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
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	

REPLY COMMENTS TO FURTHER NOTICE OF PROPOSED RULEMAKING

Deaf and Hard of Hearing Consumer Advocacy Network
Telecommunications for the Deaf and Hard of Hearing
National Association of the Deaf
Association of Late-Deafened Adults, Inc.
California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc.
Registry of Interpreters for the Deaf
Deaf Seniors of America
National Black Deaf Advocates, Inc.
Alexander Graham Bell Association for the Deaf and Hard of Hearing

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I. INTRODUCTION AND SUMMARY

Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN"), Telecommunications for the Deaf and Hard of Hearing ("TDI"), through TDI's undersigned counsel, National Association of the Deaf ("NAD"), Association of Late-Deafened Adults, Inc. ("ALDA"), California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc. ("CCASDD"), Registry of Interpreters for the Deaf ("RID"), Deaf Seniors of America ("DSA"), National Black Deaf Advocates, Inc. ("NBDA"), and Alexander Graham Bell Association for the Deaf and Hard of Hearing ("AGBA") (collectively, the "Consumer Groups"), submit these reply comments in response to the Federal Communication Commission's ("FCC" or "Commission") Further Notice of Proposed Rulemaking ("*FNPRM*") in the above-referenced proceeding.[1] These reply comments address several topics raised in initial comments, including certain service quality and technical standards such as national certification for Communications Assistants ("CAs"), answer speed, and equipment certification; consumer protection rules and a national

[1] *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*, Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51 and 03-123, FCC 11-184 (rel. Dec. 15, 2011) ("*FNPRM*").

database; outreach to consumers and businesses; and the TRS Broadband Pilot Program ("TRSBPP").

II. SERVICE QUALITY AND TECHNICAL STANDARDS

A. Service Quality

1. The FCC Should Amend its Rules to Require all Communications Assistants to Receive National Certification by a Date Certain

In initial comments, the Consumer Groups recommended that the FCC adopt a phase-in to ensure that all CAs are subject to a national certification requirement.[2] The Consumer Groups recommended RID-NAD National Interpreter Certification because RID-NAD certification is a standard that was developed in close consultation with NAD and independently of video relay service ("VRS") providers. Other parties suggested different certification incentives, or no changes at all.[3] The Consumer Groups support provider-specific training of CAs and encourage providers to engage in such training to exceed the national certification standard, but believe that all CAs should be subject to a baseline such as RID-NAD certification. The phase-in of certification requirements could be tracked by requiring providers to report the percentages of certified and non-certified CAs at specific milestones. While the Consumer Groups agree that financial incentives which reimburse providers for qualifying CA Development costs may provide additional incentives for providers to increase CA quality,[4] any such incentives should be in addition to the minimum requirement of national certification for all CAs. The FCC should amend Rule 64.604(a)(1) to require RID-NAD certification of all CAs by a date certain.

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[2] Comments of Consumer Groups at p. 11 ("Consumer Group Comments").

[3] Comments of ASL Services Holdings, LLC at pp. 23-24 (FCC should establish a "pre-Certified Interpreter Direct Development Program") ("ASL Comments"); Comments of Sorenson Communications, Inc. at p. 81 (FCC should not establish specific training qualifications for CAs or expand requirements in rule 64.604(a)(1)) ("Sorenson Comments").

[4] ASL Comments at p. 23.

The Consumer Groups recognize concerns that RID-NAD certification is an English-ASL certification and needs to be amended to accommodate ASL-Spanish bilingual speakers.[5] The Consumer Groups are committed to working with the FCC during the phase-in period to either amend RID-NAD language to include certification for ASL-Spanish interpreting or develop an independent ASL-Spanish interpreting national test. They are also committed to developing appropriate standards to ensure CA competency for deaf or hard of hearing individuals with mobility disabilities and support the implementation of a "Sign-to-Sign" service.[6] Because the Consumer Groups have proposed that the national certification requirement be phased in over a period of time, we believe that these concerns can be addressed prior to all CAs being required to possess national certification.

