

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

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

COMMENTS OF AMERICAN NETWORK, INC.

American Network, Inc. (“ANI”), by its counsel and pursuant to Section 1.415 of the rules of the Federal Communications Commission (“FCC” or “Commission”)^{1/} and the invitation extended by the Commission in its *Further Notice of Proposed Rulemaking* in the above referenced proceeding,^{2/} hereby submits its comments in response to the FCC’s proposals to revise the process for certifying providers of Internet Protocol (“IP”) based Telecommunications Relay Services (“TRS”) and to improve its oversight of those providers. ANI supports the Commission’s efforts to standardize the requirements for becoming an IP-based TRS provider so that deaf and hard-of-hearing consumers are assured high quality services, free of the fraud and abuse to which the service has been subject.^{3/}

I. BACKGROUND

ANI is a provider of Video Relay Service (“VRS”), IP Relay Service, and IP Captioned Telephone Service (“IP-CTS”).^{4/} In the *Order* that accompanied the *FNPRM*, the Commission changed many of its regulations governing the provision of IP TRS in general and VRS in

^{1/} 47 C.F.R. § 1.415 (2010).

^{2/} *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545 (2011) (“*FNPRM*”).

^{3/} *See id.* ¶ 4 n.14.

^{4/} *Notice of Certification of American Network as a Provider of Internet Protocol Relay Service (IP Relay), Video Relay Service (VRS), Internet Protocol Captioned Telephone Relay Service (IP CTS) Eligible for Compensation from the Interstate Telecommunications Relay Service (TRS) Fund*, Public Notice, 24 FCC Rcd 80 (2009).

particular. ANI applauds the Commission for the work it has done so far to reform the rules governing IP-based TRS. The Commission has taken important steps to ensure that deaf and hard-of-hearing users are provided with a telecommunications experience as functionally equivalent as possible to those available to hearing consumers. It has also, particularly through its recent *Order*, acted to ensure that the TRS Fund – through which IP-based TRS providers are compensated – is not drained by entities whose prime interest is access to Federal funding and not serving the deaf and hard-of-hearing communities. Yet, as the *FNPRM* recognizes, the FCC has not gone far enough. Accordingly, the FCC has proposed additional rules to ensure the consistent qualifications of IP-based TRS providers. While ANI supports the FCC’s efforts and many of the proposed rules, the Commission should balance the need to reform the IP-based certification process against the administrative burdens that it may unnecessarily impose on small businesses.

II. COMMENTS

A. Commission Certification Should Be the Sole Avenue for Compensation from the TRS Fund

The Commission proposes that all IP-based providers be required to receive certification from the Commission under newly established eligibility criteria. Under the Commission’s proposal, an IP-based TRS provider would no longer be eligible to receive compensation from the TRS Fund if it is eligible through the other means permitted by today’s rules.^{5/} ANI strongly agrees. These alternative methods of securing eligibility for funding do not ensure that IP-based providers are qualified to provide service. Merely having a contract with an interstate common carrier or even being an interstate common carrier is no assurance that a provider will be qualified.

^{5/} *FNPRM* ¶ 96 (“Under this proposal, certification by the Commission would be the sole method by which an Internet-based TRS provider could become eligible to receive compensation from the TRS Fund. An Internet-based relay provider would no longer be permitted to receive compensation from the TRS Fund merely: (1) by virtue of its contract with a certified state TRS program; (2) through its contract with an interstate common carrier; (3) because it is an interstate common carrier; or (4) because it is certified by a state.”).

Particularly problematic are IP-based providers that were previously eligible because they had a contract with a state TRS program or because they were qualified by a state. As the Commission points out, states generally do not have their own rules governing IP-based services.^{6/} Similarly, and as the Commission recognizes, states do not compensate IP-based TRS providers directly.^{7/} Therefore they have little incentive to ensure that IP-based providers are qualified. For states that do administer TRS programs, some require bidding processes or seek applications through requests for proposal (“RFPs”) – and the FCC has no means by which it can assure the validity of those selection processes.

