



ANDREW O. ISAR

4423 POINT FOSDICK DRIVE, NW  
SUITE 306  
GIG HARBOR, WA 98335  
TELEPHONE: 253.851.6700  
FACSIMILE: 866.474.3630  
WWW.MILLERISAR.COM

Via Overnight Delivery

May 23, 2011

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
9300 East Hampton Drive  
Capitol Heights, MD 20743

Attention: Consumer & Government Affairs Bureau, Office of Disability Rights

RE: *In the Matter of Structure and Practices of the Video Relay Service Program*, CG  
Docket No. 10-51

Dear Ms. Dortch:

Pursuant to the Section 1.3 of the Commission's Rules<sup>1</sup> and the Commission's April 6, 2011 *Report and Order and Further Notice of Proposed Rulemaking* in the above-referenced proceeding,<sup>2</sup> enclosed for filing with the Commission is one confidential and one redacted public copy of Stuart B. Consultants, Inc. dba Birnbaum Interpreting Services's ("BIS") *Petition for Waiver* ("Petition"). By this Petition, BIS requests temporary waiver of newly promulgated Section 64.604(c)(5)(iii)(N)(1)(iii) of the Commission's Rules<sup>3</sup> so that it may continue providing video relay services ("VRS") to the public under an existing arrangement with a Telecommunications Relay Service Fund ("Fund") eligible certificated VRS provider, pending a grant of BIS's own Fund eligibility certification by the Commission. BIS's Petition is being submitted in accordance with *R&O* paragraph 63.

**Request for Confidential Treatment.** Pursuant to Section 0.459 of the Commission's rules,<sup>4</sup> BIS respectfully requests that documents supporting the Petition in exhibits 1 to 5 be deemed confidential and protected, accordingly. In support of its request, BIS states as follows. These documents constitute "trade secrets" as set forth in Section 0.457 of the Commission's rules,<sup>5</sup> in that the documents contain sensitive proprietary information including, but not limited to, highly confidential leases, purchase agreements, personal employee information, and financing

<sup>1</sup> 47 C.F.R. §1.3.

<sup>2</sup> *In the Matter of Structure and Practices of the Video Relay Services, Report and Order and Further Notice of Proposed Rulemaking*, CG Docket No. 10-51, 26 FCC Rcd. 5545 (rel. April 6, 2011) ["R&O"].

<sup>3</sup> 47 C.F.R. § 64.604(c)(5)(iii)(N)(1)(iii).

<sup>4</sup> 47. C.F.R §0.459.

<sup>5</sup> 47 C.F.R. §0.457.

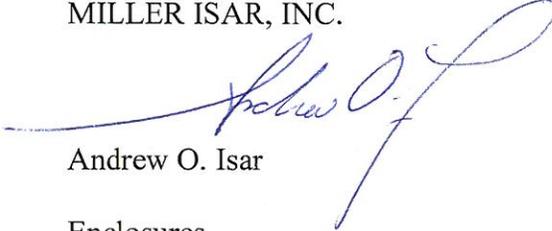
Ms. Marlene Dortch  
May 23, 2011  
Page 2

documents. These documents reveal sensitive company operations and scope that would be useful to competitors. Further, employee information contains highly confidential personal information not intended for public consumption. BIS would not otherwise make these documents publically available under any circumstance. Release of these data to the public could cause BIS, or its employees, irreparable and inestimable harm.

A redacted public version of the enclosed Petition has been filed electronically via the Commission's Electronic Comment Filing System in this proceeding. Thank you for your attention to this matter. Questions regarding this matter may be directed to the undersigned

Sincerely,

MILLER ISAR, INC.



