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

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

COMMENTS OF SNAP TELECOMMUNICATIONS, INC.

Snap Telecommunications, Inc. ("Snap!VRS" or "Snap") hereby files its response to the Commission's Notice of Proposed Rulemaking ("Notice")[1] seeking comment on particular Video Relay Services ("VRS") practices and about measures intended to detect and prevent fraud and misuse. Snap also files its comments in ASL; the video is available on Snap's website at: http://www.snapvrs.com/about_us/press/article/?id=39

Snap appreciates the Commission providing an opportunity for public comment prior to its making significant changes affecting the provision of VRS. While most of the proposed rulemaking involve sound steps aimed at "preserving the TRS Fund," there are some issues raised by the Commission which profoundly affect access to VRS by consumers and therefore require analyses according to the mandates of Title IV of the Americans with Disabilities Act ("ADA").[2]

In summary, Snap's views on the issues being sought comment are as follows:

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[1] *Structure and Practices of the Video Relay Service Program*, Declaratory Ruling, Order and Notice of Proposed Rulemaking, CG Docket No. 10-51, (rel. May 27, 2010).

[2] Pub. L. No. 101-336, § 401, 104 Stat.327, 366-69 (adding Section 225 to the Communications Act of 1934, as amended, 47 U.S.C. § 225) ("Section 225 of the Communications Act.").

Proposed Rulemaking	Snap's Position	Page
Should all VRS call centers be located within the United States?	Yes.	3
Should Communication Assistants ("CA") be permitted to handle VRS calls from home?	Yes, subject to certain safeguards.	4
Are there CA compensation schemes which incent fraudulent calls?	Snap is unaware of any such schemes and pays its Video Interpreters ("VI") an hourly rate only.	6
What procedures should be in place for the suspension of payment for minutes under review?	Snap agrees that, at minimum, there must be: 1) timely notice and reason for withholding; 2) and opportunity to respond; and 3) a timely final determination with supporting explanation. Snap disagrees that the burden should be placed on the provider to prove the legitimacy of minutes.	7
What are potential solutions which help ensure that VRS calls which originate or terminate overseas are in fact legitimate calls?	A software program should be incorporated into the iTRS database which would regulate calls to and from non-USA IP addresses.	11
Should calls in which the caller's face is not visible, involve a privacy screen or is idle be terminated after two minutes?	No. Functional equivalency (while maintaining integrity of TRS Fund) requires a different approach than automatically terminating the call.	13
Should VRS calls involving remote training which are initiated or publicized by providers be ruled non-compensable?	Yes. However, the legitimate use of VRS for remote training calls is an ADA right which should be made evident in TRS rules.	17
Must providers automatically capture conversation time, to the nearest second?	Yes.	19
Should data submission requirements to support payment claims be codified?	Yes, Snap supports the FCC's tentative conclusions on this issue.	20
Should providers be required to submit information about new and existing call centers on a quarterly basis?	Yes.	20
Should unregulated/unregistered "white-label" providers be permitted?	No. Additionally, sub-contractors should be disclosed to NECA prior to providing service and identified in a provider's billed minutes.	21
Should the FCC adopt whistleblower protection for VRS employees?	Yes, Snap supports the FCC's tentative conclusions on this issue.	24
Should VRS provider cost and demand data be made available to the public?	Yes, subject to certain limitations.	25
Should the Commission adopt more specific and stringent auditing rules?	Yes.	26
How long should call detail records, records related to billed minutes and other records related to providers' annual cost and demand data filing be retained?	Snap supports the tentative conclusion that these records must be retained for five years.	27
Should the interim rule requiring the CEO, CFO or other senior executive to certify its minutes be codified?	Yes.	27

A. Location of VRS Call Centers

Issue: Should all VRS call centers be located within the United States?

Snap does not have any call centers located outside the U.S. or its territories nor does it plan to. We are not aware if a call center located extraterritorially leads to a greater risk of fraud or abuse. The Commission offers in its Notice no empirical or other information showing an increased risk associated with extraterritorial centers. However, Snap finds that the quality of video interpreting services is closely intertwined with the capability of VIs to receive timely and observant support from managers and other interpreters. We also find that the best environment for this type of support occurs when groups of interpreters are working in close proximity with one another.

Snap is cognizant of the broad sign language diversity of VRS consumers,[3] which make it a considerable challenge to meet with interpreters entirely based in the U.S. or its territories. However, we are sensitive to the severe detrimental impact that extraterritorial call centers have on the communities that they are located in, which have far fewer interpreting resources than the U.S.[4] We are also concerned that other countries may not have the necessary interpreter education, training, and accreditation requirements which enable VRS consumers to understand and rely on their interpreting in a comparative manner with the typical minimal qualifications of VIs based in the U.S. For the above reasons, Snap supports the Commission's tentative conclusion that TRS rules should be amended to require that all VRS call centers be located in

[3] Snap respectfully disagrees with the Commission's comment in paragraph 5 of the Notice that TRS users are not "strictly 'consumers'" but rather "principal beneficiaries of a federal program." TRS is mandated by the ADA and users are accessing the telephone system as a matter of right, not as a beneficiary of a social program. Consumer ownership and direction in using relay is essential in achieving functional equivalency with how hearing people determine the nature and type of their telephone experience.

