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In the Matter of Structure and Practices of the Video Relay Service Program
Telecommunications Relay Services and Speech-to-Speech Services for Individuals
with Hearing and Speech Disabilities

CG Docket No. 10-51

CG Docket No. 03-123

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
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Washington, DC 20554

Summary

The Federal Communications Commission (“Commission”) in its efforts to fulfill several overarching principles governing the provision and regulation of TRS as set forth by Section 225 of Title IV of the Telecommunications ACT (“ACT”) has requested input from the public in its recent Further Notice of Proposed Rulemaking (FNRP released December 15, 2011) regarding the structure and practices of the Video Relay Service program. Specifically, the Commission seeks to ensure that VRS is available to all eligible users, is provided efficiently, offers functional equivalence, and is as immune as possible to the waste, fraud, and abuse that threaten its long-term viability. In short the Commission aims to ensure that the program is effective, efficient, and sustainable by addressing 5 key areas:

- (1) VRS accessibility: Broadband affordability
- (2) VRS access technology standards: insufficiently developed
- (3) VRS compensation mechanism: unpredictable and inefficient
- (4) Structure of the VRS industry: suboptimal and inconsistent with goals of the Act
- (5) Current VRS compensation mechanism: Waste, fraud, and abuse.

TABLE OF CONTENTS

SUMMARY.....	1
TABLE OF CONTENTS.....	2
INITIAL COMMENTS.....	3
BACKGROUND.....	10
CA QUALIFICATIONS.....	12
CA TRAINING.....	14
TECHNOLOGY and CONCLUSION.....	15
APPENDIX A.....	16
APPENDIX B.....	18

Initial Comments

In its recent FNPR under Mandatory Minimum Standards a. Operational Standards the Commission seeks comments on specific training requirements or qualifications to be established for VRS CAs as set forth in section 64.604(a)(1) of their rules to ensure that providers maintain a certain level of CA qualifications for all calls handled and if specific qualifications are imposed on VRS CAs, what affect would this have on the current pool of VRS CAs who may or may not meet those qualifications. Moreover, what affect, if any, would different qualifications have on the ability of VRS providers to comply with the speed of answer requirement.¹ Furthermore, the Commission asserts that the cost of the CA is not only the highest expense to providing VRS, but constant as well.² While it is true that the cost of the CA is the highest, it may not be true that it is constant or that the monies received from the TRS fund (“Fund”) to cover the cost of the CA is being sufficiently used towards the CA³.

The Commission is poised to reform VRS in order to ensure that the program is effective, efficient, and sustainable, while I believe setting specific qualifications on VRS CAs will assist in improving the VRS program, there are other areas of concern that require the attention of the Commission, specifically matters regarding occupancy and utilization expectations imposed on interpreters as well as the need for Deaf interpreters in VRS. I urge the Commission as many others have done to reconsider its “hands off” policy regarding occupancy and utilization percentages that VRS providers impose on their interpreters, moreover, to make

¹ 12/15/11 Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities. CG Docket Numbers 10-51 and 03-123. FCC 11-184. FNPRM. 6. Mandatory Minimum Standards a. Operational Standards (#) 86. of FNPRM.

² 12/15/2011 Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities. CG Docket Numbers 10-51 and 03-123. FCC 11-184. FNPRM. 4. Funding iTRS access technology C. Instituting a More Efficient Compensation Mechanism and Reducing Incentives for Waste, Fraud, and Abuse. (#) 55.

³ See APPENDIX A

the use of Deaf interpreters mandatory in order to ensure effective communication. While addressing concerns surrounding technical matters, accessibility, and compensation mechanisms that foster waste, fraud, and abuse are very important, the VRS CA is just as valuable a component for the provision of functionally equivalent telecommunications access as any other, thus the matter of ensuring effective communication by addressing concerns related to the performance expectations between employers and interpreters merits a place in the Commission's goals for reforming the VRS program.

Below are explanations of how the Commission is running the risk of inadvertently perpetuating an unsound structure if doesn't address concerns regarding employer/CA relations and the need for Deaf interpreters in VRS.