2. Improve Speed of Answer

The current speed of answer benchmark for VRS providers is that 80% of relay calls are to be answered within two minutes, measured on a monthly basis.[7] The Consumer Groups support moving the speed of answer benchmark to 80% of relay calls being answered within 30 seconds as recommended by another commenter[8] and that the speed-of-answer calculation include abandoned calls and be measured on a daily rather than monthly basis (exactly how TRS speed of answer is measured).[9] As explained in their Comments, while deaf and hard of hearing individuals have tolerated a two minute wait for answers from a VRS CA since 2007, hearing callers have indicated an unwillingness to wait for any VRS CA to answer.[10] Moreover, the

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[5] ASL Comments at p. 27.

[6] *See* Comments of Cerebral Palsy and Deaf Organization at p. 2.

[7] *See* 47 C.F.R. § 64.604(b)(2)(iii).

[8] Comments of Purple Communications at p. 18 ("Purple Comments").

[9] *See* 47 C.F.R. § 64.404(b)(2)(ii)(B) & (C).

[10] Consumer Groups Comments at p. 12.

Consumer Groups understand that the majority of VRS calls are already answered within 30 seconds and therefore this proposed answer speed benchmark is feasible. Accordingly, the Commission should now, after five full years, require a more functionally equivalent speed of answer benchmark as soon as possible.

B. Technical Standards

The Consumer Groups support the development of technical standards for equipment, including hardware and software, separately from the development of service standards.[11] Separate standards will promote functional equivalency and should further innovation. Standards can be developed and updated through an industry-standards setting organization[12] with input from consumer representatives, although minimum standards should be adopted by the Commission and updated periodically to address changes in technology.[13] Minimum standards should include a requirement for both VRS service and equipment to be compatible with the NENA i3 Solution to ensure access to NG-9-1-1 services.[14] The Commission should also set a deadline for implementing standards, and the Consumer Groups support a 2-year phased-in implementation.[15]

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[11] *See e.g.*, ASL Comments at pp. 19-22 (suggesting bifurcation of service and equipment standards); Purple Comments at p. 14 (recommending multiple categories for technology).

[12] *See e.g.*, Comments of Convo Communications, LLC at pp. 21-22 ("Convo Comments") (mentioning the Institute of Electronics and Electrical Engineers); Sorenson Comments at p. 66 (suggesting coordination with third parties to develop a SIP standard); Purple Comments at pp. 15-17 (recommending third party certification for technology); Comments of CSDVRS, LLC at pp. 43-44 (suggesting development of baseline standards) ("CSDVRS Comments").

[13] *See* Comments of NeuStar, Inc. at p. 4 (describing access technology moving towards use of gateways for routing traffic) ("NeuStar Comments").

[14] Comments of Rehabilitation Engineering Research Center on Telecommunications Access at p. 12.

[15] CSDVRS Comments at p. 44 (recommending 2-year timeline). *See also*, Convo Comments at p. 22 (recommending 3-year timeline); Sorenson Comments at p. 74 (recommending phased transition).

As detailed in the Consumer Group Comments, the Commission should require "off-the-shelf" equipment (as well as the equipment and software currently provided by VRS providers) to be interoperable.[16] Interoperability requirements will ensure that consumers can seamlessly use either equipment issued by VRS providers and/or off-the-shelf equipment for VRS services. Moreover, the Commission can ensure full compliance with interoperability and other technical standards by overseeing implementation of equipment standards.[17] The Consumer Groups however do not suggest establishing a priority for interoperability and consumer data portability standards over equipment portability standards[18] because both types of standards are critical for functional equivalency.

