circumstances under which they were interpreted. Yet interpretation of employee-initiated calls was also rife with opportunities for abuse. For some providers, interpretation of such calls became a Hobson's choice – refuse to interpret and become subject to allegations of not meeting functional equivalency obligations or interpret employee-initiated calls and risk accusations of inflating compensable usage. Commission direction on employee-initiated calling unequivocally ended this uncertainty.⁵ The same now stands to be accomplished for those issues that are the subject of this rulemaking.

Over the course of the past few years, reputable providers became increasingly perplexed over their specific obligations in unique circumstances, absent specific Commission guidance in some cases.⁶ Those who pursued personal gain exploited opportunities created by uncertainty and ambiguity with seeming impunity. Promulgation of new rules now reestablishes badly-needed regulatory certainty that will remove ambiguity, preclude the potential for fraud, and will free new providers to enter the market and existing providers to invest in service enhancements and infrastructure and serve the public with confidence.

⁵ See, e.g. *In the Matter of Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, DA 10-314 (rel. February 25, 2010).

⁶ Witness the number of requests for declaratory rulings submitted by providers and Commission action: http://www.fcc.gov/cgb/dro/trs_history_docket.html

III. THE INTERIM RULES REQUIRING OFFICER CERTIFICATION ARE APPROPRIATE AND SHOULD BE MADE PERMANENT.

The Companies agree with the interim emergency requirement that “the Chief Executive Officer, Chief Financial Officer, or other senior executive of a provider submitting minutes to the Fund administrator for compensation to certify, under penalty of perjury, that the minutes were handled in compliance with section 225 and the Commission’s rules and orders, and to certify under penalty of perjury that cost and demand data submitted to the Fund administrator are true and correct.” The Companies view the interim rule as an explicit requirement for what should already be standard VRS industry practice and what is already a standard commercial business practice.

As the Commission aptly notes, this obligation is a matter of accountability and data integrity, essential to the effective administration of the Fund. By establishing an explicit obligation on corporate officers to certify the accuracy of submissions to the Commission and Fund administrator, the Commission clearly articulates its expectation that signing corporate officers will exert the level scrutiny on submitted data accuracy and remain personally responsible. In so doing, the Commission removes any uncertainty that may have formerly existed regarding the level of responsibility and accountability for review and further on the implications for a signing officer’s malfeasance. The Companies readily agree that the requirement should be made permanent.⁷

⁷ The Companies also agree with CSDVRS’s assessment that corporate officer’s intent on defrauding 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.” *See., In the Matter of Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, *Comments of CSDVRS, LLC* (June 11, 2010) [“CSDVRS Comments”]. The requirement for officer certification must, of course, be backed by enforcement if this and other proposed rules are to be effective.

IV. THE PROPOSED RULES

A. Location of VRS Call Centers. Providers Should be Limited to Call Centers and Work From Home Locations Physically Located in the U.S. Unless They Can Document the Exceptional Circumstances and Conditions That Would Support a Non-U.S. Call Center.

The Commission has tentatively concluded that all VRS call centers should be located in the United States. The Companies agree. Regulatory uncertainty has, as noted, contributed to interpretive issues leading to many of the circumstances that have precipitated this rulemaking. Use of non-U.S. call centers exacerbates the potential for additional interpretive issues to arise, whether due to different customs, laws, staff orientation, spoken language, or simply as a matter of physical detachment from the U.S. Challenges of maintaining clear communications and control of non-U.S. call centers, particularly in countries that may have differing professional standards or are staffed by communications assistants that do not maintain the same level of professional accreditation maintained in the U.S., stand to contribute to compliance and control issues, as the Commission already notes.

Further, concerns over proper and timely routing of emergency calls by non-U.S. call centers as the Commission has stated are well placed. Although technology in theory should not preclude non-U.S. call centers from properly routing 911 calls, in practice the *risk* of issues arising from international Internet Protocol data transmission justify additional concern over the reliability of routing 911 calls efficiently in all instances. And the routing of calls to public safety access points in the U.S. thorough non-U.S. locations, from an operational perspective, is technically inconsistent with functional equivalency for non-Deaf callers whose emergency calls would be routed within the U.S.

