

**Before the
Federal Communications Commission
Washington, DC 20054**

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

COMMENTS OF AT&T, INC.

Robert Vitanza
Gary L. Phillips
Paul K. Mancini

AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036
(202) 457-3076

August 18, 2010

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	1
II. DISCUSSION.....	3
A. The Commission Should Continue with Multi-Tier, Multi Year VRS Rates Based Upon Projected Costs	3
1. Multi-Tier Rates More Accurately Reflect Different VRS Provider Costs.....	4
2. Multi-Year Rates Provide Stability and Predictability for VRS Providers	6
3. VRS Rates Should be Based Upon Projected Costs	7
B. The Commission Should Allow VRS Providers’ to Recover Their Real Costs and Provide Clarity for Those Real Costs That Are Not Recoverable	9
C. Funding for VRS Outreach Should be Coordinated Nationally And Shared with VRS Providers	14
D. The Commission Should Develop a More Transparent Certification Process	15
E. The Commission Should Not Select a Single VRS Provider	16

the number of VRS minutes used from 7,215 in January 2002⁴ to a projected monthly average of over 8 million in 2010-2011⁵ and in the size of the Interstate TRS Fund from \$58 million for the 2000-2001 fund year⁶ to \$706 million for the 2010-2011 fund year.⁷

This increase in demand for VRS minutes and the Commission’s decision to provide stable cost recovery rates for VRS have likewise driven an increase in the availability of equipment that allows deaf and hard of hearing persons to engage in VRS communications. The Commission also mandated that VRS (as well as IP Relay) users receive a ten digit North American Numbering Plan telephone number associated with their user equipment to facilitate incoming calls.⁸ These few examples demonstrate that VRS has evolved since its nascent existence in 2000 to one of the most vital forms of TRS. Unfortunately, the evolution of VRS has been accompanied by a detrimental element—persons intent on using VRS to defraud third

⁴ *Id.* at n.26.

⁵ NECA, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CG Docket No. 03-123, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, at Exh. 2a (filed Apr. 30, 2010) (“NECA 2010-2011 Rate Filing”).

⁶ Telecommunications Services for Individuals with Hearing and speech Disabilities, and the Americans with Disabilities Act of 1990 (Fund Administration Fund Size Estimate and Payment Formula, July 2000 Through June 2001), Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, CC Docket 90-571, CC Docket 92-237, NSD File No. L-00-72, *Order*, 15 FCC Rcd 11384 at ¶4 (2000).

⁷ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, *Order*, FCC 10-115, at ¶27 (rel. June 28, 2010).

⁸ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, *Report and Order and Further Notice of Proposed Rulemaking*, 23 FCC Rcd 11591 at ¶¶20-26 (2008) (“2008 Report and Order”).

parties or the Interstate TRS Fund, which has forced the Commission to take a series of actions designed to stem the losses from fraud and discourage future incidents of fraud and abuse.

In this Notice, the Commission seeks information about various facets of the VRS business and invites comment about ways to improve VRS and reduce the opportunities to use VRS for fraud and abuse. AT&T applauds the Commission's efforts to implement effective measures to address the causes of the fraud and abuse that has been perpetuated against businesses and the Interstate TRS Fund. AT&T believes that the Commission can accomplish its goals, by among other things, taking the following actions:

- continue to set VRS rates with a multi-tier, multi-year methodology;
- allow VRS providers to recover their real costs of providing VRS to deaf and hard of hearing users, and clarify the type of calls that are not reimbursable (e.g. international calls, employee VRS calls) and the justification for disallowance;
- require eligibility to recover from the Interstate TRS Fund as a condition to providing VRS and establish a process for providers to obtain timely certification;
- continue to allow competition among certified VRS providers rather than move to a single VRS provider chosen by competitive bids; and
- allow VRS providers to recover their costs of outreach and marketing and establish a central organization to facilitate VRS outreach.

