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April 11, 2013

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Meeting, CG Docket Nos. 10-51 and 03-123

Dear Ms. Dortch:

On April 10, 2013, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI") and Chair, Deaf and Hard of Hearing Consumer Action Network ("DHHCAN"); Andrew S. Phillips, Policy Attorney, National Association of the Deaf ("NAD"); Cheryl Heppner, National Advocacy Director, Association of Late Deafened Adults, Inc. ("ALDA") and Vice-Chair, DHHCAN (together, the "Consumer Representatives"); and Tamar E. Finn and Daniel P. Brooks of Bingham McCutchen LLP met with Angela Kronenberg, Wireline Legal Advisor to Commissioner Mignon Clyburn and Nicholas Degani, Wireline Legal Advisor to Commissioner Ajit Pai, to discuss the Video Relay Service ("VRS") Further Notice of Proposed Rulemaking ("FNPRM") released on December 15, 2011. On April 11, 2013, Mr. Stout, Mr. Phillips, and Ms. Finn met with Priscilla Delgado Argeris, Legal Advisor to Commissioner Jessica Rosenworcel to discuss the FNPRM.

The Consumer Representatives share the FCC's goal of ensuring true interoperability of VRS service and equipment and ensuring that VRS users benefit from technological innovations in communications services generally. The long term goal must be to make "off the shelf" technology from mainstream companies available and accessible to VRS users, not just for VRS use, but for peer-to-peer video communication. Innovations in research and development should be implemented by any shared platform developed under contract with the Commission, but also by companies that offer VRS over their own platforms.

The Consumer Representatives asked the FCC to ensure that qualified users, who have had extensive experience in making and receiving TRS calls, as recommended by national consumer advocacy organizations, are included in committees that advise the TRS Fund Administrator, that develop new industry standards, and that guide research and development to benefit VRS users.

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The participants discussed the need for independent third party outreach to educate the business community so that recipients of VRS calls understand and accept the service. The Consumer Representatives also asked that providers continue to receive reimbursement for individual company marketing to introduce new users to VRS and new services to existing VRS customers.

The Consumer Representatives made the following additional points:

- Third party neutral outreach should include consumer education regarding all forms of Telecommunications Relay Services rather than VRS alone;

- The FCC should ensure that funding for outreach and National Science Foundation research is sufficient to achieve the Commission's and statute's goals of functional equivalency and that such funding continues in the future and does not decrease after a period of time;

- FCC bureaus should be required to consult with the Consumer and Government Affairs Bureau in carrying out their delegated functions;

- While we are elated with the plans of having a reference platform for all providers to work with, to ensure total interoperability with various equipment, software, and services in delivering VRS and direct peer-to-peer video communication, we respectfully ask that the reference platform allow for future service enhancements for instance, a skills-based routing system with highly specialized interpreters to handle high-level, qualified calls such as for legal and medical conversations. Here attached are two documents previously filed with the FCC regarding the skills-based routing system.[1] Among other things, the documents explain that providers offering skills-based routing will need a corresponding speed of answer exemption for calls where consumers choose to use skills-based routing;

- The Commission should ensure sufficient consumer education and an adequate transition period before implementing a consumer self-certification requirement, ideally one year from the effective date of any rule requiring self-certification;

- Provider research and development to improve functional equivalency that exceeds the Commission's minimum service standards should be treated as a reimbursed expense for purposes of determining rates; and

- An American Sign Language summary of the Order and FNPRM should be released along with the text of the item.

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[1] *See* Comments of the Consumer Groups, CG Docket Nos. 10-51 and 03-123, at 9-11 (Mar. 9, 2012) (appended as Attachment A hereto); *Ex Parte* Letter of the Consumer Groups, CG Docket Nos. 10-51 and 03-123 (May 31, 2012) (appended as Attachment B hereto).