Area: Effective

The Commission does not need to be reminded, but for the benefit of the public, one of the main roles that the VRS CA serves in the provision of functionally equivalent telecommunications access is the provision of effective communication between Deaf and hearing users, and without effective communication between parties using VRS, functional equivalency is not achieved. VRS in its developmental stages had attracted some of the nation's best sign language interpreters to perform the duties specific to a VRS CA, and as a result users of VRS experienced effective communication in greater frequency. Today, that is no longer the case. Many of the more experienced and qualified interpreters have left the VRS industry in favor of community work and other work settings that aren't as abnormally demanding as working in VRS. Those who continue to work in VRS in many cases work very limited hours to avoid burnout and injury. As a result of the shortage of qualified interpreters willing to work in VRS, more unqualified and inexperienced interpreters have been hired. Therefore, what consumers of VRS are experiencing at a high frequency, albeit statistical data at a larger scale is not currently available, is

ineffective communication. Changes made to the rules regarding the qualifications of the VRS CA can help ensure effective communication happens, but without altering other components to the system such as occupancy and utilization expectations imposed on the CA, providers will not be able to meet the new rules intended to ensure effective communication.

The absence of Deaf interpreters working as CAs is another factor for the lack of consistent provision of effective communication. Hearing interpreters regardless of their years of experience, education, training, and fluency in the languages and/or modes of communication used in VRS cannot meet the communication needs of every Deaf and/or Hard of hearing VRS user. By virtue of our hearing abilities we inherently lack very fundamental cultural and linguistic elements that trained Deaf interpreters readily possess. It is my understanding that nearly all VRS providers do not use Deaf interpreters because the current compensation methodology does not consider it a cost eligible for reimbursement by the Fund.

Under Speech to Speech (STS) rules, certain exceptions are made regarding the role of the CA in order to help the user achieve communication.⁴ The CA is allowed to interact with the users of STS in a way that better facilitates communication without interfering with the STS user's independence. Because of the cultural and linguistic variations and complexities as well as other factors that impede communication among VRS users, a trained Deaf interpreter is often times better equipped than a hearing interpreter to meet the communication needs of VRS users. As a VRS trainer and call rater, I witnessed many interpreters interact with VRS users in a manner that did interfere with the caller's independence. This is mainly because the interpreter did not receive training that enables them to interact with VRS users in a manner that didn't interfere with their independence, but also because they were too tired and overly stressed to abstain from interfering with the user's independence. Therefore, the Commission could ensure that it is meeting its responsibilities as set forth by the

⁴ § 64.604 Mandatory minimum standards (2) Confidentiality and conversation content.(ii)

ACT by mandating under TRS Mandatory Minimum Standards the use of Deaf interpreters in VRS hence allowing the cost of employing Deaf interpreters to be eligible for reimbursement from the TRS fund under CA related expenses. Furthermore, users will experience greater efficiency and effectiveness when using VRS and the Commission can rest assured that it is meeting its responsibilities of ensuring functionally equivalent telecommunications access via VRS.

Area: Efficient

Again, because more experienced and qualified interpreters are not working in VRS due to overly demanding occupancy metrics, unhealthy break systems, and other unfavorable working conditions, efficiency depending on the interpretation of the Commission, is threatened at the communication level. Moreover, the lack of Deaf interpreters serving as CAs contributes to further inefficiency.

As a result of an increase in the number of interpreters who do not possess the skills necessary to interpret effectively, the time it takes to process calls are unnecessarily extended. Often times repeated calls on the same subject to the hearing party are necessary because of misunderstandings and miscommunications that occurred in previous calls handled by interpreters who are not qualified or experienced enough to handle calls efficiently.

There are callers who are in danger of discrimination under the per user compensation mechanism because of the greater amount of time needed to process their calls effectively. These are callers who pose a challenge for qualified and experienced interpreters and an even greater linguistic and cultural challenge for inexperienced and unqualified interpreters due to even greater linguistic and cultural complexities as well as other factors that impede communication. What measures does the Commission consider to protect these

users from discrimination if VRS operates under the per user compensation model?