Worse, some state programs require, as a condition of certification, that IP-based TRS providers engage in practices that may unnecessarily require IP-based TRS providers to increase their cost of providing service – costs that that are ultimately but unnecessarily included as part of the rate of reimbursement from the TRS Fund. Even assuming the utility of some state programs and state certification requirements, the FCC has no means of assuring that all state programs and certification requirements are the same, and it would be administratively burdensome and unnecessary for it to do so. Because the FCC administers the TRS Fund, it should be the FCC that sets the standards by which eligibility to participate in the Fund is established.^{8/}

^{6/} *Id.* (“[A]lthough an entity currently may become eligible to seek reimbursement from the TRS Fund for its provision of Internet-based relay services through a state contract, states generally do not have their own rules governing Internet-based relay services; nor do they directly compensate Internet-based relay providers. Therefore, they generally have little or no incentive to either verify the qualifications of the providers with which they contract or exercise the oversight needed to ensure full compliance with the Commission’s TRS rules once those contracts are executed and service commences.”).

^{7/} *Id.*

^{8/} Perhaps the most outrageous example of the current flawed approach is Sorenson Communications, Inc. (“Sorenson”). It is the “near monopoly” provider of VRS services, with approximately 80 percent of the VRS market. See <http://www.thedeal.com/newsweekly/insights/a-failure-of-communication.php>. Yet, Sorenson has received no FCC certification.

B. The Proposed Certification Process for Federally-Certified Providers Requires Adjustment

The Commission proposes that all providers that are not already certified by the FCC apply for certification now and demonstrate their compliance with new adopted rules as well as those rules proposed in the *FNPRM*.^{9/} Applications for initial certification or renewal would require the submission of evidence supporting an applicant's claims of eligibility. While ANI supports the Commission's efforts to prevent further fraud and abuse in the provision of IP-based TRS, the information that the FCC proposes to solicit goes too far in some cases and not far enough in others.

The Commission collects information in many other contexts from entities that wish to become licensees (for broadcast, wireless, or other services) or otherwise take advantage of Federal funding (in the schools and libraries program, for example). In none of those other contexts does the Commission require the type of information it proposes to require for IP-based TRS providers. Of the data that the FCC proposes to collect, it should only seek the following, which is similar to information that the FCC has collected in other contexts:

- Evidence of lease or ownership interest in call center facilities;
- A list of individuals or entities with a 10 percent or greater interest in the applicant;
- A list of all officers and directors of the applicant and any other entities that control the applicant;
- A list of all significant sources of funding (greater than \$10,000,000);
- Proof that the applicant owns or leases the essential equipment and software required to provide the service; and
- Copies of all other agreements critical to the provision of the service.

The Commission should – consistent with its general authority over licensees – also be permitted to inspect the facilities through which service is, or will be, provided.

While the Commission seeks information on some things that it need not (names of employees, for example), it omits critical information that is required to ensure the competitiveness

^{9/} *FNPRM* ¶ 97.

of the IP-based TRS marketplace. ANI outlines some of the additional information that the FCC should solicit below.

Exclusive Agreements. The FCC should require that, as a part of the certification process, providers declare that they have no agreements that permit them to provide TRS services on an exclusive basis. It is ANI's experience that providers have entered into arrangements with large institutions – universities in particular – to provide TRS services on an exclusive basis. Those agreements are not in the public interest and thwart the provision of innovative services to the deaf and hard-of-hearing communities. The FCC has prohibited providers from entering into exclusive arrangements in other contexts, so that consumers can have a choice of communications providers.^{10/} It should take the same approach here. Any provider that currently has an exclusive relationship to offer TRS services should be required to reform that agreement or risk termination of its certification. Similarly, IP-based TRS providers should be required to disclose annually any institution to which such TRS provider provides services to which it also provides funding of \$10,000 or more, whether in contributions or for products or services. Disclosure of such information will enable the FCC to determine if an institution is being provided incentives to direct TRS traffic to a particular TRS provider – behavior that is not in the public interest.

