

**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 )  
 )

**COMMENTS OF SPRINT NEXTEL**

Sprint Nextel Corporation (“Sprint”), on behalf of the Telecommunications Relay Service (“TRS”) operations of its subsidiary, Sprint Communications Company L.P., hereby respectfully submits comments on issues raised in the *Further Notice of Proposed Rulemaking* (“*FNPRM*”), FCC 11-51 released April 6, 2011 by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned docket.<sup>1</sup>

In the *FNPRM*, the FCC “seek[s] comment on a number of proposed modifications to [its] certification process for all Internet-based relay providers, including VRS providers.” *FNPRM* at ¶ 95. Specifically, the FCC proposes to require that all providers of Internet-based relay services be certified by the FCC in order to be eligible to receive compensation from the TRS Fund. If adopted, a provider of Internet-enabled relay services “would no longer be permitted to receive compensation from the TRS Fund: (1) by virtue of its contract with a 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.” *FNPRM* at ¶ 96. By assuming “exclusive responsibility” for certifying providers of Internet-enabled relay services,

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<sup>1</sup> The *FNPRM* was attached to a *Report and Order* (“*R&O*”) in which the FCC “adopt[ed] rules to detect and prevent fraud and abuse in the provision of video relay service (VRS)... .” *R&O* at ¶ 1. The FCC also noted that “[u]nless otherwise indicated, the new rules adopted in this *Order* apply to all forms of TRS.” *R&O* at fn. 3.

the FCC believes that it will be able to “ensure that Internet-based TRS is provided by qualified providers and will enable the Commission to exercise effective oversight over these providers.”

*FNPRM* at ¶ 96.

As one of the few providers of Internet-based TRS services whose wireless and wireline customers must support the Fund through the charges they pay for their services, Sprint applauds the FCC’s efforts to stem the fraud and abuse that have plagued the VRS market in recent years. Sprint agrees that FCC action “to substantially reduce and ultimately eliminate this fraud and abuse” is absolutely necessary if VRS is to “remain[] a viable and a valuable communications tool for Americans who use it on a daily basis,” *R&O* at ¶ 1, and if the FCC is to ensure that the fees that wireless and wireline carriers and ultimately their customers have to pay into the Telecommunication Relay Fund are reasonably related to the costs of providing a legitimate VRS service.<sup>2</sup>

For this reason, Sprint supports the FCC’s proposal to require that providers of VRS (and other Internet-enabled relay services) be certified by the FCC in order to receive compensation from the TRS Fund. Although Sprint is currently eligible to receive compensation from the TRS Fund for its provision of Internet-enabled Relay services because it is common carrier providing TRS service and because it provides traditional TRS services in a number of states pursuant to contracts with those states, it believes that all providers of Internet-enabled Relay services should

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<sup>2</sup> Sprint, for one, has consistently brought to the Commission’s attention “TRS-minute pumping” schemes and other nefarious acts. For example, it was the first provider to alert the FCC to the fact that individuals in foreign countries, such as Nigeria, were using Internet Relay to fraudulently obtain goods from businesses in the US. See Letter dated February 18, 2004 from Michael B. Fingerhut, Attorney for Sprint to Marlene Dortch, Secretary to the FCC in CG Docket No. 03-122 and CC Docket N0. 98-67 detailing an *ex parte* presentation Sprint made to FCC staff the previous day. And it explained to the FCC the actions it was taking or was considering taking to minimize the extent of such fraud.

be certified by the FCC in order to enter or remain in the Internet Relay segment of the TRS market. Sprint is willing to subject itself to this additional requirement in order to continue its provision of Internet-enabled TRS services because, as it explained in its comments in response to the *Notice of Inquiry*, 25 FCC Rcd 6012 (2010) (“NOI”) in this proceeding (at 12-13), the FCC has determined that it has sole jurisdiction over Internet-based TRS services and therefore bears the responsibility for ensuring that the entities that offer such services are doing so lawfully and in compliance with the FCC standards.<sup>3</sup>

