

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

In the Matter of)
)
Structure and Practices)
of the Video Relay Service)
Program)
)
Petition for Rulemaking)
on CPE Support and Portability)
_____)

CG Docket No. 10-51

PETITION FOR RULEMAKING
ON CPE SUPPORT AND PORTABILITY

CSDVRS, LLC (“CSDVRS”), by and through undersigned counsel and pursuant to FCC Rule Section 1.401 *et seq.*, hereby petitions the Federal Communications Commission (“FCC” or the “Commission”) to amend the 47 C.F.R. §64.604, or 47 C.F.R. §64.607, or add a new subsection to Title 47, Part 64, to require VRS providers to continue to support their end-user customer premises equipment (“CPE” or “videophone”), including enhanced features, after the user’s ten-digit local telephone number is ported to another provider. The current rules and regulations concerning a provider’s obligations to support CPE, obtain routing information, and update the iTRS database for E911 purposes still allow a porting-out provider to de-feature its videophone (i.e. remove enhanced features such as address book, speed-dial, etc.) once a number is moved to the porting-in provider. CSDVRS believes this allowance unnecessarily complicates porting while undermining functional equivalency, taxes the Interstate TRS Fund (“the Fund”), burdens consumers, and may even jeopardize public safety. CSDVRS therefore respectfully requests that the Commission open a rulemaking proceeding to mandate that VRS providers continue to support the enhanced features on their CPE after a port out. To this end, CSDVRS

also submits that the Commission should specifically delineate the fundamental functionalities of CPE in order to clarify to providers which enhanced features must remain with their videophones after porting. In respect to this new rule, CSDVRS would further submit that the porting-out provider should be afforded a portion of per-minute revenue generated by its CPE through the new default provider in order to remunerate the provider for its investment in the videophone equipment.

I. BACKGROUND

On June 24, 2008, the FCC released a Report and Order governing the implementation of ten digit numbering for Internet Protocol (IP) and VRS providers.¹ Paragraphs 60 and 61 of that Order, together with Section 47 C.F.R. §64.611(e), explained that when a relay user ports a number from one provider to another, providers who distribute CPE must ensure that their devices continue delivering routing information to the user's new default provider in order to enable that default provider to provision routing information to the central database. The rule prohibited providers who had given out CPE, but who are no longer acting as the user's default provider, from acquiring routing information from that user.²

Following the issuance of these rules, the Commission received an array of petitions from VRS providers to reconsider, waive, and/or revise the porting obligations. On December 19, 2008, in its Second Report and Order and Order on Reconsideration, the Commission denied pending petitions for reconsideration on the porting issue, and upheld its mandate that CPE provide routing information to the user's default provider, even if that provider is not the one that originally gave out the CPE.³ In addition, the FCC stated that such CPE, after porting, was required to: (1) accept a URI

¹ See, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CG Dkt. No. 03-123, WC Dkt No. 05-196, FCC 08-151, 23 FCC Rcd 11591 (June 24, 2008) (June Numbering Order).

² 47 C.F.R. §64.611(c)(2)(i); June Numbering Order at ¶61.

³ See, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CG Dkt. No. 03-123, WC Dkt No. 05-196, FCC 08-275, (December 19, 2008) (December Numbering Order) at ¶¶63-64.

or IP address that the new provider uses so that the new provider can direct the CPE to send routing information to one IP address and outgoing video connections to another IP address; (2) automatically forward dialed numbers to the new default provider so that consumers are able to dial numbers without finger-spelling those numbers; and (3) continue to provide point-to-point calling using ten digit dialing. However, the Commission granted a one year waiver for compliance with these new requirements for default providers that did not have access to technical information about the user's CPE that was needed to update the database and continue providing service to the consumer through that CPE.⁴ This waiver expired until December 31, 2009 and has not been extended. Nonetheless, full portability of CPE remains elusive in the VRS industry as no non-proprietary interface has been presented and effectuated by the various providers that would allow such portability.

