

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	1
II. DISCUSSION	4
A. Certification Only Process is Not Needed to Continue Effectively Reforming the TRS Program.	4
1. Interstate Common Carriers Should be Permitted to Forego Commission Certification	5
2. Recently Enacted Reforms Should be Permitted to Work Before Imposing a Certification-Only Condition for Providing TRS	7
B. The Proposed Certification Requirements are Overly Complicated and Unnecessarily Exclude Non-Facilities Based Providers	9
1. The Certification Process Should Focus on the Qualifications of the Applicant	9
2. Non-Facilities Based Providers Should be Able to Provide Internet-based TRS Without Certification	12
3. Applicants with Diverse Businesses Should Apply the Certification Requirements Only to their TRS Operations	14
C. Eligible Providers Should be Allowed to Continue Providing Internet- based TRS While a Certification Application is Pending	14
III. CONCLUSION	15

**Before the
Federal Communications Commission
Washington, DC 20554**

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

COMMENTS OF AT&T

AT&T Services, Inc. (“AT&T”) files these Comments in response to the Further Notice of Proposed Rulemaking (“*Further Notice*”) released by the Federal Communications Commission (the “Commission”) pertaining to qualifications to provide Internet-based Telecommunication Relay Service (“TRS”).¹

I. INTRODUCTION AND SUMMARY

In the *Further Notice*, the Commission seeks comment on additional measures it might take to strengthen oversight of Internet-based TRS providers to insure that those providers are qualified to provide Internet-based TRS in accordance with Commission rules, thereby improving the integrity of the TRS program. Among the measures proposed by the Commission is a requirement that all providers of Internet-based TRS² apply for and receive certification exclusively from the Commission to be eligible to provide the service and receive compensation from the Interstate TRS Fund. The Commission proposes, as part of this certification process,

¹ Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51, *Notice of Proposed Rulemaking* (rel. April 6, 2011); Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51, *Erratum* (rel. May 17, 2011) (collectively, the “*Further Notice*”).

² Internet-based TRS includes Video Relay Service (“VRS”), Internet Protocol Relay (“IP Relay”) service, and Internet Protocol Captioned Telephone Service (“IP-CTS”).

that an applicant provide substantial information to the Commission to justify approval, including evidence that the applicant owns and operates call centers and employs interpreters to staff those centers. Any entity that does not employ interpreters to staff its own call centers or does not provide the other evidentiary data sought by the Commission will be unable to offer Internet-based TRS or recover from the Interstate TRS Fund. The Commission also proposes a transition period to the new certification regime whereby entities that are not currently certified by the Commission will be allowed to continue providing Internet-based TRS while their application is pending if they seek a waiver of the new certification rules.

As AT&T's comments in this docket demonstrate, AT&T supports the Commission's effort to facilitate compliance with Commission rules by decreasing the opportunities for fraud and misuse of the Interstate TRS Fund.³ The *Report and Order* released simultaneously with the *Further Notice* makes substantial strides in that effort.⁴ However, AT&T is concerned that the actions proposed in the *Further Notice* exceed the reasonable measures that are needed to combat fraud and abuse to the Interstate TRS Fund and would harm competition for Internet-based TRS. These measures would ultimately compromise the stability of the TRS program by reducing innovation into Internet-based TRS offerings, reducing choices for users, and increasing costs to the Fund.

In the *Report and Order*, the Commission amended its rules to prohibit entities that are not eligible to recover from the Interstate TRS Fund from providing Video Relay Service

³ See Comments of AT&T, CG 10-51 (filed Sept. 7, 2010).

⁴ Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51, *Report and Order* (rel. April 6, 2011); Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51, *Erratum* (rel. May 17, 2011) (collectively, the "*Report and Order*").