The Companies agree that in the interest of maintaining VRS integrity and control, call centers should be physically located in the U.S. and its territories.⁸ This requirement inherently promotes effective communications, and moreover, supervision and control of the call center.

Although the Companies support the limitation of call centers to the U.S. locations, the Companies recognize that there may be extenuating circumstances that would militate toward the establishment of non-U.S. call centers in rare instances. In such cases, the Commission may alternatively consider allowing providers to petition the Commission for authority to open a non-U.S. call center. Authority to deploy a non-U.S. call center would be predicated on the petitioner's factual demonstration of why a non-U.S. call center was needed to provide relay services in the U.S., why a U.S.-based call center could not meet the provider's requirement, and how the non-U.S. call center would remain subject to the Mandatory Minimum Standards and other applicable Commission rules in all instances. If authority for a non-U.S. call center is authorized, the provider should then also be required to provide periodic reports to the Commission on non-U.S. call center performance and operations. In so doing, the Commission would not altogether foreclose the possibility of non-U.S. call centers, yet would place a significant burden on a provider seeking to deploy a non-U.S. call center to justify its need.

B. CAs Working from Home and Compensation. Providers Should Retain the Capability to Engage CAs In Work From Home Arrangements Under Specific Guidelines.

Working from Home. The Companies generally support employment or engagement of CAs to work from home, albeit under specific criteria. The benefits for extending work from home opportunities are significant, as the Commission acknowledges. If properly overseen,

⁸ See , e.g. CSDVRS Comments at 3.

work from home arrangements contribute to more productive CAs, mitigate service costs, and may ultimately contribute to an enhanced calling experience.

Work from home opportunities enable providers to engage qualified individuals who might not otherwise be in a position to be employed because of the scheduling or location considerations, thus expanding the pool of CA candidates. A top level RID certified PhD. candidate residing in North Carolina, for example, was recently recruited by a service provider, though the individual was located far from the provider's call center. The individual was able to pursue her studies while providing valuable interpreting services. Without this the work from home arrangement, the individual would not have been otherwise been able to serve as a CA.

Work from home opportunities also enable providers to mitigate the significant costs of establishing call centers nationwide, while reducing indirect overhead costs associated with maintaining a call center. Further, work at home opportunities more easily enable providers to meet the Mandatory Minimum Standards obligations for perpetual staffing, by enabling CAs to work late night shifts in a safe environment without the need to commute. If properly secured, work from home environments will enhance call security by precluding inadvertent eavesdropping. An enclosed home office provides a quiet environment free from the inevitable ambient noise typically present in an open area call center environments. Work from home arrangements are also consistent with the growing trend of enterprises to allow employees to work from home, thereby reducing commuting costs and delays, while contributing to a reduction in carbon emissions.

Technology now enables CAs working from home to provide the same level of service, call processing capabilities, and level and quality of communications, available through a

centralized call center location. Technology also enables providers to exert the same level of supervision and support, regardless of physical location. The Companies rely on sophisticated Internet Protocol (“IP”) -based VRS platforms that provide a variety of functions well-suited for remote CA access. Among them are automated data collection and transport to Company servers, the ability to engage in real time call supervision, and the ability to visually communicate with the CA while on duty. CAs are also given secured access to internal company servers and files. Company relay service platforms also enable perpetual CA station connectivity to company location databases for purposes of proper routing and access to Public Safety Access Points for purposes of E911 emergency call routing and off duty access to training materials and files. Uses of advanced technology have virtually rendered the physical location of CAs inconsequential to the provision of relay services.

The Companies readily share the Commission’s concerns over confidentiality, the ability to process emergency calls, and compensation considerations associated with work from home situations. The Companies also readily recognize that a professional work environment and the ability of a work from home CA to feel an emotional connection to the provider have been found imperative to the success of any work from home opportunity. Work from home arrangements necessarily impose obligations on the CA and provider to serve the public in accordance with the Mandatory Minimum Standards and at the same level of professionalism and conduct that would be expected if the CA worked from a call center location.