Andrew O. Isar

Enclosures

cc: Ms. Karen Peltz-Straus (via electronic delivery (redacted) karen.strauss@fcc.gov)  
Ms. Mark Stone (via electronic delivery (redacted) mark.stone@fcc.gov)  
Mr. Gregory Hlibok (via electronic delivery (redacted) gregory.hlibok@fcc.gov)

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

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

**Stuart B. Consultants, Inc. dba Birnbaum Interpreting Services  
PETITION FOR WAIVER**

Andrew O. Isar  
Miller Isar, Inc.  
4423 Point Fosdick Drive, NW  
Suite 306  
Gig Harbor, WA 98335  
Telephone: 253.851.6700  
Email: [aisar@millerisar.com](mailto:aisar@millerisar.com)

Regulatory Consultants to  
Stuart B. Consultants, Inc. dba Birnbaum  
Interpreting Services

David Birnbaum  
President and Chief Executive Officer  
Stuart B. Consultants, Inc. dba Birnbaum  
Interpreting Services  
8555 16th Street Suite 400  
Silver Spring, MD 20910  
Telephone: 301.587.8885

May 23, 2011

## SUMMARY

Stuart B. Consultants, Inc. dba Birnbaum Interpreting Services (“BIS”) has provided video relay services (“VRS”) as a subcontracting provider of a federal Telecommunications Relay Service Fund (“Fund”) provider since May 1, 2008. On January 14, 2010 BIS submitted an application for Fund eligibility pursuant to Section 64.606 of the Commission’s<sup>1</sup> rules *inter alia* demonstrating compliance with the Commission’s MMS for the provision of VRS. BIS’s application remains pending before the Commission..

The Commission’s April 6, 2011 *Report and Order and Further Notice of Proposed Rulemaking* in this proceeding *inter alia* established a prohibition on a Fund eligible certified provider entering into any form of arrangement with a Fund ineligible provider Section 64.604(c)(5)(iii)(N)(1)(iii) of the Commission’s rules. Yet the Commission explicitly accorded Fund ineligible providers, such as BIS, who are pursuing Fund eligibility certification to request a temporary rule waiver, supported by documentation demonstrating the entity’s plan and ability to come into compliance with applicable Commission relay services requirements. The Commission may grant waiver of its rules for good cause where “the particular facts make strict compliance inconsistent with the public interest.” BIS is committed to serve the Public with reliable, compliant VRS, has made considerable investments into its operations and staff, maintains that good cause for a waiver exists in this instance, and respectfully requests waiver of the prohibition in Section 64.604(c)(5)(iii)(N)(1)(iii) pending a grant of the Company’s application for Fund eligibility certification consistent with the public interest, effective June 1, 2011.

---

<sup>1</sup> 47 C.F.R. §64.604.

**TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>3</b>
<b>II.</b>	<b>DESCRIPTION OF THE REQUIREMENTS FROM WHICH THE APPLICANT SEEKS A WAIVER.....</b>	<b>6</b>
<b>III.</b>	<b>APPLICANT’S PLAN AND DOCUMENTED ABILITY TO COMPLY WITH THE AMENDED MMS.....</b>	<b>7</b>
<b>IV.</b>	<b>APPLICANT’S REQUEST FOR TEMPORARY WAIVER IS IN THE PUBLIC INTEREST AND SHOULD BE GRANTED.....</b>	<b>11</b>
<b>V.</b>	<b>CONCLUSION.....</b>	<b>14</b>

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

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

To the Commission:

Stuart B. Consultants, Inc. dba Birnbaum Interpreting Services  
PETITION FOR WAIVER

Stuart B. Consultants, Inc. dba Birnbaum Interpreting Services (“BIS” or the “Company”), by its regulatory consultants, and pursuant to the Section 1.3 of the Commission’s Rules<sup>2</sup> and the Commission’s April 6, 2011 *Report and Order and Further Notice of Proposed Rulemaking* in CG Docket No. 10-51,<sup>3</sup> hereby respectfully requests that the Commission grant a temporary waiver of newly promulgated Section 64.604(c)(5)(iii)(N)(1)(iii)<sup>4</sup> of the Commission’s Rules which prohibits an eligible Video Relay Service (“VRS”) provider to “contract with or otherwise authorize any third party to provide interpretation services or call center functions (including call distribution, call routing, call setup, mapping, call features, billing, and registration) on its behalf, unless that authorized third party also is a[n] [Telecommunications Relay Service Fund (“Fund”)] eligible provider.” BIS requests temporary waiver of Section 64.604(c)(5)(iii)(N)(1)(iii) of the Commission’s Rules until such time as the Commission grants BIS’s pending application for Telecommunications Relay Service Fund eligibility, to be further supplemented under Section 64.606, TRS Certification, when amended,

---

<sup>2</sup> 47 C.F.R. §§1.3.