(“VRS”) to the deaf and hard of hearing community.⁵ AT&T believes that extending this measure to all Internet-based TRS offerings, with accompanying restrictions on revenue sharing arrangements, will eliminate the vast majority of the problems created by lack of oversight of Internet-based TRS providers and that the situation does not warrant limiting the provision of Internet-based TRS to entities that are Commission certified. Indeed, over the last three years, the Commission has taken substantial measures to reduce the opportunities for fraud and abuse of the Fund. Many of those measures are bearing fruit and will benefit the TRS Fund for years to come. The Commission should give these steps the opportunity to take full effect and review the success of these measures before undertaking changes that might drive Internet-based TRS providers from the market and reduce competition and choice for users.

Nonetheless, if the Commission imposes a certification mandate for all Internet-based TRS providers, the process should focus exclusively on the qualifications of the applicant to provide Internet-based TRS within the confines of the TRS rules. The Commission should avoid locking Internet-based providers into any preconceived organizational structure or business plan. For example, if an applicant demonstrates that it has the basic business plan and resources needed to provide Internet-based TRS, that applicant should be certified, regardless of whether it owns the call center and employs interpreters or, alternatively, contracts for the service from another certified Internet-based TRS provider. Requiring Internet-based TRS providers to be facilities-based will only drive providers from the industry, which will limit competition and reduce consumer choice.

The Commission should also insure that the information which applicants must provide to justify certification is also tied to the applicant’s qualifications. Requiring applicants to

⁵ *Id.* at 57.

disclose data about their employees and benefits and other information that bears little relationship to their ability to provide Internet-based TRS in conformance with Commission rules will be administratively burdensome, waste applicant and Commission resources, and discourage potential providers from applying for certification. Further, the Commission should clarify that if an applicant's business is not limited to TRS, the information collection requirements that are ultimately enacted apply only to the applicant's TRS operations. Lastly, if a new certification regime is enacted, it should be supported by a reasonable transition period where current eligible Internet-based TRS providers that are not certified by the Commission can continue offering the service while their application is pending.

II. DISCUSSION

A. A Certification Only Process is Not Needed to Continue Effectively Reforming the TRS Program.

AT&T applauds the Commission for its efforts to reduce fraud and abuse of the Interstate TRS Fund over the last three years. Those reform efforts can continue by extending to all forms of Internet-based TRS the prohibitions on white labeling and restrictions on subcontracting that the Commission imposed on VRS in the *Report and Order*.⁶ Those incremental changes in the TRS program, along with the other extensive reforms that the Commission has undertaken over the last three years will more efficiently address the potential fraud and abuse to the Fund than requiring certification of all Internet-based TRS providers and should be allowed to work before taking extreme measures that will have an uncertain, and potentially harmful, impact on the TRS program.

⁶ *Id.*

1. Interstate Common Carriers Should be Permitted to Forego Commission Certification.

Current Commission rules allow four types of entities to provide Internet-based TRS and receive payment from the Interstate TRS Fund: (1) a certified state TRS provider or an entity operating relay facilities under contract with a certified state TRS program; (2) an entity that owns or operates relay facilities under contract with a common carrier providing interstate services; (3) interstate common carriers offering TRS; and (4) VRS and Internet Protocol TRS (“IP Relay”) providers certified by the Commission.⁷ The Commission proposes to amend its rules to require that all Internet-based TRS providers receive Commission certification to be eligible to provide Internet-based TRS and recover from the Interstate TRS Fund. AT&T agrees with the Commission that action is needed to reduce the potential for fraud and insure that Internet-based TRS providers are qualified to offer the service, but the rule changes proposed in the *Further Notice* overreach.

In the *Further Notice*, the Commission succinctly explains its motivation for transitioning to a Commission-only certification regime—to ensure that all entities providing Internet-based TRS are qualified to provide the service in accordance with Commission rules; to reduce waste, fraud, and abuse; and to improve oversight of Internet-based TRS providers.⁸ The Commission can, for the most part, meet these goals by extending to all forms of Internet-based TRS the prohibitions on white labeling and restrictions on subcontracting that the Commission recently imposed on VRS. These incremental steps, along with the reforms that the Commission has already undertaken, would effectively reduce incentive and opportunity to engage in fraud and

⁷ 47 C.F.R. § 64.604(c)(5)(iii)(F)(1-4).