Respectfully submitted,

/s/ Tamar E. Finn

Tamar E. Finn

Counsel for TDI

Attachments

cc (by email):

Angela Kronenberg
Nicholas Degani
Priscilla Delgado Argeris
Jonathan Chambers
Karen Peltz Strauss

Attachment A

Comments of the Consumer Groups, CG Docket Nos. 10-51 and 03-123 (Mar. 9, 2012)

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
	)	

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.
American Speech-Language Hearing Association
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

March 9, 2012

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SUMMARY

Functional equivalency must be the standard filter through which all, ever-changing telecommunications relay service ("TRS") program actions proposed or taken by the Commission and TRS providers are assessed, including the video relay service ("VRS") compensation mechanism. Several improvements are needed to ensure ongoing functional equivalency and bring all forms of TRS into the 21st Century. The Consumer Groups emphasize the importance of having a compensation mechanism that fulfills the original Congressional intent of providing functional equivalency. In addition, to achieve functional equivalency, the Commission should promote and measure use of VRS by both populations – hearing as well as deaf and hard of hearing – and should devote sufficient resources to the TRS program commensurate with the size of the program.

The Consumer Groups believe higher service quality for VRS will not only bring TRS services closer to true functional equivalency, but may also reduce the per-call (and possibly total) cost to the TRS program. The Commission should allow VRS users flexibility in the selection of CAs for their calls, set standard qualifications for CAs, and set minimum benchmarks for answer times. In particular, the Consumer Groups believe a national certification system, independent of VRS providers, should be established and phased in over time so ultimately all CAs are certified. The Consumer Groups also believe that minimum technical standards are necessary with respect to answer speed benchmarks, broadband speeds and quality, interoperability of equipment and split-screen calls.

The Commission should adopt certain additional consumer protection rules. The Consumer Groups support the imposition of rules designed to prevent slamming of relay service customers and suggest subscriber authorization be allowed through a direct authorization from

the consumer to the service provider, using the consumer's primary language (including American Sign Language ("ASL")), and by means of electronic, verbal, written or sign language communication. Provider liability will also be an important aspect of the slamming rules, and the Consumer Groups recommend that any fines assessed should be paid to the TRS Fund and that relay-related slamming complaints should be jurisdictionally handled by the FCC exclusively. The Commission should establish a transparent process for the porting of numbers or services between relay providers. Establishing number portability procedures would help to prevent unauthorized provider changes, would give consumers a clear picture of the amount of time that a service transfer should take, and would give relay providers clear guidelines under which to operate when transferring customers. The Commission should also adopt rules to protect relay users against improper use of their CPNI by service providers. The Consumer Groups believe that the CPNI rules adopted for relay services should closely mirror those adopted for voice services, including VoIP services, with certain modifications to reflect the differences between relay services and telephone/VoIP services. Finally, the Consumer Groups request that the Commission act on the Petition for Partial Reconsideration, which asks that iTRS telephone numbers be made available to hearing people who use ASL or use other visual forms of communication with people who are deaf, hard of hearing, deaf-blind or speech-disabled so that they can have direct point-to-point video calls without the need to utilize VRS. The Consumer Groups believe that the FCC can do so in the context of this proceeding.

Rigorous research and development will continually improve TRS technology, resulting in meaningful services and applications. When setting VRS rates, the Commission must take into account research and development needs as well as brand name marketing needs. The Consumer Groups also caution the Commission not to lose sight of the need to ensure that any changes to

the VRS compensation methodology not act as an effective cap on improvements in other areas such as outreach or research and development.

The Consumer Groups support the FCC's plans for a neutral third party to handle non-brand name outreach and education for VRS. Immediate steps should be taken to identify and reach out to unserved and under-served Americans who are deaf, hard of hearing, deaf-blind or speech-disabled who have not discovered TRS or VRS, or been extended the freedom and independence offered by the type of TRS that best matches their communication requirements. Separately, but equally important, there is a need to educate those people and businesses who may potentially place communications to or receive communications from deaf, hard of hearing, deaf-blind and speech-disabled individuals. Without question there is still a need for extensive outreach for all Americans, whether VRS users or not, to build familiarity and acceptance of VRS nationwide.