III. ADDITIONAL CONSUMER PROTECTION RULES TO DEVELOP REGARDLESS OF RATE DESIGN (SECTION V.)

The Commission should adopt certain additional consumer protection rules regardless of the rate design it establishes for VRS services. As detailed in the Consumer Group Comments, the Commission should require subscriber authorization to change relay providers, and the verification process should be recorded and maintained with full confidentiality protection by the provider for at least two years, either in its entirety in electronic, audio and/or video format, as applicable.[19] Requiring VRS providers to maintain verification records will allow the Commission or the TRS Fund Administrator to audit the process[20] and enforce its rules, including through a complaint process.[21] The Consumer Groups recommend that a straight-

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[16] Consumer Group Comments at p. 14.

[17] ASL Comments at pp. 20-21 (recommending equipment approval similar to Part 15).

[18] Sorenson Comments at p. 70 (suggesting prioritization).

[19] *See* Consumer Group Comments at pp. 16-18.

[20] CSDVRS Comments at p. 49.

[21] Sorenson Comments at p. 87.

forward complaint filing process be developed so that consumers are able to readily understand and file complaints (preferably with the option to file video complaints in American Sign Language). Complaints should be handled promptly, and the Commission might require providers to respond within 30 days of receiving a complaint like the FCC's cable captioning complaint procedures.[22] In addition, the Commission should devote additional staff and resources to implement and oversee all VRS consumer protection rules.[23]

The Consumer Groups agree that the TRS Fund should not support more than one database[24] and that the iTRS database should be modified to include any information the Commission finds is necessary to implement a broadband pilot program, track additional data to measure and evaluate VRS use, implement iTRS numbers for hearing contacts to engage in point-to-point calls with VRS users, and/or implement a revised VRS compensation methodology. Just as VRS providers must be subject to strict safeguards to protect VRS users' privacy, so too must the iTRS database administrator be subject to privacy requirements. Any rules the Commission adopts to apply CPNI requirements to VRS providers should similarly apply to the database administrator.

In addition to CPNI-type protections, the Commission should limit access to the information contained in the iTRS database. The Consumer Groups agree that only appropriate FCC staff,[25] the TRS Fund Administrator, and the database administrator should have complete access to the iTRS database.[26] All others, including VRS providers, should have limited access

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[22] *See* 47 C.F.R. § 79.1(g).

[23] *See* Consumer Group Comments at pp. 6-8.

[24] NeuStar Comments at pp. 2-3.

[25] For example, complete access to the iTRS database might be limited to FCC staff assigned to working committees evaluating the VRS program administration.

[26] Sorenson Comments at p. 61.

to only that information necessary to the task that they are authorized to perform. The Commission should adopt a rule setting forth this general principle of limited access, but the details should be memorialized in an agreement between the database administrator and each VRS provider that accesses the database. VRS certification should be contingent on compliance with CPNI-type protections, database security protocols, and the agreement between the provider and the administrator. By making these privacy protection measures a condition of certification, the Commission can better enforce compliance with these protections by revoking VRS certification for egregious violations of these requirements.

The Consumer Groups also support recommendations for the Commission to establish a working committee (or reconstitute a committee) comprised of Commission staff, the TRS Fund Administrator, industry representatives, and organizations representing deaf and hard-of-hearing individuals to evaluate the VRS industry and the program administration.[27]

IV. OUTREACH TO CONSUMERS AND BUSINESSES

The Consumer Groups and other commenters support the FCC's plans for a neutral third party to handle non-brand name outreach and education for VRS.[28] As set forth in the Consumer Group Comments, extensive outreach to *all* Americans to build familiarity and acceptance of VRS nationwide continues to be needed, including educating individuals who are deaf, hard of hearing, deaf-blind, speech-disabled, and deaf with a mobility disability about the various services that are available for their use, the equipment necessary to use such services and the full range of providers available to offer service as well as educating businesses and individuals in

[27] Convo Comments at p. 17; Comments of Healinc Telecom, LLC at p. 9 ("Healinc Comments").

