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.

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AT&T Inc. ("AT&T"), on behalf of its telephone companies, files these Comments in response to the Notice of Proposed Rulemaking ("*NPRM*") released by the Federal Communications Commission (the "Commission") pertaining to Video Relay Service ("VRS").[1]

I. INTRODUCTION AND SUMMARY

In the NPRM, the Commission seeks comment on a number of proposed amendments to its VRS rules intended to detect and prevent fraud and misuse in the provision of VRS. AT&T believes that by and large, existing VRS rules, coupled with effective enforcement and Commission guidance on meaning and implications, would substantially decrease the opportunities for fraud and misuse of the Interstate TRS Fund.

In searching for ways to reduce risk and fraud, the Commission should eliminate its fixation on the location of call centers and interpreters, and instead focus on their qualifications and performance. An effective call center located outside the United States and a qualified interpreter effectively working from home in a manner that protects the privacy of TRS calls are preferable to a poorly qualified interpreter working from a call center located within the United

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

States. To insure that the Interstate TRS Fund Administrator, currently The National Exchange Carrier Association ("NECA"), can appropriately evaluate questions that arise about the legitimacy of certain TRS calls, the Commission should clarify the timelines and processes for resolving those questions. The process must be expeditious and should avoid placing 100% of the burden on the TRS provider. A 90-day resolution process where the burden is shared between the Fund Administrator and the TRS provider would provide the appropriate due process to the provider and yet protect rate payers from fraud and abuse to the Interstate TRS Fund.

Currently, NECA compensates VRS providers for otherwise qualified international VRS calls that either originate or terminate within the United States. In this proceeding, the Commission should explore the basis for compensating for international VRS calls differently than for international IP Relay calls, as all IP-Relay calls that terminate outside the United States are disallowed. In AT&Ts experience, calls that originate, not terminate, outside the United States present the fraud risk about which the Commission has expressed concern. Absent a record for treating IP Relay calls differently than VRS calls, the Commission should allow TRS providers to recover the costs of providing international IP Relay for calls that either originate or terminate in the United States.

While the Commission seeks to reduce the opportunities for artificially inflated minutes, the risk to deaf and hard of hearing consumers should also be weighed before adopting a rule that requires an interpreter to terminate an ongoing call if one party leaves the call for more than two minutes. While a two minute terminate call rule may be appropriate at the beginning of a VRS call if the video caller is not present on the screen to direct the interpreter, AT&T is concerned that applying such a strident standard during an ongoing VRS call when a party to the call

disappears from the screen would put VRS users at risk if they experience an emergency or other exigent circumstances during the call. To account for these situations, the Commission should consider extending the time period before the interpreter can terminate an ongoing call and exempt calls where the interpreter determines that emergency and exigent circumstances exist.

The Commission's proposal to require VRS providers to file, with the Fund Administrator and the Commission, call center, interpreter and manager information quarterly should be scaled back to only require the provision of call center data to the Fund Administrator on an annual basis with an obligation to update any changes in the data within 30 days. These protections would provide the Commission with access to sufficient data to remain current on the VRS ecosystem without injecting itself into the management of providers. AT&T proposes that VRS providers provide an annual Officer certification to the Commission regarding the truthfulness and accuracy of data filed with the Fund Administrator. However, the Commission should not require that any VRS provider publicly disclose this confidential and sensitive proprietary data. No other industry is required to submit such detailed data, even if the members of that industry receive public funding.

II. DISCUSSION

A. Location of VRS Call Centers.

AT&T does not own or operate any call centers outside of the United States. Nevertheless, AT&T is opposed to prescriptive regulations that prohibit the establishment or operation of call centers outside of the United States.[2] The NPRM explains that the proposed rule is intended to address the Commission's concerns that VRS providers will be unable to find qualified interpreters in foreign countries and that call centers outside the United States may lack

[2] Though unstated, AT&T assumes that the Commission considers United States territories to be within the United States.

adequate supervision and thus, become a source of fraud.[3] Yet, the Commission provides no evidence that these problems currently exist or are likely to exist in the future. AT&T is unaware of any call center that has lagged in performance or become a breeding ground for fraud because of its location. Simply put, the proposal to limit call centers to the United States is a solution in search of a problem.