<sup>3</sup> *In the Matter of Structure and Practices of the Video Relay Services, Report and Order and Further Notice of Proposed Rulemaking*, CG Docket No. 10-51, 26 FCC Rcd. 5545 (rel. April 6, 2011) [“R&O”].

<sup>4</sup> 47 C.F.R. § 64.604(c)(5)(iii)(N)(1)(iii).

in accordance with the *R&O*.<sup>5</sup> BIS's request is predicated on its desire and operational imperative and commitment to continue providing responsible and compliant VRS to the Public through its current underlying Fund eligible partner pending a grant of its Fund eligibility certification. BIS requests further that if the Commission is unable to act on the instant Petition on or before June 1, 2011, and that a grant of the waiver requested herein be deemed effective on June 1, 2011, to ensure the uninterrupted provision of VRS to the Public through its current underlying Fund eligible partner pending a grant of BIS's Fund eligibility certification.

As discussed below, the circumstances surrounding this matter have established a unique situation for BIS precipitating this request for temporary waiver. Timing for Commission grant of BIS's pending application for Fund eligibility,<sup>6</sup> now in light of the proposed amendments to Section 64.606, remains uncertain. And the prohibition against Fund eligible providers engaging Fund ineligible providers, such as BIS, under newly promulgated Section 64.604(c)(5)(iii)(N)(1)(iii) becomes effective on June 1, 2011. Under these circumstances, BIS's pending application for Fund eligibility will not be granted before the prohibition in Section 64.604(c)(5)(iii)(N)(1)(iii) becomes effective and BIS would otherwise have to cease its operations entirely if unable to maintain its current relationship with its Fund eligible partner.

The *R&O* accords Fund ineligible providers an opportunity to request a temporary waiver of the newly promulgated rules "to make adjustments to their operations in order to come into compliance with the new requirements adopted."<sup>7</sup> BIS's request for temporary waiver is necessary to enable the Company to continue serving its subscribers during the pendency of its

---

<sup>5</sup> *Id.*, para. 63.

<sup>6</sup> See, e.g. *In the Matter of Stuart B. Consultants, Inc. t/a Birnbaum Interpreting Services Application for Interstate Telecommunications Relay Service Eligibility*, VRS and IP Relay Certification Application, Docket No. 03-123 (January 14, 2010).

<sup>7</sup> *R&O* at para. 62.

application for certification as a fund eligible provider, as will be supplemented under the new certification rules when promulgated. BIS has made considerable investment in its VRS operations and has met the entirety of its obligations under the Commission's now amended Mandatory Minimum Standards ("MMS") for the provision of VRS and Internet Protocol ("IP") Relay, as demonstrated by its pending application for certification as a Fund eligible provider, showing herein, and supplemental application to be submitted within 30 days following promulgation of the Commission's proposed certification rule amendments. BIS is committed to serve the Public and Deaf Community specifically, and maintains that the public interest will be served if BIS is allowed to continue providing VRS service. BIS submits that good cause exists for the requested waiver, accordingly.

## **I. INTRODUCTION**

BIS was organized under the laws of the State of Maryland on September 8, 1983. The Company has provided VRS as a subcontracting partner of a Fund eligible certificated provider,<sup>8</sup> since May 1, 2008. On January 14, 2010 BIS submitted an application for Fund eligibility pursuant to Section 64.606 of the Commission's rules *inter alia* demonstrating compliance with the Commission's MMS for the provision of VRS.<sup>9</sup> BIS's application remains pending before the Commission.

On April 6, 2010, the Commission released the *R&O*, promulgating amendments to the Commission's relay services rules, principally to Section 64.604, Mandatory Minimum Standards. In pertinent part, the amended rules implement a new prohibition in Section 64.604(c)(5), effectively precluding the provision of compensable VRS by Fund ineligible providers:

---

<sup>8</sup> See, confidential Exhibit 3.

<sup>9</sup> 47 C.F.R. §64.604.