[4] *See, e.g.*, Comments of the Canadian Association of the Deaf, CG Docket No. 10-51 (dated June 4, 2010) ("As it stands now, American VRS is a predator that is doing profound damage to the lives of Deaf Canadians without any offsetting benefits to us.").

the U.S. and its territories. However, the Commission and relay stakeholders should monitor the ability of providers to meet the needs of deaf non-American sign language users exclusively with U.S.–based VIs and be open to the possibility that exemptions to such a rule might be necessary to ensure that all eligible individuals have access to VRS regardless of the type of sign language they use.

B. VRS CAs Working from Home and Compensation

Issues: Should CAs be permitted to handle VRS calls from home? Are there CA compensation schemes which incent fraudulent calls?

For some time now, Snap has had a small pilot program of home-based interpreters termed Virtual Video Interpreters (VVIs). A primary reason for the institution of Snap's VVI program is to enable within a few minutes the availability of more interpreters to respond to a spike in Snap's call volume, which not only better serves our customers, but also helps us remain optimally consistent with the Commission's Average Speed of Answer ("ASA") requirements. Snap also endeavors to be a good citizen within the deaf community and supports VVIs as a way to ameliorate the sometimes large footprint a call center has on the availability of community and educational interpreters. A number of highly skilled VVIs are drawn from locations where there are not enough interpreters to justify opening a call center such as rural areas or where they would have to commute significant distances to the closest call center, and those who are only available to work nontraditional hours or truncated schedules. In addition, Snap's VVI program has enabled us to save and maintain a group of qualified, trained VIs using their home offices after having to close a call center as a measure to cope with withheld compensation for VRS calls which are still being reviewed by the Commission. Maintaining our internal interpreter equity has been essential in preserving the consistency and quality of our service delivery.

All of Snap's VVIs are seasoned video interpreters who have previously worked extensively in either a Snap (this accounts for the majority of our VVIs) or another provider's call center. Each VVI has signed an agreement with Snap to maintain a specific level of security for their physical location to protect the anonymity of the callers. Snap has standardized its VVI home office background and equipment to make them secure restricted areas, and consistent in appearance and experience with those VIs working at Snap call centers. Other than not being physically located in a center, the VVI has the same technical capabilities, set up and materials needs to effectively process calls as the agents and workstations in a call center. Snap's VVI equipment (as with any of Snap's call center VIs) permits for remote monitoring by a supervisor for quality assurance and to provide timely support for any interpreter needs. All of Snap's VVIs have the ability to transfer calls to a VI, which is sometimes necessary to allow for team interpreting of VRS calls which continue for a length of time.

Snap's VVIs receive the same training as its VIs, including handling emergency calls. The process for handling emergency calls by Snap VVIs is virtually the same as for VIs; Snap VVIs have the full capability to handle an emergency call and route it to the appropriate public safety answering point ("PSAP"). While Snap on-duty and available VVI and VIs simultaneously receive a red flashing alert of an incoming 911 dialed call, our internal "best practice" process is that, whenever possible, those calls are handled by a VI in a call center so another VI or manager is available to offer support for the call. However, if for some reason a VI in a call center is not available for the emergency call, a VVI will handle the call and follow the same standard procedure for handling an emergency call.

Snap's stringent VVI requirements and standardized set-ups have successfully safeguarded the confidentiality of customers' VRS calls and other mandatory minimum TRS requirements.[5] Snap is very confident in the VVI system we have established utilizing the availability of highly skilled interpreters across the country while being sensitive about the impact of its VRS operations on community-based interpreting. For the above reasons, Snap recommends that the Commission support the ability of video interpreters to work remotely, subject to the safeguards Snap describes above. Snap would be in favor of a standardized set of requirements (a "checklist") for VVIs and their remote offices which must be certified by a manager as being fully compliant prior to placing the VVI in service.

Snap is unaware about interpreter compensation schemes which could provide incentives for VRS calls which are made for the purpose of generating revenue. All of Snap's interpreters, including its VVIs, are paid only based on an hourly rate; there are no bonuses or other incentives paid to Snap's interpreters. Snap does not think that illegitimate VI conduct and compensation schemes are easier to carry out at a remote location if proper safeguards are in place. In Snap's case, VVIs are monitored in the same manner as the VIs – Snap has the ability to see that VVIs answer calls as they come in through the standard queue, the type of calls that they handle and that their individual occupancy and utilization records are comparable with their peers – to ensure that no bogus conversations are being billed.

To ensure consistency and accountability in the provision of VRS from remote locations, Snap supports treating them as call centers for the purposes of TRS administration. Snap recommends that provider VVIs are collectively grouped as one virtual call center to enhance

[5] See, Comments of Gretchen Whitney [a former Snap employee] CG Docket No. 10-51 (filed June 11, 2010) (("As a provider of "from home" VRS services I would like to say that I am able to transfer a call, take a 911 call as well as provide interpreting services in what I believe to be the MOST secure place I know.").

efficiency of reporting and decrease the administrative burden of listing each VVI location separately in billing VRS calls to the TRS Fund Administrator.

C. Procedures for the Suspension of Payment

Issue: What procedures should be in place for the suspension of payment for minutes under review?