Sprint also agrees with the FCC that a provider of Internet-enabled Relay services seeking certification from the FCC should be able to demonstrate its ability to comply with the Commission’s rules governing the provision of these services. *FNPRM* at ¶ 97. Nonetheless, the amount of evidence necessary to make such a demonstration must be reasonable and specifically tied to the provider’s Internet-based relay operations. In many respects, the evidence and other documents that the FCC has proposed applicants for certification must submit fail to meet this criteria. In case of Sprint, whose TRS operations constitutes only a small part of its overall business, the evidence and documents that Sprint would be required to produce have absolutely no relationship to Sprint’s ability to comply with the FCC’s rules governing the provision of VRS and other Internet-enabled services or give the FCC any assurance that its operations will comply with the law.

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<sup>3</sup> As Sprint also explained in its comments in response to the NOI (at 13), this responsibility will require the FCC to periodically examine the services being offered by the each provider – especially if the FCC learns that a VRS provider’s so-called “out-reach” activities appear to be designed to pump VRS minutes and thereby increase the VRS provider’s compensation from the TRS Fund. It will also require the FCC to conduct periodic audits of the minutes and costs being submitted by each provider.

Perhaps the most problematic of the FCC's proposed criteria is that in order to be authorized by the FCC to offer VRS and other Internet-enabled TRS services a provider of Internet-based TRS services would have to own and operate its own centers. The FCC proposal here is apparently based on the notion that "ownership and operation of call centers" is the only way a provider would be able to adequately demonstrate its ability to comply with the FCC's rules governing the provision of VRS and other Internet-based services. *See FNPRM* at ¶ 97 ("to assure provision of a service that is functionally equivalent to voice telephone service" the FCC proposes that "applicants 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").

It is unclear, however, how call center ownership and operation ensures that an entity seeking to provide VRS and other Internet-enabled TRS will provide a functionally equivalent service or, for that matter, provide a service that complies with the law. Certainly the fact that both Viable and Purple owned and operated call centers did not deter them from engaging in conduct that (1) in the case of Viable, shuttered its operations and resulted in several of its executives pleading guilty to defrauding the government, R&O at ¶ 4 and fn. 14; and (2) in the case of Purple, led to a Consent Decree pursuant to which Purple has agreed to make voluntary payment to the United States Treasury and execute a note to enable the TRS Fund to recover the upwards of \$19,000,000 Purple received from the TRS Fund for the provision of VRS that may have violated the Act and FCC's rules.<sup>4</sup>

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<sup>4</sup> *In re Hands on VRS, Inc., Go Am., Inc., & Purple Communications, Inc.*, 25 FCC Rcd 13090 (2010).

Nor does the fact that the FCC will no longer allow certified VRS entities to bill the TRS Fund on behalf of uncertified (or ineligible) entities providing VRS – so called “white labels” – require that all VRS providers own and operate their own VRS call centers. To the contrary given that the FCC has now banned the practice, *R&O* at ¶ 58, eligible providers that continue to bill the TRS Fund on behalf of white label providers would risk losing their certification to provide VRS and other Internet-enabled services. Such risk should be sufficient to prevent the reemergence of white labels providers.

Sprint’s operations demonstrate that ownership and operation of VRS call centers is not necessary to ensure functional equivalency and to prevent fraud and abuse. Sprint has for a number of years now obtained its VRS call center operations through a contract with an otherwise qualified VRS provider.<sup>5</sup> Sprint closely monitors the operations of its vendor to ensure that it complies with Sprint’s understanding of the FCC’s requirements governing the provision of VRS.<sup>6</sup> VRS users who have selected Sprint as their default carrier fully understand that Sprint is responsible for the quality of their service. Indeed, Sprint ensures that any customer complaints from its users about the VRS service they are receiving are resolved as rapidly as possible. In short, there has never been any question that Sprint is providing a functionally equivalent VRS service despite the fact that it does not own or operate VRS call centers.

Sprint believes that the business model it employs for its provision of VRS service makes the most sense, not only for itself but for the TRS Fund as well. Given its small share of the

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<sup>5</sup> Sprint’s current vendor is CSDVRS. It is Sprint’s understanding that AT&T uses a similar business model.

