

**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: The Commission

**PETITION FOR RULEMAKING**

American Association of the Deaf-Blind (“AADB”), Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), Association of Late-Deafened Adults, Inc. (“ALDA”), National Association of the Deaf (“NAD”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”) and Hearing Loss Association of America (“HLAA”) (collectively, the “Consumer Groups”), pursuant to Section 1.401 of the Commission’s Rules, 47 C.F.R. § 1.401, petition the Commission to institute a rulemaking proceeding to amend 47 C.F.R §§ 64.601 and 64.604 to allow for a cost-recovery methodology for the provision of Communication Facilitator (“CF”) services when offered in conjunction with Video Relay Service (“VRS”) or Point-to-Point (“P2P”)<sup>1</sup> services.

**I. BACKGROUND**

A CF is a person trained to provide close-vision or tactile sign language services to relay the sign language shown on the screen during a VRS or P2P call for the benefit of a deaf-blind<sup>2</sup>

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<sup>1</sup> A Point-to-Point call as used herein means a point-to-point video call between a deaf individual and a deaf-blind individual or a call between a deaf-blind individual and a signing hearing individual.

<sup>2</sup> The term “deaf-blindness” as used herein means concomitant hearing and visual impairments, the combination of which causes severe communication hardship. *See also* 29 U.S.C. §1905 (The Helen Keller Act definition of an individual who is deaf-blind); 34 C.F.R. 300.8(c)(2) (Federal definition of deaf-blindness for special education purposes).

individual who otherwise would not be able to utilize existing VRS or P2P services.<sup>3</sup> CFs can therefore provide access to VRS and videophones for the many deaf-blind individuals who are unable to see on-screen VRS interpreters or other videophone callers.

There are currently no VRS companies that provide CF services.<sup>4</sup> The only agency in the country currently providing CF services to the deaf-blind community is the Deaf-Blind Service Center (“DBSC”) in Seattle, Washington. DBSC provides these services under contract with the Washington Office of the Deaf and Hard of Hearing (“ODHH”).<sup>5</sup> The DBSC program provides access to CF services at the DBSC service center<sup>6</sup> as well as CF training and training for deaf-blind consumers on how to communicate efficiently using a CF in conjunction with VRS (“CF-VRS”) and P2P services (“CF-P2P”). The DBSC program thereby meets the unique needs of a segment of the deaf-blind population that otherwise lacks effective access to existing relay services.

## **II. DISCUSSION**

### **A. CF Services Qualify As Telecommunications Relay Services (“TRS”).**

As the Commission noted in its *VRS Order*, Section 225 of the Communications Act of 1934, as amended (the “Act”),<sup>7</sup> does not limit relay service to telecommunications services.<sup>8</sup>

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<sup>3</sup> This definition is based upon the definition of Communication Facilitator provided by the Deaf-Blind Service Center in Seattle, Washington, and the Washington Department of Social and Human Services. Communication Facilitators are not sign language interpreters.

<sup>4</sup> VRS companies have, however, expressed willingness to provide CF services if such services were compensable from the TRS Fund, much like compensation for VRS Communications Assistants (CAs) under 47 C.F.R § 64.604.

<sup>5</sup> ODHH is a subdivision of the Washington Department of Social and Health Services (“DSHS”) and is the state TRS administrator. <http://www.dshs.wa.gov/hrsa/odhh/relser.shtml>.

<sup>6</sup> DBSC provides access to CF services at multiple locations throughout Washington State.

<sup>7</sup> 47 U.S.C. § 225. The language “with a hearing individual” should not be construed to disqualify CF-P2P as TRS.

Rather, the Act defines TRS as a service that “provides the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.”<sup>9</sup>

Both “communication by wire” and “communication by radio” are broadly defined in the Act to include “the transmission... of writing, signs, signals, pictures and sounds of all kinds... including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.”<sup>10</sup> TRS can therefore be construed to encompass CF services as “incidental to such transmission.” This interpretation fulfills section 225’s mandate of functional equivalency by increasing the availability and usefulness of the telecommunications system for Americans with hearing disabilities who also have vision loss.

