

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

In the Matter of)
)
Rates for Interstate Calling Services) WC Docket No. 12-375
)

**COMMENTS OF CONSUMER GROUPS IN
RESPONSE TO NOTICE OF PROPOSED RULEMAKING**

**National Association of the Deaf
Telecommunications for the Deaf and Hard of Hearing, Inc.
Deaf and Hard of Hearing Consumer Advocacy Network
Association of Late-Deafened Adults, Inc.
Hearing Loss Association of America
California Coalition of Agencies Serving the Deaf and Hard of Hearing
Cerebral Palsy and Deaf Organization**

The National Association of the Deaf (NAD), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), Association of Late-Deafened Adults, Inc. (ALDA), Hearing Loss Association of America (HLAA), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), and the Cerebral Palsy and Deaf Organization (CPADO) (collectively, the “Consumer Groups”), respectfully submit these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) December 28, 2012 Notice of Proposed Rulemaking in the above-referenced proceedings.¹

With the passage of the Americans with Disabilities Act (ADA) in 1990, Congress found that discrimination against people with disabilities persists in critical areas such as employment,

¹ *In the Matter of Rates for Interstate Calling Services*, WC Dkt. No. 12-375, Notice of Proposed Rulemaking, FCC 12-167 (rel. Dec. 28, 2012) (“*NPRM*”).

housing, public accommodations, education, transportation, communication, institutionalization as well as access to public services.² While the ADA has helped reduce discrimination against people with disabilities, unfortunately many people with disabilities continue to experience discrimination. It is against this backdrop and history of discrimination that the Consumer Groups encourage the FCC to be especially sensitive to inequalities within inmate calling services (ICS). Approximately 48 million Americans are deaf or hard of hearing and it is fair to assume that a significant number of inmates are also deaf or hard of hearing.³

I. DEAF AND HARD OF HEARING INMATES SHOULD NOT BE PENALIZED BECAUSE TTY TELEPHONE CONVERSATIONS TAKE LONGER THAN VOICE TELEPHONE CONVERSATIONS

A. ICS Providers Should Be Required to Proportionally Discount Rates For TTY Calls.

The Consumer Groups agree with the Commission's findings that the average length of a TTY telephone conversation is approximately four times longer than a voice telephone conversation.⁴ TTY telephone conversations take longer than voice conversations because TTY conversations, which are typed, have much lower average words per minute rates than voice conversations. This large timing difference between TTY and voice calls is supported by past FCC orders as well as the authority on the history of telecommunications access for deaf and hard of hearing people in the United States – *A New Civil Right: Telecommunications Equality for Deaf and Hard of Hearing Americans*.⁵ Further, the timing difference can be exacerbated in

² Americans with Disabilities Act of 1990, 42 U.S.C. §12101(a) (1990).

³ A recently released study by Johns Hopkins School of Medicine found that more than forty-eight million Americans over the age of twelve—almost one in every five people in this country—are deaf or hard of hearing. See Amanda Chan, 1 In 5 Americans Has Hearing Loss: Study, *The Huffington Post* (Nov. 15, 2011, 4:38 PM EST), http://www.huffingtonpost.com/2011/11/15/hearing-loss-americans-one-in-five_n_1095586.html.

⁴ NPRM at ¶ 42.

⁵ "Because it can take up to three times longer to complete TTY calls than voice calls, the Commission encouraged wireline interexchange carriers to offer discounts on long distance calls to Telecommunications Relay Service users..." *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Report and Order, FCC 00-436 at FN 49 (rel. Dec 14,

relay calls since in addition to the slower conversation rate between TTYs, the relay operator has to translate the call between the deaf or hard of hearing and hearing callers. The translation process typically includes frequent pauses as the operator relays the call from text to voice and back. A TTY relay telephone call can easily be more than four times longer than a voice telephone call.

