

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

EXPEDITED PETITION FOR CLARIFICATION

Sprint Nextel Corporation ("Sprint"), on behalf of the Telecommunications Relay Service ("TRS") operations of its subsidiary, Sprint Communications Company L.P., hereby respectfully requests that the Federal Communications Commission ("FCC" or "Commission") clarify its July 28, 2011 decision in the above-captioned docket, *Second Report and Order* FCC 11-118 ("*Second Report*"), in three respects. Sprint asks that the FCC make clear (1) that Video Interpreters ("VIs") who are trained by the provider, who are stationed at the facilities of the provider and who are directly under the VRS provider's supervision are employees regardless of whether or not they are hired directly by the provider; (2) that certificated facilities-based VRS providers will be able to send traffic to other certificated facilities-based VRS providers when they are unable to immediately handle that traffic due to factors outside of their control, e.g., a sudden surge in traffic due to an earthquake, and still be able to bill and receive compensation from the TRS Fund for such traffic as is permitted under Section 64.604(c)(5)(iii)(F)(1-4) of the Commission's Rules, 47 C.F.R. § 64.604(c)(5)(iii)(F)(1-4); and, (3) that the VRS provider leasing an Automatic Call Distribution (ACD) platform from a third party non-provider need not locate such ACD on its premises or use its own employees to manage such platform. In support thereof. Sprint states as follows.

In the *Second Report* (at ¶2), the FCC determined, *inter alia*, that all Internet-based TRS (“iTRS”) providers must “obtain certification from the Commission in order to be eligible to receive compensation from the Fund” and that in particular “all VRS applicants for Commission certification” must provide documentation that they “lease, license or own, as well as operate, essential facilities associated with TRS call centers and [] employ interpreters to staff those centers at the date of the application.” The FCC found that such requirements were necessary in order to “to ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission’s rules, and to eliminate waste, fraud and abuse through improved oversight of such providers.” *Id.* at ¶ 1.

Sprint currently provides all forms of iTRS services and has been eligible to receive compensation from the TRS Fund by virtue of the fact that it is a common carrier providing TRS service and because it provides traditional TRS services in a number of states pursuant to contracts with those states. 47 C.F.R. § 64.604(c)(5)(iii)(F). Nonetheless, Sprint has supported the requirement that all providers of iTRS services be certified by the FCC in order to enter or remain in the Internet Relay segment of the TRS market. Sprint explained that it was willing to subject itself to the additional regulation that the certification requirement would entail because the FCC, having determined that it has sole jurisdiction over iTRS services, must ensure that the entities that enter this segment of the TRS market comply with the Act and FCC standards. Indeed, as one of the few providers of iTRS services whose wireless and wireline customers must support the Fund through the charges they pay for their services, Sprint believes that more effective FCC oversight of the iTRS providers is absolutely necessary if the FCC is to meet its overarching responsibility 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 iTRS services. FCC oversight of VRS providers is particularly important given the fraud and waste that has plagued the VRS market in recent years.¹

Sprint does not believe, however, that requiring VRS providers that apply for certification to demonstrate that they “lease, license or own, as well as operate, essential facilities associated with TRS call centers and [] employ interpreters to staff those centers at the date of the application” will lessen or eliminate the incentive to engage in fraudulent behavior designed to increase the number of minutes submitted to the TRS Fund Administrator for compensation. As Sprint pointed out in its June 1, 2011 Comments on the *Further Notice of Proposed Rulemaking*, FCC 11-51 released April 6, 2011, recent experience demonstrates that ownership of facilities and employment of interpreters does not deter unscrupulous VRS providers from engaging in fraudulent behavior. *See* Sprint’s Comments at 4.

There are, undoubtedly, many reasons why the incentive to engage in fraudulent behavior is so prevalent in the VRS segment of the iTRS market, including the apparent failure of the previous TRS Fund Administrator to closely scrutinize the minutes being submitted by providers for unusual trends. However, Sprint believes that a primary cause is the fact that the FCC has yet to develop a rate-setting methodology that would drive VRS rates to costs.² Indeed, as long as

¹ Unlike other segments of the iTRS market, the provision of VRS appears to particularly prone to fraudulent and other highly suspect “marketing” schemes by certain providers designed to increase the number of VRS minutes for which these providers are paid from the Fund.