AT&T applauds the Commission's effort to ensure the integrity of call centers in an effort to minimize the opportunities for fraud. However, the Commission should focus on the qualifications and performance of call centers and interpreters, not on their location. Commission rules already provide minimum standards that call centers must meet to provide VRS.[4] AT&T also supports proposals to require VRS providers to use only certified interpreters.[5] So long as VRS providers use certified interpreters and call centers are operated in accordance with the minimum standards directed by Commission rules and any applicable state contracts, the location of the call center should be irrelevant.

In certain circumstances, such as when bi-lingual interpreters are needed, the ability to locate a call center outside of the United States may enhance a VRS provider's performance. Moreover, though the Commission views the dearth of registered interpreters currently residing in countries outside of the United States as a barrier to locating call centers in those countries,[6] it should instead be viewed as an opportunity. Foreign interpreters may offer a partial solution to the problem of a limited supply of interpreters. And, though those interpreters may not currently

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[3] *NPRM* at ¶17.

[4] 47 C.F.R. §64.604.

[5] Interpreters can be certified by The Registry of Interpreters for the Deaf, Inc. or The National Association of the Deaf.

[6] *Id.*

be trained to operate as VRS interpreters, VRS providers seeking to establish call centers outside of the United States can train and insure that interpreters, regardless of where they live, are qualified under Commission rules. For these reasons, AT&T encourages the Commission to look beyond the location of VRS call centers and focus on their capabilities and performance.

B. VRS Interpreters Working from Home.

AT&T also opposes any effort to regulate the location of interpreters while performing as a communications assistant ("CA"). Once again, the Commission has expressed "concern," but offered no support for the need to impose a new rule regulating the location of interpreters. AT&T is unaware that interpreters working from home are any less qualified or capable than an interpreter in a call center or have failed to maintain the privacy of VRS calls. It is the qualifications and performance, not the location, of the interpreter that is paramount. Fixating on the location of interpreters would potentially reduce the pool of applicants that are able to provide interpreter services, as in-home working options provide VRS providers with the opportunity to attract interpreters in need of flexible working hours or arrangements because of family or other circumstances. It also gives VRS providers the option to retain qualified interpreters in geographic areas outside of call center locations. This ability to attract from a greater pool of interpreters is and will remain a significant benefit for those providers that choose to offer this flexibility. The VRS provider is responsible for insuring that interpreters handing their VRS calls, regardless of their location, have the requisite skills to perform effectively as a CA and the technology and safeguards in place to insure compliance with Commission privacy rules.

C. Procedures for Suspension of Payment.

AT&T agrees with the Commission that the Fund Administrator and VRS providers need clarity about the appropriate procedures to follow when questions arise as to the validity of VRS calls or whether those calls were submitted in accordance with the Commission's VRS rules. AT&T also agrees that any procedures must afford VRS providers with due process. While AT&T agrees with the three minimum standards for such rules set forth in the *NPRM*—timely notice of the calls for which payment is withheld and the reason for withholding payment, the opportunity to explain why the disputed calls are compensable, and a timely notice of final disposition[7]—the manner in which these standards are applied must also be clarified. Even carefully crafted rules can be applied in a manner that would deny due process. AT&T proposes a process that is expeditious—it concludes within 90 days—and divides the burden of proof between the Fund Administrator and the VRS provider.