An eligible VRS provider may not contract with or otherwise authorize any third party to provide interpretation services or call center functions (including call distribution, call routing, call setup, mapping, call features, billing, and registration) on its behalf, unless that authorized third party also is an eligible provider.<sup>10</sup>

The newly promulgated rule amendments, including the prohibition of compensable VRS by Fund ineligible providers, now go into effect on June 1, 2011.<sup>11</sup>

Recognizing that some Fund ineligible providers intend on – or are, as is the case with BIS - pursuing Fund eligibility to be compensated for the provision of VRS (and IP Relay) on their own right, the Commission accorded such providers the opportunity to request a temporary waiver of applicable rules,<sup>12</sup> supported by documentation demonstrating the applicant’s plan and ability to come into compliance with applicable Commission relay services requirements.<sup>13</sup> Fund ineligible providers seeking temporary waiver of Commission rules are specifically directed to provide a description of the requirements from which the applicant seeks waiver and documentation demonstrating the applicant’s plan and ability to come into compliance with applicable amended (MMS) requirements within three months of the date on which the rules become effective.

The applicant’s plan and ability to comply with the amended MMS must include:

---

<sup>10</sup> 47 C.F.R. § 64.604(c)(5)(iii)(N)(1).

<sup>11</sup> *Federal Register*, Structure and Practices of Video Relay Service Program, Vol. 76, No. 84, 24393–24402 [2011–10342] (May 2, 2011).

<sup>12</sup> *Id.*, para. 62: “We recognize that some companies currently offering VRS through an arrangement with an eligible provider may wish to continue providing this service on their own, yet may require additional time to make adjustments to their operations in order to come into compliance with the new requirements adopted in this *Order*. To give these entities an opportunity to continue to provide VRS as a subcontractor with an eligible provider until such time as they obtain certification under new procedures to be adopted pursuant to the accompanying FNPRM, we will consider requests for a temporary waiver of the new requirements. A company requesting a waiver of the rules adopted in this *Order* will have the burden of showing that the waiver is in the public interest, that grant of the waiver request will not undermine the purposes of the rules that we adopt today, and that it will come into compliance with those rules within a short period of time [footnote in original omitted].”

<sup>13</sup> *Id.*, para. 63.

- A. A detailed plan for modifying its business structure and operations in order to meet the new requirements, and
- B. Submission of relevant documentation to support the waiver request comprising:
  - (1) a copy of each deed or lease for each call center the applicant currently owns or plans to acquire;
  - (2) a list of individuals or entities that hold at least a 10 percent equity interest in the applicant, have the power to vote 10 percent or more of the securities of the applicant, or exercise de jure or de facto control over the applicant, a description of the applicant's organizational structure, and the names of its executives, officers, partners, and members of its board of directors;
  - (3) a list of the applicant's full-time and part-time employees;
  - (4) proofs of purchase or license agreements for the use of equipment and/or technologies that the applicant currently uses or intends to use for its call center functions, including but not limited to, call distribution, routing, call setup, mapping, call features, billing for compensation from the Fund and user registration;
  - (5) copies of employment agreements for the provider's executives and CAs; and
  - (6) a list of financing arrangements pertaining to the provision of VRS, including documentation for financing of equipment, inventory, and other property.

Applicants must further file for certification<sup>14</sup> within one month after the amended certification rules become effective.<sup>15</sup>

In light of the fact that BIS's application for Fund eligibility certification remains pending before the Commission, that the effective date of the prohibition on Fund eligible providers partnering with Fund ineligible providers becomes effective in less than two weeks, and that BIS has made a considerable investment in its operations and seeks to continue providing service to the public, BIS hereby seeks waiver of Section 64.604(c)(5)(iii)(N)(1)(iii). Pursuant to the Commission's stated temporary rule waiver requirements, BIS offers the following in support of its request.

---

<sup>14</sup> Or presumably supplement existing applications for Fund eligibility certification.

<sup>15</sup> *R&O* para. 63. "we require applicants requesting a temporary waiver to provide, in writing, a description of the specific requirement(s) for which it is seeking a waiver, along with documentation demonstrating the applicant's plan and ability to come into compliance with all of these requirements (other than the certification requirement) within a specified period of time, which shall not exceed three months from the date on which the rules become effective.<sup>15</sup> In addition, the waiver applicant must file for certification within thirty days after the final certification rules become effective [footnote in original omitted]."