Moreover, an interpretation of TRS that fails to accommodate CFs would be contrary to the stated purpose of the Act.<sup>11</sup> As explained below, a more limited reading that excludes CF services would impede the provision of TRS to deaf-blind consumers in a manner functionally

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<sup>8</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd. 5140 at ¶ 88 (rel. Mar. 6, 2000) (“*VRS Order*”). The Commission also stated therein that “[a]s new services develop, parties may petition us for a determination as to whether a service falls within the definition of telecommunications relay service.” *Id.* at ¶ 13.

<sup>9</sup> 47 U.S.C. § 225(a)(3).

<sup>10</sup> *Id.*

<sup>11</sup> As the Commission itself has noted, “[b]ecause the purpose of section 225 is to give people with hearing or speech disabilities access to the telephone network, and because Congress realized that to fully participate in society one must be able to call friends, family, businesses and employers, section 225 must be read to apply to any service that allows individuals with hearing and speech disabilities to communicate by wire or radio.” *VRS Order* at ¶ 13.

equivalent to that provided for users of voice communications, as required by the Act and Title IV of the Americans with Disabilities Act (“ADA”).<sup>12</sup> A narrow interpretation that precludes CF services would therefore inhibit delivery of relay services, rather than facilitate them, as Congress expressly mandated in the Act by requiring the Commission to ensure that “relay services are available, to the extent possible and in the most efficient manner...”<sup>13</sup>

**B. The ADA Requires that TRS be Functionally Equivalent to Voice Telephone Service.**

In adopting the functional equivalency requirement in Title IV of the ADA, Congress recognized that persons with hearing and speech disabilities, including the deaf-blind population, have long experienced discriminatory barriers to their ability to access, utilize and benefit from telecommunications services.<sup>14</sup> Today, despite implementation of statutory requirements aimed at eliminating such barriers, the deaf-blind community is still one of our society’s most underserved populations with respect to the provision of telecommunication services.

As the Commission acknowledged in its decade-old *VRS Order*, “functional equivalence is... a continuing goal that requires periodic reassessment.”<sup>15</sup> In light of the rapid and numerous technological innovations enjoyed by most Americans in recent years as part of the

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<sup>12</sup> PL 101-336, July 26, 1990, codified at 47 U.S.C. § 225.

<sup>13</sup> 47 U.S.C. § 225(b)(1).

<sup>14</sup> *See, e.g.*, House Report at 129; Senate Report at 77-78. The congressional “Findings and Purposes” section of the ADA confirms as much, stating that “individuals with disabilities continually encounter various forms of discrimination, including... the discriminatory effects of... communication barriers...” 42 U.S.C. §12101. The House Report notes the need for “Federal prohibition of discrimination on the basis of disability in... telecommunications.” House Report at 28. The Commission likewise has acknowledged that Title IV is aimed at eliminating barriers to entry for “Americans who cannot use the nation’s telephone system because it does not accommodate their hearing, speech, or other disability.” *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12479 (rel. June 30, 2004) (emphasis added).

<sup>15</sup> *VRS Order* at ¶ 4.

telecommunications revolution, and in contrast with the relative lack of corresponding technological advancements in telecommunications services available to the deaf-blind community, the time is ripe for the Commission to reassess functional equivalence of TRS for deaf-blind consumers.<sup>16</sup> Such disparity in deaf-blind consumers' ability to access, utilize and benefit from telecommunications services as an essential link to the rest of society is contrary to Congressional mandate and necessitates remedial action by the Commission.

The ADA also established the principle that a TRS call should never cost the consumer more than an equivalent voice telephone call.<sup>17</sup> TRS is a form of universal service. Just as the Universal Service programs ensure service at reasonable rates to consumers located in high cost areas or who have low incomes, it is the FCC's statutory duty to ensure that TRS provides functionally equivalent services to the deaf and hard of hearing communities, including the deaf-blind community. CF services should therefore be compensable from the Interstate TRS Fund.

**C. CFs Are Necessary to Achieve TRS Functional Equivalency For Deaf-Blind Consumers.**

The Consumer Groups are troubled by the fact that the current TRS rules fail to adequately account for deaf-blind individuals, and that such oversight adversely affects deaf-blind consumers who are thereby denied functionally equivalent access to the nation's telecommunications systems. The economic and societal costs of such inequality are enormous. As the Commission has stated, "[TRS] is critical given the importance that telecommunications plays in a person's ability to participate in this information age."<sup>18</sup> Deaf-blind Americans who currently cannot utilize VRS or P2P services are not able to gain and retain employment that

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<sup>16</sup> See discussion of the technological inadequacy of deaf-blind consumer access to telecommunications *infra* note 17.