From the public’s perspective, the location of a CA should be entirely transparent to the caller. The CA must have the capability to perform from home any function that the CA would have if working from a call center. From the CA’s perspective, the CA’s physical location

should be considered an extension of the provider's call center in terms of appearance, security, the CA's conduct, and access to needed functionality and documentation. Work from home locations should therefore be open to full and unencumbered access by the provider and the Commission. This should be clearly recognized by any individual who agrees to a work from home arrangement. And from the provider's perspective, each provider has an obligation to support work from home CAs with the same tools, functions, capabilities, administrative guidance, supervision, and technology that would be available in a physical call center.

Providers also maintain an implicit obligation to engage CAs who are deemed responsible and capable of working independently. This may include some minimum standards including years of experience, experience with the provider, or some other determination that the individual is capable of independent work. Because not all individuals necessarily possess the discipline or capability to work alone, or wish to work alone, the provider must ensure that those CAs who are considered for work from home arrangements, are indeed capable of so doing.

The Companies maintain that work from home arrangements should continue to be allowed, albeit under the following specific conditions, which should be codified in Commission rules:

- CA work locations are to be considered an extension of the provider's call center in terms of the provider's ability to supervise the CA remotely and conduct in person inspections with the CA's concurrence;
- Work from home locations must be open to full and unencumbered access by the provider and the Commission upon reasonable notice of inspection;
- CA work locations are to be considered an extension of the provider's call center in terms of the CA's broadband access to provider call processing databases and E911 routing;

- CAs must have the same training, access to the same training materials and policy manuals, supervisory support access, and calling platform available to CAs in call centers;
- CAs must have the ability to request and receive maintenance support and technical assistance as is available in call centers;
- CA physical work locations must meet all Mandatory Minimum Standards (“MMS”) with respect to security and function – the ability to work in a physically enclosed space that: 1) is not visible to others; 2) is located where conversations may not be heard; 3) can be physically secured from the inside and outside; 4) has the same backdrop as the call center; where no personal effects, decorations, or any other item is visible to the caller; and 5) has all necessary uninterruptable power backup capabilities otherwise required under the MMS;
- CAs approved for work from home locations must be deemed capable of so doing based on a determination by the provider;
- Work from home CAs must be subject to the same periodic performance reviews and routine supervision applicable to call center CAs;
- CAs who do not follow provider policies should be subject to the same level of disciplinary action applicable to call center CAs;
- CA’s who are found ineffective in a work from home environment must be subject to the termination of the arrangement, as agreed upon prior to the initiation of the arrangement; and
- The provider must maintain a minimum of one multi-CA call center located in a professional business environment.⁹

Lastly, work from home locations should be affiliated either with a company call center or a collective virtual call center¹⁰ from an administrative perspective. Work from home location system data should be readily collectable and Data reportable with call center data to which the remote location is affiliated.

⁹ Although what constitutes a “call center” may be generally understood as a matter of Commission and industry practice, the issue of work from home obligations raises the need for a clear, articulated definition and standard for a “call center.” By explicitly defining the term, now in anticipation of promulgating rules governing work from home situations, the Commission will further establish certainty in so far as administrative responsibilities – including the annual Relay Services Data Request submission – are concerned, and preclude potential misinterpretation.

¹⁰ CSDVRS Comments at 6.

Compensation. The Commission correctly notes that “most VRS CAs are salaried or paid by the hour and thus will get paid an amount irrespective of the number of minutes they relay.” To the extent that VRS CAs are so compensated, compensation should remain fixed regardless of work location,. Limited exemptions may include adding to fixed compensation arrangements when working odd hour shifts, non-scheduled shifts, or Holidays. Providers should also retain the flexibility for providing merit bonuses consistent with performance evaluations in such instances, regardless of physical work location.¹¹

C. Procedures for the Suspension of Payment. Fund Administrator and Commission Suspension or Withholding of Payments Should be Accomplished Under an Established Procedure Providing for Clear Responsibilities, Timelines, Due Process, and the Right of Appeal.