**II. DESCRIPTION OF THE REQUIREMENTS FROM WHICH THE APPLICANT SEEKS A WAIVER.**

BIS requests temporary waiver of Section 64.604(c)(5)(iii)(N)(1)(iii) of the Commission's rules until such time as the Commission grants BIS's application for Telecommunications Relay Service Fund eligibility certification, to be supplemented in accordance with amended Section 64.606, TRS Certification, as ultimately promulgated. In anticipation of the likely demands to be placed on the Commission with similar requests by Fund ineligible providers following promulgation of the Commission's rule amendments to Section 64.604, the pendency of the Commission's final certification regulations, and the uncertain timing for Commission action on the Company's pending application for certification and supplemental application, BIS seeks this waiver to continue its operations. Specifically, BIS seeks this temporary waiver in order to continue in the uninterrupted provision of VRS to the public through its Fund eligible certified VRS provider partnership arrangement, to retain its subscribers, to retain the professional communications assistants ("CAs") and staff under its employ, to attract new employees, to maintain its current service platform and operations in tact, and to fully comply with the Commission's certification requirements when ultimately adopted, pending the Company's final certification as Fund eligible.

Section 64.604(c)(5)(iii)(N)(1)(iii) limits Fund eligible (certificated) providers to contract solely with other Fund ineligible providers. Although BIS has had an application for certification as a Fund eligible provider for nearly a year and a half, the Company remains a Fund ineligible provider. In consideration of the MMS rule amendments becoming effective on June 1, 2011, BIS now seeks to be able to continue providing its services and maintain its current operation, without interruption, under its existing agreement with its Fund eligible certificated provider, until BIS may provide compensable VRS (and IP Relay) as a Fund eligible provider.

### **III. APPLICANT'S PLAN AND DOCUMENTED ABILITY TO COMPLY WITH THE AMENDED MMS.**

Pursuant to the *R&O*, the grant of a temporary waiver request under the amended MMS is predicated in part upon a showing that the requesting party maintains a plan and documents its ability to comply with the amended MMS.<sup>16</sup> BIS maintains that it already complies with the entirety of the Commission's existing VRS MMS, as has been demonstrated in the Company's pending application for Fund eligibility. The Company's pending application provides, in detail, the extent to which BIS has, since the application submission date and before, complied with the MMS established pursuant to Section 64.604 of the Commission's rules.<sup>17</sup> Further, since the submission of its original application, BIS has continued to invest in, refine and improve on its operations, built its team of professional interpreters and managers to better serve its subscribers.

BIS also maintains that it currently complies with the entirety of the amended MMS regulations as demonstrated herein and as it will demonstrate through submission of a supplemental application to be submitted within 30 days from the date on which the Commission's new certification regulations are promulgated. For purposes of demonstrating a petitioner's immediate plan and documented ability to comply with the amended MMS, the *R&O* establishes that "Evidence of the applicant's plan and ability to come into compliance with the new rules shall include the applicant's detailed plan for modifying its business structure and operations in order to meet the new requirements."<sup>18</sup> Such evidence of a "detailed plan" for modification of the petitioner's business structure and operations to meet the new requirements includes documentation demonstrating compliance with six key obligations and employment

---

<sup>16</sup> *R&O* para. 63.

<sup>17</sup> 47 C.F.R. §64.604.

<sup>18</sup> *R&O* para. 63.

plans. Evidence of BIS's current compliance and amended certification rule compliance plan and documented ability to comply with the amended MMS pursuant to the *R&O*, is as follows.<sup>19</sup>

- 1. a copy of each deed or lease for each call center the applicant currently owns or plans to acquire;**

BIS currently maintains two of fully supervised call centers in Silver Spring, MD, and Baton Rouge, LA. Copies of BIS's leases for each call center location are attached hereto at confidential **Exhibit 1**.

- 2. a list of individuals or entities that hold at least a 10 percent equity interest in the applicant, have the power to vote 10 percent or more of the securities of the applicant, or exercise de jure or de facto control over the applicant, a description of the applicant's organizational structure, and the names of its executives, officers, partners, and members of its board of directors;**

BIS is wholly owned by David S. Birnbaum, Chief Executive Officer and Treasurer, and Joan Raciti, Secretary. Mr. Birnbaum and Ms. Raciti are the sole members of the Company's Board of Directors.

