

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

To: Secretary, FCC
For: The Commission

**FIRST SET OF COMMENTS IN RESPONSE TO
THE MAY 27, 2010 NPRM**

Hamilton Relay, Inc. (“Hamilton”), by its counsel, hereby submits these comments in response to Sections V.A, V.B and V.E.5 of the Commission’s May 27, 2010 *Notice of Proposed Rulemaking* (“NPRM”).¹

Hamilton welcomes the Commission’s inquiry into ways to improve not only Video Relay Services (“VRS”) but all forms of Telecommunications Relay Service (“TRS”). In doing so, however, Hamilton urges the Commission when adopting final rules in this proceeding to be clear as to which rules apply to VRS providers only, which rules apply to Internet-based relay (“iTRS”) providers, and which rules apply to TRS providers generally. As a provider of all forms of relay other than VRS, Hamilton noted this concern in response to the February 27, 2010 *Declaratory Ruling*, and wishes to reiterate that concern here.² Hamilton believes that whatever

¹ *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 (rel. May 27, 2010) (“NPRM”).

² Hamilton Relay, Inc., Request for Clarification, CG Docket No. 10-51 (filed Mar. 29, 2010). Footnote 1 of the May 27 decision indicates that “[a]lthough this item is being released in docket number 10-51, which specifically relates to VRS, sections III.B, IV and many of the issues raised in the [NPRM] apply to all forms of TRS.” *NPRM* at n.1. However, the quoted footnote requires clarification because the May 27 decision does not contain a section III.B and it is not (continued...)

rules are adopted as a result of this proceeding should reflect the reality that concerns about fraud and abuse in the relay industry are largely confined to VRS,³ and that MARS-based services⁴ have not been the subject of any recent fraud or abuse concerns. In addition, the Commission should be cognizant of the fact that MARS-based services are subject not only to federal but also significant state regulation of their services, which may reduce the need for additional federal oversight of MARS-based services.

Having said that, Hamilton believes that two proposed rules, concerning call center locations and Communications Assistants (CAs) working from home, should apply not only to VRS providers but to all TRS providers, as explained below.

Location of Call Centers

Recognizing that some VRS providers have established call centers that are located outside of the United States and that regulation of those call centers may be difficult, the Commission has tentatively concluded that all VRS centers should be located in the United States.⁵ Hamilton supports this proposal as a rational method of regulating relay call center activity, but in this instance Hamilton believes that the proposed rule should be extended to *all* forms of relay. First, many relay providers provide multiple forms of relay service, and it is not

completely clear from a review of the *NPRM* which provisions will apply to VRS only and which provisions will apply more generally to other forms of TRS.

³ See, e.g., *NPRM* ¶ 2 & n.5.

⁴ The Commission adopted the Multistate Average Rate Structure (“MARS”) plan to calculate the annual interstate traditional TRS rate. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, , CG Docket No. 03-123, 22 FCC Rcd 20140 ¶¶ 16-35 (2007); see also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CG Docket No. 03-123, FCC 10-115 ¶ 5(rel. June 28, 2010). The Commission also uses the MARS methodology to calculate the rates for Speech-to-Speech relay services, captioned telephone services and Internet Protocol-based captioned telephone services. See *id.*

⁵ *Id.* ¶¶ 17-18.

clear why portions of their call centers might continue to remain overseas and thus subject to potential fraudulent activity and lack of oversight, while only the provider's VRS call centers are regulated within the jurisdiction of the United States. To be fully encompassing and avoid the potential for regulatory arbitrage, the Commission should simply require that all relay call centers be located within the United States.⁶

Second, most non-VRS forms of relay (particularly MARS-based services) are regulated principally at the state level, and some states have a preference, and in some cases, outright requirements, that the provider's call center(s) be located within the state. Thus, the upshot of the Commission's rule, if adopted, would likely be that only Internet Relay providers would be immune from the new call center restrictions. Given the long history of fraudulent foreign calling patterns associated with Internet Relay, Hamilton believes that the proposed call center rule should be applied to all forms of TRS, including Internet Relay.

Finally, to the extent that new whistleblower protections will apply to all forms of TRS (discussed further below), it is not clear that such protections could be appropriately enforced if the employees' call centers are located outside of the United States. For all of these reasons, Hamilton believes that proposed rule section 64.604(b)(4)(iii) should be revised as follows: "(iii) *Location of call centers.* ~~VRS~~TRS call centers must be located in the United States."