Regretfully the bad acts of some individuals in defrauding the TRS Fund have wreaked havoc in the past year in that a large amount of compensation for VRS calls was suspended (and a significant amount remain unpaid pending an indeterminate ongoing review), to the detriment of the consumer experience in using VRS. The withheld compensation without any information, process, opportunity to respond or resolution greatly adversely impacted Snap's ability to manage its business. To survive and continue to meet minimum TRS requirements, Snap had to make severe operational cuts, rollback its plans to enhance consumer services and products, delay payment of its obligations, close call centers and reduce the number of VIs on its staff.[6] While Snap continued to serve every legitimate VRS call, the questionable compensatory process caused some providers to decline handling certain types of calls (such as calling numbers with recorded information) which the Commission had not made a regulatory determination regarding whether these types of calls were a legitimate use of VRS nevertheless their compensation routinely suspended pending some indeterminate review.[7] The overlong delay in the reimbursement of certain expenses such as those associated with ten digit numbering[8] also

[6] *See, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, Comments of Snap Telecommunications, Inc. (May 14, 2010) ("Snap 2010 Rate Comments") at 17; *See, also,* Comments of Gretchen Whitney.

[7] *See,* Ex Parte Letter on Compensable Minutes Petitions and Needed Clarifications from CSDVRS, LifeLinks, Snap Telecommunications, Inc., and Sprint Relay to Chairman Genachowski and Commissioners Copps, McDowell, Clyburn, and Baker, CG Docket 03-123(January 21,2010) ("Providers' Letter on Compensable Minutes"); *See, also,* Petition to Initiate a Notice and Comment Rulemaking Proceeding, CG Docket 03-123, CC Docket No. 98-67 (January 27, 2010)("Consumer Petition").

[8] *See,* Providers' Letter on Compensable Minutes at 3.

caused significant operational problems for providers and a corresponding detriment to consumers in that some providers declined to undertake additional consumer outreach and education efforts due to the unreliable reimbursement process for these expenses.

Snap agrees with the Commission that, legally, due process must be afforded to providers with respect to any delay or suspension of compensation for VRS calls. Snap generally supports the Commission's tentative conclusion that the TRS rules must provide, at minimum: 1) timely, advance notice and reason for the withholding (i.e. simultaneously with the decision by NECA to withhold rather than after reimbursement distributions are made and withholdings discovered by providers); 2) an opportunity to respond; and 3) a timely final determination with a supporting explanation. Snap recommends that providers are required to respond within 10 business days after receiving notice of a proposed withholding. Snap continues to support the joint provider request that if NECA and the Commission's review process are not completed within the extended 6 week time period specified in NECA's March 31, 2009 letter to providers, then NECA will promptly issue compensation for such minutes to the provider, subject to possible recoupment by the Commission. As we stated, "this process would allow providers to continue to operate and serve consumers at a high level of quality during such ongoing review." We also continue to be of the view that, for critical business and customer service considerations, the Commission must set a time limit to issuing a final determination, [9] which Snap recommends setting as no later than 30 days after the date of the initial notice. Finally, to maintain consistency with due process standards and to help reduce the need for litigation, Snap recommends that the Commission provide for the opportunity to appeal the determination to another office, perhaps the Commission's Office of Managing Director.

[9] *See*, Providers' Letter on Compensable Minutes at 3-4 and footnote 8.

Snap agrees with consumer organizations that VRS calls should be timely compensated unless there is "clear and unequivocal evidence of fraud against the VRS program."[10] While Snap agrees that providers should initially be required to show why they believe the withheld minutes are in fact compensable, Snap **disagrees** with the Commission's tentative conclusion that providers must carry the burden that the minutes in question are compensable. In the past year there were numerous incidents where NECA inquired us about the nature of certain calls which we had no information about other than the processing data we have on the call; we explained to NECA several times that it was unlawful under TRS confidentiality rules for Snap to retain any information about the content of the call and/or to contact the caller to inquire them in turn about their calls. Snap does not have the Commission's authority as a regulatory and enforcement agency to investigate into TRS users who are independent from us and utilize tools such as a subpoena to obtain further information from these private individuals or entities.

To the extent that the providers or their subcontractors themselves engage in possibly improper conduct related to VRS calls, we think that it is reasonable to expect that they be required to make a conclusive showing about the legitimacy of such conduct. However, providers should not be forced in the impossible position of shouldering a financial guarantee that every user of their services was legitimately using VRS; for example, there are some non-U.S. residents who have employed methods to use VRS despite providers' best efforts to block them – prevention and enforcement against these users and their resulting illegitimate minutes is not strictly a provider responsibility, but a joint obligation shared with governmental agencies. In cases of VRS calls in which providers were not involved in any manner except to interpret in compliance with TRS rules what appeared to be legitimate calls, Snap is of the view that the

[10] *See*, Consumer Petition at 10, 12.

Commission ultimately retains the burden of an investigation and determination about any fraudulent use of VRS by the private individual or entity; furthermore Snap believes that providers should be timely compensated for VRS calls made by the private individual or entity regardless of any investigative or enforcement activity if these VRS calls occurred with no fraudulent involvement of the provider, lest providers inequitably be made financially responsible for actions which occur outside of its control.