<sup>17</sup> 47 U.S.C. § 225(d)(1)(D).

<sup>18</sup> *VRS Order* at ¶ 5.

requires some degree of telephone use, conduct personal affairs with a larger degree of independence, and establish, and maintain, professional and personal relationships via the telephone.

CFs are necessary to provide many deaf-blind people with relay service that is functionally equivalent to voice communications. The time-consuming, obsolete and ultimately ineffective telecommunications services currently available to deaf-blind individuals are not, as Congress mandated, functionally equivalent to their real-time counterparts.<sup>19</sup> CFs empower the deaf-blind user to take complete control of the phone call, affording these users long-awaited telephonic functional equivalency. CF services will reduce the frustration experienced by deaf-blind individuals who are unable to access modern relay services such as VRS, and with whom others do not take the time to communicate using inefficient and outmoded technology. CF services will thereby help to overcome the insularity barriers that confine members of the deaf-blind community and offer them opportunities and benefits enjoyed by the rest of society that are concomitant with independence and self-determination.

Since the Commission established the compensability of VRS from the TRS Fund ten years ago,<sup>20</sup> the “ability to make or receive a telephone call while communicating in ASL has revolutionized TRS, and, in turn, the lives of many persons who are deaf and hard of hearing.”<sup>21</sup> Likewise, establishing the compensability of CF services from the TRS Fund would transform the lives of many of the 70,000-100,000 people living in the United States who are deaf-blind

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<sup>19</sup> TDI has previously demonstrated that Braille TTY and similar traditional relay services are inherently hindered by delay and inaccuracies. *See, e.g.*, Comments of the Telecommunications for the Deaf, Inc., CC Docket No. 98-67, at 6-10 (filed Aug. 26, 2003). The Commission has also noted the importance of real-time communication to functional equivalency considerations in the *VRS Order* approving VRS compensation from the TRS Fund.

<sup>20</sup> 47 C.F.R. §64.601(26); *see also VRS Order* at ¶¶ 21-27.

<sup>21</sup> *In the Matter of Structure and Practices of the Video Relay Service Program*, Declaratory Ruling, CG Docket No. 10-51, ¶ 2 (rel. Feb. 25, 2010).

and who lack even the most basic access to telecommunications services.<sup>22</sup> The unique combination of modern VRS technology and CF services has the potential to achieve the two overarching goals of Title IV, equal access and functional equivalency, for the deaf-blind population. Amendment of the Commission's Rules is needed so that deaf-blind Americans can enjoy equal access to, and an equal opportunity to benefit from, the telecommunications revolution to which they are entitled. It is once again time to revolutionize TRS to ensure that CFs are readily available to provide deaf-blind consumers with functionally equivalent access to the nation's telecommunications systems.

**D. Notice and Comment Rulemaking is Needed to Resolve the Issue of Compensation for CF-VRS Calls.**

The Consumer Groups request that the Commission initiate a rulemaking proceeding to amend the Commission's Rules governing the delivery of TRS to allow compensation from the TRS Fund for the provision of CF services offered in conjunction with VRS and P2P services to deaf-blind individuals.<sup>23</sup> There are a number of inquiries the Commission should consider making in such a notice of proposed rulemaking, including:

- Should the Commission amend its rules to permit compensation from the TRS Fund for the provision of CF services offered in conjunction with VRS and P2P services to deaf-blind individuals?
- How do CF services further the "functionally equivalent" mandate of Section 225(a)(3) of the Act?
- How are CF calls to be compensated? Should the Commission initially treat CF-VRS and CF-P2P calls as jurisdictionally interstate in nature for both oversight and funding purposes to allow for the costs of CF services to be recoverable from the Interstate TRS Fund? Should an alternate cost-recovery methodology be used for CF-VRS and CF-P2P calls?

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<sup>22</sup> NARUC Board of Directors, *Resolution to Support Equal Access to Communication Technologies by People with Disabilities in the 21st Century*, adopted February 20, 2008, available at: <http://www.naruc.org/Resolutions/People%20with%20Disabilities%20Resolution1.pdf>.

<sup>23</sup> See Attachment A for proposed textual amendments to 47 C.F.R. §§ 64.601 and 64.604.