II. DISCUSSION

A. The Commission Should Continue with Multi-Tier, Multi-Year VRS Rates Based Upon Projected Costs.

In the *2007 Cost Methodology Order*, the Commission adopted a multi-tier, multi-year cost-recovery regime for VRS providers with the intention of increasing predictability for TRS

providers and compensating providers for the “reasonable” actual costs of providing service.⁹ The Commission’s emphasis on predictability and reimbursement of reasonable costs sets the stage for the development of a stable VRS ecosystem. Although some fraud and abuse has accompanied the rise of VRS, the majority of VRS usage is legitimate¹⁰ and has provided substantial benefits to VRS users. Tiered rates promote efficiency among VRS providers, while multi-year rates provide the predictability that VRS providers need to invest in improvements in service. These principles of predictability and recovery of reasonable costs are no less important now than they were when the Commission considered them in the context of VRS compensation in 2007. The Commission should remain committed to these principles, which bring stability and innovation to the VRS industry.

1. Multi-Tier Rates More Accurately Reflect Different VRS Provider Costs.

In the *2007 Cost Methodology Order*, the Commission adopted a multi-tiered approach that calculated VRS rates based upon the weighted average projected costs of VRS providers with similar market share and costs. The Commission concluded that using three tiers based upon market share promoted competition among VRS providers, allowed newer providers to cover their costs, and did not over-compensate the larger providers.¹¹ The Commission now questions whether to continue with this multi-tiered approach to VRS cost recovery or change to some alternate regime, such as a single rate or company-specific compensation for each VRS provider. AT&T strongly believes that the current multi-tier approach is the correct one.

⁹ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, *Report and Order and Declaratory Ruling*, 22 FCC Rcd 20140 at ¶11 (2007) (“*2007 Cost Methodology Order*”).

¹⁰ *See Notice* at ¶31 (“the increased payments to VRS providers have been driven, in part, by legitimate growth in the number of minutes of VRS used”).

¹¹ *2007 Cost Methodology Order* at ¶53.

The Commission was correct in 2007 when it decided that setting reasonable compensation rates in tiers, based upon the size of the VRS provider, is the optimal manner in which to set VRS compensation rates. Unlike traditional TRS, one provider has an overwhelmingly dominant market share position in VRS. That provider's costs of providing VRS are generally lower than the costs of smaller TRS providers, as it benefits from efficiencies absent with smaller VRS providers. Thus, including the dominant provider's cost data in a weighted average calculation to determine a VRS compensation rate for all VRS providers would severely understate the compensation needed to reimburse smaller VRS providers for their real costs of providing service. Indeed, prior to 2008, the dominant provider's VRS minute and cost projections drove VRS rates.¹²

Despite the passage of three years, the situation remains much the same, with a single dominant VRS provider joined by many smaller providers. The same public interest benefits that led the Commission to adopt a tiered methodology for VRS rates—competition and the appropriate level of compensation for VRS providers—are more compelling than ever. An appropriate level of compensation provides stability for VRS providers and allows smaller VRS providers to compete effectively with the market share leader. A single VRS recovery rate would place significant financial constraints on smaller VRS providers and merely strengthen the market share position of the largest VRS provider.

Tiered rates also allow new providers to compete in the market. Start-up costs tend to be higher for smaller providers as they endeavor to establish call centers, develop technology platforms and hire personnel. The higher rates at the lower tiers allow these new providers to recover sufficient funds to be able to bear these costs as well as present a corresponding

¹² *2007 Cost Methodology Order* at ¶52.

economic incentive to serve the market. Larger providers have already achieved a level of scale where they can concentrate on efficiencies to drive costs out of the business.