Timely Notice of Questionable Calls and Reason for Inquiry. AT&T proposes that the Fund Administrator have 30 days from a VRS provider's submission to notify the provider of the VRS calls for which payment is withheld and the reason for withholding payment. This time period gives the Fund Administrator adequate time to review each VRS provider's submission and determine whether the calls are allowed or justify further inquiry. The Fund Administrator should have the initial burden to demonstrate some reasonable evidence that justifies further inquiry, disclose that evidence to the provider from which payment is withheld, and explain the Commission, Order, Ruling, or policy about which there is a question of compliance. In other

[7] *Id.* at 24.

words, the Fund Administrator must "reasonably believe" that the minutes may not be legitimate or otherwise were not submitted in compliance with TRS rules.[8]

Further, if the Fund Administrator is suspicious about a few questionable calls submitted by a VRS provider, it should withhold payment for only those questionable calls, not for all VRS calls included in the submission. As it stands, VRS providers do not recover their costs to provide VRS until 60-90 days after the VRS call. Unjustifiably withholding payment for allowable calls would be inequitable and has the potential to unreasonably place financial stress on VRS providers, which have payrolls and other fixed expenses to meet, often before the resolution of an inquiry.

The Opportunity to Explain Why Calls are Compensable. VRS providers from which the Fund Administrator requests further verification that calls are compensable should have 30 days to respond to any such inquiry. When NECA makes such a request following the provision of reasonable evidence that creates a suspicion about the legitimacy of VRS calls, the burden should shift to the VRS provider to explain the basis for submitting the contested calls to the Fund Administrator for recovery and to present any available evidence supporting that explanation. If the VRS provider presents a reasonable explanation, in conjunction with any supporting evidence, then the provider has met its burden.

It has been suggested that the burden lies solely with the VRS provider to demonstrate that the VRS calls are compensable. Yet, the Fund Administrator should be reasonable about the type of verification that it seeks from VRS providers and the standard that VRS providers must meet to demonstrate that a call is compensable. For example, it would be unreasonable for the Fund Administrator to require a VRS provider to prove or certify that a particular call is compensable. In most situations, it is impossible for a VRS provider to prove that a call is

[8] *See id.* at 23.

compensable from the Fund, as no VRS provider can conclusively demonstrate that a call is a VRS call by definition—that is, a call between a deaf person and a hearing person.[9] Absent any actions by the VRS provider or anyone affiliated with the VRS provider that acts to artificially or fraudulently generate minutes, the VRS provider must assume that relay services are being used by persons who are deaf or heard of hearing.

Timely Notice of Final Disposition. Once a VRS provider gives some reasonable explanation that a call is legitimate, the burden should shift to the Fund Administrator to demonstrate that the call was not submitted in compliance with Commission rules or is otherwise not an allowable call. If the Fund Administrator cannot make this showing, the call should be considered legitimate. The Fund Administrator should have 30 days from the VRS providers' follow-up submission to make this final determination. Moreover, the Fund Administrator and the Commission should be more transparent about the determinations they make regarding the disallowance of VRS calls by disclosing the methods that are used to validate a call. For example, how does the Commission determine that a call is an international call?

D. 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.[10] In contrast, all IP Relay calls that terminate outside of the United States are not

[9] For VRS and IP Relay, callers are required to certify that they suffer from a hearing or speech impairment before they can designate a default provider and receive a ten-digit telephone number. Thus, providers can confirm that a party to the call for which they are the default provider certified that they have a hearing or speech disability, but those providers cannot certify who actually is present on the call. Further, because a substantial number of VRS and IP-Relay calls are dial-around calls for which the provider is not the customer's default provider, VRS and IP Relay providers often cannot even make that representation. Yet, providers are still required to complete these calls.

[10] Structure and Practices of the Video Relay Services Program, CG Docket 10-51, *Declaratory Ruling*, 25 FCC Rcd 1868, ¶9 (2010) ("*VRS Declaratory Ruling*").

compensable.[11] The Commission, without soliciting comment or providing any in-depth analysis, initially disallowed costs from international IP Relay calls pending efforts to ensure that one end of the call occurs within the United States.[12] 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, if one end point of the call is in the United States.

