

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
Telecommunications Relay Services and Speech-to- ) CG Docket No. 03-123  
Speech Services for Individuals with Hearing and )  
Speech Disabilities )  
 )  
NECA Interstate Telecommunications Relay )  
Services Fund Payment Formula and Fund Size )  
Estimate for the July 2011 Through June 2012 Fund )  
Year )

To: Secretary, FCC  
For: The Commission

**REPLY COMMENTS OF HAMILTON RELAY, INC.**

Hamilton Relay, Inc. (“Hamilton”), by its counsel, hereby submits these reply comments in response to the *Public Notice* (“*Notice*”) issued May 4, 2011 by the Consumer and Governmental Affairs Bureau (“Bureau”) in the above-captioned proceeding.<sup>1</sup> In the *Notice*, the Bureau seeks comment on the interstate Fund Administrator’s (“the Administrator’s”) proposed compensation rates for various types of Telecommunications Relay Services (“TRS”) for the period of July 1, 2011 through June 30, 2012.<sup>2</sup>

As discussed in its initial comments, Hamilton believes that the proposed compensation rate for traditional TRS has not been correctly calculated. The comments filed by Sprint Nextel Corporation (“Sprint”) confirm Hamilton’s concerns about the data used to calculate the proposed 2011-2012 compensation rate. To ensure the integrity of the rate calculation, the Commission should recalculate the interstate TRS rate with all states included in order to

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<sup>1</sup> *National Exchange Carrier Association Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the July 2011 Through June 2012 Fund Year*, Public Notice, CG Docket No. 03-123, DA 11-826 (rel. May 4, 2011) (“*Notice*”).

<sup>2</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Interstate Telecommunications Relay Service Fund Payment Formula and Fund Size Estimate (filed Apr. 29, 2011) (“*2011 NECA Proposal*”).

evaluate the disparity between the two calculations. Finally, Hamilton believes that all states whose rates are based on competitive bidding should be included in the Multi-state Average Rate Structure (“MARS”) calculation, and that deciding whether to include or exclude a particular state should not require a rulemaking proceeding but instead may be conducted under existing Commission rules and policies.

### **I. Data from Hamilton and Sprint Appear to Confirm a Calculation Error**

As Hamilton noted in its initial comments, it appears that data from at least two states in which Hamilton is the traditional TRS provider are missing from the list of state rate data in Appendix C of the Administrator’s filing, and that there may have been other calculation errors.<sup>3</sup> Hamilton reiterates these concerns based on the concerns expressed in Sprint’s comments.

In its comments, Sprint indicates that, based on available information, the Administrator’s proposed 8.7 percent reduction in the current rate is incorrect.<sup>4</sup> Specifically, Sprint notes that in order for the calculation to be accurate, in non-Sprint TRS states: 1) the average state rate paid to TRS providers must have declined by approximately 17 percent; 2) the demand of minutes must have declined by 34 percent; and 3) the revenues received by providers must have declined by 45 percent.<sup>5</sup> As Hamilton demonstrates below, none of these conditions can be supported by Hamilton’s data. As a result, Hamilton concurs with Sprint’s conclusion that the proposed TRS rates are incorrect.

***A. The Average Hamilton State Rate Did Not Decline by 17 Percent.*** Like Sprint, Hamilton’s average compensation rate increased in the states Hamilton served in 2009 and 2010.

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<sup>3</sup> Comments in response to *Public Notice* of Hamilton Relay, Inc., CG Docket No. 03-123 at 2 (filed May 18, 2011) (“Hamilton Comments”).

<sup>4</sup> See Comments in response to *Public Notice* of Sprint Nextel Corporation, CG Docket No. 03-123 at 2 (filed May 18, 2011) (“Sprint Comments”).

<sup>5</sup> See *id.*

When Hamilton's own increases are combined with the 5 percent increase reported by Sprint, the other two providers would have had to experience a substantial drop (perhaps even to negative numbers) in order to justify the 8.7 percent reduction recommended by the Administrator.<sup>6</sup>

Hamilton believes that scenario is highly unlikely and therefore urges the Commission to review the matter.