NECA’s scrutiny of reportable compensable minutes is understood to be a critical function necessary to preserve Fund integrity. Regrettably, this process has been conducted at times in a seemingly arbitrary manner without a clear indication of the rationale for why funds are withheld, without according providers a meaningful opportunity for due process, and without a clear timeline for adjudication.¹² The Commission proposes adoption of clear procedures for suspension or withholding of funds lacking under the current process, which the Companies support with additional provisions.

¹¹ There are instances, however, where entities must rely on sub-contractual relationships to augment capabilities on a temporary or longer-term basis, where the subcontracting individual or entity may or may not be engaged at a physical call center. As a subcontracting entity effectively steps into the shoes of the eligible provider, providers should retain the ability to compensate subcontracting entities commensurate with the manner in which the provider itself is compensated by the Fund, *viz.* on a per minute basis. The level of compensation established in such relationships must also remain fixed regardless of the number of conversational minutes interpreted, and subject to the same guidelines for automated documentation of usage required by the Fund administrator for the provider to verify.

¹² *See*, CSDVRS Comments at 10. The Companies also have personal experience with NECA’s withholding practices.

The Companies agree that at a minimum timely notice be given to the providers of the minutes for which payment is being withheld, as well as the reason(s) for the withholding; that providers be given an opportunity to demonstrate why they believe the withheld minutes are in fact compensable; and that providers be given a final determination of whether payment will be made for the disputed minutes with a supporting explanation, as proposed. As to the first and third points, the Companies agree with the Commission that the Fund administrator bears a responsibility in this process to provide detailed determination of why it maintains that a provider has erred in seeking compensation for certain minutes. Too often in the past have providers had to guess as to why funds have been withheld or suspended. The Fund administrator should be explicitly required to indicate why certain usage is not deemed compensable. This would enable providers to evaluate the specific data that has raised concern, and be specific in formulating responses. Further, a more detailed understanding of why the Fund administrator was withholding or suspending payments would enable providers to address their own operational procedures to insure that there are not systematic problems that inadvertently contribute to recurring suspensions. This would ultimately reduce instance of suspension and withholding. Further, the Fund administrator bears a responsibility to advise providers of the final adjudication and rationale supporting the administrator's decision in a timely manner.

With respect to provider justification of submitted compensable usage, the Companies also agree that the burden correctly remains on the provider to factually demonstrate why the reported minutes are compensable. Because of the variety of data and data sources that could be used to justify minute compensability, the Companies suggest that the justification submitted by

providers not be limited to any specific source. Instead, the Companies propose that the Commission offer guidelines as to the type of documents and data that would be deemed persuasive in justifying provider claims for compensability of questionable usage including but not limited to specific call data and CA call processing records.

As to timelines, the Companies propose that a fixed amount of time should be established for providers to respond to Fund administrator notices of withholding or suspension of funds, and that the Fund administrator be held to an equal amount of time to adjudicate the matter. Here, the Companies propose that 14 days for provider responses and 14 days for subsequent adjudication would create certainty and ensure timely action by both parties. In the event that the Fund administrator upholds the suspension or withholding, providers should have the right to appeal decisions to the Commission, consistent with current practice for accorded for federal universal service fund matters.

The Companies take no position of whether new rules are required or existing rules amended. Under either approach, the final rules should be establish a clear, unambiguous process with definitive guidelines, time tables, and responsibilities for providers and the Fund administrator, that accord providers due process and the right of appeal.

D.1. Specific Call Practices - International VRS Calls. Providers That Do Not Agree to Terminate Calls or That Terminate Calls Believed to be Non-Compensable Calls Should Deemed To Have Acted Responsibly In the Face of Subscriber Complaints If Following Established Procedures.