[28] *See e.g.*, Purple Comments at p. 35 (suggesting that existing outreach efforts of VRS providers be leveraged); Healinc Comments at p. 8 (supporting FCC collaboration for uniform messaging), Comments of Video Relay Services Consumer Association at p. 5 (supporting an independent outreach program) ("VRS Consumer Association Comments").

other sectors of the general community.[29] While providers have conducted and should continue to conduct outreach activities which market their individual brands, an independent third party outreach program will be able to provide wide distribution of neutral, uniform information about VRS to *all* consumers and will not be limited to providing information to individuals who are deaf, hard of hearing, deaf-blind, speech-disabled, and deaf with a mobility disability.[30] The Consumer Groups believe that third party outreach can be effective in helping deaf and hard of people find jobs as businesses may be more willing to hire deaf and hard of hearing employees knowing that they have full access to telecommunications. The Consumer Groups recognize that co-partnering and separate initiatives are also needed from a multiple stakeholders like the U.S. Department of Commerce, U.S. Department of Labor, U.S. Chambers of Commerce, Small Business Administration, Rehabilitation Service Administration, and many others.

V. TRS BROADBAND PILOT PROGRAM

Like several commenters,[31] the Consumer Groups support establishing a TRSBPP to provide discounted broadband Internet access to low-income Americans who are deaf, hard of hearing, deaf-blind, speech-disabled, and deaf with a mobility disability who use ASL as their primary form of communication.[32] However, the Consumer Groups do not support the proposal to limit TRSBPP to one connection per household.[33] Rather, the Consumer Groups suggest that TRSBPP be implemented to allow eligibility for each ten-digit number. Such implementation

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[29] Consumer Group Comments at pp. 32-35.

[30] *See* Sorenson Comments at p. 21 (arguing that providers are better situated to reach deaf, hard-of-hearing, and speech-disabled community).

[31] *See e.g.*, ASL Comments at p. 24; CSDVRS Comments at p. 33; Sorenson Comments at p. 11; VRS Consumer Association Comments at p. 4; Hancock, Jahn, Lee & Puckett d/b/a Communication Axess Ability Group at p. 3; Cerebral Palsy and Deaf Organization at pp. 2-3.

[32] *See* Consumer Group Comments at p. 37.

[33] *See* Sorenson Comments at p. 12.

will ensure that each individual has access to broadband with sufficient speed and technical requirements to use VRS regardless of whether the individual lives in a single family home, in a multi-dwelling unit (e.g., apartments, condominiums, etc.), or in some other housing arrangement.

VI. PER-USER RATE METHODOLOGY (SECTION V.)

In initial comments, the Consumer Groups expressed their strong preference that the Commission not change the current per-minute reimbursement methodology without: (1) a fully developed record that includes outreach to and education of deaf and hard of hearing consumers; (2) evaluating whether recent FCC actions to combat waste, fraud and abuse have significantly reduced incentives and opportunities to commit fraud;[34] and (3) evaluating whether more can be done to police, audit, and enforce compliance with current rules designed to prevent fraud. Notwithstanding their strong objections to the per-user methodology proposed in the *FNPRM*, and subject to advance adoption and implementation of functional equivalence guarantees, the Consumer Groups expressed a willingness to work with the FCC to explore alternative compensation that would protect consumer choice and the mandate of functional equivalency. For example, the Consumer Groups expressed a willingness to explore a system that would assign variable costs (CAs) to a per-minute rate element and fixed costs to a per-user rate element.

In these reply comments, without endorsing a per-user rate methodology, the Consumer Groups respond to various proposals concerning implementation issues associated with a per-user rate element. First, the Consumer Groups agree that an "active user" should not be defined

[34] The FCC certification measures have drastically reduced the number of VRS providers (certified and conditional certified). *See* Consumer Group Comments at p. 54. The Consumer Groups urge the Commission not to take any steps that will further reduce the VRS provider options available to consumers.