Though a company-specific VRS recovery rate may more accurately compensate VRS providers for their costs, it also would reduce some of the incentive for VRS providers to operate more efficiently. Tiered rates allow the Commission to set recovery rates based upon industry costs, which considers both the costs of the most efficient and less efficient providers. Less efficient VRS providers with higher per minute costs than the recovery rate are forced to be more efficient and drive costs out of their businesses. This incentive disappears if the Commission adopts a company-specific recovery rate, where a VRS provider is judged merely against itself. AT&T encourages the Commission to continue with the three tiered approach for setting VRS recovery rates, which recognizes the different financial positions of the VRS providers and provides a long-term benefit to the Interstate TRS Fund by spurring more efficient operations.

2. Multi-Year Rates Provide Stability and Predictability for VRS Providers.

In the *2007 Cost Methodology Order*, the Commission adopted a multi-year rate methodology for VRS, in part, to provide the consistency that is necessary for planning and budgeting.¹³ While straightforward, this principle cannot be overstated. With the benefit of planning, VRS providers can budget their costs, make long-term investments in their VRS business, and allocate money to programs and technologies to improve efficiencies and reduce future costs. Without this ability, VRS providers will have difficulty surviving, as they will struggle to raise needed capital, attract a capable workforce, and invest in new technologies.

Indeed, the Commission's reliance on a multi-year cost methodology over the past three years supports this position. It is no mere coincidence that the past three years have seen

¹³ *2007 Cost Methodology Order* at ¶56.

significant advances within the VRS industry, such as ten-digit numbering for relay users, automatic 9-1-1 transfer and connections, mobile video-mail, new video hardware and software, and functionally-equivalent features for dialing and connections. These changes were possible because VRS providers could rely on the stability of VRS rates. This stability allowed VRS providers to plan not only for reimbursable costs, but for non-reimbursable costs, such as the cost of raising capital. The stability generated by that three-year plan advanced the mandate of the Americans with Disabilities Act to narrow the functional equivalency gap in communications for deaf and hard of hearing Americans. For that reason, the Commission should continue a multi-year rate cycle.

3. VRS Rates Should be Based Upon Projected Costs.

Under Section 225 of the Communications Act, TRS providers are entitled to reimbursement for their reasonable costs of providing TRS.¹⁴ Commission rules likewise direct the TRS Administrator to design TRS rate formulas that reimburse TRS providers for the reasonable costs of providing interstate TRS.¹⁵ To meet these requirements, the TRS Administrator should continue to set VRS recovery rates based upon VRS providers' projected costs rather than historical costs, as utilizing historical costs would result in substantially reduced VRS rates. These reduced VRS rates would not adequately compensate VRS providers for actual costs incurred in providing the service, as they overlook increases in costs that tend to occur over time, such as payroll, health insurance, taxes, leased property, outreach, and, with the

¹⁴ 47 U.S.C. §225(d)(3).

¹⁵ 47 C.F.R. §64.604(c)(5)(ii).

Commission's recent ruling, interpreting services for employees.¹⁶ Any business that cannot recover its costs will not survive.

Moreover, limiting reimbursement to historical costs discourages investments in and development of new technologies that would reduce the functional equivalence gap for deaf and hard of hearing Americans. While the proposed VRS rates include a component for invested capital, that allocation is insufficient if it is based upon a rate that is almost 50% of the current VRS rate. VRS providers will simply be too cash strapped to continue innovating. Such a result violates the Congressional directive that TRS regulations “not discourage or impair the development of improved technology.”¹⁷ Yet, that is a very real prospect of reliance on historical costs.

In the *2007 Cost Methodology Order*, the Commission considered, and wisely rejected, the option of using historical costs to calculate VRS rates. The result has been healthy growth in VRS over the last three years, an increase in the number of competitors offering VRS, and substantial innovation that has benefited VRS users. Deviating from the tried and true formula of using projected costs to calculate VRS rates risks significant financial hardship to some VRS providers, which eventually would be detrimental to VRS users. In a recent statement to the VRS community, Commission staff indicates that “[t]he FCC continues to believe that VRS is the most functionally equivalent form of relay for people who communicate using American

¹⁶ See *Structure and Practices of the Video Relay Services Program*, CG Docket 10-51, *Declaratory Ruling*, 25 FCC Rcd 1868 (2010) (“*VRS Declaratory Ruling*”)(VRS calls made by or to a VRS provider’s employee, or the employee of a provider’s subcontractor, are not eligible for compensation from the TRS Fund on a per-minute basis from the Fund, but rather as business expenses.).

