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VIA ELECTRONIC FILING (ECFS)

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: **WRITTEN EX PARTE PRESENTATION**

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities
CG Docket No. 03-123

Dear Ms. Dortch:

On behalf of Hamilton Relay, Inc. ("Hamilton"), this letter requests that the Consumer and Governmental Affairs Bureau ("Bureau") take action in response to the January 28, 2009 Petition for Declaratory Ruling ("Petition") filed by various Telecommunications Relay Service ("TRS") providers in the above-captioned proceeding.[1] The Petition raises important questions regarding the need to clarify that various calls involving more than one Communications Assistant ("CA") are compensable TRS calls.

Specifically, the Petition seeks "a Declaratory Ruling clarifying that relay calls involving multiple [CAs], interpreters, and technologies are forms of [TRS] that are necessary to achieve

[1] *See* AT&T, CSDVRS, LLC, Lifelinks, LLC, Sorenson Communications, Inc., Viable, Inc., CAC, GoAmerica, Inc., Snap Telecommunications, Inc., and Sprint Nextel Corporation, *Petition for Declaratory Ruling*, CG Docket No. 03-123 (filed Jan. 28, 2009) ("Petition"). Hamilton notes that the Petition was not included in a recent list of pending items in the TRS dockets, but it is not clear whether the list was meant to be exhaustive. *See Structure and Practices of the Video Relay Service Program*, Declaratory Ruling, Order and Notice of Proposed Rulemaking, CG Docket No. 10-51, FCC 10-88, n.23 (rel. May 27, 2010).

functionally equivalent telephone service, and therefore are eligible for reimbursement through the Interstate Telecommunications Relay Service Fund ('TRS Fund')."[2]

Although Hamilton was not a party to the Petition, Hamilton agrees that a Declaratory Ruling is necessary in order to clarify certain informal advice that was provided by the TRS Fund Administrator more than five years ago. Hamilton believes that the Petition raises sufficiently important issues for relay users that the Bureau should move forward expeditiously with its review of those issues. Given the rapid development of new TRS technologies and capabilities, the informal advice of the TRS Fund Administrator should be updated and clarified by the Bureau. In addition, Hamilton understands that the TRS Fund Administrator recently has raised questions as to whether calls involving multiple CAs may be compensated from the Fund, and at least one state TRS administrator (from the State of Maryland) has raised similar questions. Accordingly, this is no mere academic exercise, and the guidance that the Bureau offers on these matters will help ensure that people who are deaf, hard of hearing or who have difficulty speaking are afforded the functional equivalency to which they are entitled under the Americans with Disabilities Act.

Multiple CA calls can take several forms. First, consumers with speech disabilities are asking to make relay calls to users of *other* types of relay, such as a Speech to Speech ("STS") user who wishes to call a Captioned Telephone Service ("CTS") or Internet Protocol CTS ("IPCTS") user. In this scenario, a CA is necessary in order to assist the STS user, and a separate CA is needed to help the CTS/IPCTS user.[3]

Second, consumers are asking to make relay calls to users of the *same* type of relay, such as a CTS user who wishes to call another CTS user. Such calls also would require a CA on both ends of the call.[4]

Finally, there are relay users who wish to make relay calls but require two CAs to complete the call – for example, a person with a speech disability who is hearing impaired who wishes to call a hearing person may require an STS CA in order to speak and have the CA translate, and a separate CTS CA to ensure that all words spoken by the hearing person are heard

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[2] Petition at 1.

[3] Hamilton does not anticipate that the number of users who would need to place STS to CTS/IPCTS calls will be significant. To date, Hamilton has had only one request for such a call.