The Consumer Groups strongly support establishing a "TRS Broadband Pilot Program" ("TRSBPP") to provide discounted broadband Internet access to low-income deaf, hard of hearing, deaf-blind, and speech disabled Americans who use ASL as their primary form of communication. However, the Consumer Groups caution the Commission not to create a "separate but equal" system for hearing and speech disabled persons for fear that such a system would in reality become separate and unequal.

The Consumer Groups organized these comments to focus first on needed service quality and VRS program improvements. Adopting rules to implement these VRS program improvements must continue to be the Commission's top priority. It is the Consumer Groups' strong preference that the Commission not change the 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; and (3) evaluating whether more can be done to police, audit, and enforce compliance with current rules designed to prevent fraud. According to Chairman Genachowski, reforms to the VRS program to eliminate incentives for fraud have already saved taxpayers approximately $250 million. The Consumer Groups respectively submit that defining a VRS "user" for purposes of a per user compensation mechanism is difficult and presents numerous new opportunities for fraud. The Consumer Groups have a number of concerns about the proposed per user methodology requiring each user to choose one service provider for a specified contract length, including but not limited to a concern that it would provide incentives for VRS providers to limit VRS use. Additionally, the Consumer Groups are very wary about the creation of any national database of VRS users, and although the Consumer Groups are still discussing potential viable options for identifying deaf or hard of hearing users that qualify for VRS services, one possible means may be to combine self-certification with a non-usage policy.

The Consumer Groups are adamantly opposed to the per-user compensation methodology in the belief that it would decimate the level of functional equivalence achieved with the current system. The per-minute compensation methodology with the recent rule changes to combat fraud and abuse remains the best rate compensation methodology at the present time to support the current level of functional equivalence for deaf and hard of hearing consumers and speech impaired consumers. Should the Commission proceed with a system that does not use the current per-minute compensation methodology against the strong recommendations of the Consumer Groups, the Consumer Groups oppose any system that uses the per-user compensation methodology as it is proposed in the *FNPRM*.

Subject to functional equivalence guarantees that need to be established in advance of any adoption and implementation, the Consumer Groups are prepared to discuss the possibility of a rate structure that more accurately reflects the manner in which costs of providing VRS are incurred. Instead of a per-user compensation regime that compromises competition, the Commission could consider modifying the reimbursement so that its rate structure would recover fixed costs through a per user reimbursement rate with one provider and recover usage sensitive costs (CA costs) through a per-minute reimbursement rate (that would be available to the selected provider directly as well as other providers through the use of dial-around). Under such a rate structure, VRS providers' compensation would be comprised of two separate components: (1) a lower per-minute rate to recoup traffic sensitive costs — the cost of compensating CAs; and (2) a fixed per-user rate to recover the remainder of VRS fixed costs which do not vary with usage. The Consumer Groups however remain concerned that any compensation system that includes some element of per-user compensation is fraught with problems in its implementation for all of the reasons stated in these Comments with respect to the per-user model. Accordingly, the Consumer Groups oppose any adoption or implementation of a hybrid compensation regime without clear functional equivalence guarantees prior to the implementation, and ask that the per-minute compensation regime be allowed to continue with the Commission's recent anti-fraud rule changes and efforts until such time as an advisory committee studies and makes recommendations to implement any changes to the current reimbursement methodology.

The Consumer Groups look forward to continuing to work cooperatively with the FCC as it strengthens and updates the VRS program. The Consumer Groups will work with the FCC to ensure that the burdens of reducing fraud do not fall primarily on deaf and hard of hearing consumers, the very population the TRS program is intended to serve.