⁸ *Further Notice* at ¶95.

abuse of the TRS Fund, and negate the need to subject entities that are currently eligible to recover from the Fund to an administratively burdensome certification process.

The *Further Notice* emphasizes the Commission's belief that the current alternative methods to be eligible to recover from the Fund have facilitated participation in the VRS program by unqualified, non-compliant providers.⁹ This unqualified statement does not withstand scrutiny when applied to interstate common carriers. There is no evidence that interstate common carriers offering TRS have engaged in any fraudulent or abusive behavior toward the Fund or have facilitated participation in the TRS program by unqualified entities. In fact, interstate common carriers are highly regulated by this Commission and State regulators and thus, in many ways, are better suited to ensure compliance with the extensive TRS regulations. While the Commission points to CAC's relationship as a billing agent for Viable as evidence that the current eligibility criteria is problematic,¹⁰ a single example does not constitute a systematic problem and does not justify the extensive changes proposed. CAC's example supports only the proposition that white labeling should be prohibited and that subcontracting of core TRS components should be limited to other eligible Internet-based TRS providers. The Commission has already taken action in the *Report and Order* to restrict these types of activities. CAC's actions do not justify broader regulation.

The Commission's recent actions to limit the permissible types of VRS subcontracting relationships and prohibit VRS revenue sharing schemes that incent abusive activity will effectively eliminate participation in the VRS program by unqualified, non-compliant providers. The Commission's next logical, incremental step would be to extend those restrictions to IP

⁹ *Id.* at ¶96.

¹⁰ *Id.* at note 264.

Relay and IP-CTS. In the absence of evidence of a systematic problem impacting interstate common carriers, the Commission should not force interstate common carriers to apply for certification to provide Internet-based TRS.

2. Recently Enacted Reforms Should be Permitted to Work Before Imposing a Certification-Only Condition for Providing TRS.

In the last three years, the Commission has undertaken extensive reforms aimed at reducing the incentives and opportunities to engage in fraud and abuse of the TRS Fund. The Commission has clarified that providers may not offer financial or other incentives in an attempt to increase the length or frequency of TRS calls;¹¹ imposed 10-digit number assignment obligations (including registration and verification of disability) on providers;¹² clarified how to measure conversation time;¹³ clarified that the Interstate TRS Fund does not compensate providers for point-to-point calls,¹⁴ VRS calls made by or to VRS provider employees,¹⁵ VRS

¹¹ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket 03-123, *Declaratory Ruling*, ¶13 (rel. May 28, 2008).

¹² Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, E911 Requirements for IP-Enabled Service Providers, CG Docket 03-123, WC Docket 05-196, *Report and Order* (rel. June 24, 2008); Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, E911 Requirements for IP-Enabled Service Providers, CG Docket 03-123, CC Docket 98-67, WC Docket 05-196, *Second Report and Order* (rel. Dec. 19, 2008).

¹³ *Public Notice*, TRS Providers Seeking Compensation from Interstate TRS Fund Must Comply with Standard Rounding Principles in Measuring the Conversation Time of the TRS Call, DA 09-211, CG Docket 03-123 (rel. Feb. 10, 2009).

¹⁴ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket 03-123, *Order* (rel. Sept. 18, 2009).

¹⁵ Structure and Practices of the Video Relay Service Program, CG Docket 10-51, *Declaratory Ruling*, ¶¶3-5 (rel. Feb. 25, 2010).

calls made or arranged for the purpose of generating revenue,¹⁶ calls between two voice users,¹⁷ VRS calls that both originate and terminate outside of the United States,¹⁸ IP Relay calls that originate or terminate outside the United States,¹⁹ and VRS calls for training or other programs in which a VRS provider is involved;²⁰ required a TRS provider's Chief Executive Officer, Chief Financial Officer, or other senior executive to certify, under penalty of perjury, to their submissions to the Interstate TRS Administrator;²¹ reduced VRS compensation rates;²² and, most recently, imposed requirements relative to VRS call centers, CAs working from home, compensation for VRS CAs, entities that can provide VRS, whistle blower protection, and audits.²³ Insufficient time has passed to assess the effectiveness of these reforms. The Commission should permit adequate time for these reforms to work prior to engaging in actions that are unnecessary and that might have undesired consequences, such as driving respectable, eligible Internet-based TRS providers from the market.