A leading VRS provider's platform at one time inadvertently enabled the CA to pick callers from the queue. VRS users who were deemed culturally and linguistically challenging were often overlooked in favor of those who were deemed "easier" to work with. Hence the Commission prohibited the practice of cherry picking, and the VRS provider altered its platform to prevent interpreters from the ability to cherry pick incoming calls. This, however, didn't solve the problem of ineffective and inefficient communication. Moreover, interpreters can still reject a call if they wish to do so.

My mother is Deaf and a user of VRS. I recorded many of her VRS calls for personal research on the subject of pattern recognition. She is a user considered challenging especially for the unqualified and inexperienced interpreter. What I observed is that one of two things happened. One, the interpreter kept the call and processed it impatiently and oppressively or two, through pattern recognition the interpreter detected a challenge and quickly handed her off to another interpreter. Amazingly, this was done with very little interaction between the interpreter and my mother. At one time she was handed off four times before a fifth interpreter kept the call and processed it in its entirety. This is a simple case of profiling based on pattern recognition, an executive function found within our frontal lobes. In either case the calls were not handled efficiently. Although I cannot prove that the interpreters were indeed unqualified or inexperienced, I speculated that was the case based on their lack of interpreting skills or in the case of interpreters who did possess the interpreting skills necessary, that working conditions are such that they were too emotionally, mentally, and/or physically exhausted to work with VRS users who may further exhaust them. Furthermore, a VRS CA's ability to process information in order to decode and encode messages from one language to another deteriorates after 20 minutes. Hence, the quality of the work and the accuracy of the messages are further

degraded regardless of how experienced and qualified the interpreter is.

The Commission seeks to minimize waste by addressing efficiency within the structure of the VRS program, if it continues to opt for a “hands off” policy towards employer/employee relations relative to working conditions such as occupancy expectations, then wasteful practices relative to Fund monies going towards services rendered poorly within the VRS program will persist. Under section 151 of the ACT, it states, “...a rapid, efficient nationwide communication service...” and “...to the extent possible and in the most efficient manner...” I urge the Commission to include in its efforts to fulfill its responsibility by taking action that would change certain aspects of employer/employee relations that adversely impact efficiency, and thereby cause the Commission to fall short of meeting its regulatory goals and obligations. With respect to interpreter related concerns, the previous members of the commission ignored the pleas dating back to the pioneering days of VRS by our professional organization RID and individual members of the profession. It is my hope that this Commission does not continue in the previous Commission’s legacy.

Area: Sustainable

Today (01/18/2011) a fellow colleague who is on a working vacation at a call center owned and operated by one of the top providers of VRS, reported that she and other fellow interpreters had to microwave bags full of rice to use as heating pads for their hands and wrists to alleviate the pain of prolonged interpreting due to the lack of adequate break times. If this isn’t cause for concern for the sustainability of the program, I don’t know what is.

I have included results of a survey developed for interpreters working in VRS, which can be found in Appendix B. In question number 4 out of 85 respondents, 70 either strongly agreed or agreed that they experienced physical, mental, and/or emotional pain from working in VRS due mainly to the demands imposed

on them by their employers.

In the first five years of my career as a video interpreter, I was physically able to work for long periods of time, but the accuracy of the messages was threatened because of interpreting for more than 20-30 minutes per hour. Today, I choose not to work more than 4 hours per day or more than 20 hours per week in because of the toll that VRS work takes on me physically, mentally, and emotionally. I cannot stress enough how the Mandatory Minimum Standards regarding the VRS CA's qualifications of being able to interpret both accurately and impartially are not being fulfilled sufficiently not only because of the higher instances of using inexperienced and unskilled labor, but because of experienced and skilled interpreters being overworked as well as the lack of Deaf interpreters serving as linguistic and cultural resources to ensure effective communication. If nothing is done to protect one of the most valuable components of functional equivalency, the VRS program's sustainability will continue to be threatened. In essence what will happen if the Commission does not seek ways to involve itself where appropriate in matters related to employer/employee relations specifically to alleviate undue burdens placed on the interpreter to produced beyond what they are humanly capable, is that the more experienced and qualified interpreters will continue to leave the field of VRS due to burnout and/or injuries. In effect, the program will be inundated with inexperienced and unqualified interpreters thereby rendering the VRS program not functionally equivalent at the communication level, and the matter of reducing waste, inefficiency, and ineffectiveness not fully realized.

