Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: Secretary, FCC
For: The Commission

REPLY COMMENTS OF HAMILTON RELAY, INC.

Hamilton Relay, Inc. ("Hamilton"), by its counsel, hereby submits these reply comments in response to the *Further Notice of Proposed Rulemaking* ("*FNPRM*") released April 6, 2011 by the Commission in the above-captioned proceeding.[1] In the *FNPRM*, the Commission seeks comment on proposed certification requirements for all Internet-based Telecommunications Relay Service ("TRS") providers, including Internet Protocol Relay ("IP Relay") and IP-based captioned telephone relay service ("IP CTS").[2] The *FNPRM* seeks to extend to all Internet-based providers many of the new obligations adopted to eliminate Video Relay Service ("VRS") fraud and abuse.[3]

As a provider of various relay services for 20 years, Hamilton takes its role seriously and appreciates the progress the Commission is making in reforming the relay industry to better serve consumers and eliminate abuse. However, while VRS reform may be essential, it does not necessarily follow that extending the new VRS requirements to IP Relay and IP CTS is either necessary or healthy for competition in those services. Hamilton demonstrated in its comments that alternative regulatory

---

[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) ("*R&O and FNPRM*"). References to the proposed rulemaking portion of the *R&O and FNPRM* are referred to herein as the *FNPRM*, and references to the Report and Order portion of the *R&O and FNPRM* are referred to herein as the *Report and Order*.
[2] *See FNPRM* ¶ 95. Hamilton is a provider of IP Relay and IP CTS but not Video Relay Service.
[3] *See generally Report and Order*.

mechanisms are already in place which provide sufficient oversight of IP Relay and IP CTS providers.[4] In addition, as the Commission itself acknowledged in the *FNPRM*, any certification and compliance rules adopted in this proceeding may be interim in nature, and thus Hamilton argued that any such rules would be premature.[5] Hamilton also suggested needed modifications to the proposed rules in the event that the Commission nonetheless decides to adopt such interim rules. The recommended modifications would help eliminate duplicative and particularly burdensome paperwork submissions.[6] Finally, Hamilton explained why a five-year certification renewal process would be preferable to annual updates.[7]

AT&T and others have raised similar concerns, and as set forth below Hamilton supports those comments. In addition, Hamilton agrees with AT&T that the Commission should permit new regulatory reforms sufficient time to work before implementing additional and perhaps unnecessary information collection obligations. At the same time, Hamilton believes that several proposals by American Network, Inc. ("ANI") are overbroad and would be inappropriate in many circumstances as explained below.

I. Other Providers Share Hamilton's Concerns About the Proposals in the *FNPRM*

Hamilton notes that other providers, including AT&T,[8] Purple,[9] Sorenson[10] and Sprint[11] have expressed concern about the burdensome nature of the Commission's information collection proposals in this proceeding.[12] For example, AT&T has expressed significant concerns that the actions proposed in the

---

[4] *See* Comments of Hamilton Relay, Inc. in response to *FNPRM*, CG Docket No. 10-51 at 3-5 (filed June 1, 2011) ("Hamilton Comments").
[5] *See id.* at 5-6.
[6] *See id.* at 6-9.
[7] *See id.* at 10.
[8] Comments of AT&T, Inc. in response to *FNPRM*, CG Docket No. 10-51 at 3-5 (filed June 1, 2011) ("AT&T Comments").
[9] Comments of Purple Communications, Inc. in response to *FNPRM*, CG Docket No. 10-51 at 5 (filed June 1, 2011) ("Purple Comments").
[10] Comments of Sorenson Communications, Inc. in response to *FNPRM*, CG Docket No. 10-51 at 1-2 (filed June 1, 2011) ("Sorenson Comments").
[11] Comments of Sprint Nextel Corporation in response to *FNPRM*, CG Docket No. 10-51 at 3 (filed June 1, 2011).
[12] Even ANI, with whom Hamilton disagrees on other points as set forth below, expresses reservation about "the administrative burdens that [the Commission] may unnecessarily impose

FNPRM exceed reasonable steps to prevent fraud and abuse, and present an unworkable administrative burden.[13] Hamilton agrees.