During the 1970s and 1980s, many telephone companies and public utility authorities recognized the unfairness in charging deaf and hard of hearing TTY users the same per-minute rates as hearing users for voice telephone calls. This led to steep reductions in the price of calls made over the telephone line for deaf and hard of hearing customers. For instance, in December 1977, the Connecticut Public Utilities Control Authority mandated a seventy-five percent reduction in toll charges for all TTY calls.⁶ Around this time, the National Center for Law and the Deaf, then at Gallaudet College, published a manual, *Strategies for Obtaining Reduced Intrastate Rates for TDD Users*, to help deaf and hard of hearing people persuade their telephone companies to reduce rates for TTY users.⁷ The manual encouraged people to focus on the value of the telephone service when determining rates and compared discounted TTY rates to telephone users in rural areas paying the same rates as those in urban areas despite the fact that it costs more to provide telephone service to rural areas.⁸ Similarly, the Commission should require ICS providers to do the same for both point-to-point TTY calls as well as TTY relay calls.

2000). See also, Karen Peltz Strauss, *A New Civil Right: Telecommunications Equality for Deaf and Hard of Hearing Americans*, 16 (2006).

⁶ Stauss at 16.

⁷ Id.

⁸ Id.

Since "telecommunications relay service calls" for deaf and hard of hearing individuals are exempted from the Commission-established "per call compensation plan" for ICS providers, the FCC should use this exemption to require ICS providers to proportionally discount all relay calls by seventy-five percent.⁹ Moreover, the FCC should extend this discount to all TTY calls through its ancillary jurisdiction here or under Section 225 of the Communications Act.

B. Prisons and ICS Providers Should Allow Deaf and Hard of Hearing Inmates Proportionally Longer Times To Make TTY Calls.

Correctional facilities often set time limits for each inmate's call during each day, week, or month. We urge the FCC to use whatever authority it has to compel prisons and ICS providers to allow deaf and hard of hearing inmates proportionally more minutes in calling time for each call and/or allocated weekly/monthly calling time. Ultimately, ICS providers must accommodate the communication needs of deaf and hard of hearing inmates to the extent necessary to avoid discriminating against them on the basis of disability.

II. DEAF AND HARD OF HEARING INMATES SHOULD NEVER HAVE TO PAY ADDITIONAL FEES FOR USING RELAY SERVICES

The Consumer Groups are unaware of specific instances, aside from the record, where ICS providers have charged deaf or hard of hearing inmates additional fees for connecting to a relay operator. However, Pastor Mark Erlichman, who works extensively with deaf and hard of hearing inmates, has testified that he has witnessed deaf and hard of hearing inmates having to pay \$9 for connecting to a TTY relay operator.¹⁰ Such a practice is usurious and egregiously unfair. The Consumer Groups strongly urge the FCC to create clear rules to ensure that this discriminatory practice is banned.

⁹ NPRM at ¶ 42.

¹⁰ NPRM at FN 137.

III. THE FCC SHOULD REQUIRE ALL ICS PROVIDERS TO REPORT TELECOMMUNICATIONS ACCESS RELATED COMPLAINTS TO THE FCC

Correctional institutions typically do not keep track of the number of deaf and hard of hearing inmates. As a result, the Consumer Groups does not have data on this specific inmate population and also does not have access to the discrimination experienced by the deaf and hard of hearing inmates as a result of ICS providers. We can only imagine that Pastor Mark Erlichman's testimony is just the smallest tip of the iceberg and that there is a great deal of telecommunications injustice that has not yet been revealed. Since ICS providers operate within the prisons and are regulated by the FCC, the only way to expose the potential discriminatory practices is by requiring the ICS providers to document and report their billing practices to the FCC as well as any prisoner complaints to the FCC. There should also be a clear and easy way for prisoners to complain without a threat of recrimination. It's highly doubtful that any of these individuals, or anyone inside the prisons, have knowledge or the ability to file FCC complaints against their ICS providers. Nonetheless, the FCC should reach out to prisoners to inform them about how they can make a complaint directly to the FCC.

IV. THE FCC SHOULD BE MINDFUL ABOUT HOW THESE ANTI-DISCRIMINATION POLICIES APPLY TO CONSTANTLY EVOLVING COMMUNICATIONS TECHNOLOGY