¹⁷ 47 U.S.C.A. §225(d)(2). See also 47 C.F.R. §64.604(b)(5).

Sign Language (“ASL”).”¹⁸ AT&T agrees and appeals to the Commission to continue using projected costs to set VRS rates and thus, avoid jeopardizing the progress that has been made in extending the functionally equivalent VRS service to all ASL users.

B. The Commission Should Allow VRS Providers’ to Recover Their Real Costs and Provide Clarity for Those Real Costs That Are Not Recoverable.

Section 225 creates a cost recovery system whereby TRS providers are compensated for their reasonable costs of providing relay service.¹⁹ Recoverable costs must “relate to the provision of service in compliance with the applicable non-waived [TRS] mandatory minimum standards.”²⁰ Based upon this standard, the Commission and the TRS Administrator have disallowed costs associated with the provision of VRS that should be recoverable, such as costs for research and development, user equipment, E-911, porting costs, and number assignment. The costs of providing point-to-point calls are also not recoverable because point-to-point calls are not TRS calls. Moreover, while the Commission has disallowed other costs, such as certain types of international calls and employee calls, further clarity is needed regarding the reason for disallowing these costs and how the various forms of these costs should be treated.

¹⁸ Joel Gurin, Bureau Chief, and Karen Peltz Strauss, Deputy Bureau Chief, *A Message from the FCC’s Consumer and Governmental Affairs Bureau to the VRS Community* (posted May 10, 2010): <http://www.nad.org/blogs/bobbie-bethscoggins/fcc-public-notice-new-vrs-rates-nad-file-comments>. (last checked Aug. 13, 2010).

¹⁹ 47 U.S.C. § 225(d)(3); 47 C.F.R. § 64.604(c)(5).

²⁰ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571 & 98-67, CG Docket No. 03-123, *Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 12475, 12551–52, ¶199 (2004) (*2004 TRS Report & Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Order on Reconsideration*, 21 FCC Rcd 8050, 8057, ¶¶15–16 (2006).

AT&T encourages the Commission to reevaluate the categories of costs that VRS providers, and all TRS providers for that matter, can recover. Many of these costs that the Commission disallows relate to the provision of VRS and improve the quality of the service, to the benefit of deaf and hard of hearing users. Disallowing these costs discourages VRS providers from investing in new projects and improving service. Examples of the types of costs that should be recoverable or should be further reviewed include those costs associated with research and developments, video equipment, number acquisition, porting, point-to-point calls, international calls, and employee calls.

Research and development: Research and development costs are currently recoverable only if they are necessary to meet the Commission's mandatory minimum standards.²¹ This restriction acts as a strong disincentive for providers to improve service if the upgrade or improvement does not impact a mandatory minimum standard. It also contradicts the Congressional directive and a Commission rule against TRS regulations that discourage or impair the development of improved technology.²² The public interest would be served by policies that promote investments in services and technologies that improve accessibility for persons with disabilities. Thus, the Commission should allow for the recovery of research and development costs that are related to the provision of TRS.

Video Equipment. Video equipment is an integral part of VRS without which there would be no service. As the Commission has observed, VRS users receive video equipment from their VRS provider.²³ And reality is that obtaining equipment from a provider is the most efficient

²¹ 2004 TRS Report and Order at pp.12547-12548, ¶189.

²² 47 U.S.C. § 225(d)(2).