International calling remains an integral part of providing functional equivalence, though invites abuse. It is unclear that promulgation of new rules will necessarily preclude abuse by those who are inclined to engage in it. It is also unclear that there are readily available

technological tools that would definitively establish patterns of abuse and enable providers to automatically preclude abusive calls.

Technology is currently being utilized by several providers to identify international-to-international calls. This technology identifies the Internet Protocol address of the originating and terminating legs of the call, which enables the CA to refuse such calls through passing through the platform. The Companies encourage industry-wide adaptation of this technology as a first line of defense by a date certain, as an added function to preclude such calls from ever being reportable as compensable, however unintentionally.

CAs then logically form a second line of defense against such abusive practices because they are, in a majority of instances, directly able to quickly determine the legitimacy of each call based on the circumstances. CAs should have the discretion to recommend to their supervisor to decline to interpret an international – or any - call or end a call prematurely if: 1) the CA concludes that the call is illegitimate based on specific Commission guidelines for compensability; 2) advises the caller of the basis for being unable to process the call under Commission rules; and 3) documents and reports the abuse to supervisory personnel. These functions should be explicitly adopted by the Commission as a means to preclude abuse.

If the CA and provider have acted responsibly to terminate such calls consistent with these three criteria, the provider should be deemed to acted properly and responsibly in the face of any subsequent consumer complaints that may be filed with the Commission.

D.2. Specific Call Practices - VRS Calls in Which the Caller's Face Does not Appear on the Screen. A Balance Must Be Struck Between Caller Privacy and Limiting the Potential For Abuse.

The need for caller privacy is well recognized. Relay service users have a right to expect that their privacy will be protected. As is the case with international calling, an unlimited ability to use privacy screens or otherwise conceal the caller's appearance from the interpreter has given rise to abuse in the past. Here again, the CA is the key line of prevention when an otherwise legitimate act is abused and must be protected if following established guidelines for preventing callers from indiscriminate use of privacy as a means for abusing the Fund.

The Companies support the termination of a call that has been initiated but inactive for a period of time, to be specified by the FCC. Again, the CA should document the incident and advise supervisory personnel who would make the ultimate decision of terminating the call. The Companies suggest that the process for disconnecting such calls be established as a matter of Commission regulation, as proposed *supra.*, and that those providers be deemed as having acted responsibly when demonstrating that the process for disconnection was followed should a complaint be filed.¹³

¹³ The Commission may consider a separate rulemaking on development of specific guidelines or procedures to be taken when terminating calls suspected of being abusive and the process for indemnification of providers in such instances.

D.3. Specific Call Practices - Calls Involving Remote Training. A Specific Rule Precluding Compensation of Provider-Initiated Training and Conference Calling Is Appropriate.

As noted, this NPRM creates an opportunity for regulatory certainty. To that end, the Companies agree with the Commission's tentative conclusion that a rule should now promulgated to establish that provider-involved VRS calls that enable a person to participate in remote training using a VRS CA are not compensable from the Fund. Training is a cost of doing business. Promulgation of a specific rule establishing the non-compensability of provider-based training calls gives the Commission and Fund administrator an established basis for adjudication of claims and enforcement action.

A clear distinction should be made between provider-initiated and subscriber-initiated training calls. Whereas provider-initiated training calls should indeed not be compensable, in the interest of functional equivalency, subscriber-initiated training calls – and for that matter conference calls generally - should be compensable, as these calls are consistent with non-relay remote commercial training calls and conferencing service that have been gaining popularity.¹⁴ The Companies recognize that compensation training calls and conference calls generally, have in the past created incentives for abuse. To preclude this potential for abuse, the Companies propose that the attendant rule explicitly establish that subscribers who initiate conference calls of any type must meet these criteria: 1) that there be no commercial tie with the provider; 2) that the call entail no less than one non-disabled hearing participant; 3) that the call entail participants

¹⁴ The proliferation of teleconference services have facilitated the ability of business to conduct meetings with geographically dispersed employees, vendors, and others, and have gained popularity in recent years, particularly as travel expenses have escalated and the cost of telecommunications and teleconferencing services have dropped. The advent of video conferencing has also contributed to the popularity of these services.

located in desperate locations; 4) that the subscriber in no way receive compensation – financial or otherwise - from the provider; and 5) that the training have no connection whatsoever to the provider’s services.