¹⁶ *Id.* at ¶6.

¹⁷ *Id.* at ¶8.

¹⁸ *Id.* at ¶9; Structure and Practices of the Video Relay Service Program, CG Docket 10-51, *Report and Order*, ¶6 (rel. April 6, 2011).

¹⁹ Structure and Practices of the Video Relay Service Program, CG Docket 10-51, *Report and Order*, ¶6 & note 106 (rel. April 6, 2011).

²⁰ *Id.* at ¶43-46.

²¹ Structure and Practices of the Video Relay Service Program, CG Docket 10-51, *Declaratory Ruling* (rel. May 27, 2010).

²² Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket 03-123, *Order* (rel. June 28, 2010).

²³ Structure and Practices of the Video Relay Service Program, CG Docket 10-51, *Report and Order* (rel. April 6, 2011).

B. The Proposed Certification Requirements are Overly Complicated and Unnecessarily Exclude Non-Facilities Based Providers.

As currently crafted, the proposed certification process is overly complicated and seeks information from applicants far beyond what is needed to determine the qualifications of an applicant to provide Internet-based TRS. AT&T believes that the certification process should collect only the information that would be reviewed by the Commission in evaluating the qualifications of an applicant. AT&T also believes that the proposed rules should allow non-facilities based providers to apply for certification. Limiting Internet-based TRS providers to those that own call centers and employ interpreters would adversely limit competition and eventually be detrimental to users of Internet-based TRS.

1. The Certification Process Should Focus on the Qualifications of the Applicant.

The certification process proposed in the *Further Notice* is exceedingly complex and seeks information from applicants that is far beyond what is needed to demonstrate qualifications to provide Internet-based TRS. The Commission should simplify this process by limiting the information collection requirement to information that is needed to demonstrate the qualifications of the applicant. This change will create a more reasonable process for applicants to follow and will yield better results for consumers more quickly, as the Commission will be able to focus on the information that is most relevant to those consumers and the Fund.

The process delineated in the *Further Notice* requires an applicant to disclose, in addition to the forms of Internet-based TRS to be provided and a description of how it will meet the mandatory minimum standards applicable to Internet-based TRS, 12 mandatory evidentiary categories of information.²⁴ Among the required components that the applicant must submit are

²⁴ *Further Notice* at ¶97.

“a copy of each deed or lease for each call center operated by the applicant,” “a list of all of the names of applicant’s full-time and part-time employees,” “proofs of purchase or license agreements for use of all equipment and/or technologies,” “copies of employment agreements for all of the provider’s executives and CAs,” “copies of any subcontracting agreements for services not directly essential for the provision of Internet-based relay (such as maintenance and transportation services),” and “a list of all sponsorship arrangements (*e.g.*, those providing financial support or in-kind interpreting or personnel service for social activities in exchange for brand marketing), including any associated agreements.”²⁵ Such detailed and specific data collection requirements extend far beyond the information needed to determine the qualifications of an applicant to provide Internet-based TRS.

While it may be reasonable to require an applicant seeking Commission certification to describe a work force plan and how it will meet Commission speed of answer requirements rules, the identity of the applicant’s employees and the terms of any employment agreements have no bearing on that requirement or on any other mandatory minimum standard. Similarly, requiring applicants to produce copies of service agreements for trash pick-up, janitorial, and other services that, in the Commission’s own words are “not directly essential for the provision of Internet-based relay” is unnecessary and wasteful of the resources of the applicant and the Commission. Also, obtaining license agreements for **all** equipment and technology used by a provider is unnecessary, as most providers will utilize some equipment or technology that is not directly tied to a TRS call. Further, even if the equipment or technology needed for an Internet-based TRS call is subject to a license agreement, the key is whether the provider has the license

²⁵ *Id.*

agreement, not the details of that license agreement.²⁶ Similarly, it is the existence of call centers to handle the Internet-based TRS calls, not the details of a call center lease or deed, that impact an applicant's qualifications to provide the service. Rather than providing copies of license agreements, leases, or deeds to the Commission, Applicants should be able to demonstrate their qualifications by providing a general description of the facilities (and location of those facilities) and technologies that will be utilized to provide Internet-based TRS. Such a certified statement with the application would be more efficient for both the applicant and the Commission and yet provide the protections that the Commission seeks to ensure an applicant's qualifications.