CAs Working from Home and Compensation

The Commission also has suggested the possibility of restricting the practice of VRS CAs working from home. Among the Commission's concerns are the need to preserve the confidentiality of relay calls, the ability to handle emergency calls in accordance with FCC rules,

⁶ Hamilton believes that such a decision would not be inconsistent with the United States' obligations under the World Trade Organization General Agreement on Trade in Services, because relay call centers are not specifically covered under that agreement.

and the ability to transfer a call to another CA if the CA cannot continue to handle the call, all of which could be compromised in a home-based setting.⁷ Hamilton agrees with the Commission's concerns, and supports a rule that restricts CAs from working in unmonitored workspaces.

Hamilton believes that any rules concerning this issue should apply not only to VRS providers but to all TRS providers – there should be no room in the Commission's rules for authorizing unsupervised CA activity for any form of relay service. Supervisors serve an important role in rectifying problems for relay users when a problem cannot be resolved by a CA. Supervisors also serve as an additional layer of fraud protection -- removing the CA from the same workspace as the supervisor simply increases the potential for fraud. Moreover, all of the concerns cited by the Commission (caller confidentiality, emergency call handling, and call transferability) apply equally to VRS and all other forms of TRS. Given the fraud issues that are still prevalent in this industry (even if they are largely confined to VRS), Hamilton believes that now is not the time to liberalize the CA workspace rules.

Whistleblower Protections

At the request of Sorenson, and in light of recent evidence of fraud and the billing of illegitimate VRS minutes, the Commission has tentatively concluded that it should adopt a specific whistleblower protection rule for the employees and subcontractors of not only VRS providers but *all* TRS providers.⁸

The Commission acknowledges in the *NPRM* that there are numerous federal and state whistleblower laws that already protect employees who report misconduct by their employers.⁹

⁷ *Id.* ¶¶ 19-20.

⁸ *Id.* ¶ 50.

⁹ *Id.* ¶ 49 (citing, e.g., to Whistleblower Protection Act of 1989, P.L. 101-12, 103 Stat. 16 (1989)).

Indeed, as the Commission noted earlier this year in the *National Broadband Plan*, “the right to speak anonymously without fear of government reprisal is protected by a number of laws, including federal whistleblower laws and the First Amendment.”¹⁰ Additionally, numerous states have existing whistleblower laws that protect workers within those states.¹¹

Because Hamilton does not provide VRS currently, Hamilton takes no position with respect to the adoption of the proposed whistleblower protections to the extent they are applicable to *VRS providers only*. However, Hamilton believes that the Commission has not rationally explained why the plethora of existing federal and state whistleblower laws is insufficient to protect employees. Hamilton therefore urges the Commission to conduct a more thorough review of the various existing whistleblower protection laws to ensure that the Commission is not arbitrarily creating whistleblower rules to protect employees who are already protected by existing law. In doing so, the Commission should be cognizant of the fact that its proposed whistleblower rules may overlap, and possibly may be inconsistent with, various existing federal and state whistleblower protection laws.

To the extent that the Commission nonetheless decides to adopt whistleblower rules that are applicable to *all* TRS providers and not just VRS providers, the Commission should amend the rule as follows:

47 C.F.R. § 64.604(a)(3)(6)(iii).

(iii) Whistleblower protections. Providers shall permit any employee, agent, or contractor to disclose in good faith to a designated manager any known or reasonably suspected violations of FCC rules, or any other unlawful or fraudulent activity that the reporting person believes reasonably in good faith ~~to be unlawful, wasteful, fraudulent, or abusive, or that otherwise e~~would result in the improper

¹⁰ *Connecting America: The National Broadband Plan*, § 4.3 & nn.155-156 (2010) (footnotes omitted).

¹¹ See, e.g., <http://www.ncsl.org/default.aspx?tabid=13390> (visited Sept. 5, 2010).

billing of minutes to the Interstate TRS Fund. Providers must make available at least one means by which such disclosure may be made anonymously. Providers must promptly investigate any report of wrongdoing and, when warranted, take appropriate corrective action. Providers may not discipline any employee, agent, or contractor solely for reporting reasonably and in good faith under this provision. Providers shall also inform all employees, agents, and contractors that they may directly contact the Commission's Office of Inspector General to report in good faith known or reasonably suspected violations of FCC rules~~wrongdoing~~.

To reiterate, Hamilton believes that existing law provides adequate protection to employees, and that new, FCC-specific whistleblower rules may simply lead to regulatory confusion, rather than lend clarity to this important issue. However, if the Commission determines that a new rule is required, these amendments will track more consistently the whistleblower protections rules in the various states and help TRS providers comply in good faith with the new rules, while simultaneously protecting TRS providers from bad faith use of the whistleblower rules. The amendments also delete words that are ambiguous and could be reasonably misinterpreted by TRS providers and employees alike.

Respectfully submitted,

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