

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: Secretary, FCC
For: The Commission

PETITION FOR LIMITED RECONSIDERATION

Hamilton Relay, Inc. (“Hamilton”), by its attorneys, hereby respectfully seeks reconsideration of one discrete issue in the *Report and Order* (“*Order*”) issued in the above-captioned proceeding.¹ In the *Order*, the Commission has adopted new billing dispute procedures that should bring regulatory certainty to billing disputes between Telecommunications Relay Service (“TRS”) providers and the TRS Fund Administrator (the “Administrator”).² While Hamilton endorses the general billing dispute process adopted by the Commission, Hamilton notes that the Commission did not consider Hamilton’s proposal of a 1.6% interest rate on reimbursements to providers where the Administrator or the Commission ultimately determines that disputed minutes of use are legitimate.³ Hamilton requests that the Commission consider and institute a 1.6% interest rate per annum in such situations.

¹ *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 10-51, FCC 11-54 (rel. Apr. 6, 2011) (“*Order*”).

² *See id.* ¶ 28.

³ *See* Hamilton Comments, CG Docket No. 10-51, at 3 (filed Sept. 13, 2010) (“Hamilton Comments”).

The Commission is not obligated to “address every comment, but it must respond in a reasoned manner to those that raise significant problems.”⁴ In the *Order*’s discussion of billing dispute procedures, the Commission merely cites to Hamilton’s support, along with other TRS providers, for “transparent procedures to afford due process when payment is withheld for minutes submitted to the Fund administrator.”⁵ The *Order* does not discuss or consider Hamilton’s proposed 1.6% interest rate proposal.⁶ As discussed below, the lack of an interest rate creates a significant problem for Hamilton and presumably for other TRS providers because of the lengthy processing time – potentially up to a full year – for a billing dispute to reach finality under the new rules. Therefore, Hamilton believes the Commission should have addressed, and adopted, the interest rate proposal.

In its comments in this proceeding, Hamilton suggested an interest rate of 1.6% because that is the rate currently used by the Administrator with respect to the cash working capital allowance for Internet Protocol Relay services (“IP Relay”) and Video Relay Services (“VRS”).⁷ Essentially, cash working capital is the average monthly amount of capital needed to provide funds for a provider’s day-to-day operations.⁸ An allowance for cash working capital recognizes

⁴ *Covad Commc’ns Co. v. FCC*, 450 F.3d 528, 550 (D.C. Cir. 2006) (citation omitted). *See also AT&T Corp. v. FCC*, 86 F.3d 242, 247 (D.C. Cir. 1997) (remanding where Commission “completely failed to address” argument raised in *ex parte* letter); *Thompson v. Clark*, 741 F.2d 401, 409 (D.C. Cir. 1984); *GTE Service Corp. v. FCC*, 205 F.3d 416, 422 (D.C. Cir. 2000) (failure “to consider an important aspect of the problem” is error); *AT&T Corp. v. FCC*, 317 F.3d 227, 238 (D.C. Cir. 2003) (remanding case where agency failed to address argument).

⁵ *See Order* ¶ 25.

⁶ *See generally id.* ¶¶ 24-30.

⁷ *See* Hamilton Comments at 3 (citing the Administrator’s *Interstate Telecommunications Relay Service Fund Payment Formula and Fund Size Estimate*, CG Docket No. 03-123, at 14-15 & n.31 (filed Apr. 30, 2010) (“2010 Administrator Filing”)). *See also 2010 Administrator Filing* at 19.

⁸ *See, e.g.*, 47 C.F.R. § 65.820(d).

that payments from the Fund are made 30 days after reimbursement is requested, which serves to compensate the provider for the time delay.⁹

The Commission endorsed the 1.6% cash working capital allowance in its decision adopting the Administrator's proposed rate for IP Relay and VRS,¹⁰ and thus acknowledged the time value of reimbursements from the Fund. There is an equally compelling time value associated with any delay in reimbursing a provider for disputed minutes from the Fund, where the TRS provider is ultimately able to demonstrate that a payment withholding was improper. Compensating for the delay is particularly important because the time period involved may be far longer than 30 days – potentially up to a year, in fact. Accordingly, Hamilton believes that TRS providers should be reimbursed in full with interest of 1.6% for any period in which they were improperly denied timely reimbursement. Otherwise, the Commission will have essentially authorized the imposition of an irrational penalty by denying the provider of the benefit of access to cash working capital for up to a full year, even though the disputed reimbursement was shown to have been improperly withheld.

Application of an interest payment would also be consistent with the practices of other federal agencies. For instance, the Internal Revenue Service authorizes interest payments on certain refunds.¹¹ As a contracted entity for the federal government, the Administrator should not be permitted to withhold funds and retain built-up interest on disputed payments that are ultimately awarded to a provider. If a provider ultimately prevails in the billing dispute and the minutes of use at issue are determined to be legitimate, it is appropriate to reimburse the provider

⁹ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CG Docket No. 03-123, FCC 10-115 n.23 (2010).

¹⁰ *Id.* ¶ 6 & n.23.

¹¹ 26 U.S.C. § 6611; *see also* 42 C.F.R. § 405.378 (interest payments authorized in connection with certain Medicare underpayments).

with a reasonable interest rate.¹² Therefore, Hamilton believes the Commission should adopt Hamilton's proposed 1.6% interest rate, consistent with the rate currently used by the Administrator in analogous situations. Moreover, an interest payment would serve as an incentive for the Administrator and the Commission to resolve billing disputes promptly, resulting in a more efficient reimbursement process.

For the reasons set forth above, Hamilton respectfully requests that the Commission consider and adopt Hamilton's proposal of a 1.6% interest rate on reimbursements to TRS providers where the Administrator or Commission ultimately determines the minutes of use at issue are legitimate.

Respectfully submitted,

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¹² Of course, no reimbursement would be due, and thus no interest would be due, if the provider is ultimately unable to demonstrate that the disputed minutes of use were legitimate.