Equipment and Technology. In order to promote a robust IP-based TRS marketplace, equipment offered by providers must be completely interoperable. All equipment should be able to

^{10/} See, e.g., *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, et al.*, Report and Order and Notice of Proposed Rulemaking, 22 FCC Rcd 17791, ¶¶ 1-3 (2007) (extending the prohibition in the program access rules against exclusive contracts for any vertically integrated programming, finding that competing multichannel video programming distributors need access to vertically integrated programming to remain viable substitutes to the incumbent cable operator in the eyes of consumers); *Promotion of Competitive Networks in Local Telecommunications Markets*, Report and Order, 23 FCC Rcd 5385, ¶ 1 (2008) (determining that in residential settings, carriers may not enter into contracts for the provision of telecommunications services with premises owners that restrict consumers' access to other telecommunications providers, and that such carriers may not enforce telecommunications service exclusivity contracts in predominantly residential multiple tenant environments, in order to ensure that such contracts "no longer serve as an obstacle [for consumers] to competitive access in the telecommunications market").

function on the system of any IP-based TRS provider. Consumers of traditional telephone services – both wired and wireless – enjoy this interoperability today and deaf and hard-of-hearing consumers should too. As part of the certification process, TRS providers should be required to declare that they do not distribute, own, or control any proprietary technology or products in connection with the service they offer. Tying consumers to a service through non-interoperable devices is not in the public interest.^{11/} Today, Sorenson provides TRS users videophones using proprietary phones with built-in proxy or routers, which cannot be used if their TRS customers switch providers. Any new FCC certification must demonstrate compliance with this requirement.^{12/} The Commission should not grandfather existing equipment or continue to waive its rules to permit the provision of this anti-competitive equipment to TRS users.^{13/}

Evidence of Technical Competence. It is no longer sufficient to merely provide qualified Communications Assistants (“CAs”) for an IP-based TRS provider to offer service to the public. While qualified CAs are important, a full understanding of the sophisticated nature of IP-based network architecture is also critical. Applicants should be required to fully describe their network architecture, including how they are capable of migrating to new technology in the future.

^{11/} This is an obligation to which TRS providers are already subject and the FCC must ensure that any entities receiving new FCC certification are compliant with these obligations. *See, e.g., Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities, Declaratory Ruling and Further Notice of Proposed Rulemaking*, 21 FCC Rcd 5442, ¶¶ 29-34 (2006) (concluding that “all VRS consumers must be able to place a VRS call through any of the VRS providers’ service, and all VRS providers must be able to receive calls from, and make calls to, any VRS consumer”).

^{12/} Indeed, Commission examination of entry requirements for IP-based TRS providers is only one element of what must be a broader examination of the structure of the TRS industry. As noted above, the Commission has permitted Sorenson, through the sale of restrictive consumer equipment and anti-competitive service agreements, to become a near-monopoly provider, depriving consumers of competitive services. The Commission should ensure that it bans the practices that Sorenson has employed to prevent effective competition. *See supra* note 8.

^{13/} In Sorenson’s case, it admits that it will offer service using Session Initiation Protocol (“SIP”). *See Opposition of Sorenson Communications, Inc. to Request for Waiver of American Network, Inc.*, CG Docket No. 10-51, at 2 (filed May 25, 2011). Because Sorenson will provide service using this common protocol, it should be required to allow users the choice of using other VRS providers’ services with its equipment without further modifications and should be required to notify users that they have a choice of VRS providers despite the fact that one provider has given them the equipment.

Applicants also should be required to describe how their network architecture is configured to comply with new Commission numbering and similar rules in an IP-based environment. Similarly, applicants should be required to demonstrate that any ancillary products, such as wireless applications, do not impede a provider's ability to comply with FCC rules, including users' ability to access multiple providers.

The rules now require that TRS providers seek re-certification every five years. Under the Commission's proposals, existing providers would, in addition to seeking re-certification every five years, be required to provide all of the information needed for certification every year.^{14/} This would mean, for example, that providers already certified under the FCC's rules would be required to provide all of the information required by the new and old rules each year. This administrative burden is unnecessary and particularly unwarranted for existing FCC-certified TRS providers. While, as noted above, the Commission has no means of assessing the efficacy of state certification programs, those that have already received FCC certification should not be penalized for inconsistent state processes or grouped with entities that have elected to avoid the more stringent FCC certification requirements. Instead, currently FCC-authorized providers should be permitted to retain their current certification without further administrative obligations to provide all of the information required by the newly-adopted and proposed rules when they seek re-certification. Once providers submit the information required by the new and proposed rules (*i.e.*, either in an initial application by an entity without a current FCC certification or after renewal of certification by an entity currently FCC-certified), they should be required only to provide *updated* information in their annual reports. A requirement that existing providers must provide all qualifying information every year will introduce uncertainty to the validity of TRS certifications, potentially

^{14/} FNPRM Appendix D Proposed Rules (§ 64.606(c)(2)).

causing providers not to invest in new technologies and applications for fear that an existing certification would be revoked based on the provision of an annual report.