As AT&T notes, the certification process should focus on the qualifications of the applicant, and should not require information exceeding that which is needed to demonstrate that a provider is qualified to provide Internet-based TRS.[14] AT&T notes, as did Hamilton in its initial comments, that the following proposed submissions are unnecessary to determine the qualifications of an applicant: 1) deeds or leases for each call center operated by an applicant; 2) a list of employees; 3) proofs of purchase or license agreements; 4) employment agreements; 5) subcontracting agreements; and 6) sponsorship agreements.[15] AT&T suggests that, instead of mandating the submission of such documents, it may be reasonable for the Commission to require an applicant to "describe a work force plan and how it will meet the Commission speed of answer requirement rules"[16] and a certified statement "providing a general description of the facilities (and location of those facilities) and technologies that will be utilized to provide Internet-based TRS"[17] to demonstrate the applicant's qualifications. Hamilton agrees with AT&T that the Commission should focus only on collecting information that demonstrates an applicant's qualifications rather than implementing information collection requirements that do not necessarily correlate to an applicant's qualifications to provide relay services.[18]

---

on small businesses." Comments of American Network, Inc. in response to *FNPRM*, CG Docket No. 10-51 at 2 (filed June 1, 2011) ("ANI Comments").

[13] AT&T Comments at 3-5.

[14] *See id.* at 9-12.

[15] *See id.* at 10; Hamilton Comments at 6-8.

[16] AT&T Comments at 10.

[17] *Id.* at 11.

[18] AT&T also argues that the certification requirements should only apply to the applicant's TRS operations, and not other parts of the applicant's business. *See id.* at 14. Hamilton agrees. Information regarding other aspects of the applicant's business is not germane to the applicant's qualifications to provide TRS service, and therefore requiring the submission of such information would be unnecessary and would likely be inconsistent with the Paperwork Reduction Act. 44 U.S.C. § 3506(c). *Accord* Sorenson Comments at 6.

In addition, AT&T opposes "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."[19] Hamilton agrees. Although an Internet-based TRS provider should be required to operate its own call centers and employ its own staff, it should not be *prohibited* from contracting with third parties that operate core components such as call centers under the provider's supervision.

Nor should such third parties be required to obtain federal certification. As Hamilton noted in its comments, requiring third parties to seek federal certification will have a significant negative impact on the regulatory process by splintering responsibility among numerous parties and potentially flooding the system with new applicants seeking certification. In addition, such an approach is likely to lead to enforcement problems due to the number of parties involved and the lack of clarity as to which party bears responsibility for any given core component of a provider's service.[20] Hamilton suggested in its comments that the better approach would be to require a federally certified IP-based relay provider to maintain responsibility for all aspects of its operations, regardless of whether those operations are performed in-house or contracted to third parties.[21]

Accordingly, providers need not own and operate each call center, nor provide all of the "core components" of Internet-based TRS. Rather, they should be permitted to contract with third parties that possess core component operations such as IP CTS call centers. Providers should only be required to demonstrate that they are qualified to provide the service and are ultimately responsible for the service they provide.

II. The Impact of New Regulations Needs to Be Assessed Before Additional and Potentially Unnecessary Regulations Are Adopted

In its comments, AT&T encourages the Commission to allow recently enacted reforms sufficient time to work before imposing a federal certification-only condition.[22] Specifically, AT&T refers to

---

[19] AT&T Comments at 12. *See also* Purple Comments at 8.
[20] Hamilton Comments at 9.
[21] *Id.*
[22] AT&T Comments at 7-8.

numerous relay reforms that have been adopted in the last three years, including: 1) the clarification that providers may not offer financial or other incentives to increase the length or frequency of TRS calls; 2) the imposition of 10-digit number assignment obligations; 3) clarification of how conversation minutes should be measured; 4) clarification that the Interstate TRS Fund does not compensate providers for a variety of different calls; and 5) the obligation on the part of providers to submit minutes of use for reimbursement under penalty of perjury, among other reforms.[23] Hamilton agrees with AT&T that the Commission has developed an array of measures to combat fraud and abuse, and should allow those reforms to take root before imposing additional obligations on providers. Such an approach would reasonably allow the Commission to evaluate whether additional obligations are necessary for IP Relay and IP CTS providers.

