

Before the  
Federal Communications Commission  
Washington, DC

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

To: Chief, Disability Rights Office

**REPLY COMMENTS OF MALKA COMMUNICATIONS GROUP, INC.**

Malka Communications Group, Inc. (“MCG”), by its attorneys, and pursuant to the Commission’s Report and Order and Further Notice of Proposed Rulemaking, released April 6, 2011,<sup>1</sup> hereby submits its Reply Comments in the above-captioned proceeding. MCG submits these Reply Comments to seek clarification of two issues. First, MCG requests that the Commission clarify that state certification as a common carrier is not required to become a certified provider. Second, MCG requests that the Commission clarify that an entity seeking certification is permitted to license facilities from any company that can provide it a technology platform that will enable the entity to meet the operational requirements set forth in the Commission’s rules, and that such licensing agreement does not have to be with a certified provider.

**I. MALKA COMMUNICATIONS GROUP, INC.**

MCG is a company founded in April 2010 by Ms. Nataly Malka, a Deaf individual, who serves as MCG’s CEO. As a leading member of the Deaf community, Ms. Malka is deeply

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<sup>1</sup> *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, released April 6, 2011 (the “FNPRM”).

committed to improving the quality of life in the Deaf community. In addition to many years of civic and charitable activities serving the Deaf community, Ms. Malka has over fifteen years of experience providing telecommunications services to the Deaf community. In the early 1990's, Ms. Malka initiated a program to bring the Teletypewriter device (TTY/TTD) to Israel in order to bridge the communication barrier. Over her fifteen years of providing telecommunications services to the Deaf community, she has worked with some of the leading businesses that provide services to the Deaf community. One of those businesses was Sorenson Communications, Inc., where she focused on government relations between Sorenson and the Israeli Government.

Ms. Malka is also the founder of TelkolNET, which she has operated since 1998. Ms. Malka includes among her duties at TelkolNET, the recruitment of Deaf consumers to receive services from a certified VRS provider, and the training of interpreters for that VRS provider. Other charitable endeavors to which she has dedicated her time include Miss Deaf International, a beauty pageant specifically for the Deaf, where she focused on raising funds and empowering Deaf women from around the world, setting examples for other countries to follow.

With the founding of MCG, Ms. Malka began her plan to become a certified VRS provider. MCG started out as a subcontractor to an eligible provider, and since its inception MCG has been planning to seek certification to become an eligible provider. MCG has been very successful at reaching and educating the Deaf community about the availability and benefits of using VRS. MCG has been steadily increasing its number of VRS users and their usage of the service.

As part of its effort to become an integral part of the Deaf community, in addition to its VRS business, MCG has been developing school curricula to assist in the teaching of sign-

language to Deaf children. Deaf children are often neglected by hearing-focused school systems, and often hearing parents fail to understand or know how best to aid a Deaf child in developing his or her full potential. The curricula being developed by MCG is designed to help Deaf students overcome these obstacles. MCG also has dedicated capital to philanthropic endeavors within the Deaf community, including providing financial support to the athletic endeavors of Deaf teens, because for Deaf teens, special arrangements are sometimes needed to allow a full and rich athletic experience comparable to those of hearing teens. MCG is committed to continuing such philanthropic endeavors so that Deaf teens will have opportunities for constructive athletic experiences that will give them the foundation for future social and employment success.

The Commission's *FNPRM* has required MCG to hasten its efforts to come into compliance with the Commission's certification requirements. MCG therefore submits these Reply Comments so that MCG can be clear about the requirements that it must meet to become a certified provider.

**II. THE COMMISSION SHOULD CLARIFY THAT STATE CERTIFICATION AS A COMMON CARRIER IS NOT REQUIRED TO BECOME A CERTIFIED PROVIDER**

In the *FNPRM* the Commission stated that it was proposing rule changes first discussed in the *2010 VRS NOI*.<sup>2</sup> The Commission pointed out that the changes were needed “to ensure that all entities seeking certification in the future – or currently certified entities seeking re-certification – are fully qualified to provide Internet-based relay service in compliance with our

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<sup>2</sup> *FNPRM* at ¶ 92, citing *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Notice of Inquiry, 25 FCC Rcd 8579, 8607, ¶ 31 (2010) (“*2010 VRS NOI*”).

rules and requirements, including all of the new obligations adopted in the accompanying *Order*, to reduce waste, fraud and abuse, and improve oversight.”<sup>3</sup>

The first proposal the Commission set forth was that “all Internet-based relay providers be required to receive certification from the Commission, under the procedures and guidelines proposed herein, to be eligible to receive compensation from the TRS Fund.”<sup>4</sup> The Commission stated that this would be the sole method by which an Internet-based TRS provider could become eligible to receive compensation from the TRS Fund. The Commission stated that its previous methods of allowing certification for entities by virtue of: (1) having a contract with a state, (2) having a contract with an interstate common carrier, (3) being an interstate common carrier, or (4) having been certified by a state, would no longer be sufficient to allow an entity to receive compensation for the TRS Fund.<sup>5</sup> The Commission pointed out that:

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.<sup>6</sup>

The Commission then listed the evidence that it will require from applicants seeking certification or re-certification as Internet-based relay providers.<sup>7</sup> Notably absent from this list is any requirement that an entity be certified as a common carrier by a state. Indeed, given the clear rationale set forth by the Commission for why state certification is an inadequate test for certification by the Commission, it would seem that the Commission would have specifically stated that state certification as a common carrier is not required. However, in the proposed

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<sup>3</sup> *Id.* at ¶ 95.