Unchanged, the proposed evidentiary submissions would be overly burdensome to applicants, some of which may be deterred from seeking to provide Internet-based TRS. It would also be burdensome on the Commission, which must review and consider all of the requested information in a reasonable amount of time. Thus, the Commission should limit the data that an applicant must submit to the Commission to justify certification to solely information pertaining to the qualifications of the applicant to provide Internet-based TRS within the confines of the Commission rules. The Commission itself recognized that the certification process should retain this very focus: “[W]e propose requiring evidence of an applicant’s ability to comply with our rules governing the qualifications of CAs, including speed of answer, facility redundancy to ensure continuance of the service, and other operational and technical standards designed to assure provision of a service that is functionally equivalent to voice telephone service.”²⁷

²⁶ The cost of the license, while also provided in a license agreement, may be needed by the Interstate TRS Administrator or the Commission in association with annual submissions, but should not be needed to assess qualifications to provide Internet-based TRS.

²⁷ *Further Notice* at ¶97.

The Internet-based TRS business is competitive, with many different players offering service in many different ways, with many different business plans. Internet-based TRS users will gravitate away from a provider that is not reliable and competent. Thus, it not necessary for the Commission to regulate the entry of Internet-based TRS providers more than what is needed to insure that providers are qualified to provide the service and can meet the mandatory minimum standards established by Commission rules.

2. Non-Facilities Based Providers Should be Able to Provide Internet-based TRS Without Certification.

In the *Further Notice*, the Commission proposes that an applicant seeking certification from the Commission to provide Internet-based TRS must “provide documentary and other evidence demonstrating that the applicant owns and operates facilities associated with TRS call centers, and employs interpreters, on a full or part-time basis, to staff such call centers at the date of the application.”²⁸ AT&T rejects the proposition that an entity is qualified to provide Internet-based TRS only if it owns and operates the call centers and employs the interpreters that staff those centers. Such a requirement would unnecessarily limit the pool of potential Internet-based TRS providers and reduce competition among providers. Undoubtedly, it would cause some current providers that are eligible to provide Internet-based TRS to leave the Internet-based TRS business.

Limiting the pool of potential Internet-based TRS providers would adversely affect the TRS program. Over the last few years, the growth in TRS has been driven by the innovation and resultant service offerings for Internet-based TRS. This innovation and the service offerings that it has spawned have provided the deaf and hard of hearing community with a myriad of choices

²⁸ *Id.*

in communications and users have taken advantage of those choices. Excluding potential entrants that do not own call centers and employ interpreters would risk breaking this cycle of innovation—in contravention of the directive in Section 225(d) of the Communications Act that any TRS regulation “not discourage or impair the development of improved technology.”²⁹ Indeed, an extensive network of resellers is typically a sign of a healthy competitive marketplace. That network should not be dismantled in the Internet-based TRS space.

Instead, AT&T proposes that an applicant should be able to demonstrate sufficient facilities and personnel to provide Internet-based TRS by providing a copy of a contract with a certified Internet-based TRS provider that owns and operates its own call centers and employs interpreters. Contracting with another certified provider that is likewise subject to Commission oversight would present minimal risk to the Fund. The Commission reached the same conclusion in its recent *Report and Order* in its analysis of whether entities eligible to recover from the Fund for the provision of VRS should be able to subcontract certain services: “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.”³⁰

AT&T and other Internet-based TRS providers have successfully subcontracted with other reputable, eligible providers to offer a choice of service to the deaf and hard of hearing users. These relationships improve innovation in the industry, as evidenced by the VRS iPhone4 Application developed with the assistance of AT&T’s subcontractor. These relationships with certified providers should be allowed to continue. Otherwise, AT&T and other Internet-based

²⁹ 47 U.S.C. §225(d).