E.1-2. Detecting and Stopping the Billing of Illegitimate Calls – Automated Call Data Collection; Data Filed with the Fund Administrator to Support Payment Claims. A Rule Establishing an Affirmative Automated Call Data Collection Obligation on Providers as a Mandatory Minimum Standard is Appropriate.

The Companies agree with the Commission’s tentative conclusions that a rule imposing a Mandatory Minimum Standard obligation on providers to automatically capture conversation time, to the nearest second, for each call submitted for compensation from the Fund as well as calculating speed of answer time statistics is appropriate and necessary. VRS platform technology has perfected automatic conversation minute capture and answer time statistical capabilities. Automatic capture and reporting of these data creates an automatic data trail that precludes abuse, while also enabling providers to document usage and operational capabilities, and the Fund administrator to verify the validity of submitted data in a standard format and engage in claim adjudication. The Companies agree that promulgation of these standard practices will preclude abuse and clearly establish minimum operating criteria for new entrants. Ultimately, any entity that cannot, or does not wish to, invest in technology having these capabilities, should not provide VRS.

E.3. Detecting and Stopping the Billing of Illegitimate Calls – Requiring Providers to Submit Information about New and Existing Call Centers. Submission of Call Center Data is Appropriate Albeit Under A Clear Definition of What Constitutes a “Call Center.”

The Companies generally support quarterly reporting of call center information and relevant updates as proposed by the Commission, now under an explicit rule. Reporting call center data represents an extension of the annual relay services data request information already

submitted to the Fund administrator. Providers must assume responsibility for the actions of employees and subcontractors regardless of their location, and the Commission and Fund administrator should have reasonable access to such data as is necessary to oversee an eligible provider's operations, including staffing.

E.4 Detecting and Stopping the Billing of Illegitimate Calls – Requiring Service to be Offered in the Name of the Provider Seeking Compensation from the Fund. Operational Affiliations Constitutes an Effective Practice that Should Be Retained Under Strict Limitations.

Despite the abuse that has been perpetrated under some purported “white label” arrangements, and the demands of some providers to terminate the practice altogether, if formally organized under explicit requirements, maintains responsibility of the relationship on an entity subject to Commission authority, conditions full disclosure, and used in limited circumstances, “white label” arrangements offer tremendous benefits for the public, the Commission and Fund administrator, and the industry.

White labeling has an analog in commercial manufacturing, where it serves as a standard business practice. Its adoption in the VRS industry offers two key benefits: 1) white labeling enables new entrants to begin serving the market and developing data and a track record of compliance in support of pending applications for eligibility; and 2) enables eligible providers to expand their operations through sub-contractual relationships without the need to make long-term commitments, again consistent with standard commercial practice. White labeling has a meaningful purpose in the relay industry if such arrangements are closely regulated and limited in scope. Accountability and disclosure are at the heart of making the practice viable.

First, the “white label” moniker should be eliminated as the term does not accurately represent the type of arrangements that should be authorized. Beyond this being a matter of

simple semantics, under the framework proposed below, the practice should be termed as an “operational affiliation” between two entities to reflect the nature of the four distinct types of arrangements being proposed herein. This is not a euphemism for retaining the *status quo*, but rather as a descriptive term intended to establish a working relationship between entities. The Companies believe that entities operating under the auspice of an “operational affiliate” are ultimately the responsibility of the eligible provider, whether they provide services as an entity: 1) whose applications for Fund eligibility are pending; or 2) that are providing services for the eligible provider as a subcontractor; or 3) that are engaged by eligible providers as branded affiliates; or 4) provide services under a separate brand, are ultimately the responsibility of the eligible provider.