BACKGROUND

Video Interpreters United (VIU) was founded with the intention of uniting the interpreters working in VRS and to ensure that our voice was heard by those with the power to make changes that protect the viability of VRS to its consumers. Before the organization came to a halt in its potential to make an impact, we reached approximately 375 members comprised of mostly interpreters and some consumers. Our movement was halted for many reasons, but one of the main reasons was the fear whether founded or unfounded of retribution for our participation in steering the future course of VRS provision. Interpreters continue to fear for their jobs and therefore continue to refrain from actively participating in the process for reform. A smaller number of us continue to brave against the forces that suppress our voice, and have created change in many ways, but the industry remains vulnerable to wasteful practices that threaten the sustainability, efficiency, and effectiveness of the program because to date it steers clear of employer/employee relations.

As a pioneer of the VRS program and perhaps one of the first persons to report fraud and abuse of the Fund to the FCC that led to the arrests and convictions of the owners of Viable and others, I appreciate the Commission's efforts to reform the program to better serve its users and its unwillingness to give an unlimited amount of money to VRS providers given their track record for abusing the Fund. However, to think it folly⁵ to make it viable to use the Fund to support the hiring of more interpreters in order to make healthy working conditions possible or to provide the users of VRS added resources for effective communication via a Deaf interpreter as expressed by the appellate court that denied Sorenson's petition for review of the Commission's decision. Grant it the appellate court's statement is in reference to allowing the VRS providers to operate at any cost, be

⁵ http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1018/DOC-310452A1.pdf (page 14 first paragraph.) Specifically that it is folly to suggest section 225 requires that VRS should operate at any cost.

it as it may, it is a somber reality nonetheless of the lack of thorough understanding and sensitivity towards the needs of the interpreters working as CAs and the users of VRS that I hope the Commission doesn't share. But, I can hardly blame the Commission for its reluctance to pour money towards CA-related costs. However, I urge the Commission to not allow historical gross misconduct by some VRS providers from persuading them that the need to ensure that call centers are adequately staffed with both hearing and Deaf interpreters for the purposes of ensuring effectiveness, efficiency, and sustainability is not a legitimate one. Certain measures and requirements can be put in place to ensure that the compensation for CA-related costs is indeed being used towards the CA. Such as complete transparency when reporting CA-related costs.

In December 2009, VIU submitted an *ex parte*⁶ in response to one of the Commission's initial efforts to reform VRS after discovering wide-spread practices of waste, fraud, and abuse. In its *ex parte* VIU suggested something similar to the per user compensation model that now the Commission is considering and seeking comments on. The suggestion VIU made was in the context of a separation of CA from provider and working within a universal platform operated and handled by a neutral entity whose only incentive is to ensure interoperability, effective communication, and unrestricted access for users of VRS. Although I feel that I do not know all that needs to be known to provide a confident response in favor of or against a per user compensation mechanism within the current context of a competitive market or even a bidding market absent of the separation of labor from provider, I gather based on my extensive VRS experience, knowledge, and working for several providers that with certain measures in place relative to CA qualifications requirements, the per user compensation mechanism may be an effective means for reducing waste,

⁶ <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020353122>

fraud, and abuse. However, if it eliminates all other competitors in favor of one to three providers, it may inadvertently disrupt a delicate balance that many stakeholders of both the VRS industry and communities at large have painstakingly worked to create. What I am referring to is the delicate balance of furnishing both the VRS industry and the communities with quality interpreting services while offering interpreters a competitive market.

Qualifications: Minimum Requirements

Below are my recommendations with respect to the comments the Commission seeks relative to the VRS CA's qualifications and training.