In its meetings with the Commission about compensation-related issues, Snap has said that *the Commission should not attempt to legislate TRS policy through the compensation process*. Past routine withholding of compensation for certain types of calls pending Commission review cast significant doubt and sometimes unwarranted disinclination in the minds of providers and VRS customers. Snap fully supports consumer organizations' view that VRS calls must be promptly permitted, connected and reimbursed unless the Commission adopts rules clearly restricting or otherwise proscribing certain types or categories of VRS calls.[11] The Commission should immediately cease generally withholding compensation for certain types or categories of calls and later "clawing back" the withheld compensation through subsequent rulemaking and orders; we share the view that such practice contravenes the ADA and the Administrative Procedure Act.[12] Additionally, we believe such practice requires providers to bear a substantial level of principal investment risk, let alone any returns on invested capital, which are unduly exposed to industry-specific risk, should at any time, the Commission chooses to adopt and retroactively apply a new TRS rule or policy that could contest the solvency of the provider. This investment risk also substantially reduces the attractiveness of raising and investing new

[11] *See*, Consumer Petition at 10-11.

[12] Id. at 10.

capital for purposes of bringing to market new innovation that benefits VRS consumers. Moreover, it severely impacts the ability for providers to conduct adequate internal budget and planning exercises for managing the operations in the most efficient manner.

Furthermore, the Commission should encourage providers to proactively raise with them and timely respond to issues which may involve compensation questions; as Snap did in informing the Commission in advance about a program involving remote training calls, but nevertheless resulted in a substantially material compensation issue that is still being reviewed and possibly will not be resolved until after the Commission completes rulemaking under this Notice. Finally, Snap agrees with consumer organizations that the Commission should be transparent and publicly disclose any types or categories of VRS calls that it routinely withholds payments for.[13]

D. 1. International VRS Calls

Issue: What are potential solutions which help ensure that VRS calls which originate or terminate overseas are in fact legitimate calls?

The Commission expresses in its Notice a concern about a "large" volume of VRS calls which terminate overseas, which may reflect fraudulent schemes. Although the Commission has had a longstanding ability to access information on the Internet Protocol ("IP") addresses of parties to a call and/or at least the ten digit number of the calling party, it does not indicate in its Notice that a significant portion of these international terminating calls have in fact been determined by the Commission as being non-compensable or fraudulent. Snap is not aware of any enforcement action brought by the Commission against a party for engaging in a scheme in which international calls originating in the U.S. were made for the purpose of generating VRS minutes. Snap is uncertain about the scope of the "problem" and the corresponding need for a

[13] Id. at 11.

"fix" given that the U.S. has historically proudly referred itself as a "Nation of Immigrants" and therefore it is reasonable to expect that many deaf in this country wish to use VRS to call those who reside in other parts of the world.

Snap has had the opposite experience with international calling, in that the vast majority of the international calls attempted through Snap!VRS are initiated by individuals who reside outside the U.S. and its territories in order to avail themselves to our relay services in the absence of accessible telecommunications services in their home countries. Snap has an internal document providing VIs a specific procedure for handling international calls and trains its VIs to promptly disconnect calls which are identified as having no domestic resident participating.

In response to withheld compensation for VRS calls which are still being reviewed regarding their compliance with international VRS call requirements, Snap suggested to the TRS Fund Administrator, National Exchange Carrier Association ("NECA"), that the iTRS database Administrator, NeuStar, should incorporate into their system a geolocation software program which would block VRS calls which involve only international IP addresses or telephone numbers. If NeuStar implements this geolocation program then all vendors would be using the same standard database and process rather than experiencing varying and possibly inconsistent results if providers use such a program on an individual basis. VRS providers would be able to send to the iTRS database the IP address of the caller and if the geolocation software found it to be outside the US, an error code would be received back by the provider.

That being said, Snap is extremely concerned by the implication in the last sentence of the Notice's "International VRS Calls" section that VRS calls which originate ***or*** terminate overseas may not continue to be compensable and its reference to IP relay calls which terminate overseas are not compensable. Snap is of the view that removing entirely the ability of Americans to use

relay to make or receive international calls is in violation of the ADA. In fact, deaf Americans already suffer from being restricted from using VRS when they are abroad in that they experience barriers to attempting VRS calls to the extent that they have largely given up trying. This barrier contravenes ADA law and case precedents that Americans' rights to the ADA's protections and provisions do not expire at the border.[14] Snap recommends that the Commission take this opportunity to clarify eligible relay users' right to access relay from anyplace including international locations as long as they currently are registered as a valid U.S. resident. Snap would be favorable of establishing stringent criteria to clearly establish U.S. residency, such as possessing in their name a valid U.S. passport, a current driver's license, a mortgage or rental agreement, proof of employment or education within the U.S. and other measures to prevent using an U.S. address as a subterfuge to becoming eligible to use VRS.

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

Issue: Should calls in which the caller's face is not visible, involve a privacy screen or is idle be terminated after two minutes?

While it is recognized that the susceptibility of VRS to fraudulent use is heightened when privacy screens are used and video callers are not visible, active or responsive, an analysis of the issue and its resolution must occur squarely within the rubric of ADA mandates. The ADA requires that TRS provide for the ability of a deaf or hard of hearing individual to access a telephone system in a "functionally equivalent" manner as a hearing individual.[15] Our statutory guidance about the degree of rights deaf and hard of hearing have in using TRS is interlocked precisely with the full range of capabilities hearing people have with their telephones. At the

[14] *See, e.g., Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119 (2005) (holding that Title III of the ADA applies to foreign-flagged cruise ships).