***B. Demand for Minutes Did Not Decline by 34 Percent and Revenues Did Not Decline by 45 Percent.*** Although TRS minutes declined in 2010, Hamilton did not experience the 34 percent decrease that Sprint suggests would have been required in order to derive the Administrator's rate calculation. Likewise, revenues from Hamilton's TRS states did not drop by 45 percent. The significance of the declines suggests that not all relevant data has been analyzed.

## **II. The MARS Calculation Should Include All States Whose TRS Rates Are Based on Competitively Bid Rates**

When determining whether to include or exclude a state's TRS rate, it is important to recall why the Commission adopted MARS in the first place -- the Commission fully expected state rates to vary and that the average among those varying rates would produce a reasonable rate. That basic assumption has not been challenged in the record, and thus there is no rational reason to exclude any states from the MARS calculation in the absence of evidence that the rate is not competitively bid.

As the Commission has recognized through its adoption of the MARS plan, and as Hamilton has noted in the past, the MARS plan "accounts for states with low TRS rates as well as those with high TRS rates" resulting in a "reasonable, competitively-based interstate TRS

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<sup>6</sup> See Sprint Comments at 2.

rate.”<sup>7</sup> By its nature, the MARS calculation accounts for variances among the states, and therefore no state should be considered an “outlier,” whether because the state has too low an intrastate rate or too high a rate. Indeed, as the Administrator increasingly excludes more supposed “outliers,” the results of the MARS calculation may become increasingly skewed, drawing it away from the Commission’s original goal of simplifying the TRS rate calculation.

With respect to the California TRS rate, Hamilton argued in its initial comments that the California rate should have been included in the MARS calculation because the California intrastate TRS rate is no longer tied to the interstate TRS rate.<sup>8</sup> Based on conversations with Commission staff, it appears that California may have been excluded from the MARS calculation because the intrastate TRS rate was tied to the interstate TRS rate for part of the year.<sup>9</sup> However, Hamilton believes that the Administrator at the very least should have included data from California for the part of the year that its intrastate rate was not tied to the interstate rate. Such an approach would be consistent with the Administrator’s past practice.<sup>10</sup> Consequently, Hamilton believes the Administrator should have included the data from the portion of the year when California’s intrastate rate did not pose any circularity problem.

Finally, Hamilton submits that the Commission may make these proposed rate adjustments without the need for an additional notice and comment proceeding. The

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<sup>7</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20150-51 ¶ 19 (2007) (citing Hamilton *Ex Parte* (Feb. 12, 2007) at 1).

<sup>8</sup> See Hamilton Comments at 3.

<sup>9</sup> See Hamilton *ex parte* filing, CG Docket No. 03-123 (filed May 24, 2011).

<sup>10</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Interstate Telecommunications Relay Service Fund Payment Formula and Fund Size Estimate (filed May 1, 2008) (partially including Maine because it compensated the TRS provider on a flat rate mechanism for a portion of 2007). Hamilton, of course, believes all states can and should be included in the MARS calculation, including those with flat rate mechanisms, so long as the states establish intrastate rates using a competitive bidding process.

Commission's rules provide that payments shall be distributed to TRS providers based on formulas approved or modified by the Commission.<sup>11</sup> Thus, the Commission may under existing rules decide to modify the formulas it uses by including states such as California that may not have been previously included in the MARS calculation.

### III. Conclusion

Sprint and Hamilton have raised significant concerns about the manner in which the proposed interstate TRS rate has been calculated. Hamilton urges the Commission to review the result and recalculate the MARS rate with the relevant state data. Such data should include all states that use a competitive bidding process to derive an intrastate TRS rate.

Respectfully submitted,

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<sup>11</sup> 47 C.F.R. § 64.604(c)(5)(iii)(E). See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 25 FCC Rcd 8689, 8693 ¶ 6, 8695 ¶ 12 (2010) (“2010 TRS Order”) (declining to reduce the VRS rates as proposed by NECA in light of concerns expressed by providers and users), *stay request denied*, 25 FCC Rcd 9115 (CGB 2010). See also *2010 TRS Order* at 8696 ¶ 14 (dismissing the argument that a decision to create a new methodology would amount to a rule change that could only be adopted pursuant to a new rulemaking proceeding). Sorenson Communications, Inc. has appealed the *2010 TRS Order*. *Sorenson Communications, Inc. v. FCC*, No. 10-9536 (10th Cir. filed June 18, 2010), *stay request denied* (10th Cir. July 29, 2010).