- 3. a list of the applicant's full-time and part-time employees;**

A list of the BIS's full-time and part-time employees are attached hereto at confidential **Exhibit 2**.

---

<sup>19</sup> BIS considers the entirety of the documents provided in the supporting Exhibits to its Application to be proprietary. Pursuant to Section 0.459 of the Commission's rules, 47 C.F.R. §0.459, BIS respectfully requests that the documents contained in Exhibits 1 to 5 be deemed confidential and protected accordingly. In support of its request, BIS states as follows. The data submitted in these documents contain sensitive proprietary information including, but not limited to, operations and organizational data. These data specifically reveal company operations and scope that would be useful to competitors. BIS would not otherwise make these data publically available. Release of these data to the public could cause BIS irreparable and inestimable harm, and would undermine the Company's operations, particularly at a time when a number of entities are seeking Fund eligibility and could seek to replicate BIS's operations.

4. **proofs of purchase or license agreements for the use of equipment and/or technologies that the applicant currently uses or intends to use for its call center functions, including but not limited to, call distribution, routing, call setup, mapping, call features, billing for compensation from the Fund and user registration;**

BIS's service and supporting functions are provided through use of a shared platform/equipment with its Fund eligible certificated partner provider under its current partnership agreement, a copy of which is attached hereto at **Exhibit 3**. Though Section 64.604(c)(5)(iii)(N)(1)(iii) prohibits Fund eligible providers to engage Fund ineligible providers, this section also provides a limited exception which enables Fund eligible certificated providers to engage other Fund eligible certificated providers for the provision of call center functions, "including but not limited to, call distribution, routing, call setup, mapping, call features, billing for compensation from the Fund and user registration." Regarding this exception, the Commission notes, "This exception will allow eligible VRS providers to contract with other entities who are also eligible providers to provide core components of its VRS. We are satisfied that because eligible entities have already met the Commission's eligibility requirements, they pose less risk to the integrity of the program."<sup>20</sup> Though BIS is not currently a Fund eligible certificated provider, through this Petition, BIS also seeks waiver of the prohibition against Fund eligible certificated providers engaging with Fund ineligible providers so that it may maintain its existing relationship with its Fund eligible certificated partner, to include use of its partner's "core components," *e.g.* VRS Platform.

---

<sup>20</sup> *R&O*, footnote 164.

**5. copies of employment agreements for the provider’s executives and CAs; and**

Copies of employment agreements for the provider’s executives and CAs; are attached hereto at confidential **Exhibit 4**.

**6. a list of financing arrangements pertaining to the provision of VRS, including documentation for financing of equipment, inventory, and other property.**

BIS is internally funded, and will require no additional external funding to underwrite additional capital investments in equipment, inventory, and property at this time.

**7. Plan for hiring of new Communications Assistants.**

BIS currently employs eight CAs in addition to the Company’s principals. In hiring its existing employees, BIS has established specific minimum employment standards based on prospective employee interpreting skills and national certification.

Employment offers will first be made to existing independent contractors located in Company call centers. Offers will next be made to in-home CAs, to the extent the CA expresses a willingness to work from a Company call center location.

The attached documentation underscores the Company’s investment in its operations and commitment to the ongoing provision of VRS, and compliance with the amended MMS and the proposed certification rules.

The *R&O* also establishes that those requesting temporary rule waiver must seek “certification within thirty days after the final certification rules become effective.”<sup>21</sup> BIS has already complied with this requirement at least in so far that it’s application for certification remains pending before the Commission. BIS states further, that it is prepared to submit a

---

<sup>21</sup> *R&O* para. 63.

supplemental application for certification within thirty days following the effective date of the amended certification rules when promulgated. The Exhibits attached hereto clearly demonstrate that BIS is already prepared to supplement its certification application immediately.

The Commission states that a “rigorous showing that the applicant has workable plans and the ability to continue providing VRS in a manner that will not undermine the measures adopted in this *Order* to eliminate the fraud and abuse that have plagued the VRS program.”<sup>22</sup> By its showing herein, BIS maintains that its submission will withstand the appropriate rigor and scrutiny the Commission seeks to apply in determining the merit of granting BIS’s request, and ultimately in granting the Company’s certification application as a responsible, compliant VRS provider.