[4] The Petition did not address the issue of multiple CAs involving a single technology. *See* Petition n.10. However, Hamilton believes that the Bureau should address this issue, as set forth in more detail below, because there are occasions in which, for example, a CTS user calls another CTS user, where such users have no alternative but to use the relay system. Hamilton stresses that it is *not* asking the Commission to compensate TTY to TTY calls, IP Relay to IP Relay calls or VRS to VRS calls, because as explained below such calls can be made without the need for using the relay system.

or read properly by the relay user. Thus, while only one person on the call in this scenario is hearing impaired, the relay user requires two CAs to complete the call.[5]

The TRS Fund Administrator has previously addressed but not resolved the issue of compensating providers for multiple CA calls. In 2005, the TRS Fund Administrator asked "whether the [TRS] Fund should reimburse for the two sets of minutes associated with the call – the minutes associated with the calling party and the CA/interpreter involved with placing the call, and the minutes associated with the called party and the CA/interpreter involved with receiving the call."[6] That issue remains undecided.

Hamilton believes that the Bureau should clarify that, in order to carry out the Commission's statutory obligation of 1) ensuring "functionally equivalent" service;[7] 2) increasing "the utility of the telephone system . . . [for] hearing-impaired and speech-impaired individuals"[8]; and 3) making TRS available "to the extent possible," such multiple CA calls permissibly fall within the definition of relay services and are compensable from the TRS Fund. In doing so, the Bureau should examine the needs of each party to the call -- a CTS user, for example, needs relay to access the telephone network, and an STS user needs relay to access the telephone network, and each caller requires a CA. These needs should be viewed separately, and the providers' compensation for addressing those needs should be viewed separately as well.

Hamilton also agrees with the TRS Fund Administrator's initial assumption that "calls between people who have *no calling alternative* . . . and use two relay centers, like CapTel to TTY or to VRS, or CapTel to CapTel . . . may be billed to the [TRS] Fund for reimbursement."[9] In fact, the Commission has already put in place safeguards to prevent fraud and abuse in such situations: "The justification for reimbursement for multiple-CAs will have to be made by the TRS provider on a case-by-case basis, and that, as in all other contexts, attempts to collect more

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[5] Hamilton believes it would be very rare for a relay user to require two CAs to complete the call. To date, Hamilton has received only one such request, from a relay user who requested to make an STS/CTS combination call. Nonetheless, Hamilton submits that such users, even if they are few in number, should be permitted to make relay calls in the most functionally equivalent manner available to them, and the fact that multiple CAs may be necessary to complete such calls should not act as an artificial barrier or dissuade providers from handling such calls.

[6] E-mail from Maripat Brennan, NECA to Dixie Ziegler, Hamilton, et al. (June 23, 2005) (reprinted in Appendix B of the Petition, at B-1) ("Brennan E-mail").

[7] 47 U.S.C. § 225(a)(3).

[8] *Id.* § 225(b)(1).

[9] Brennan E-mail, at B-1, B-2 (emphasis added) (CapTel is a form of CTS); *see also* Sprint ex parte, CG Docket No. 03-123, at 2 (filed Apr. 21, 2005) (noting that such multiple CA calls should not be considered "double dipping."). A TTY is a text telephone. 47 C.F.R. § 64.601(a)(22). VRS is Video Relay Service. *Id.* § 64.601(a)(26).

compensation than is justified may subject the TRS provider to enforcement action."[10] A Declaratory Ruling by the Bureau in this matter would merely confirm that the providers have met their burden under this case-by-case standard for the multiple CA calls discussed herein.

The TRS Administrator's focus on "no calling alternative" is consistent with the Commission's recent conclusion that "[t]here are many forms of TRS, but all require a CA to convey communications between the person with a speech or hearing disability and another individual."[11] Thus, a distinction can be drawn between a VRS to VRS call, for example, for which no CA is required, and the call patterns discussed below which specifically require at least one CA in order for the called and calling parties to be connected – the parties in the latter situation have no alternative but to have a CA on the call.