- Are the definitions of “Communication Facilitator” and the qualifying definition of “deaf-blindness” for compensable CF use as set forth herein sufficient? If not, how should they be modified?
- How and to what extent would existing minimum TRS standards as set forth in § 64.604 need to be adapted to make them appropriate for application to CF-VRS and CF-P2P?
- Should compensable CF-VRS and CF-P2P initially be offered on a voluntary basis pending further determination, after implementation, of nation-wide demand?
- Should CF-VRS and CF-P2P calls made by home-bound deaf-blind individuals be compensable? If so, what qualifications should apply to determine inability to utilize designated CF-VRS and CF-P2P access centers? For example, what criteria should be established to determine inability to travel to a CF-VRS or CF-P2P access center based upon medical reasons, such as illness or mobility-based disabilities? Should lack of readily available public transit be a sufficient reason for a deaf-blind individual to receive a home visit by a CF? Should rate structures differ for home visit vs. access center CF-VRS and CF-P2P calls? If so, how?
- What training and certification processes, if any, should be applied to CFs? Should the requirements be similar to those for CAs under § 64.604? Should these qualifications differ for CFs who make home visits (i.e. background checks, etc.)?
- To what extent should the rules adopted apply to other forms of TRS? If so, how would the use of CFs work in practice with other forms of TRS? Is VRS unique? Why or why not?

### **III. Conclusion**

Congress has directed the Commission to ensure that “relay services are available, to the extent possible and in the most efficient manner....”<sup>24</sup> To this end, and as explained above, 1) CF-VRS and CF-P2P should qualify as relay services for the currently-underserved deaf-blind consumers who necessitate it to achieve functional equivalency, 2) the DBSC program in Washington demonstrates that making CF services available is certainly possible, and 3) CF-VRS and CF-P2P are by far “the most efficient manner” for provision of relay services to that segment of the deaf-blind population otherwise unable to access VRS or P2P services.

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<sup>24</sup> 47 U.S.C. § 225(b)(1).

For the reasons stated herein, the Consumer Groups respectfully request that the Commission initiate a notice and comment rulemaking proceeding to improve the availability and quality of relay services by amending the Commission's TRS rules to create cost-recovery mechanisms for the provision of CF services to deaf-blind consumers.

Respectfully submitted,

/s/Tamar E. Finn

Randall Pope  
Interim Executive Director  
American Association of the Deaf-Blind  
8630 Fenton Street, Suite 121  
Silver Spring, MD 20910

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Tamar E. Finn  
Lauren B. Wideman  
BINGHAM MCCUTCHEN LLP  
2020 K Street, NW  
Washington, DC 20006  
(202) 373-6000

*Counsel to Telecommunications for the Deaf  
and Hard of Hearing, Inc.*

Claude L. Stout  
Executive Director  
Telecommunications for the  
Deaf and Hard of Hearing, Inc.  
8630 Fenton Street, Suite 604  
Silver Spring, MD 20910

Cynthia Amerman, President  
Association of Late-Deafened Adults, Inc.  
8038 MacIntosh Lane  
Rockford, IL 61107

Nancy J. Bloch  
Chief Executive Officer  
National Association of the Deaf  
8630 Fenton Street, Suite 820  
Silver Spring, MD 20910

Brenda Battat  
Executive Director  
Hearing Loss Association of America  
7910 Woodmont Avenue, Suite 1200  
Bethesda, MD 20814

Sheri A. Farinha Vice Chair  
California Coalition of Agencies Serving  
the Deaf and Hard of Hearing, Inc.  
4708 Roseville Rd, Ste 111  
North Highlands, CA 95660

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## **Attachment A**

### **Proposed Rule Amendments**

#### **§64.601 Definitions and provisions of general applicability.**

##### **Subsection (a)(9) is added to read:**

(9) Communication Facilitator (CF). A person who provides close-vision or tactile sign language services to relay the sign language shown on the screen during a video relay service or point-to-point call to a deaf-blind end user.

##### **Subsection (a)(21) is amended to read:**

(21) Telecommunications relay services (TRS). Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with other individuals in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not use such a device, speech-to-speech services, video relay services, communication facilitator services and non-English relay services. TRS supersedes the terms "dual party relay system," "message relay services," and "TDD Relay."

#### **§64.604 Mandatory Minimum Standards.**

##### **Subsection (a) is amended to read:**

(a) Operational standards.