**IV. APPLICANT’S REQUEST FOR TEMPORARY WAIVER IS IN THE PUBLIC INTEREST AND SHOULD BE GRANTED.**

BIS maintains that the public interest will be served if BIS is allowed to continue providing uninterrupted VRS service to the public, and that good cause exists for the requested waiver. That the Commission itself has anticipated the public interest of explicitly according Fund ineligible providers to seek a waiver in order to enable them to pursue Fund eligibility, suggests that the Commission readily recognizes the benefits and necessity of enabling responsible providers, including BIS, that meet (as is the case with BIS) - or can readily meet - the obligations for the continued provision of VRS to seek temporary rule waivers in anticipation of demonstrating full compliance.

Clearly, a temporary waiver of the prohibition against continued operations by Fund ineligible providers pending certification, as is requested herein, is necessary for legitimate

---

<sup>22</sup> *Id.*

providers who seek to become Fund eligible providers. With respect to BIS specifically, in the absence of a grant of the temporary rule waiver sought herein, nearly 2,500 BIS subscribers will be significantly inconvenienced by BIS's inability to continue providing service. BIS subscribers would experience an immediate service interruption, and would have become eligible provider subscribers. BIS subscribers have, over the years, developed deep loyalty to BIS, its services, and its CAs. An inability to continue as BIS subscribers would represent far more than a simple inconvenience, but would require subscribers to establish a rapport with a new provider and new CAs.<sup>23</sup>

Further, existing CA employees and prospective employees would immediately become unemployed as the Company could no longer exist if ceasing to provide VRS immediately pending certification. Though BIS could arguably maintain solvency if its pending application were to be granted in a relatively short period of time, it certainly could not continue to exist for a protracted and open ended period of time. The Company could not pay CAs as it would arguably not need them until certified, making the prospect of reemploying CAs or employing new CAs even more challenging. Further, the Company would risk defaulting on legal obligations assumed with the provision of its VRS services including, but not limited to, licensing agreements, building lease agreements, and others, that ultimately could result in unnecessary insolvency, simply because of the timing of events surrounding the pendency of the Company's certification application. And the Company would otherwise need to restart its

---

<sup>23</sup> "[BIS's interpreters are very professional. They do a valuable service for the Deaf community. We hope they continue to provide services in the years to come." Subscribers Rabbi Fred and Connie Friedman, Baltimore, MD; "I was trying out all the VRS companies. I tried BISVRS and stopped trying other companies. I am 100% satisfied with BISVRS and have a satisfied experience every time I use them." Subscriber Sorella Romaro, Antelope, CA; "Sometimes I forget we have an interpreter for our conversations. They are very professional." Subscriber Gary Smith, Rochester, NY.

operations, rather than maintaining them through the certification, which would add to the Company's operational challenges.

The Deaf Community has made it clear of their preference for a number of VRS providers.<sup>24</sup> Foreclosing the opportunity to BIS to continue its operations pending certification would limit, rather than expand the number of VRS providers for no sound reason, and is unnecessary to the extent that BIS demonstrates its compliance with the existing and proposed rules. BIS has through this temporary request for rule waiver and pending application demonstrated that it meets the MMS and proposed additional certification requirements to become a Fund eligible provider. The Company has made significant investments in its platform, call centers, CA team and staff, and in its operations. BIS is prepared to welcome the Commission to corroborate the Company's representations in person, as proposed under the new certification rules. The grant of the Company's instant request for temporary waiver will simply accord the Company and Commission with the time necessary to enable BIS to continue its operations, while the Commission concludes its verification of the Company's ability to provide compensable VRS directly as a Fund eligible provider.

BIS has fully disclosed the extent of its operations and compliance with Commission regulations governing the provision of VRS. BIS's showing demonstrates that the Company is prepared to provide compliant services as a responsible provider consistent with the Commission's intent to eliminate fraud, waste, and abuse. BIS has a legacy of providing responsible compliant VRS to the public. To now preclude BIS from the provision of VRS pending certification is unnecessary and would be contrary to the public interest.

