



Telecommunications for the Deaf & Hard of Hearing, Inc.
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December 19, 2012

Chairman Julius Genachowski
Commissioner Robert McDowell
Commissioner Mignon Clyburn
Commissioner Ajit Pai
Commissioner Jessica Rosenworcel

VIA EMAIL

Dear Chairman & Commissioners:

Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), Association of Late-Deafened Adults (“ALDA”), Hearing Loss Association of America (“HLAA”), and National Association of the Deaf (“NAD”), to be referred to as “Consumer Groups,” understand that the Commission is circulating an order with emergency rules regarding Internet Protocol Captioned Telephony Service (“IP CTS”). We understand that the emergency rules would, among other things, require new users of IP CTS to provide a certification by an audiologist or other professional certifying hearing loss of a certain level (*e.g.*, more than -70 dB loss) prior to signing up for and using IP CTS. Consumer Groups respectfully object to the adoption of any such user certification requirements, whether on a permanent or temporary basis, without input from consumer groups and other interested stakeholders that represent/serve deaf, hard of hearing, deaf-blind, and speech-disabled consumers. A professional certification requirement or a moratorium on new users would harm consumers who need access to captioned services.

Prior to adopting any rules, the Commission should follow its standard notice and comment process and work collaboratively with consumer groups and other stakeholders to balance any perceived need for user certification with the burdens of such certification. The opportunity for notice and comment is critical as the contemplated rules will affect a significant consumer group, may impose an undue burden, and may run afoul of the principle of functional equivalency. It is also critical because the dB level of hearing loss alone for an individual does **not** adequately capture those individuals who may have a lower dB loss, and can hear that someone is talking, but are unable to fully comprehend what exactly is being said (this is commonly referred to in the profession as poor “speech discrimination”). This is particularly true when the consumer is connected to a phone line that is noisy, muffled, unclear or otherwise distorted and which by its very nature provides none of the visual clues that someone with hearing loss typically relies upon. We believe a 70 dB requirement could penalize people with fluctuating hearing loss, such as Meniere’s Disease, who might need CTS on certain days. There are people with hearing loss that may be lower than the proposed threshold, but also have central auditory processing disorder that can benefit more from CTS. There are also people with a lesser hearing loss who can hear well in a quiet setting, but not in a noisy environment. Such ranges of differences may or may not be evaluated when the audiogram is provided, and the Commission would benefit greatly from a thorough

investigation and review on this issue with a number of audiologists from Gallaudet University and other institutions.

The emergency rules will significantly impact a large number of citizens. A recent study by Johns Hopkins University establishes that one in five Americans 12 years and older are deaf or hard of hearing.¹ As we stated in our recent VRS comments, “[u]nlike a low income consumer who can produce documents to prove eligibility for the Lifeline program, a deaf and hard of hearing consumer is unlikely to have a document that demonstrates the consumer’s hearing loss.”² For those who have been deaf since birth, a recent audiogram may not be readily at hand. For people who have not seen an audiologist in several years, it means an additional, unplanned visit. Requiring consumers who are deaf or hard of hearing to make any appointment to see an audiologist to certify hearing loss will come at a cost of time and money to those individuals.³

Further, a requirement for an audiologist or other professional certification is inconsistent with Congress’ mandate that Telecommunications Relay Services (“TRS”) be functionally equivalent. As the Consumer Groups stated in their “TRS Policy Statement,” functional equivalency must be the standard filter through which every TRS program action proposed or taken by the Commission, consumer groups, and TRS providers is assessed.”⁴ A leading principle set forth in the *Policy Statement* is that the “TRS experience for an individual who is deaf, hard of hearing, deaf-blind or speech-disabled must, at the minimum, be equivalent to that of a call between two hearing persons on the telephone or over the Internet.”⁵ Requiring an appointment with an audiologist as a precondition to using IP CTS services does not meet the “functional equivalency” standard or the principle set forth in the Policy Statement that the TRS experience must be “equivalent to a call between two hearing persons on the telephone network or over the Internet.” Stated simply, hearing consumers do not need to take time out of their schedules for medical appointments and incur additional medical expenses when they wish to utilize the Internet and communications facilities.

In addition, creating a professional certification requirement or moratorium on registration puts the burden of the rules directly on the backs of the consumers who need IP CTS. Petitions filed by consumer groups in 2004 and again in 2009 make it clear that CTS has the ability to change lives, to allow people who had given up on the ability to use a phone to be able to connect again with friends, family and at work. Anything that impedes equal access to telecommunications services for people who are deaf or hard of hearing flies in the face of the intent of Title IV of the Americans with Disabilities Act.

With these burdens and principles in mind, the Consumer Groups request that the Commission refrain from issuing emergency rules requiring an audiologist or other professional certification of hearing loss, and instead proceed with an expedited notice and comment proceeding that enables consumer groups and other stakeholders that represent/serve people who are deaf, hard of hearing, deaf-blind, and speech-

¹ Vol. 171 Arch. Intern Med No. 20, at 1851 (Nov. 14, 2011).

² *In the Matter of Structure and Practices of the Video Relay Service, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Comments of Telecommunications for the Deaf and Hard of Hearing, Inc. *et al.* to Further Notice of Proposed Rulemaking, at 44 (March 9, 2012) (“Comments of Consumer Groups”).

³ Comments of Consumer Groups, at 44-45.

⁴ Notice of Ex Parte Meeting, GN Docket Nos. 03-123 & 10-51, Attachment, *Consumer Groups TRS Policy Statement - Functional Equivalency of Telecommunications Relay Services: Meeting the Mandate of the Americans with Disabilities Act*, at 1 (April 12, 2011) (“*Policy Statement*”).

⁵ *Policy Statement*, at 2 (April 12, 2011).

disabled to comment on the appropriate eligibility requirement. This could set a dangerous precedent for other forms of TRS.

Thank you for your consideration. We fully support the Commission's efforts to minimize wherever possible any chance of fraud, waste, or abuse with any form of TRS.

Sincerely yours,

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Shaping An Accessible World