From an operational perspective, these entities would be required to disclose themselves to the consumer as the service provider, identify the operational affiliate under whose eligibility the entity was providing service, and would be required to meet all Mandatory Minimum Standards, operate under all operational guidelines, and in every manner provide service as if it had already been granted eligibility by the Commission. This ensures that a single entity remains directly responsible to the Commission, who maintains legal authority over the eligible provider’s regulated operations, and subject to Commission enforcement action.

The Companies maintain that with these clearly established requirements and restrictions, “operational affiliations” provide a valuable option and benefit to providers and the public, with no additional risk.

E.5. Detecting and Stopping the Billing of Illegitimate Calls – Whistleblower Protections for VRS CAs and Other Provider Employees. Whistleblower Protections Are Appropriate But Must Include Due Process Procedures.

The Companies have noted the critical importance of CAs serving as a key line of defense against abusive practice in many instances. Establishment of whistleblower protections will contribute to a reduction in the potential for abuse, and the promulgation of a rule to protect whistleblowers is appropriate.

Whistleblower protection rules must also contain two key provisions to be effective: 1) a standard process for ensuring that the whistleblower has judiciously considered the incident to be report and has evidence to support the incident being reported; and 2) that providers are accorded due process in defending themselves against allegations of impropriety and/or non-compliance. Whistle blowing, itself opens up the potential for abuse. Disgruntled employees, subcontractors and affiliates, may use whistle blower protections to vent their frustration and anger by falsifying accusations or taking situations out of context in an effort to extract revenge on the provider. This possibility, even if remote, must be considered in the Commission's whistleblower protection rules.

The Companies propose that to protect against this situation from arising, the rules also include – or refer to – a standardized set of criteria for whistleblowers to take prior to submitting a report to the Commission. These criteria could include, ensuring that the situation to be reported can be substantiated by evidence, and/or can be corroborated by others. Ideally, in instances involving the provider, the individual should identify repeated instances pointing to a trend of behavior that warrants reporting.

As proposed for adjudicatory issues associated with compensation disputes, upon receiving a whistleblower complaint, the Commission also should present the provider with evidence supporting the complainant's report. Providers should be accorded due process. Providers should be able to defend against complaints by providing evidence regarding reported incident(s), justification for the action, information regarding applicable company standard practices, and background information regarding potentially disgruntled individuals who might have perceived cause for false accusations, among others. A specified timeframe should be established for company response and Commission action, subject to appeal by the provider.

In implementing these protections, it is important to ensure that all provider staffs, subcontractors and affiliates clearly recognize these protections and their commensurate responsibilities when engaging in whistle blowing. To ensure a standard set of objective guidelines, the Commission should prepare an overview of whistleblower protections and process for reporting violations to the Commission available on the Disability Rights Office web site and upon request in writing. The overview would provide a standard process that is available and provide a "plain English" explanation of whistle blower rights and protections under the new rules. Such an overview would also identify the obligations of the whistleblower to verify the validity of the actionable item that is reported, as suggested. In so doing, the Commission would establish a common base of understanding in the industry on whistleblower protection rights and responsibilities, while helping to ensure that whistle blower reports are accurate and indeed reflect an actionable situation.

E.6. Transparency and the Disclosure of Provider Financial and Call Data – Provider Cost and Demand Should Not Be Subject to Public Review.

Provider cost and demand data should not be subject to public scrutiny. Transparency does not equate to literally opening the entirety of an entity's operations to the public, but rather should equate to public access to general information, as is already available without the need for further disclosure. The Commission and Fund administrator already make aggregate industry data available for public review. It is entirely unclear why confidential operational data *should* be made available to the public. There is no known demand and cost data at the company level, and no envisioned benefit of making such data available to the public.

The Commission and Fund administrator are vested with the authority to review company operations, including sensitive confidential information, on behalf of the public. The Companies are unaware of any other entity regulated by the Commission in the wireline or wireless industries whose cost and demand data are made available to the public. Public availability of sensitive confidential information accomplishes little more than providing an opportunity for competitive espionage, misinterpretation or misuse by the public. The Companies maintain that any provider data deemed confidential should remain under the purview of the Commission and Fund administrator.