A pivotal point to the porting issue in light of the expired waiver, and the central point of the instant petition, was raised by GoAmerica contemporaneously with the December Numbering Order. On December 19, 2009 GoAmerica petitioned the Commission for a rule requiring the original CPE provider to ensure that the device's enhanced features remained usable after the consumer ported his or her number to a new provider.⁵ While CSDVRS originally opposed this position and, along with other providers, petitioned the Commission in regard thereto and proposed in its stead a model similar to the wireless industry,⁶ given what has transpired in the VRS industry since the mandated implementation of ten-digit numbering and associated porting of numbers, CSDVRS would now proffer a contrary position and requests that the Commission maintain the current rule on porting and interoperability of CPE, mandate its implementation, and initiate a rulemaking proceeding to require

⁴ *Id.* at ¶68. The lack of an industry porting standard effectively applied this waiver to every provider.

⁵ *See*, Go America *Ex Parte* Letter, CG Docket 03-123 (December 19, 2009).

⁶ *See*, CSDVRS, Snap, Sprint-Nextel, Viable - Petition for Rulemaking on VRS Equipment Porting (April 14, 2009).

porting-out providers to continue to support specifically defined enhanced features of their CPE regardless of whether such features are based on the provider's network or in the CPE hardware.

II. STATEMENT OF POSITION

CSDVRS believes that the current rules are insufficient to support full interoperability of CPE and VRS functionalities as first mandated by the Commission in 2006.⁷ The rules require VRS consumers be able to port their local number, and direct that users continue being able to use the equipment they received from their former default providers.⁸ However, the rules do not address the definition or support of enhanced features which are of pivotal importance to consumers. The Commission should also be aware that during the waiver period, no non-proprietary industry standard was developed to ensure interoperability of CPE upon expiration of the waiver, and the industry practice remains de-featuring of a ported-out videophone which renders the device less than fully functional. Indeed, CSDVRS has determined that the disabled CPE of a porting-out provider is generally only capable of reconnecting with the former provider, or calling by IP address: both of which are in contradiction to the interoperability and numbering rules. CSDVRS therefore implores the Commission to undertake a rulemaking to reaffirm interoperability to include ongoing support of enhanced features.

CSDVRS further submits that in implementing and effectuating the proposed rule, the Commission must also institute a streamlined process for porting of numbers between providers. VRS providers that have undertaken numbering porting have found that absent a cohesive standard, the process has been somewhat problematic. In consideration of this, Sorenson Communications and CSDVRS have both addressed in prior petitions that the porting process needs to be standardized to

⁷ See, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Further Notice of Proposed Rulemaking, CG Dkt. No. 03-123, WC Dkt No. 05-196, FCC 06-57 (May 9, 2006) (Interoperability Order).

⁸ See generally, December Numbering Order

ensure seamless transition of numbers from one provider to another.⁹ As CPE must be *de facto* interoperable between providers effective January 1, 2010, CSDVRS stresses that the Commission must similarly ensure a seamless transition of service on the videophones themselves.

CSDVRS believes that expanding the rule to require porting of the CPE device *and* the local number while requiring porting-out providers to continue to support defined enhanced features will help to curtail many incongruities in the porting process as raised in prior petitions.¹⁰ Moreover, instituting this requirement will further uphold functional equivalency and afford consumers more choice, as well as preserve the integrity of the Fund, and offer more competition in the VRS industry.

III. BENEFITS TO IMPLEMENTING NEW RULE

A) Protecting the Fund

There are thousands videophones distributed to deaf and hard of hearing consumers in the VRS marketplace. The dominant VRS provider, Sorenson Communications, distributed approximately 90% of those phones when VRS was in its formative years and at great expense to the Fund. Since the exclusion of CPE costs from the rate methodology, CSDVRS, Snap, and Purple have expended considerable financial resources distributing the majority of the remaining 10% of the CPE to market. Yet the burden to the Fund continues under the current rules insofar as providers are compelled to undertake significant outreach efforts to address an issue that could be simplified by addition of the rule that CSDVRS proposes herein.

Despite ongoing consumer outreach in the past year, there still exists considerable confusion concerning local ten-digit numbers, and this confusion is exacerbated by number porting. Aggravating the issue further is competition for market share amongst the providers which further

⁹ See, Sorenson Communications Comments, CG Docket 03-123 (February 12, 2010); CSDVRS Petition for Rulemaking, CG Docket 10-51 (March 1, 2010) (Porting Petitions).