TTY usage among deaf and hard of hearing people has plummeted as deaf and hard of hearing people have embraced newer and more advanced communications technology such as email, text messaging, instant messaging, video conferencing, and other IP-based telecommunications, as well as the relay systems that work with such varied technology. For instance, in 2011 there were about 25 million video relay calls, 16 million IP-relay calls, and 16 million captioned telephone calls, while there were only about 9 million traditional TTY relay

calls.¹¹ Thus only about 14% of all relay calls nationwide were made from TTYs (9 million divided by 66 million), and it is safe to say that this percentage decreases every year. Moreover, while many prisons continue to only provide TTY access for their deaf and hard of hearing inmates, there have been strong efforts to add new telecommunications relay service technology to prisons such as videophones and captioned telephones.¹² Any disability access policies created and applied to ICS providers need to be flexible enough to apply to these other forms of IP-based communications. For instance, we envision ICS providers in the future providing IP-based telecommunications access such as video conferencing services and/or Internet access. These ICS providers should be required to make sure that deaf and hard of hearing inmates using their IP-based services are able to fully utilize and access video relay service, captioned telephone service, and IP relay service, as well as point to point calling with videophones. Any new rules needs to evolve along with the ever-changing communications technology used by deaf and hard of hearing inmates.

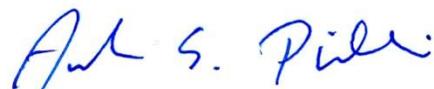
¹¹ Report on TTY Transition, *FCC Emergency Access Advisory Committee*, March 2013, 12-13, http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0311/DOC-319386A1.pdf (last visited Mar. 13, 2013); "Video Relay Service (VRS) is a form of Telecommunications Relay Service (TRS) that enables persons with hearing disabilities who use American Sign Language (ASL) to communicate with voice telephone users through video equipment, rather than through typed text. Video equipment links the VRS user with a TRS operator – called a "communications assistant" (CA) – so that the VRS user and the CA can see and communicate with each other in signed conversation. Because the conversation between the VRS user and the CA flows much more quickly than with a text-based TRS call, VRS has become an enormously popular form of TRS. For more information about other forms of TRS," *FCC Guide on Video Relay Services*, <http://www.fcc.gov/guides/video-relay-services> (last visited Mar. 13, 2013); "Captioned Telephone Service - Captioned telephone service... uses a special telephone that has a text screen to display captions of what the other party to the conversation is saying. A captioned telephone allows the user, on one line, to speak to the called party and to simultaneously listen to the other party and read captions of what the other party is saying... Unlike traditional TRS (where the CA types what the called party says), the CA repeats or re-voices what the called party says. Speech recognition technology automatically transcribes the CA's voice into text, which is then transmitted directly to the user's captioned telephone text display," *FCC Guide on Telecommunications Relay Service*, <http://www.fcc.gov/guides/telecommunications-relay-service-trs> (last visited Mar. 13, 2013); "Internet Protocol (IP) Relay Service - IP Relay is a text-based form of TRS that uses the Internet, rather than traditional telephone lines, for the leg of the call between the person with a hearing or speech disability and the CA. Otherwise, the call is generally handled just like a TTY-based TRS call. The user may use a computer or other web-enabled device to communicate with the CA," *FCC Guide on Telecommunications Relay Service*, <http://www.fcc.gov/guides/telecommunications-relay-service-trs> (last visited Mar. 13, 2013).

¹² VA Prison Gets Videophones for the Deaf, *Associated Press*, November 18, 2010, <http://voices.washingtonpost.com/local-breaking-news/virginia/va-prison-gets-videophones-for.html> (last visited Mar. 13, 2013).

The Consumer Groups strongly encourage prisons and ICS to work together to make sure that the telecommunications needs of deaf and hard of hearing inmates are met. This means providing deaf and hard of hearing inmates with access to amplified phones, videophones, captioned telephones, TTYs, IP-relay, and more. Prisons and ICS providers should respect the communication preferences of the deaf and hard of hearing inmates and allow them to choose which equipment/services best fit their communication needs. The communication needs of deaf and hard of hearing people vary widely as some are comfortable communicating in ASL and others are not; some can speak, and hear with the assistance of an amplifier, while many cannot; and some are comfortable with the written English language and may prefer text-based communications, while others are not proficient in English. Moreover, some inmates may have other disabilities, such as mobility or vision, and this may affect the kind of equipment they can use. It is also important to be mindful that the communication needs of inmates can change over the course of their detention, such as if their hearing worsens.

The Consumer Groups appreciate the opportunity to submit our comment and urge the FCC to create clear and strong rules that ensure equal telecommunications access for deaf and hard of hearing inmates communicating through TTYs, all forms of telecommunications relay services, and advanced communication services.

Respectfully submitted,



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