(1) Communications assistant (CA).

(i) TRS providers are responsible for requiring that all CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities.

(ii) CAs must have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette. CAs must possess clear and articulate voice communications.

(iii) CAs must provide a typing speed of a minimum of 60 words per minute. Technological aids may be used to reach the required typing speed. Providers must give oral-to-type tests of CA speed.

(iv) TRS providers are responsible for requiring that VRS CAs are qualified interpreters. A "qualified interpreter" is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(v) CAs answering and placing a TTY-based TRS or VRS call must stay with the call for a minimum of ten minutes. CAs answering and placing an STS call must stay with the call for a minimum of fifteen minutes.

(vi) TRS providers must make best efforts to accommodate a TRS user's requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA.

(vii) TRS shall transmit conversations between TTY and voice callers in real time.

(1) Communication facilitator (CF).

(i) CFs must be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities, including deaf-blind individuals.

(ii) CFs must have competent skills in close and tactile signing, and familiarity with hearing and speech disability and deaf-blind cultures, languages and etiquette. CFs must possess clear and articulate voice communications.

(iii) TRS providers must make best efforts to accommodate a TRS user's requested CFs gender.

(vii) TRS shall transmit conversations between CF users and voice callers in real time.

(23) Confidentiality and conversation content.

(i) Except as authorized by Section 705 of the Communications Act, 47 USC 605, CAs and CFs are prohibited from disclosing the content of any relayed conversation regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. STS CAs may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user. The caller may request the STS CA to retain such information, or the CA may ask the caller if he wants the CA to repeat

the same information during subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls.

(ii) CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay user specifically requests summarization, or if the user requests interpretation of an ASL call. CFs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay user specifically requests summarization. An STS CA may facilitate the call of an STS user with a speech disability so long as the CA does not interfere with the independence of the user, the user maintains control of the conversation, and the user does not object. Appropriate measures must be taken by relay providers to ensure that confidentiality of VRS users is maintained.

**Subsection (c)(5)(iii)(F) is amended to read:**

(F) TRS providers eligible for receiving payments from the TRS Fund are:

(1) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to §64.606; or

(2) TRS facilities owned by or operated under contract with a common carrier providing interstate services operated pursuant to §64.604; or

(3) Interstate common carriers offering TRS pursuant to §64.604; or

(4) Video Relay Service (VRS), Internet Protocol (IP) and Communication Facilitator (CF) Relay providers certified by the Commission pursuant to §64.606.

**§64.606 CF, VRS and IP Relay Provider and TRS program certification.**

**Section (a)(3) is added to read:**

(2) CF Relay provider: Any entity desiring to provide CF Relay services, independent from any certified state TRS program or any TRS provider otherwise eligible for

compensation from the Interstate TRS Fund, and to receive compensation from the Interstate TRS Fund, shall submit documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned "CF Relay Certification Application." The documentation shall include, in narrative form:

- (i) A description of the forms of TRS to be provided (i.e., VRS and/or IP Relay and/or P2P);
- (ii) A description of how the provider will meet all non-waived mandatory minimum standards applicable to each form of TRS offered;
- (iii) A description of the provider's procedures for ensuring compliance with all applicable TRS rules;
- (iv) A description of the provider's complaint procedures;
- (v) A narrative describing any areas in which the provider's service will differ from the applicable mandatory minimum standards;
- (vi) A narrative establishing that services that differ from the mandatory minimum standards do not violate applicable mandatory minimum standards; and
- (vii) A statement that the provider will file annual compliance reports demonstrating continued compliance with these rules.

**Section (b)(3) is added to read:**

(2) Requirements for CF Relay Provider FCC Certification. After review of certification documentation, the Commission shall certify, by Public Notice, that the CF Relay provider is eligible for compensation from the Interstate TRS Fund if the Commission determines that the certification documentation:

- (i) Establishes that the provision CF Relay will meet or exceed all non-waived operational, technical, and functional minimum standards contained in §64.604;
- (ii) Establishes that the CF Relay provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section and the mandatory minimum standards contained in §64.604, including that it makes available for TRS users informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints; and

(iii) Where the TRS service differs from the mandatory minimum standards contained in §64.604, the CF Relay provider establishes that its service does not violate applicable mandatory minimum standards.