¹⁰ See *e.g.*, CSDVRS Petition for Expedited Declaratory Ruling, CG Docket 03-123 (January 29, 2010); Porting Petitions.

confounds consumer understanding of how numbering works, what a port is, and what happens to their CPE and its enhanced features upon porting their number. The end result is the need for more ten-digit numbering outreach by the VRS providers, the cost of which was previously passed on to the Fund and now must be shouldered by providers. CSDVRS submits that by effectuating the mandate petitioned for herein, outreach costs would fall dramatically as consumers would simply be allowed to keep their current CPE (if they choose to do so) with all of its functionalities, even though they have ported to a new default provider.

CSDVRS also asserts that this rule will assist in eradicating fraud perpetrated against the Fund. While not excusing any basis for wrongdoing, CSDVRS believes that the make-up of the VRS marketplace was a major factor that forced some providers to circumvent the Commission's rules in order to compete and generate more revenue. If this new rule were implemented, providers would not need to concern themselves with putting phones on the market and opposing the economies of scale that other providers may enjoy. Instead, they could focus on providing their services through existing CPE. The proposed rule would not only obviate this particular basis for committing fraud, thereby saving undeterminable amounts of resources of the Fund, but would ultimately encourage more competition in the market as explained below.

B) Functional Equivalency and Consumer Choice

The requested amendment to the rules would more clearly support the functional equivalency mandate of Section 225 of the Communications Act¹¹ and thereby protect consumer choice. This very important issue is not necessarily accounted for under the current rules, but would be more adequately protected under the instant proposal.

¹¹ 47 U.S.C. §225 (the Act)

Under current industry operational standards, VRS users are compelled to choose one device on which to receive their calls, and barring a dial-around, they must utilize the default provider that supplied the CPE for their outbound calls as well. Despite the expiration of the waiver, a deaf person still cannot take a videophone provided by one VRS provider, port the number and device to a new provider, and still have the device function with all of its enhanced features (if it functions at all). This clearly is not functionally equivalent access to telecommunication services guaranteed to deaf and hard-of-hearing people under the Act as the same impediment does not occur with hearing people.

Hearing persons that utilize land line, and Voice-Over-Internet Protocol have the option of choosing any CPE they wish and the device will function with all of its features regardless of which provider they choose to utilize. The same may be said of wireless devices, albeit to a much lesser extent as wireless providers maintain exclusive supply and use contracts with device manufacturers which narrows the “open” market of wireless devices. However, even in the wireless marketplace, providers are usually able to offer identical enhanced features and can access features that the consumers are used to having for implantation on their new devices (for example address books and data that is contained on a wireless device’s SIM card can generally be read and re-assigned to a new device, even between providers). Deaf and hard-of-hearing consumers are afforded no such choice or carryover of features in the VRS marketplace.

Under the proposed rule, if consumers were to port their local number to a new default provider and chose to maintain the original CPE, their choice to switch default providers would not work to deny them the features of their videophone that they are accustomed to using such as their address book, speed dial, etc. Instead, all of the features that made the videophone appealing to them in the first place would be maintained, and a provider could not ‘penalize’ a

consumer that ported their number and device to a new default provider by de-featuring the phone. This will work in the better interests of the consumers, and, as explained below, will bring more equity to the industry while still affording the porting-out provider a return on its investment.

It should be noted that CSDVRS does not advocate the abolition of a complete port (i.e. move the number to a new CPE as occurs presently) as research and development in new technologies is critical to the industry and such a limitation would be stifling. Moreover, many consumers will invariably seek out updated and advanced videophone products as newer technologies become available. In such instances, CSDVRS again reasserts that it is essential that the Commission offer a standardized means for a port between providers, regardless of whether new CPE is involved.

C) Increased Marketplace Competition

Entry into the VRS marketplace is presently a substantial undertaking. Enterprises wishing to provide this vital service must invest significant amounts of capital into equipment, personnel, and other overhead costs before they can even consider offering VRS. Indeed, a start-up VRS company must also partner with an established and certified provider in order to collect payment for services rendered and to assist the start-up with meeting the statutory minimum standards. If the entity is able to keep its head above water and compete, it may be able to apply for certification as a stand-alone marketplace competitor that could bill the Fund directly.