³⁰ *Id.* at 58 & fn 164.

TRS providers will be forced into a decision of whether to acquire call centers and employ interpreters to staff those centers, which may not be a financially viable alternative, or terminate their Internet-based TRS business. In that case, the cycle of innovation that has been the hallmark of the Internet-based TRS business over the last few years will be threatened.

3. Applicants with Diverse Businesses Should Apply the Certification Requirements Only to their TRS Operations.

As referenced above, the proposed certification rules require applicants seeking certification from the Commission to submit a substantial amount of information to demonstrate their qualifications to provide Internet-based TRS. The proposed rules are drafted broadly in contemplation of applicants whose sole or primary business is the provision of TRS. Consequently, those rules create confusion and the potential for even more burdensome information collection when applied to applicants with more diverse business operations, where TRS is not the sole, or even the primary, revenue source. For example, while AT&T provides Internet-based TRS, AT&T's TRS operations are a very small part of AT&T's overall corporate operations. If the proposed certification rules are applied to AT&T's diverse businesses, they would require AT&T to disclose information about businesses, employees, contracts, etc. that has no relation to AT&T's TRS business or to AT&T's ability to operate as an Internet-based TRS provider. If the Commission adopts a certification regime contemplated in the *Further Notice*, AT&T requests that the Commission clarify in its final rules that the information collection requirements apply only to an applicant's TRS operations.

C. Eligible Providers Should be Allowed to Continue Providing Internet-based TRS While a Certification Application is Pending.

The Commission proposes to allow each Internet-based TRS provider that is currently eligible to receive compensation from the TRS Fund via a means other than Commission certification to

continue providing TRS while its application for certification is pending at the Commission if the provider petitions for a temporary waiver of the new certification rules.³¹ If, despite the absence of an urgent need, the Commission nevertheless imposes a Commission certification only regime, AT&T supports the proposal to allow currently eligible providers to continue providing Internet-based TRS while their certification application is pending. AT&T agrees that such a transition is needed to ensure the seamless delivery of Internet-based TRS to users. The temporary waivers should be granted as a matter of right to providers who were previously eligible to recover from the Fund and apply for certification to the Commission to provide Internet-based TRS. Allowing such providers to continue offering Internet-based TRS under the current rules would be in the public interest and would avoid substantial user confusion as to whether their default provider will be certified and allowed to continue providing service.

III. CONCLUSION

Over approximately the last 10 years, communications accessibility for deaf and hard of hearing community has been enhanced by innovation in Internet-based TRS offerings. This innovation has created a cycle that promises to continue improving accessibility, while ushering in a new phase of TRS. While the first few years of this progression were characterized by a few instances of fraud and abuse to the Interstate TRS Fund, that behavior was not representative of the vast majority of Internet-based TRS providers. Over the last three years, the Commission has taken steps to ensure that those few perpetrators of fraud and abuse have been brought to justice and has undertaken extensive reforms to reduce the opportunities for fraud and abuse. The *Further Notice* is an opportunity for the Commission to take the next incremental step to reform Internet-based TRS by extending the white label and subcontractor restrictions adopted in the

³¹ *Id.* at ¶103.

recent *Report and Order* to all forms of Internet-based TRS. The Commission should defer more extensive regulation, such as requiring all Internet-based TRS providers to be certified by the Commission and to produce extensive evidence of its business operations to become certified, as such regulation is premature, would be overly burdensome for applicants and the Commission, and would risk reducing the number of Internet-based TRS providers, which would ultimately reduce competition and increase the costs to the Fund.

June 1, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Vitanza", with a long horizontal flourish extending to the right.

Robert Vitanza
Gary L. Phillips
Paul K. Mancini
Attorneys for AT&T Inc.

AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036
(202) 457-3076 (Phone)
(202) 457-3073 (Fax)
robert.vitanza@att.com