<sup>6</sup> Sprint’s interpretation may be more conservative than how its vendor interprets the rules for its own operations and perhaps how the FCC would interpret the requirements if called upon to do so.

VRS market, the costs that Sprint would incur in setting up and operating the requisite number of call centers to provide the service 24 hours a day 7 days a week and ensure redundancy would not outweigh any “owner’s economics” that Sprint would expect to realize.

Moreover, Sprint would be entitled to include the cost of owning and operating VRS call centers in its annual cost submissions to the Fund Administrator – in accordance with prior FCC decisions regarding VRS cost recovery, Sprint does not include the costs it incurs as a result for obtaining call center operations from another certified VRS provider in its annual submissions – which, in turn, could put upward pressure on VRS rates assuming that the methodology the FCC ultimately adopts for determining VRS rates are based on the actual allowable costs of each VRS provider. In contrast, CSDVRS’s provision of call center operations on behalf of Sprint should enable the more efficient use of CSDVRS’s facilities which, again assuming a methodology for establishing VRS rates is based on the actual costs, should put downward pressure on VRS rates.

Of course, Sprint’s cost /benefit analysis here may change especially if Sprint’s mobile VRS application for Sprint’s 4G Android phones proves to be successful and Sprint is able to capture a greater share of the overall VRS market. Should that occur, the benefits of providing VRS service through its own call centers may then outweigh the costs. Sprint’s point here is VRS providers should be able to choose a business model for their provision of VRS that is based on marketplace realities and enables them to provide VRS service that complies with the rules. Forcing such providers into a business model that is simply not economic given their relative position in the marketplace could have the untoward effect of forcing them from the marketplace, reducing consumer choice, and at least in the case of Sprint, if it decides to exit the market, depriving consumers of the opportunity to avail themselves of mobile VRS service.

In short, the FCC should not adopt its proposal to certify only VRS providers that own and operate call centers. Instead, the FCC should continue to enable otherwise eligible providers to obtain call center functions pursuant to a contract with an eligible provider. *See R&O* at ¶ 58.

The FCC should also modify the evidentiary showing that a provider must furnish in its application for certification, at least for multi-service providers like Sprint, or alternatively state that it will waive the requirements for such providers. Indeed, the documents that the FCC will require appear to be designed for those providers that only provide Internet-enabled TRS services.

For example, requiring VRS providers to produce the “employment agreements for all of its executives” would provide no useful information about Sprint’s VRS operations. None of these executives are directly involved in Sprint’s provision of VRS or Internet-based TRS services and thus their employment contracts are simply irrelevant to the issue of whether Sprint should be authorized to provide Internet-enabled TRS services.<sup>7</sup> For identical reasons, Sprint should not be required to provide the names of its approximately 40,000 employees that are not directly involved in Sprint’s provision of TRS services. Such a list at most should be limited to a

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<sup>7</sup> The FCC has found that no portion of an executive’s salary “may be attributed to the provision of TRS unless it can be shown that “a particular executive actually supported the provision of TRS.” *See In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 22 FCC Red 20140, 20169 (2007). For this reason, Sprint excludes all of the costs associated with such contracts, as well as all traditional overhead costs, *e.g.*, the costs of Sprint’s in-house legal department, that under generally accepted accounting principles would be attributed to the TRS on the basis of reasonable measure such as the revenue generated by TRS vis-à-vis the company as a whole. It does so even if a particular executive spent some time dealing with a TRS issue or one of Sprint’s lawyers spent some time representing the Sprint’s TRS group before the FCC. It simply not worth the time and costs that would be involved in having an executive or in-house lawyer attempt to determine the time he or she spent of TRS issues during the year. Such costs would have virtually no impact on the costs which Sprint directly incurs in its provision of TRS and which it reports to the Fund Administrator.

list of employees who work on VRS or Internet-based relay issues and whose salaries and other expenses are included in Sprint's annual cost submission to the Fund Administrator.

Respectfully submitted,

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