Certification: VRS CA should hold some type of sign language interpreting certification issued by a state organization or national organization and have at least 5 consecutive years experience working as an interpreter in professional settings outside of VRS. The experience should be verifiable.

At this time there isn't an interpreter test that sufficiently evaluates skills specific for working in a VRS setting. Therefore, the current certification exams do not adequately reflect the ability of an interpreter to provide effective communication in a VRS setting.

The Commission could put out an RFP from interested parties to bid for the development of one, which the possession of such a certification will serve as a minimum standard required by the TRS rules. When such a test becomes available, all interpreters currently working in VRS as well as those wanting to work in VRS will need to take said exam. VRS interpreters currently working in VRS can be given up to two years to take the exam.

Interpreters who provide additional communication services such as Spanish language VRS need to be temporarily waived from these requirements until a test that certifies their skills is available in order to not disrupt services to VRS users who rely on this particular service as well as to assist the provider in remaining compliant with ASA requirements. However, as an interim, such interpreters can be required to take the Texas State Board of Evaluators Trilingual test. The Commission should be made aware that this test like all others does not adequately test for interpreting skills specific to VRS, and furthermore some of its components are not suitable for interpreters who only use American Sign Language and Spanish. Therefore these requirements will also need to be waived until a test that can adequately evaluate their skills is available.

If the compensation mechanism moves from per minute to per user, VRS providers could be given a higher per user compensation in the form of monetary differentials based on every interpreter they hire who meets the minimum requirements (at this time 5 years experience and a certification by at least one certifying body).

Deaf Interpreters as a requirement to assist hearing interpreters in ensuring effective and efficient communication. The field of Deaf interpreting is quickly growing, but not rapidly enough to meet this requirement. Therefore, this requirement will need to be waived until it can be met.

Eventually, Deaf Interpreters will also need to take a test that certifies their skills set suitable for working in VRS.

Training:

40 hours

Topics may include:

- History of VRS
- Standardized Call Processing Approach that compliments outreach and education material on how to work with a sign language interpreter in VRS to ensure consistent provision of the service. The Commission seeks comments on whether further education and outreach is needed to ensure that the public is educated sufficiently on VRS; how to work with a sign language interpreter when using VRS is a much needed component of such educational and outreach activities.
- Effective and efficient provision of the service
- Cultural sensitivities
- Regulation compliance
- Whistleblower policies
- Managing cumulative secondary trauma

In addition to such topics, there should be annual ongoing and/or refresher trainings to ensure that interpreters are up to date with VRS related topics. VRS providers should have trained personnel available for mandatory periodical stress meetings to help manage cumulative secondary trauma that can lead to burnout and/or misconduct while processing calls.

In the area of technology that could assist in reducing inefficiency and ineffectiveness, I suggest that programs such as pattern matching be implemented within a VRS provider's network to effectively match up interpreters with VRS users similar to how online dating services and other consumer services function. In essence, when registering new users whether active users changing default providers or new to VRS users, a profile can be created for the VRS user that specifies particular communications needs and frequently dialed numbers that can be matched up with an interpreter's specific skills set and experience. While this may be considered services that go beyond the minimum standards required by TRS rules, it is another viable means for reducing waste particularly inefficiency and ineffectiveness. The Commission can seek further input from the public on how or whether this is a viable option for implementation to assist in reducing waste.

CONCLUSION

I applaud the Commission in its past and present efforts to not only reform VRS, but to improve it. Clearly the Commission is not persuaded that the current program and structure is sound, and is steadfast in its commitment to reduce waste, fraud, and abuse. I understand that the Commission may not consider the realm of employer/employee relations within its scope of responsibilities, and I therefore urge the Commission to consider ways to address the concerns relative to the interpreters working in VRS.