[15] 47 U.S.C. § 225 (a)(3).

same time, it is understood that the Commission must carry out the functional equivalence mandate in the context of administrative and other pragmatic considerations, as for example, making TRS available "to the extent possible and in the most efficient manner" to consumers.[16]

Snap VIs do not use privacy screens nor does Snap's policy or procedures enable their use by VIs. We are not aware of any circumstances in which VIs would find it necessary to use a privacy screen.

VRS consumers, on the other hand, as the Commission stated in its Notice, have legitimate reasons for using privacy screens, or otherwise not being visible or responsive during a VRS call in the same way voice telephone users are at times not active or taking a break during a call. In Snap's experience, customers who use a privacy screen or who are temporarily not visible during a VRS call account for a very tiny portion of the overall calls we handle. In a great majority of such circumstances, the reason the customer is not visible is apparent to the VI and valid. For example, a number of Snap's VCO customers use their privacy screen on occasion, being able to carry out a legitimate VRS call without the VI needing to see them. Many VRS customers engage in calls which require them to multi-task, which may cause them to become temporarily inattentive to the caller while carrying out legitimate and sometimes necessary activities simultaneously. Often participants during a workplace conference call will take temporary breaks at intervals, the deaf caller is adversely impacted by a default disconnection from VRS and being required to start from scratch with new VIs about the content and terminology used in the conference call.

[16] 47 U.S.C. § 225 (b)(1).

It is unclear from the Notice or other information available to relay stakeholders about the extent that privacy screens or "unavailable/unresponsive" conduct is used to enable illegitimate calls for the purpose of generating revenue for a provider. Certainly individuals determined to perpetuate illegitimate schemes will easily overcome a "two-minute" rule by making token appearances during the call. Snap is unsure whether this is an issue which is best addressed through monitoring and enforcement mechanisms rather than adopting a rule which diminishes access to TRS. While Snap supports proactive and protective approaches in administering TRS, we are concerned that the "fix" may do much more harm to consumers than the "problem," especially in an environment where "*managing the TRS Fund appears to have become more important in some people's minds than achieving functional equivalence for the deaf*."[17] In addition, Snap fully supports the views of the Registry of Interpreters for the Deaf that it is "outside the scope of the interpreter's duties and erodes our core obligations to the Deaf community" if providers or regulators require interpreters to be "arbiters of VRS call content, breaking transparency rules and determining which calls are for legitimate purposes and which are not."[18]

Snap is of the opinion that Notice about the issue is insufficient for the Commission to obtain a fully informed perspective which adequately encompasses the rights and interests of critical stakeholders – especially consumers and interpreters – in considering a new rule. Snap recommends that, prior to issuing any rule, the Commission first provides an opportunity for stakeholders to collaboratively discuss the issue to better understand and address the dynamic

[17] *See*, Snap 2010 Rate Comments at 20.

[18] Letter of the Registry of Interpreters for the Deaf to Chairman Genachowski, CG Docket No. 03-123 (September 28, 2009).

interplay of needs, and possibly eliciting from them a consensus on the issue. The General Counsel of Snap had informal conversations with deaf attendees at the recent National Association of the Deaf biennial conference about the proposed "two minute" rule. Every person spoken with indicated that they were unaware of the proposal and that while they understood the legitimate concern about keeping VIs on hold, they were unanimous in opposing a "two minute" disconnect as an approach which was not functionally equivalent to what voice callers experience. Instead, they suggested a range of possibilities to handling the issue which were far more "disability-centric" and supportive of consumer determination and self-direction. In addressing this issue, we should be mindful that the notice and comment method is not always culturally and linguistically appropriate to garner the input of deaf consumers of VRS. In cases where telecommunications access for consumers are profoundly affected, we should not default to proposed "solutions" generated and considered with little or no consumer involvement.

In any event, Snap opposes the Commission's tentative conclusion that a call should be automatically disconnected after "two minutes" of no visibility or responsiveness as inapposite to the ADA's functional equivalency mandate. Snap is of the view that a VRS call should not be attempted to the intended recipient unless the VI sees the caller and establishes that the caller is deaf or hard of hearing and requires sign language interpretation for the call. Snap is of the opinion that VIs should not use privacy screens. Consistent with the ADA's functional equivalency mandate, a VRS consumer who is visible to the VI, either by sight or sound (such as VCO consumer) should not be disconnected even if the consumer is "unavailable or unresponsive" to the caller. For the same reason, a VRS consumer who is not visible should not be disconnected so long as there is a connection with a live hearing party who is actively engaged in the call; it would be incumbent on the hearing caller to check on the deaf caller (e.g.,

by saying "Hello, anyone there? Are you still there?"), and allowing the hearing party to disconnect if he or she no longer wants to be connected with the deaf party.