To the extent that the Commission concludes otherwise, the availability of confidential information should then be generally subject to the provisions of section 1.731 of the Commission's rules,¹⁵ including the requirement that "Materials marked as proprietary may be disclosed ... only for use in prosecuting or defending a party to [a] complaint action, and only to

¹⁵47 C.F.R. §1.731, Confidentiality of information produced or exchanged by the parties.

the extent necessary to assist in the prosecution or defense of the case..” Requesting parties must be required to identify themselves and the rationale for their public records request, and providers must be notified of the request and be allowed to argue against it. If the request is granted, the requesting party must be required to verify the destruction of the confidential materials following use.

E.7. Transparency and the Disclosure of Provider Financial and Call Data – Provider Audits. Provider Audits Constitute A Reasonable Requirement With Established Guidelines.

The Companies do not oppose more specific and stringent auditing rules, if the Commission finds them necessary to safeguard the integrity of the Fund. The auditing process is a reasonable requirement that serves as an additional tool for proper Fund management and regulatory oversight. Current audits of federal Universal Service Fund (“USF”) contributors demonstrate the value of the audit process for federal regulatory programs including the federal Telecommunications Relay Service Fund. The current USF audit process provides a useful framework that can be applied here.

Annual audits border on “overkill,” particularly for smaller emerging providers. Unlike USF contributors, relay service providers already submit detailed financial and operational data to the Fund administrator and the Commission annually and periodically. Because audits are costly for all parties involved, detract from other operational imperatives, and require significant resources, a biennial audit would appear more appropriate. Biennial audits would allow the Commission to perform audits on a rotational basis with a group of providers being audited one year followed by the second group of providers being audited the next.

Before formal adoption of an audit process, it is imperative that the standards and regulations addressed in the instant rulemaking be promulgated first. Providers must have before them the entirety of the standards and scope that are to be subject to an audit. The Commission already maintains audit authority, so would its ability to engage in *ad hoc* audits would in no way be impacted by any delay in promulgating specific formal audit process guidelines. It is critical for the Commission, Fund administrator and providers that the scope of recurring audits be clearly established, in accordance with the outcome of the instant rulemaking.

E.8. Transparency and the Disclosure of Provider Financial and Call Data – Record Retention. Current Commission Record Retention Requirements Should be Equally Applicable to Relay Service Providers.

The Companies support adoption of current Commission standards for record retention. Adoption of current record retention standards for other regulated carriers preserves general consistency and applicability of the Commission’s standards. For record retention purposes, “Documents” should be deemed to include electronic copies as reasonable facsimiles of original paper documents. To the extent that the 18-month record retention period applicable to common carriers is adopted for relay service providers, there should be an underlying expectation that compensable call claims against providers should also be limited to 18 months. If providers may expunge call detail records from their files after 18 months, there should be a reasonable expectation that those records will not otherwise be needed to defend against compensability claims after an 18 month period. Otherwise the retention period is rendered useless.

V. CONCLUSION

The Declaratory Order and NPRM represents a major step in reestablishing regulatory certainty that has been so sorely needed. Adoption of clear standards, obligations, and processes will once and for all put an end to the “creative” regulatory interpretations that resulted in harmful abusive practices and tainted the reputation of responsible providers, while giving providers a clear roadmap for compliance and certainty for investments and innovation, and again enabling new market entry. The Companies commend the Commission for its Herculean efforts to engage in this rulemaking, and urge the Commission to promulgate rules that incorporate the considerations addressed herein.

Respectfully submitted this 23rd day of June, 2010,

PAH! VRS, INC.

By:

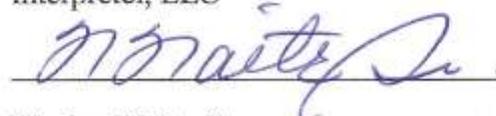


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