²³ Notice at ¶21.

and effective means for a VRS user to obtain video equipment and insure that the equipment will work with the VRS of their default provider. This equipment comes with a cost; yet, the cost of video equipment for VRS users is not recoverable. Reduced VRS recovery rates presents the risk that financially squeezed providers will be unable to continue financing the cost of equipment. In that event, AT&T advocates that the Commission reconsider reimbursing VRS providers for equipment costs.

Number acquisition and porting. When the Commission mandated the provision of 10-digit telephone numbers to all Internet-based TRS providers and further required providers to support porting, it recognized that providers would incur costs associated with the acquisition of those numbers and with porting a number. However, the Commission ruled that these costs were not recoverable from the Interstate TRS Fund.²⁴ While the Commission has recognized a provider's ability to pass through costs to VRS users to whom numbers are assigned, that is often not practical and inevitably VRS providers are left to bear 100% of the number acquisition and porting costs. VRS providers do not have billing relationships with users of their service, and thus, would be required to establish such relationships to recover these costs. Though number acquisition costs per user are insufficient to justify the cost of establishing a billing relationship and recovering those costs from users, in the aggregate, these costs are anything but small.²⁵ To insure the long-term viability of VRS providers and a stable VRS ecosystem, number acquisition and porting costs should be recoverable.

²⁴ 2008 Report and Order at ¶100; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, In re: E911 Requirements for IP-Enabled Service Providers, CG Docket No. 03-123, CC Docket No. 98-67, WC Docket No. 05-196, *Second Report and Order and Order on Reconsideration*, 24 FCC Rcd 791 at ¶¶48-51 (2008) (“*Second Numbering Report and Order*”).

²⁵ Requiring Commission approval of any plan to recover costs from VRS users also discourages providers from undertaking any self-recovery efforts.

Point-to-Point Calling. Point-to-point calls are not “telecommunications relay service” as defined in section 225 because they occur between persons with hearing or speech disabilities, not between a person with such a disability and a hearing person.²⁶ The Commission considers point-to-point calling an essential form of communication, furthering the accessibility of communications services to deaf and hard of hearing persons even more than relay services,²⁷ and, thus, requires all default providers to support point-to-point calls.²⁸ Yet, VRS providers cannot recover any of the costs associated with point-to-point calls. AT&T encourages the Commission to evaluate options for VRS providers to recover costs associated with point-to-point calls, which, by definition, would be substantially less than costs for VRS calls that occur with a CA. With the proposed reduction in VRS rates and the many different costs that providers are asked to bear without recovery, providing a means to minimize those costs would result in long term stability of VRS providers and benefit the Interstate TRS Fund.²⁹

International Calls. The Commission has clarified that VRS calls that do not originate or terminate within the United States are not compensable from the Interstate TRS Fund, citing the policy behind Section 225.³⁰ In contrast, all IP Relay calls that terminate outside of the United

²⁶ See 47 U.S.C. § 225(a)(3) (defining “telecommunications relay services” as services that provide the ability for individuals with hearing or speech impairments to communicate with hearing individuals); *Second Numbering Report and Order*, at ¶¶66.

²⁷ *Id.* at ¶¶65, 67.

²⁸ *Second Numbering Report and Order* at ¶65.

²⁹ To the extent that VRS providers can recover costs for video equipment, number acquisition, and porting, there may be less urgency to receive compensation for point-to-point calls.

³⁰ *VRS Declaratory Ruling* at ¶9.

States are not compensable.³¹ The Commission initially disallowed costs from international IP Relay calls pending efforts to ensure that one end of the call occurs within the United States.³² IP Relay providers, with the assignment of telephone numbers to users, can now make that determination. Thus, there is no longer a need to disallow costs for all IP Relay calls terminating outside the United States. Moreover, AT&T's experience has been that the majority of fraud associated with international calls arises from calls that originate outside of the United States and that there is minimal benefit in tying the compensability of international IP Relay calls to the termination point of the call. Thus, AT&T advocates that international IP Relay calls be compensated similarly to international VRS calls.