Snap is of the view that if the Commission chooses to adopt a rule disconnecting a deaf caller who is not visible and not engaged with a live hearing party, then it should do so only after the VI provides the deaf caller with advance notice and allowing the deaf caller to indicate that he or she is still on the call, including pressing a video phone key. We are of the opinion that two minutes is too brief of a time period and recommend ten, but no lower than five minutes. We are also of the view that deaf callers should be permitted to continue through breaks during conference calls (which typically lasts ten minutes) on the same VRS call, which is equivalent to the ability and inherent costs of hearing participants continuing to stay connected to conference calls during breaks. Finally the Commission should make clear that VIs should not disconnect from callers who dialed 911 or makes apparent they are experiencing an emergency even if they are not visible.

D. 3. Calls Involving Remote Training

Issue: Should VRS calls involving remote training which are initiated or publicized by providers be ruled non-compensable?

Because Snap endeavors to be ethical and transparent in transacting its business, we publicly disclose that the Commission has withheld compensation, pending its review, for remote training calls placed through Snap!VRS by deaf students of an independent company which provides comprehensive career services to facilitate employment for people with disabilities. Snap proactively informed the Commission about remote training calls prior to us handling them and we want to continue being above-board in informing reviewers of our comments about our context of withheld compensation for remote training calls.

It is evident from a plain reading of the Notice that the Commission is not questioning the legitimate use of VRS to make remote training calls. The Notice strictly focuses on whether to explicitly prohibit the compensation of remote training calls which are "initiated or promoted by or on behalf of a provider." It should be beyond question that the ADA provides a right to access through relay remote training opportunities in an equal manner as hearing people have with their telephone systems. This ADA right to use relay to access remote training exists in addition to and independently from any obligation an entity has under the ADA to provide accommodation to its employers, customers or other members of the public. The current rulemaking proceeding seeks comments solely on the issue of "provider-involved" remote training calls and any intent by the Commission to address broader questions about remote training calls must be subject to further rulemaking to ensure that there is an opportunity to develop an appropriate record including ADA analyses as applied to any other issues related to remote training calls.

The Commission has stated several times in prior guidance that VRS calls made for the purpose of generating provider revenue are not compensable and Snap has been clear that this guidance applies in the case of remote training calls. Snap supports the Commission's tentative conclusion that it should reinforce its prior guidance by adopting a rule specifically barring compensation for remote training calls made or arranged for the purpose of generating compensable minutes. We agree that providers cannot bill for remote training calls that they themselves initiate or those which result from their publicizing remote training opportunities to their customers or others in the public.

Our caution is that the Commission should decline to adopt or otherwise use in any new rule general and ambiguous terms such as "provider-involved" and "promote" which may lend to continuing uncertainties and a resulting need for further agency review which create havoc to

providers who are trying to provide optimal and efficient services within tight budgets. For example, would it be considered "promoting" remote training if providers made available video phones to students to enable them to participate in a remote training course or providing those students with information about how to use VRS? Likewise, would it be considered "provider-involved" if the parties communicate to a provider in advance of a remote training with some general details about the program so that the provider has an adequate number of VIs scheduled (these calls almost always require interpreting teams to facilitate) in case the participant chooses to participate in the training using that particular provider's VRS? Because a great number of typical provider customer support activities could generally be considered "provider-involved" or "enabling" remote training calls to be possible, we recommend that the Commission sharply define the proscription to mean provider initiated, provider publicized and provider incentivized remote training calls which are made or arranged for the purpose of generating compensable minutes. We also recommend that the Commission clearly state that eligible relay users have the right under the ADA to use VRS to access remote training in addition and as an alternative to any other rights the individual may have under the ADA to an accommodation to access the training; that it is a violation to decline a right afforded under one Title of the ADA because there may be coverage under a different Title.

E. 1. Automatic Call Data Collection

Issue: Must providers automatically capture conversation time, to the nearest second?

All Snap processed VRS calls are handled by a centralized server which automatically captures and records all call information to the nearest second. No user input is used in the data capture process. Snap supports the Commission's tentative conclusion that the TRS rules

should be amended to require providers to automatically capture the conversation time, to the nearest second, for all calls submitted for compensation.

E. 2. Data Filed with the Fund Administrator to Support Payment Claims

Issue: Should data submission requirements to support payment claims be codified?

Snap supports the Commission's tentative conclusion to 1) codify the requirement of call data records (as described in the Notice) which must be submitted to NECA along with billed minutes; 2) codify the requirement of submitting speed of answer compliance data; and 3) require that the call record and speed of answer data be filed electronically and in a standardized format. Snap finds the current format which is used to submit information to the TRS Administrator as eminently workable and capturing all the relevant data, and recommends the Commission to continue using such a format for future reporting.

E. 3. Requiring Providers to Submit Information about New and Existing Call Centers

Issue: Should providers be required to submit information about new and existing call centers on a quarterly basis?

Snap supports the Commission's tentative conclusion that it should amend the TRS rules to require VRS providers to file on a quarterly basis a statement detailing the name and address of each call center (including those of subcontractors), the number of CAs and CA managers at the call center, the name and contact information for the managers of the call center. Snap also supports the Commission's tentative conclusion that amendments to the most recent quarterly filing is required each time a new call center is opened or closed, the ownership or management of the call center changes, or there are changes to the list of providers whose calls are processed through the call center, with the understanding that remotely located interpreters (VVIs as described in Section B above) are collectively grouped as one call center to avoid the excessive

administrative burden of having to report every change of a VVI's status if they are considered a "call center" per the Commission's discussion in Section B of the Notice.