² Sprint has recommended that the FCC adopt a competitive bidding process to produce cost-based rates. *See* Sprint’s Comments at 15-16 filed August 18, 2010 on the Notice of Inquiry, 25 FCC Rcd 6012, (June 28, 2010). Sprint has also recommended that the FCC require that stand-alone VRS providers contribute to the TRS Fund, perhaps based on the number of minutes they submit to the Fund Administrator on a quarterly or semi-annual basis. VRS providers would be authorized to recover their contributions from their users. Alternatively their owners could elect to absorb such costs. Adopting such a requirement may provide an incentive for stand-alone VRS providers to moderate their now insatiable demands for higher VRS compensation rates. *See*, Sprint’s *NOI* Comments at 14-15 and 11-12.

compensation rates are above the costs that VRS providers are allowed to recover from the TRS Fund, a strong incentive for unscrupulous providers, even if they provide VRS through their own facilities, to fraudulently “pump” VRS minutes will continue to exist.³

Sprint is concerned, therefore, that the FCC has elected to ignore the pricing mechanism and rigorous oversight of VRS providers, including requiring all VRS providers to submit to annual audits of their operations to control fraud in the provision of VRS in favor of a facilities-based licensing requirement. Such a requirement could well force legitimate VRS providers that currently provide VRS on a resale basis, such as Sprint, from this segment of the iTRS marketplace.⁴

Nonetheless, Sprint is not asking the FCC to reconsider its decision in this regard.⁵ Rather, Sprint is reviewing the economic and business case for becoming a facilities-based VRS provider. In this regard, Sprint has been exploring various options that would enable it to develop a cost model consistent with its current position in the VRS segment of the iTRS market and in doing so Sprint realizes that it needs a better understanding of three of the newly imposed requirements for obtaining VRS certification.

³ Compare National Broadband Plan at 142 (“Most ICC [intercarrier compensation] rates are above incremental cost, which creates opportunities for access stimulation, in which carriers artificially inflate the amount of minutes subject to ICC payments”).

⁴ As the FCC is well aware, Sprint has provided VRS using a resale business model for a number of years. In Sprint’s case, such business model makes the most sense, not only for itself but for the TRS Fund as well. Given its small share of the 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. And, as the FCC also knows, Sprint has never engaged in the types of fraudulent activities that have plagued the VRS market.

⁵ Should other parties ask the FCC to reconsider its decision here, Sprint may well support such petitions.

First, although the Commission will now require all entities seeking such certification to employ their own VIs, *see Second Report* at ¶ 15, the FCC does not define the term “employee.” VRS providers with *de minimis* market shares will need flexibility in the way it develops its VI work force. Sprint, for example, should not have to hire VIs on a permanent basis to accommodate anticipated growth in the amount of VRS traffic it expects to handle only to terminate their employment a few months later in the event that the projected growth fails to materialize. Rather, Sprint and other VRS providers should be able to obtain services of VIs on a temporary basis or pursuant to a contract of short duration with an agency specializing in finding jobs for interpreters fluent in American Sign Language so as to better match its staffing needs with the amount of VRS traffic it is actually processing. As long as such temporary workers are trained by the VRS provider, stationed at the VRS provider’s facilities and under the VRS provider’s direct supervision and control, the FCC’s goal of eliminating fraud should not be compromised. Of equal importance, allowing the VRS the flexibility in staffing its VRS centers should help minimize their costs which should also be a goal of the FCC.

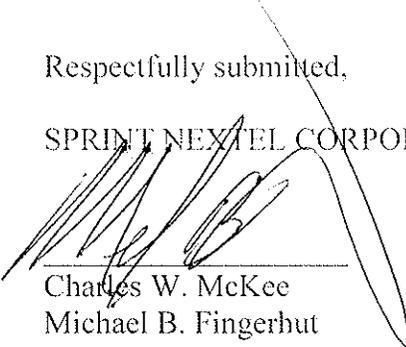
Second, Sprint asks that the FCC confirm its understanding that under the new rules a VRS provider that is currently eligible under 47 C.F.R. § 64.604(c)(5)(iii)(F)(1-4) to receive compensation from the Fund for the VRS traffic it handles regardless of the fact it obtains the VIs and facilities from another certified VRS provider would be able to continue such arrangements as a means to handle roll-over traffic. Sprint’s understanding here is based on the fact that the FCC did not rescind or otherwise modify Section 64.604(c)(5)(iii)(F)(1-4). And the FCC was clearly correct in maintaining the option available under this rule. Indeed, continuing to allow a certificated VRS provider the ability to roll-over VRS traffic to another certificated provider is clearly in the public interest since it would enable a VRS provider with a *de minimis*

share of the market to handle an unexpected and temporary surge in traffic such as that experienced by wireline and wireless carriers in the immediate aftermath of the earthquake that occurred on August 23, 2011. Moreover, the ability to provide VRS by utilizing the services of another certified provider would enable a VRS provider to effectively manage growing traffic volumes as it seeks to hire more VIs and increase the number of work stations consistent with such growth. Plainly, increased staffing and work station expansion cannot occur overnight.

Third, Sprint requests a Commission determination as to whether leasing an automatic call distribution platform from a platform vendor not affiliated with any VRS provider would be acceptable under the FCC's new certification rules even if such ACD is located at that vendor's premises and is connected to the work stations at the VRS provider's center via the Internet. Again allowing a VRS provider such flexibility would enable the provider to hold down its costs and would not undercut the bases for the imposition of the ACD lease or ownership requirement.

Respectfully submitted,

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