so narrowly as to preclude consumers who are deaf, hard of hearing, deaf-blind, speech-disabled, or deaf with a mobility disability from maintaining their VRS access connections. One possible means of addressing this concern is to define an "active user" as one that places/receives calls over a period of time longer than one month.[35] The Consumer Groups reiterate that any definition of "active user" should count inbound as well as outbound calls. The Consumer Groups continue to believe that mandatory term contracts violate the mandate of functional equivalency. If the Commission disagrees and either permits or mandates term contracts, the Consumer Groups strongly oppose any term length longer than one year and urge the Commission to require flexible early termination options, which may include the option to return VRS equipment in exchange for exiting the contract. Should the Commission limit VRS users' choice in the number of VRS access providers,[36] the Consumer Groups support an independent body conducting outreach to inform consumers who are deaf, hard of hearing, deaf-blind, speech-disabled, and deaf with a mobility disability about the requirement to select a VRS access provider and independent registration of the consumer's initial choice of provider.[37] While all changes in VRS access providers should be subject to rules governing number portability and slamming, it is important that consumers receive accurate, non-biased information about any Commission requirement to make an initial selection of a VRS access provider. Finally, the Consumer Groups agree that the success of any rate methodology is dependent on well-

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[35] Sorenson Comments at p. 49 (proposing "active user" be measured over a trailing six month period).

[36] The Consumer Groups reiterate their preference that a consumer be permitted to choose one VRS access provider for wireline technology and a second VRS access provider for wireless technology. *See also*, Purple Comments at p. 9.

[37] CSDVRS Comments at p. 21 (proposing that "registration be administered by an independent non-provider affiliated entity to ensure that consumers get the benefit of equal access to information about their registrations and to mitigate the possibility of fraudulent registrations or impermissible incentives to register."); Purple Comments at pp. 11-12.

developed, transparent, and predictable rules and processes that are monitored and enforced by the TRS administrator and the Commission.[38]

VII. CONCLUSION

The Consumer Groups respectfully request that the Commission consider the points discussed herein and in their initial Comments when considering ways to improve the structure and efficiency of the VRS program.

Respectfully submitted,

/s/ Tamar Finn

Tamar E. Finn
Danielle Burt
BINGHAM MCCUTCHEN LLP
2020 K Street, NW
Washington, DC 20006
(202) 373-6000

Counsel to Telecommunications for the Deaf and Hard of Hearing, Inc.

Cheryl Heppner
Vice Chair
Deaf and Hard of Hearing Consumer Advocacy Network
3951 Pender Drive, Suite 130
Fairfax, VA 22030

Howard A. Rosenblum
Chief Executive Officer
National Association of the Deaf
8630 Fenton Street, Suite 820
Silver Spring, MD 20910

Claude L. Stout
Executive Director
Telecommunications for the Deaf and Hard of Hearing, Inc.
8630 Fenton Street, Suite 604
Silver Spring, MD 20910

Brenda Estes, President
Association of Late-Deafened Adults, Inc.
8038 MacIntosh Lane
Suite 2
Rockford, IL 61107

Sheri Ann Farinha
Vice Chairperson
California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc.
4708 Roseville Rd, Ste 111
North Highlands, CA 95660

[38] *See* ASL Comments at p. 15 (expressing need for stability in the provision of relay services); Convo Comments at p. 11 ("adoption and enforcement of such new, detailed regulations will tax the already scarce resources of the Commission, which is not ideally suited to police VRS quality on a day-to-day basis"); Purple Comments at p. 31 ("The success of any system is dependant on the Commission creating a structure that has clear and discernible rules and procedures that provide predictability to providers and the Commission.").

Jim Potter
President
Deaf Seniors of America
15139 West Woodbridge Drive
Surprise, Arizona 85374

Janet Bailey
Government Relations Representative
Registry of Interpreters for the Deaf, Inc.
333 Commerce Street
Alexandria, VA 22314

Alexander T. Graham,
Executive Director and CEO
Alexander Graham Bell Association for the Deaf and Hard of Hearing
3417 Volta Place, NW
Washington, DC 20007

Benro Ogunyipe
President
National Black Deaf Advocates, Inc
P.O. Box 32
Frankfort, KY 40602

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