E. Idle Calls

To prevent the occurrence of illegitimate calls, the Commission proposes to adopt a rule that would require interpreters to terminate a VRS call if (1) at the beginning of the call, the interpreter does not see the face of the VRS caller and the caller's face does not reappear on the screen within two minutes; or (2) either party to the call is away from the call or unresponsive for longer than two minutes. AT&T does not object to the imposition of this requirement in the first instance, upon the initiation of a call. However, AT&T is concerned that the strident imposition of such a requirement after a call has begun would be detrimental to VRS callers.

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[11] Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51, *Notice of Inquiry*, ¶29 (rel. May 27, 2010) ("*Notice*"). *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).

[12] *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).

VRS callers do not have a "hold" button and often leave the view of the camera to attend to matters that may arise. This is functionally equivalent to a hearing person placing the headset down to tend to another temporary matter and then resuming the call. VRS calls should retain the ability to retain the call in this manner, even if communication is delayed for slightly longer than two minutes. If the person on the other end of the call does not want to wait, they can terminate the call at any time. The proposed rule would not account for situations where one party to the call explains that they have to be away from the call for a period of time that may exceed two minutes or where an emergency situation or other exigent circumstances prevents the party from resuming the call. There are innumerable scenarios where the party to the call may need assistance, but may not get that assistance because the interpreter had to hang up the call. Yet, AT&T understands the Commission's desire to limit the abuse that may occur if there is no outer limit on how long a call can continue with nonresponsive parties. Thus, AT&T proposes a longer period of time, such as five minutes of non-responsiveness in situations where a caller leaves the call and is thereafter non-responsive. AT&T also proposes that the Commission recognize an exception for emergency situations or exigent circumstances that are evident from the information available to the interpreter.

F. Call Center Information.

The Commission proposes an amendment of its TRS rules to require certified VRS providers that submit calls for reimbursement from the Fund to make quarterly filings with the Commission and the Fund Administrator with information about each call center the provider owns or controls and the interpreters and managers at those call centers and to update that information within 30 days of any change. AT&T does not oppose a Commission rule requiring VRS providers to disclose the location of each call center. However, as proposed, the rules are

overly burdensome because they require filings more often than needed and unjustifiably seek information about VRS provider employees and management of the call centers.

AT&T submits that an annual call center filing to the Fund Administrator only, with the requirement to update the information within 30 days of any change, would be adequate to provide the Commission with access to all of the information it needs. The Commission fails to explain why a quarterly (rather than annual) filings or dual submissions to the Fund Administrator and the Commission (rather than a single filing to the Fund Administrator), with the substantial burdens that they would impose, are needed to provide Commission access to the information it seeks. Rather than requiring VRS providers to repeat the same information four times a year, the updates are an effective way for providers to keep their information current and would be consistent with current Commission rules, which requires VRS providers to notify the Commission within 30 days of substantive changes in their service.[13]

Further, the proposal that VRS providers disclose the number of employees and the specific managers and their contact information is unnecessary and would serve no purpose. The Commission should not direct the operation of any VRS provider or the manner in which that provider manages its business. Moreover, providers operate differently, with different levels of efficiency and scale. Looking at raw data about the number of interpreters and managers for each call center provides little insight into the effectiveness of the VRS provider in meeting the needs of its customers. It also is unnecessary unless the Commission plans to use the data in a manner not described in the *NPRM*. In short, as long as the VRS provider is meeting the Commission's minimum standards in accordance with all Commission rules pertaining to VRS, the provider should be free to operate its call centers and manage its personnel without

[13] 47 C.F.R. §64.606(f)(2).

Commission intervention. Under no circumstances should the Commission concern itself with the details of a provider's staffing and management decisions.

To the extent that the Commission requires the filing of information pertaining to call centers on an annual basis, AT&T proposes that the Commission provide a format to VRS providers so that all information is submitted in a consistent manner.