Respectfully,
Gina Gonzalez

APPENDIX A: CA-RELATED COSTS
(as reported by VRS Providers)

VRS Per Minute Component Costs as Reported by Providers					
20					
Category	2007	2008	2009	2010	2011
Facilities	\$0.2260	\$0.2056	\$0.2636	\$0.3455	\$0.3797
CA Related	\$2.1070	\$2.0456	\$1.9574	\$2.9270	\$3.4647
Non-CA Related	\$0.4118	\$0.4549	\$0.4792	\$0.6458	\$0.7359
Indirect	\$0.5774	\$0.5417	\$0.4985	\$0.6207	\$0.6509
Depreciation	\$0.3901	\$0.2852	\$0.2067	\$0.2476	\$0.2561
Marketing	\$0.0639	\$0.0249	\$0.0175	\$0.0268	\$0.0281
Outreach	\$0.2321	\$0.2669	\$0.2954	\$0.3307	\$0.3397
Other	\$0.0000	\$0.0000	\$0.0000	\$0.0000	\$0.0000
Return on Investment	\$0.1369	\$0.1110	\$0.0897	\$0.0990	\$0.1073
Total Cost per Minute	\$4.1451	\$3.9358	\$3.8081	\$5.2430	\$5.9620

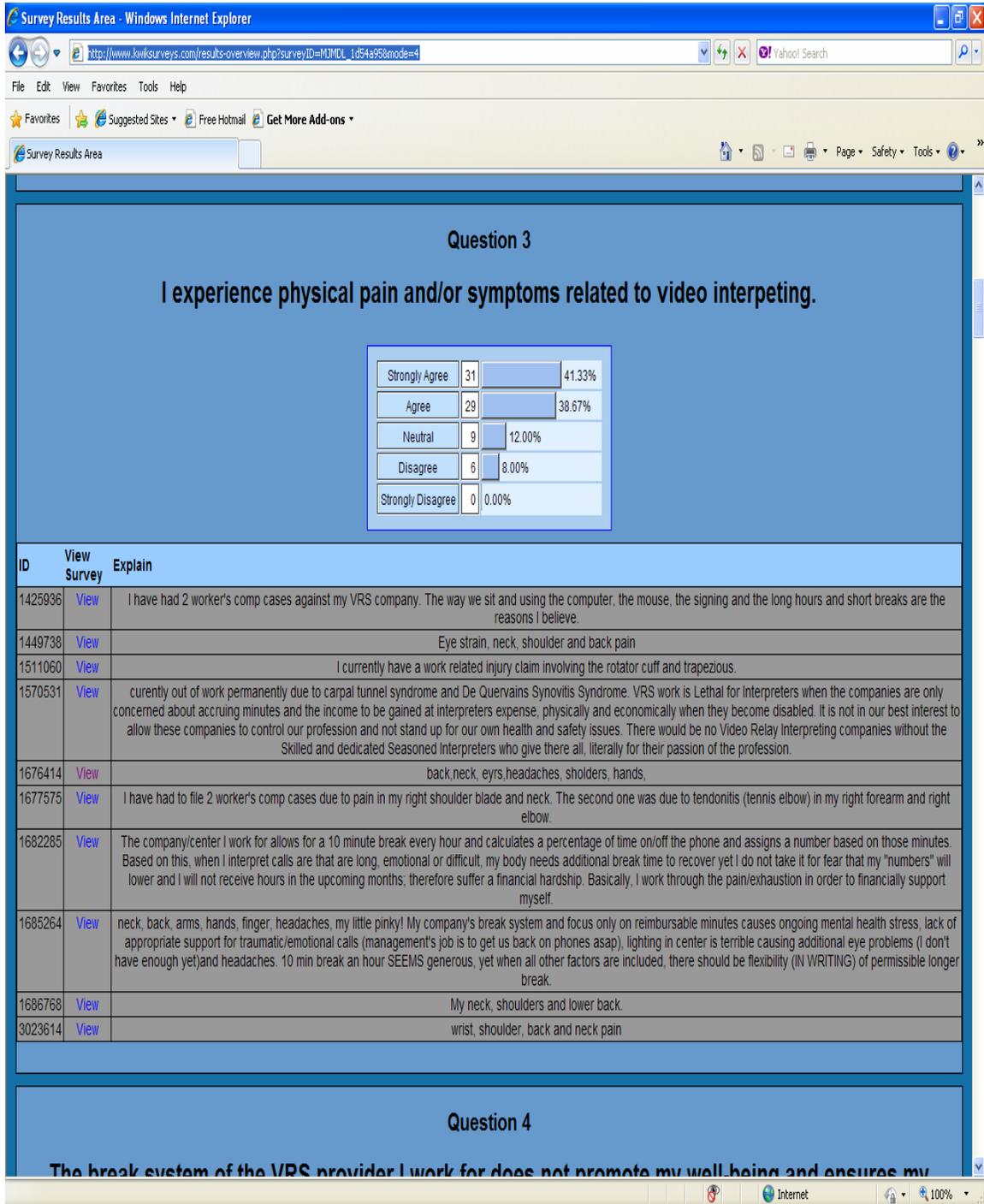
On this slide copied from NECA's 2010 spring report, VRS providers reported CA-related costs as steadily rising since 2007. While the costs rose as reported by VRS providers, neither compensation for the interpreter nor quality at the CA level of the service improved.