VRS Provider Employee Calls. In the VRS Declaratory Ruling, the Commission determined that VRS providers may not receive reimbursement from the Fund for VRS calls to which an employee, or an employee of a provider's subcontractor, is a party.³³ In reaching this decision, the Commission reasoned that VRS providers have an obligation to bear these business expenses.³⁴ That reasoning should not apply to VRS calls made by employees who are not engaged in the VRS business. For example, while an AT&T affiliate operates as a VRS provider, the overwhelming majority of AT&T employees, including employees who are deaf and hard of hearing, are not involved in any aspect of the TRS business. VRS calls made by

³¹ Notice at ¶29. See also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, *Report and Order, Order on Reconsideration, Further Notice of Proposed Rulemaking*, ¶129 & n.371 (rel. June 30, 2004).

³² See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, *Order*, ¶42 (rel. Jun. 30, 2003).

³³ *VRS Declaratory Ruling* at ¶5.

³⁴ *Id.* at ¶4.

these employees using AT&T VRS should not be considered a business expense of AT&T's affiliate that provides VRS, and thus should be allowed costs recoverable from the Interstate TRS Fund. This result would be consistent with the Commission's guidance that "non-business related VRS calls placed by employees outside the workplace would not be business expenses of the provider and, therefore, would be compensable from the Fund on a per-minute basis."³⁵ Accordingly, the Commission should clarify that its prohibition on the recoverability of the costs of VRS calls made by employees applies only to those employees engaged in the provider's VRS business.³⁶

C. Funding for VRS Outreach Should be Coordinated Nationally and Shared with VRS Providers.

In the Notice, the Commission explains that it is difficult to assess the effectiveness of funded VRS outreach programs and the reasonableness of funding those programs.³⁷ The Commission also questions whether to fund VRS provider-sponsored outreach.³⁸ In the past, AT&T has advocated a national outreach campaign for STS³⁹ and believes that a similar effort for VRS outreach would more effectively educate deaf and hard of hearing persons on the value

³⁵ *Id.* at n.13.

³⁶ The Commission should also clarify that costs pertaining to calls using a VRS provider's service to an affiliate of the VRS provider that is not engaged in the TRS business are recoverable. For example, calls made by deaf or hard of hearing users to AT&T customer service over a toll free number assigned to AT&T should not be disallowed merely because users made the calls over AT&T's VRS.

³⁷ *Notice* at ¶17.

³⁸ *Id.*

³⁹ Comments of AT&T, Inc. on NECA Interstate TRS Fund Submission for 2010-2011 Fund Year, CG Docket No. 10-51, p. 6 (filed May 14, 2010); *Ex Parte* Letter from Toni Acton, Director, AT&T Services, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, CG Docket 03-123 (filed July 10, 2009).

of VRS. A nationally coordinated VRS outreach campaign would be much more efficient and garner more value for the same money than the piecemeal educational efforts that different VRS providers can muster, regardless of how well their plans are executed or intentioned.

Nevertheless, provider funded outreach and marketing generates substantial public benefits. Unfortunately, VRS providers are often discouraged from engaging in outreach because of NECA's refusal to reimburse providers for programs it considers to be marketing, rather than outreach. Even if outreach activities are recoverable, substantial uncertainty about how NECA distinguishes outreach from marketing creates risks that the costs will not be recoverable and reduces the incentive to conduct any outreach at all. AT&T advocates that the Commission and NECA cease trying to distinguish between marketing and outreach, as each necessarily has some component of the other. Instead, the Commission should compensate provider initiated outreach and marketing at a reduced rate, for example 50%. This type of reimbursement scheme allows for reimbursement of legitimate outreach activities that providers conduct, while recognizing that the marketing portion of providers efforts are not entitled to compensation.