G. White Labeling

The Commission seeks comment on a proposal to limit white labeling, an arrangement whereby an entity that is not eligible to recover from the Fund provides relay services and an entity that is eligible to recover from the Fund submits the ineligible entities' minutes to the Fund. AT&T agrees that entities that are not eligible to recover from the Interstate TRS Fund should not be eligible to provide VRS to the deaf and hard of hearing community. 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 VRS program. Yet, the Commission should clarify that subcontracting is not prohibited and that eligible VRS providers are allowed to subcontract for services with other entities for the provision of VRS, provided that the eligible VRS provider files for reimbursement from the Interstate TRS Fund for the recovery of its costs and markets its relay services under its own name so that consumers know the provider that stands behind the relay service.

AT&T also encourages the Commission to develop 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.[14] 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.[15] Some of those have been pending for nearly a year.[16] 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.

H. Transparency and Financial Disclosure.

AT&T objects to the proposal that VRS providers must disclose company specific financial information to the public. VRS provider submissions are filled with highly sensitive commercial and financial information that has long been treated by the Fund Administrator and the Commission as competitively sensitive and confidential.[17] AT&T disagrees with the suggestion in the *NPRM* that "it may not be consistent with public policy to allow provider specific cost and demand data to be kept confidential." The Commission attributes this suggestion to the fact that VRS providers are to be compensated for their marginal cost of providing service.[18] Yet, this connection is anything but logical. VRS providers do not keep their data completely confidential, as the information is provided to the Fund Administrator.

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[14] 47 C.F.R. §64.606.

[15] *Notice* at ¶25.

[16] For example, Convo Communications filed its application on October 30, 2009.

[17] *See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, ¶22 (1993).

[18] *NPRM* at 53.

No other competitive industry, regardless of whether the members of that industry receive public funding, is required to disclose competitively sensitive information. Eligible Telecommunications Carriers ("ETC's) and Universal Service Fund recipients, both of which receive significant public funding, rightfully have no obligation to publicly disclose sensitive competitive information. The reason is simple. The public disclosure of financial information harms competition in the long run. The Commission has recognized this fact, and has protected the confidentially sensitive information submitted by VRS providers. The Fund Administrator has access to VRS provider data and acts on the Commission's behalf to judge the integrity of the data. The benefit from publicly disclosing that data would be substantially offset by the competitive harm that disclosure would cause to the VRS business.

I. Provider Certification.

In the *NPRM*, the Commission proposes to make permanent its interim rule requiring the Chief Executive Office ("CEO"), Chief Financial Officer ("CFO"), or other senior executive of each TRS provider to certify, under penalty of perjury, that all minutes submitted to the Fund Administrator for compensation are handled in compliance with section 225 and the Commission's rules and orders, and are not the result of impermissible financial incentives, or payments or kickbacks, to generate calls, and that cost and demand data submitted to the Fund Administrator related to the determination of compensation rates or methodologies are true and correct. AT&T proposes that any mandated Officer certification occur annually and that monthly submissions to the Fund Administrator and annual cost and data submissions to the Fund Administrator include a certification as to the truth and accuracy of the submission by either an Officer or an authorized employee of the TRS provider. As the Commission has acknowledged, TRS providers already certify to the monthly data submitted to the Fund

Administrator.[19] Requiring monthly Officer certifications would impose an unnecessary administrative burden and delays associated with routing the submissions for signature. Further, allowing a signature from an Officer or authorized employee is sufficient for other similar Commission filings. For example, carrier submissions of line counts to the Universal Services Administrative Company seeking High Cost Support from the Universal Service Fund can be certified by an authorized Officer or employee.[20] A similar process of allowing the administrative efficiency of an authorized employee signature for TRS provider submissions to the Fund Administrator, coupled with an annual Officer certification, would still serve the Commission's purpose of ensuring the veracity and completeness of TRS provider submissions.

Respectfully submitted,

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[19] *See NPRM* at ¶14.

[20] *See* Competitive Carriers High Cost Data Submission, Form 525, *available at* http://www.usac.org/_res/documents/hc/pdf/525.pdf.