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

Issue: Should unregulated/unregistered "white-label" providers be permitted?

Snap is of the view that the Commission should prohibit certified providers from billing for VRS minutes garnered by non-certified ("white-label") providers. "White-label" providers have uniformly represented themselves to VRS customers as being identically situated for all intents and purposes as certified providers, with no disclosure to consumers about their status or indirect services through other providers. Allowing "white-label" providers greatly diminishes the consumer protection objectives of the Commission's certification program, lacks clear Commission oversight, is not directly accountable for compliance with minimum TRS standards, endangers public safety through their operating unregulated without any risk of losing certification, engenders great confusion among VRS consumers regarding the structure and services of the non-certified provider, and adds significant additional costs which inevitably must be funded at such time the FCC is clearly focused on reducing the size of the TRS Fund.

Snap is of the opinion that, to best promote and protect the aims of the TRS program, non-certified providers can only operate if they apply to become an eligible TRS provider and become certified by the Commission. Therefore, non-certified providers should be required to service their customers and bill for their minutes through a single certified provider in order to maintain accountability for TRS minimum requirements and to enable newer providers to receive guidance and support from more experienced VRS providers until such time they receive their certifications. Snap believes non-certified providers should continue to own their customers and

their VP technology, but be required to have 100% of the call volumes processed, serviced or interpreted, and billed through a single certified provider of their choice. Snap also believes that the non-certified provider should first register with the FCC before commencing operations to notify the Commission of its intent to seek certification and disclose its selection of the specified certified provider with whom they will partner in the interim. The non-certified provider would then be subject to all the same rules and regulations of a certified provider and be susceptible to direct oversight from the experienced certified provider. Snap believes this will inevitably lead to consolidation, which will lead to a better rationalization and lowering of costs through operating efficiencies and scale, while fostering a level, competitive playing field for the certified providers who have invested millions of dollars of capital, time, and other resources in their efforts to become certified only to have the barriers to entry put in place by the FCC fall to anyone wishing to participate in the market. Hence, Snap furthermore believes that the non-certified provider must become certified within a specified period of time (e.g. 12-18 months) following registration of intent with the Commission to ensure the barriers to entry are maintained. This will ultimately facilitate additional innovation and expand consumer choice while ensuring the non-certified provider is committed to achieving certification for the purpose of protecting the aims of the TRS program.

Snap is of the view that sub-contractors who directly handle or substantially facilitate VRS calls are essential to certified providers being able to more fully serve the diverse needs of their existing customers, promote innovation in services and products for the benefit of customers and to connect with new and possibly underserved VRS consumers. Sub-contractors may themselves be certified providers. However, where they are not certified providers, we would want to be sure that sub-contractors do not become the “de facto” substitute if “white-label” providers are

prohibited. Snap is in favor of more strict regulation of sub-contractors operating in VRS as outlined above; we support requiring their disclosure by the certified provider to the Fund Administrator prior to their servicing VRS calls and that the certified provider clearly identifies the providing sub-contractor in its monthly billing for VRS calls.

Snap does not support the proposal that the sub-contractor entities actually handling the calls (whether or not they are certified providers) must identify themselves to the calling parties either in lieu of or in addition to the name of the TRS provider for these calls. This type of "wholesale interpreting" operating model, whereby the sub-contractor (or wholesaler) supplies end-to-end interpreting services, using its own interpreters, on behalf of the TRS provider (or retailer) should be transparent to the calling parties. Snap believes this operating model is a proven and best practice telecommunications model that yields significant value for calling parties enabled by the formation of a superior value chain built upon the specialized expertise and respective core strengths of the TRS provider and sub-contractor, which results in structural cost efficiencies derived from economies of scale of the sub-contractor or wholesaler, higher and consistent levels of quality, and operating efficiencies achieved from process standardization. Ultimately, all entities and parties involved benefit from lower costs and higher quality. By relaying the retailer brand to the calling parties, the TRS provider or retailer's relationship with its customer goes uncompromised and, if not certified, may still leverage all of the proper governance activities conducted by the sub-contractor or certified wholesaler in this case to ensure compliance, while maintaining its ability to differentiate itself among other retailers through customized features and value-add services. However, we believe this would not be sustainable if the Commission were to require the sub-contractor to disclose itself to the calling parties, thereby compromising the fundamental principles and value afforded by the model.

Hence, providers would be confronted with higher costs and calling parties would lose the opportunity to benefit from higher quality.

In addition, the Commission should make clear that certified providers may be serviced by other certified providers, by the use of their technology platform, interpreters or other types of core service support. The Commission should require that any such arrangement between certified providers should be disclosed to the TRS Fund Administrator.

E. 5. Whistleblower Protections for VRS CAs and Other Provider Employees

Issue: Should the FCC adopt whistleblower protection for VRS employees?

Snap has an internal policy of encouraging its employees and subcontractors to raise any concerns about the improper use of VRS to its management or enforcement agencies. Snap's General Counsel has a standing regular meeting with different divisions of Snap to proactively elicit and discuss any issues involving the provision of VRS and assist with understanding TRS rules and other guidance. Snap supports the Commission's tentative conclusion that it should adopt, effective immediately, a whistleblower protection rule for any provider employee or subcontractor who reports possible wrongdoing to any governmental entity. Snap supports the Commission's tentative conclusion that providers must inform their employees that they can report fraud to the Commission's Office of Inspector General. Further, Snap is of the view that whistleblower protections should also extend to cover relay consumers, particularly given their oft-articulated fear of losing their current video phone or ability to receive future upgrades and access to VRS if they do something not to their provider's liking.