D. The Commission Should Develop a More Transparent Certification Process.

The Commission seeks comment on the state of the certification process for VRS providers. Currently, although Commission rules establish eligibility criteria for a VRS provider to receive payments from the Interstate TRS Fund,⁴⁰ they do not limit who can provide the service to the deaf and hard of hearing community. Consequently, white labeling relationships have developed whereby entities that are eligible to recover from the Interstate TRS Fund submit costs on behalf of the entities that are ineligible to recover from the Fund but provide the actual

⁴⁰ See 47 C.F.R. §64.604(c)(5)(iii)(F).

service. Subcontracting is also prevalent. While AT&T believes that subcontracting can be a valuable resource and should remain an option, we also strongly believe that all entities providing VRS to users should meet the same eligibility criteria as entities that can recover from the Fund. Requiring this demonstration of competence would likely reduce the incidences of fraud and abuse and eliminate the prospect of VRS providers that are completely invisible to the Commission. This step will increase the integrity of the TRS program.

Notwithstanding, such a requirement can succeed only if the Commission develops a more transparent process for VRS providers to receive Commission certification. Commission Rule 64.606 details the process for submitting a request to the Commission for VRS provider certification, and the findings that the Commission must make to qualify a provider for certification.⁴¹ Yet, there is no guidance as to how the Commission will make these findings or the time period that it has to make them. The Commission acknowledges that several applications for VRS provider certification are pending.⁴² Some of those have been pending for nearly a year.⁴³ As a result, potential VRS providers are left with substantial uncertainty as to if and when they will be eligible to recover from the Fund, leaving them little option but to partner with providers already eligible to recover from the Fund. The Commission must have a more transparent and timely process detailing how and when providers will become certified.

E. The Commission Should Not Select a Single VRS Provider.

In the Notice, the Commission inquires about the possibility of selecting one or more VRS providers using competitive bidding, as many states now choose their intrastate TRS

⁴¹ 47 C.F.R. §64.606.

⁴² *Notice* at ¶25.

⁴³ For example, Convo Communications filed its application on October 30, 2009.

providers. AT&T strongly opposes any effort to move to a competitive bidding model for VRS, as it would harm competition and harm accessibility for deaf and hard of hearing persons.

Unlike traditional TRS, a single VRS provider maintains a substantial share of the VRS market, over 80%. That scale places the dominant provider in an advantageous position relative to the smaller VRS providers in any competitive bidding scenario, whereby it nearly always would be able to construct the most competitive bid. The ability of the dominant provider to drive efficiencies and reduce costs in ways that are unavailable to smaller providers would allow it to undercut all other providers. Further, because the dominant provider handles over 80% of the VRS calls, it is unlikely that other VRS providers currently have sufficient capacity to handle all VRS calls. Another provider would need substantial and costly short term investments to scale up to that level if it were chosen to be the only, or even the primary, VRS provider.

Selecting a single VRS provider through competitive bidding could also be harmful to accessibility for VRS users. The competitive bidding process could result in the selection of the VRS provider with the lowest quality of service because it has the lowest cost. While generally the competitive bidding process has been a tried and reliable manner in which to select vendors, especially in the government sector, VRS providers, with the uncertainties about future recovery rates, have the potential to be more fiscally challenged than many other industries. The best approach for the Commission is to allow a healthy VRS marketplace to continue to thrive, with deaf and hard of hearing users having a choice from multiple providers. Moreover, utilizing a single VRS provider eliminates the push of competitive forces, which drives innovation. Much of the recent innovation in VRS has been driven by smaller providers which introduced Wi-Fi enabled devices, applications for use with the iPhone 4, and software downloads. The dynamic

of these smaller providers would be lost if the Commission moves to the single provider regime and would not be advantageous to the VRS industry.

Dated: August 18, 2010

Respectfully submitted,

/s/ Robert Vitanza

Robert Vitanza
Gary L. Phillips
Paul K. Mancini

AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036
(202) 457-3076 (Phone)
(202) 457-3073 (Fax)
robert.vitanza@att.com