---

<sup>24</sup> See e.g. panelists comments regarding VRS competition during the Commission's December 17, 2009 public hearing.

## V. CONCLUSION

Through the temporary rule waiver process specifically accorded to VRS providers under the *R&O*, responsible, compliant providers such as BIS have been accorded the opportunity to demonstrate that they warrant authority to provide uninterrupted VRS, despite their current Fund ineligible provider status, pending Commission verification of their compliance with the entirety of the MMS and new certification requirements. BIS has a history of responsible service; has demonstrated that it complies with the MMS, as now amended; has demonstrated its commitment to the responsible provision of VRS through the hiring of CAs, investment in platform and other delivery technologies, and deployment of “brick and mortar” call centers staffed by professional employees and supervisors. BIS has also demonstrated that it has “workable plans and the ability to continue providing VRS in a manner that will not undermine the measures adopted in [the *R&O*] to eliminate the fraud and abuse that have plagued the VRS program.”

In view of the foregoing, BIS submits that it has established a solid basis and good cause for a waiver of Section 64.604(c)(5)(iii)(N)(1)(iii) of the Commission’s rules on or before June 1, 2011, pending a grant of the Company’s application for Fund eligibility certification.

[Signature on following page.]

Respectfully submitted this 23<sup>rd</sup> day of May, 2011,

STUART B. CONSULTANTS, INC. dba  
BIRNBAUM INTERPRETING SERVICES



By: \_\_\_\_\_

Andrew O. Isar  
MILLER ISAR, INC.  
4423 Point Fosdick Drive, NW  
Suite 306  
Gig Harbor, WA 98335

Its Regulatory Consultants

David Birnbaum  
President and Chief Executive  
Officer  
Stuart B. Consultants, Inc. dba  
Birnbaum Interpreting Services  
8555 16th Street Suite 400  
Silver Spring, MD 20910

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

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

**EXHIBITS LISTING**

<b>EXHIBIT</b>	<b>CONTENTS</b>
1	A copy of each deed or lease for each call center the applicant currently owns or plans to acquire (CONFIDENTIAL)
2	A list of the applicant's full-time and part-time employees (CONFIDENTIAL)
3	VRS Platform Lease (CONFIDENTIAL)
4	Copies of employment agreements for the provider's executives and Communications Assistants (CONFIDENTIAL)

## **Exhibit 1**

A copy of each deed or lease for each call center the applicant currently owns or plans to acquire  
(CONFIDENTIAL)

**REDACTED FOR PUBLIC INSPECTION**

## **Exhibit 2**

A list of the applicant's full-time and part-time employees  
(CONFIDENTIAL)

**REDACTED FOR PUBLIC INSPECTION**

## **Exhibit 3**

VRS Platform Lease  
(CONFIDENTIAL)

**REDACTED FOR PUBLIC INSPECTION**

## **Exhibit 4**

Copies of employment agreements for the provider's executives and Communications Assistants  
(CONFIDENTIAL)

**REDACTED FOR PUBLIC INSPECTION**

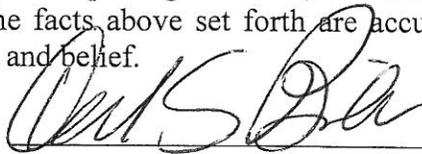
AFFIDAVIT  
Veracity of Statements

State of Maryland :  
County of Montgomery : ss.  
:

David Birnbaum, Affiant, being duly sworn/affirmed according to law, deposes and says that:

He is the President and Chief Executive Officer of Stuart B. Consultants, Inc. dba Birnbaum Interpreting Services and that he is authorized to and does make this affidavit for said Petitioner;

That Stuart B. Consultants, Inc. dba Birnbaum Interpreting Services, the Petitioner herein, certifies under penalty of false statement that the facts above set forth are accurate, true, and correct to the best of his knowledge, information, and belief.

By:  \_\_\_\_\_

David Birnbaum

Sworn and subscribed before me this 23 day of May, 2011.

  
\_\_\_\_\_  
Signature of official administering oath

Ronald S. Rucke, Sr.  
\_\_\_\_\_  
Print Name and Title

My commission expires Oct. 22, 11.