III. ANI's Proposals Are Overbroad and Would Not Be Appropriate in Many Circumstances

A. Any Ban on End-user Exclusivity Arrangements Should Not Preclude Competitively Bid State Contracts or Federal Contracts

ANI proposes that the Commission require providers to declare that they have "no agreements that permit them to provide TRS services on an exclusive basis."[24] Hamilton cautions that there are numerous permitted exclusive arrangements at both the state and federal levels that should not be impacted if ANI's proposal is adopted. For example, the vast majority of states undertake a competitive bidding process that ultimately results in the selection of a traditional TRS provider for the state. Such exclusive arrangements have been permitted for 20 years and should continue to be permitted given the competitive bidding process that underpins them. In addition, the Federal Relay service contract is currently an exclusive contract. Accordingly, Hamilton opposes any blanket prohibition on exclusive arrangements. The Commission possesses other tools to deal with exclusive arrangements that are anticompetitive, and should handle such matters on a case-by-case basis.

---

[23] *See id.*
[24] *See* ANI Comments at 5.

B. Restrictions on Proprietary Technology and Products Would Inhibit Innovation

ANI also proposes that providers be required to "declare that they do not distribute, own, or control any proprietary technology or products in connection with the service they offer."[25] Hamilton believes the proposal may be overbroad. Many relay providers, whether Internet-based or not, possess numerous proprietary technology and products, including patented technology and processes, proprietary software, and proprietary call center products and materials. For example, there are numerous proprietary technologies employed by relay providers that are invisible to the end-user, such as switching, database structure, ACD queuing, and even such mundane back-office tasks as time and attendance tracking. Such proprietary technology and products should not be construed as *per se* violations as ANI suggests. Additionally, providers may distribute or control proprietary technology under license as part of it service offering.

Moreover, the prohibition that ANI seeks would essentially inhibit innovation, to the detriment of consumers. Innovation in the relay industry should be encouraged as directed by the Communications Act,[26] so long as the technology meets interoperability and interconnection requirements under relevant Commission rules.

Consequently, Hamilton opposes ANI's proposal to the extent that it would prohibit providers from entering into such licensing arrangements or owning or controlling proprietary technology and products in connection with their service offerings.

C. ANI's Technology Compliance Proposals May Not Be Feasible and May Be Inapplicable in Many Instances

ANI also asks the Commission to require applicants to "fully describe their network architecture, including how they are capable of migrating to new technology in the future" and "how their network architecture is configured to comply with new Commission numbering and similar rules in an IP-based

---

[25] *Id.* at 6.
[26] 47 U.S.C. § 225(d).

environment."[27] While seemingly non-objectionable in the abstract, this proposal may be infeasible to implement and, even if implemented, overbroad. It is simply impossible to demonstrate a provider's capability to implement new technology that has not even been required and has not yet been funded for development. To the extent that applicants are required to describe how their service complies with Commission rules, this requirement should be limited to current and applicable rules for the service being provided. In addition, the requirement must not be construed too broadly. For example, ten-digit numbering rules apply to two specific types of relay only (VRS and IP Relay) and not to Speech-to-Speech, traditional TRS, Captioned Telephone Service, or IP CTS. For these reasons, Hamilton opposes ANI's proposal.

Respectfully submitted,

HAMILTON RELAY, INC.

By: /s/ David A. O'Connor
David A. O'Connor
Joshua M. Bercu

Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037
202.783.4141
Its Counsel

June 16, 2011

[27] *Id.* at 6-7.