APPENDIX B: NECA's Report on CA-Related Costs

VRS Per Minute Change in Component Costs			
22			
Category	2009	2010	2011
Facilities	\$0.2636	\$0.08	\$0.12
CA Related	\$1.9574	\$0.97	\$1.51
Non-CA Related	\$0.4792	\$0.17	\$0.26
Indirect	\$0.4985	\$0.12	\$0.15
Depreciation	\$0.2067	\$0.04	\$0.05
Marketing	\$0.0175	\$0.01	\$0.01
Outreach	\$0.2954	\$0.04	\$0.04
Other	\$0.0000	-	-
Return on Investment	\$0.0897	\$0.01	\$0.02
Total Cost per Minute	\$3.8081	\$1.43	\$2.15

This slide is from NECA's own report. What this suggests is that VRS providers expenses were a lot higher than what they actually needed to provide VRS. Compare CA-related costs as reported by NECA to those reported by VRS providers. However, if healthy working conditions that would ensure effectiveness, efficiency, and sustainability of the program by hiring qualified interpreters and sufficiently staffing call centers are the goal, then CA-related costs as reported by VRS providers would perhaps be indeed valid and reliable.

APPENDIX B: SURVEY RESULTS



Survey Results Area - Windows Internet Explorer

http://www.kwiksurveys.com/results-overview.php?surveyID=M3MDL_1d54a958&mode=4

Survey Results Area

Question 4

The break system of the VRS provider I work for does not promote my well-being and ensures my longevity in the field of video interpreting.

Strongly Agree	38	51.35%
Agree	13	17.57%
Neutral	10	13.51%
Disagree	8	10.81%
Strongly Disagree	5	6.76%

ID	View Survey	Explain
1338514	View	If we miss a break, we are expected to work through until the next scheduled break, not allowing us to be more flexible if we happen to be on a long call, or need to vent or just step away.
1376994	View	While I would like to see more flexibility when it comes to minimum login minutes, my current employer has reasonable requirements, and does not bully the VIs like Sorenson. The issues mainly stem from the fact that it can be difficult, and sometimes impossible, to get a switch when a break is needed.
1425936	View	These 2 statements conflict with each other. The break system definitely does not promote my well being and does not ensure my longevity in the field. (This question needs to be rewritten.)
1449738	View	The current break system works really well. However, I do feel pressured recently to be logged on 80% of the time and billable between 45 and 50% which I don't think I can keep up for very much longer. I am tired.
1570531	View	the two main ones don't, from my experience.
1676414	View	keeps changing and does not allow VIs to take care of themselves due to difficult or emotional calls, including our physical well being
1677575	View	We get a 10 minute break every 50 minutes and we get in trouble if we take longer breaks then that. Also this type of break system is against the industry standard.
1682285	View	see answer above
1685264	View	wish they would just let us take care of ourselves and those that abuse it. deal with accordingly. Instead additional stress occurs which contributes to panic when late or longer breaks are needed for a variety of reasons.
1686768	View	10 min break for 50 mins worked?

Question 5

The call volume I handle is stressful i.e it is above normal levels found in interpreting.

Internet 100%