Snap particularly finds Section 806 of the Sarbanes-Oxley Act[19] a good model in that it clearly spells out the scope, rights, procedure and remedies afforded to the parties involved in the whistle blowing action.

E. 6. Transparency and the Disclosure of Provider Financial and Call Data

Issue: Should VRS provider cost and demand data be made available to the public?

In response to the Commission's public notice seeking comment on NECA's proposed compensation rates for the 2010 Fund Year, Snap expanded on its disclosure of its actual VRS costs per minute in response to the 2009 rate proposed rulemaking to describe in unprecedented detail its real-world investment and operating costs.[20] Snap's public filing included information about its VRS operating expenses which are "allowable" by the Commission and NECA, specific per-minute figures for certain excluded expenses such as interest on loans, and a breakdown in increments of its consumer operations video phone costs on a per minute basis. Snap stated in its filing that it decided to disclose its previously confidential data in response to the expressed stakeholder interest for that type of information so the public has a better understanding about the appropriate level of funding required for VRS to progress towards being fully ADA-compliant in that it becomes a functionally equivalent service.[21] As Tom Kielty, Snap's President and CEO has asserted in meetings with the Commission and Snap customers, the business of providing VRS is a privilege, which is premised on the civil right of relay consumers to accessible telecommunications.

[19] 18 United States Code, Chapter 73, §1514A.

[20] Snap 2010 Rate Comments at 11-18.

[21] *See*, Snap 2010 Rate Comments at 11.

For the same reasons, Snap supports transparency in requiring the public disclosure of certain VRS provider cost and demand data to the extent necessary to allow stakeholders to meaningfully assess the appropriateness of the compensation rates. Snap is not persuaded by some provider arguments that such disclosure would undermine competition; Purple's disclosure obligations as a result of being a publicly traded company has not in itself appeared to adversely affect its ability to compete as the provider of VRS' second largest volume of calls. However, Snap believes that some limitations on the scope of disclosure would be appropriate to allow providers to maintain confidential certain investments designed to provide it with a competitive edge, thus Snap refers to its 2010 rate comments as described above as the extent to which it deems appropriate to disclose categories of cost and demand data.

Snap recommends that the providers are required to file their disclosure reports in the Commission's Electronic Comment Filing System in the 10-51 Docket. Snap further suggests that the Commission periodically re-evaluate any disclosure requirements to assess whether the objectives in requiring such disclosure are being met, or whether any changes are necessary.

E. 7. Provider Audits

Issue: Should the Commission adopt more specific and stringent auditing rules?

Snap fully complied in the past with a random Commission audit performed by a contractor. Snap has no objection to the Commission adopting audit rules to better safeguard the availability of TRS for consumers. Snap recommends requiring compliance with the US Generally Accepted Auditing Standards (GAAS) for any audits. Snap is of the view that annual audits are unnecessarily an expensive approach and TRS funds should be conservatively used for administrative costs. Snap proposes that random audits every three years should be sufficient, with follow up audits six months later if a provider has been found non-compliant in significant

areas or suspicious activities have been detected. Providers such as Snap who regularly conduct internal audits should be able to offer the auditor's findings and an unqualified audit opinion letter as persuasive documentation of compliance when the Commission seeks information from that provider. Snap is of the view that the Commission should occasionally engage in compliance audits as well as regular revenue or call records and systems audits.

Snap is hesitant about the Commission contracting out the audit process, based on our interactions with the auditor for the Commission which reflected some issues we believe arose out of the contractor's inexperience with TRS rules, deaf consumers and interpreters.

E. 8. Record Retention

Issue: How long should call detail records, records related to billed minutes and other records related to providers' annual cost and demand data filing be retained?

Snap has retained in a digital format its call detail and other information supporting our compensation and reimbursement claims since the inception of our service. Snap supports the Commission's tentative conclusion that providers must retain for five years their call detail records, records related to billed minutes and other records related to providers' annual cost and demand data filing.

E. 9. Provider Certification Under Penalty of Perjury

Issue: Should the interim rule requiring the CEO, CFO or other senior executive to certify its minutes be codified?

Snap has a longstanding process by which its minutes and data submitted to the TRS Administrator is certified by a senior Snap executive. Snap is amenable to the FCC's tentative conclusion that it should adopt permanently a requirement that a senior executive certifies, under the penalty of perjury, that: 1) its submitted VRS minutes have been handled in compliance with TRS rules and orders and are not the result of impermissible financial incentives, or payments or

kickbacks; and 2) its submitted cost and demand data are true and correct. If such a rule is adopted, we recommend that the Commission develop standardized certification language for use by providers and that the certification language include a "to the best of my knowledge" provision so that the certifying party is not subject to inequitable liability for noncompliance occasioned by an undiscovered and possibly minor error or an issue caused by someone with an injurious intent and concealing it from immediate discovery.

Respectfully submitted,

/s/ Jeff Rosen

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