<sup>4</sup> *Id.* at ¶ 96.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at ¶ 97.

rules, the Commission continues to list as a requirement for certification at Section 64.606(a)(2)(iv) “demonstration of the provider’s status as a common carrier.” It is, of course, possible for an entity to be a common carrier without obtaining state certification. Section 153(11) of the Communications Act defines a common carrier as “any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy....”<sup>8</sup> The D.C. Circuit Court of Appeals has explained that an entity fits into this definition if it: (1) holds itself out to serve indifferently all potential users, and (2) allows customers to transmit intelligence of their own design and choosing.<sup>9</sup> Thus, an entity committed to holding itself out consistent with this definition should be able to be certified as an Internet-based relay service provider by the Commission without requiring prior certification by a state.

Several commenters noted this inconsistency and asked the Commission to clarify whether state certification is still required for an entity to be certified by the Commission to be an Internet-based relay provider.<sup>10</sup> Malka joins these other commenters in requesting that the Commission clarify that state certification as a common carrier is not required by an applicant seeking certification under the Commission’s proposed new certification rules. As the Commission has clearly explained, state certification did nothing to protect against abuse of the

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<sup>8</sup> 47 U.S.C. § 153(11). *See also* 47 U.S.C. § 225(a)(1) defining a common carrier as “any common carrier engaged in interstate communications by wire or radio as defined in Section [153] and any common carrier engaged in intrastate communication by wire or radio, notwithstanding Sections [152(b)] and 221(b).”

<sup>9</sup> *National Association of Regulatory Commissioners v. FCC*, 533 F. 2d 601 (D.C. Cir. 1976)(quoting *National Association of Regulatory Commissioners v. FCC*, 525 F. 2d 630, 641, n. 58 (D.C. Cir. 1976).

<sup>10</sup> *See* Comments of Hamilton Relay, Inc. at p. 8; Comments of Sorenson Communications, Inc. at p. 6; Comments of Purple Communications, Inc. at p. 5.

TRS Fund.<sup>11</sup> For new entrants, state certification is an added expense which may serve no useful purpose for the business plan of an Internet-based relay provider. As the Commission pointed out, state certification is not directly related to the provision of Internet-based relay services.<sup>12</sup> Therefore, the Commission should specifically rule that state certification is not a requirement for certification for Internet-based relay providers.

**III. THE COMMISSION SHOULD CLARIFY THAT AN ENTITY SEEKING CERTIFICATION IS PERMITTED TO LICENSE FACILITIES FROM ANY COMPANY THAT CAN PROVIDE IT A PLATFORM THAT WILL ENABLE THE ENTITY TO MEET THE REQUIREMENTS OF THE COMMISSION'S RULES**

In the *FNPRM*, the Commission added as a requirement for certification “proofs of purchase or license agreements for use of all equipment and/or technologies, including hardware and software, used by the applicant for its call center functions, including but not limited to, ACD, routing, call setup, mapping, call features, billing for compensation from the TRS fund, and registration.”<sup>13</sup> In its comments, ASL Holdings, Inc. interprets this requirement as obligating an applicant for certification to engage in a licensing agreement only with a certified provider.<sup>14</sup> Malka is unable to find anything in the *FNPRM* to support this interpretation. Indeed, such an obligation would stifle innovation, and the Commission has recognized that new entities in the TRS service have spurred innovation.<sup>15</sup> Therefore, Malka requests that the Commission clarify that an entity seeking certification may obtain a licensing agreement with any company that can provide a platform capable of enabling the applicant to meet the operational requirements set forth in the Commission’s rules.

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<sup>11</sup> *FNPRM* at ¶ 96.

<sup>12</sup> *Id.*

<sup>13</sup> *FNPRM* at ¶ 97.

<sup>14</sup> Comments of ASL Holdings, Inc. at 4-5.

<sup>15</sup> *FNPRM* at ¶ 2.

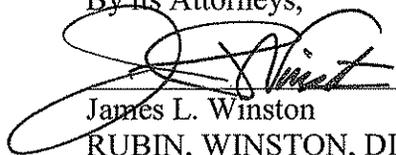
#### **IV. CONCLUSION**

MCG is a company founded by a Deaf individual who has demonstrated a long term commitment to improving the lives of other Deaf individuals. MCG has a demonstrated record of being able to identify individuals in need of VRS, and has arranged for them to receive that service. MCG has made great progress in developing into a company capable of being certified as a VRS provider. MCG requests that the Commission clarify the above identified issues so that MCG can continue its efforts to become a certified provider with a clear understanding of the certification requirements.

Respectfully submitted,

**MALKA COMMUNICATIONS GROUP, INC.**

By its Attorneys,



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