C. Changes to Provider Eligibility Information Should Constitute “Substantive Changes” Requiring Notification Under the FCC’s Rules

As the Commission notes, the rules do not specify the type of “substantive changes” that require notification to the FCC.^{15/} ANI proposes that any change to the eligibility information noted above should require notification to the FCC. New rules should make it clear that the Commission may act, upon receipt of this changed information, to de-certify a provider if it finds that the changed circumstances affect the provider’s eligibility.

D. The FCC Should Adopt a Notification Requirement for Service Interruptions Instead of Requiring Prior Regulatory Approval for Such Interruptions

The Commission proposes to modify its regulations so that a provider of IP-based service is required to obtain FCC approval before any planned service interruption.^{16/} The proposed rule is unnecessary and burdensome. While IP-based TRS customers must be protected from prolonged interruptions in service, seeking Commission approval for service interruptions is a vestige of past over-regulatory regimes. Regulatory approval may have been appropriate when monopoly telephone service was provided, but the Commission has migrated from those requirements for competitive services such as wireless services, for example.^{17/} The IP-based TRS service is a competitive service and should be afforded the same regulatory treatment as other competitive services.

Moreover, the proposed rules are unnecessarily broad. A one-hour maintenance outage in the middle of the night would require the same approval as a week-long outage. Instead of

^{15/} *FNPRM* ¶ 100.

^{16/} *Id.* ¶¶ 101-02.

^{17/} *See, e.g.*, 47 C.F.R. § 27.66 (delineating the FCC notification requirements for the discontinuance, reduction, and impairment of wireless service).

requiring regulatory approval, the Commission should require notification when there is a service interruption – whether planned or unplanned. For planned interruptions, the FCC should be provided notice no later than 14 days prior to the service interruption. The Commission should also require that providers give appropriate notice to customers and describe, in their notice to the FCC regarding the interruption of service, the type of notice provided to consumers. For unplanned interruptions, providers should be required to notify the FCC within two business days of the start of the interruption of service, as proposed, indicating the nature of the interruption and when service was restored (or when it will be restored). If service has not been restored by the time of the notice, providers should be required to notify the FCC again when service is restored.

E. ANI Agrees with the Recently Adopted Interim Measures

In the *FNPRM*, the Commission proposed that any non-FCC-certified IP-based TRS provider be permitted to seek temporary waiver while it seeks permanent authorization from the FCC.^{18/} The FCC subsequently dismissed the many requests for temporary waiver already received, stayed the effective date of certain rules, and directed providers to comply with the new FCC certification rules that it expects to establish as outlined in the *FNPRM* prior to expiration of the stay.^{19/} ANI supports the Commission’s efforts and believes that such actions will prevent service to consumers from being interrupted during the Commission’s transition to FCC-only certification for IP-based TRS providers. Once the new certification rules are established and existing providers timely seek certification, existing providers may be grandfathered until the FCC reviews those providers’ certification requests. However, the Commission should promptly process all such requests so that existing providers are not permitted to rely on their grandfathered status indefinitely. ANI also agrees with the FCC’s plan to permit existing non-FCC-certified providers to

^{18/} *FNPRM* ¶ 103.

^{19/} *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Order Suspending Effective Date, FCC 11-86 (rel. May 31, 2011).

continue to offer service for 30 days if: (1) they fail to seek FCC-certification; or (2) the FCC rejects their request for permanent certification.

III. CONCLUSION

While ANI supports many of the Commission's proposed rules, the FCC should adopt the actions described herein in order to ensure the effective provisioning of IP-based TRS to the deaf and hard-of-hearing communities. Specifically, the FCC (1) should ensure that Commission certification is the only way IP-based TRS providers may achieve eligibility for TRS Fund payments, (2) should seek eligibility information from TRS providers during the certification process that is consistent with the information the Commission collects in other contexts, (3) should specify that significant changes to a provider's eligibility information amounts to a "substantive change" under the FCC's rules, (4) should establish a notification requirement for IP-based TRS service interruptions, and (5) should ensure that interim measures allow for continuity of service to consumers. Taking such actions will combat the waste, fraud, and abuse that have plagued these important services in the past while helping to achieve functional equivalency for IP-based TRS users.

Respectfully submitted,

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