The start-up VRS company is faced with a daunting marketplace that is almost completely dominated by a company that grew unchecked in the formative years of the industry aided by lack of Commission oversight during the last administration. Such dominance in the marketplace, and the economy of scale associated therewith, makes competition by established

and certified providers a difficult undertaking, let alone what it presents to the start-up. CSDVRS believes that by effectuating the rule in this petition, the start-ups, smaller providers, and even the larger certified providers will be able to balance the VRS marketplace and offer consumers more options. Moreover, CSDVRS believes that with this rule in place, and the ensuing balancing of the marketplace, the Commission will be able to avoid involvement in the institution and/or prosecution of an antitrust action against the largest provider similar to that experienced when AT&T was broken up in 1984.¹² CSDVRS believes such an action to be inevitable unless the course of the industry is to change, and such litigation will no doubt tax the Commission and all parties involved. The rule presented herein will act to mitigate the likelihood of such proceedings to the better interests of all.

Mandating support of the enhanced features of the CPE will allow providers, large and small, to compete on a level playing field free from any monopolistic underpinnings created during the last administration. The consumers will have their choice of CPE and can then choose the provider he/she likes best based on service and performance. Providers would not be able to “corner” consumers into maintaining their services as default provider simply under the threat of de-featuring the videophone the consumers had become accustomed to. On the same token, however, that provider would be able to recapture its capital investment (or more) in the ported CPE based on a percentage of generated minutes. CSDVRS believes this is a win-win for the consumers, the providers, and the Commission and submits that a debunking of this position would only support a possible antitrust action in the future.

¹² See, *United States v. AT&T*, 552 F.Supp. 131 (DDC 1982)

IV. PROPOSED RULES

CSDVRS first submits that the Commission should amend 47 C.F.R. §64.604 or add a new subsection to Title 47, Part 64 to specifically delineate what comprises standard videophone enhanced features in the VRS marketplace. CSDVRS submits that the basic enhanced features that are afforded hearing people would be dispositive on this matter. Specifically, these features should include, at a minimum: call history, contact/address list, and a video mail system. Under the proposed rule, providers would be compelled to continue to support these features upon porting of the CPE.

CSDVRS next submits that the Commission should amend 47 C.F.R. §64.604, or 47 C.F.R. §64.607 or add a new subsection to Title 47, Part 64, to account for the rules proposed herein concerning ongoing support of CPE. Specifically, CSDVRS proffers the following language to permit consumers to choose their default provider without penalty in the form of feature elimination:

- All CPE features provided by the original provider on the date of initial installation of the device, including any features beyond the stated minimum, must remain functional and supported by the original provider even if the consumer ports to a new default provider.
- The original provider of the CPE will continue to support E911 as well as support the phone and features for point to point calling. In exchange for this service the original provider of the CPE will receive a perpetual licensing fee for the life of the CPE of 8% of the monthly reimbursed minutes generated by that videophone.

CSDVRS further submits that the proposed rule should include a renewed default provider selection period for 180 days to allow consumers to port to their provider of choice (if necessary). Once selected, the consumer should be bound to a one-year commitment to the selected default provider absent a reasonable early cancellation fee that cannot be subsidized by the providers (much like in the wireless market). To protect consumer choice, CSDVRS stresses that dial around must remain an option for the consumer. CSDVRS believes that this rule will allow the market to stabilize, prevent “porting wars” between the providers, and secure reliable and sustainable VRS access to consumers.

PART V: CONCLUSION

Based upon the foregoing, CSDVRS respectfully petitions the Commission to initiate a rulemaking proceeding to require VRS providers to continue to support their end-user customer premises equipment, including enhanced features, after the user’s ten-digit local telephone number is ported to another provider. CSDVRS believe this will simplify the ten-digit number porting process for the VRS industry as well as promote functional equivalency and equalize the VRS marketplace while affording consumers more choice and preserving the integrity of the Fund.

Respectfully Submitted,

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