Hamilton also believes that the guidance provided by the Bureau on these matters will help inform the state TRS program administrators as they address similar issues at the intrastate level. As noted above, at least one state already has raised questions about multiple CA calls. Accordingly, Hamilton urges the Bureau to take action on the Petition as soon as possible. Should the Bureau need further information in order to move forward, Hamilton requests that the Bureau seek public comment on these matters as soon as possible.

Summary of Multiple CA Calls

To summarize the above, Hamilton believes that the Bureau should confirm that three different forms of multiple CA relay calls are reimbursable:

1. Calls made by users who require two CAs to complete a call to a hearing person (e.g., a user who requires a STS CA and a CTS CA to complete the call);
2. Calls made by two users of the *same* relay technology when calling without a CA is not an alternative (e.g., a CTS user calling another CTS user); and
3. Calls made between users of two *different* forms of relay technology (e.g., an STS user calling a CTS user).

The third point can take multiple forms, and Hamilton believes it is necessary to detail each variation of such calls because some of these calls already are reimbursable. Specifically, under current rules, Hamilton believes the following multiple CA calls already are reimbursable

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[10] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration and Notice of Proposed Rulemaking, CC Docket No. 98-67, CG Docket No. 03-123, FCC 03-112, 18 FCC Rcd 12379, para. 74 (2003) (discussing three-way calling and multi-party conferencing).
[11] *Structure and Practices of the Video Relay Service Program*, Notice of Inquiry, CG Docket No. 10-51, FCC 10-111 ¶ 2 (rel. June 28, 2010).

under current FCC rules, but seeks confirmation from the Bureau that such calls are compensable:

CTS to STS
CTS to TTY
CTS to traditional Voice Carryover ("VCO")
CTS to traditional Hearing Carryover ("HCO")
CTS to CTS[12]
IPCTS to IPCTS[13]
IPCTS to STS
IPCTS to TTY
IPCTS to traditional VCO
IPCTS to traditional HCO
IPCTS to CTS
STS to STS
Traditional VCO to Traditional VCO
Traditional HCO to Traditional HCO
Internet Protocol Relay Service ("IP Relay") to STS
IP Relay to CTS
IP Relay to traditional VCO
IP Relay to traditional HCO

Hamilton also agrees with the Petitioners that the Bureau should confirm that the following call types also are reimbursable forms of relay:

IP Relay to TTY
IP Relay to VRS
TTY to VRS
Traditional VCO to VRS
Traditional HCO to VRS
STS to VRS

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[12] Because CTS is a form of VCO, and because VCO-to-VCO calls are mandatory, Hamilton believes that CTS to CTS calls are also reimbursable. Hamilton notes that two CAs are required for CTS to CTS calls. However, unlike VRS to VRS, IP Relay to IP Relay and TTY to TTY calls, a CTS to CTS call must be placed through the relay system in order to be processed. VRS to VRS calls, in contrast, may be made without any interpreters, and thus there is no need to reimburse providers for such calls. The same is true for IP Relay to IP Relay calls and TTY to TTY calls – no CA is required to complete such calls, and therefore it is reasonable not to reimburse providers for such calls.

[13] As with CTS to CTS calls, use of the relay system is necessary in order to complete IPCTS to IPCTS calls.

CTS to VRS
IPCTS to VRS

Hamilton believes that the following calls should continue to be *non-reimbursable* because they may be made without use of the relay system:

VRS to VRS
IP Relay to IP Relay
TTY to TTY
Voice to Voice

In sum, with the exception of VRS to VRS, IP Relay to IP Relay, TTY to TTY and Voice to Voice calls, all relay call combinations (including STS to STS and CTS to CTS calls) should be reimbursable, regardless of whether one CA or two CAs is required to complete the call. In addition, a user who requires one or two CAs (for example, a relay user who needs both CTS and STS) should be able to call a standard telephone user as well as another relay user. In the latter case, it is conceivable that more than two CAs may be necessary to complete the call, but the frequency of such calls should be rare.

This filing is made in accordance with Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1).

In the event that there are any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

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