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

COMMENTS TO FURTHER NOTICE OF PROPOSED RULEMAKING

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"), American Speech-Language Hearing Association ("ASHA"), 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"), hereby respectfully submit these comments in response to the Federal Communication Commission's ("FCC" or "Commission") Further Notice of Proposed Rulemaking ("*FNPRM*") in the above-referenced proceeding.[1]

[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*").

I. FUNCTIONAL EQUIVALENCY

The Americans with Disabilities Act ("ADA")[2] requires the Commission to ensure that deaf, hard of hearing, deaf-blind and speech-disabled individuals have nationwide access to the telephone system and network "in a manner that is *functionally equivalent* to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communications services by wire or radio."[3] Given that what is defined as functionally equivalent service will not remain static but rather will evolve, the Commission has held that "functional equivalence" requires "periodic reassessment" in light of the "ever-increasing availability of new services and the development of new technologies."[4]

For the Consumer Groups, functional equivalency must be the standard filter through which all, ever-changing telecommunications relay service ("TRS") program actions proposed or taken by the Commission and TRS providers are assessed, including the video relay service ("VRS") compensation mechanism. Assessments must be routinely, periodically, and proactively made to determine whether an action will move TRS users on both sides of the conversation towards functional equivalency. Further equal consideration must be given to what technology, equipment, training, program, policy or service may need to be developed or provided to achieve greater functional equivalency with the "general population." As more fully described herein and in the *Consumer Groups' TRS Policy Statement - Functional Equivalency of Telecommunications Relay Services: Meeting the Mandate of the Americans with Disabilities Act*

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[2] PL 101-336, July 26, 1990, codified at 47 U.S.C. § 225 of the Communications Act of 1934, as amended ("Act").

[3] 47 U.S.C. § 225(a)(3) (emphasis added).

[4] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd. 5140, ¶ 4 (2000).

(the "Policy Statement"),[5] several improvements are needed to ensure ongoing functional equivalency and bring all forms of TRS into the 21st Century.

A. Set Functional Equivalency Standards To Bring TRS Into 21st Century

The Consumer Groups strongly agree with the Commission's overarching goal in this proceeding "to improve the VRS program so that it better promotes the goals Congress established in section 225 of the Act."[6] The National TRS program was designed to provide a more level playing field in communications between deaf and hard of hearing consumers and their hearing contacts, and since its inception, TRS has transformed the daily telecommunications experience for people who are deaf, hard of hearing, deaf-blind and speech-disabled as well as their contacts in the community. VRS, in particular, has improved the communications experience for deaf and hard of hearing consumers in the last 10 years. Given that the National TRS program is beyond its formative stages, the time is ripe to develop solutions that bring all forms of TRS, including VRS, into the 21st Century.

Improvements are specifically needed to ensure that the National TRS program achieves and maintains functional equivalency as required by law. As detailed in the Policy Statement, several principles, goals and objectives should be considered when assessing any reform to the National TRS program, including the VRS compensation mechanism. Any reform should also take into consideration feedback from consumer representatives as well as providers to develop solutions to improve VRS.

The Consumer Groups emphasize the importance of having a compensation mechanism that fulfills the original Congressional intent of functional equivalency. TRS technology and

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[5] Letter from Tamar E. Finn and Brett P. Ferenchak, Counsel to TDI, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51, attach. (filed Ap. 12, 2011).

[6] *FNPRM*, ¶ 11.

service quality have not kept pace with advancements in the non-TRS industry. However, the national TRS program and the compensation mechanism must be able to adapt to continuing improvements in technology and cover applicable expenses to ensure availability and use of VRS. To help achieve functional equivalency and as described further herein, the Consumer Groups recommend that the cost methodology incorporate applicable expenses for improving technology and for customer outreach and education about the availability and use of VRS.

In addition, while acknowledging the importance of stopping fraud, waste and abuse in the national TRS program, the Consumer Groups urge the Commission to allow measures already taken to discourage fraud, waste and abuse to work and move on to issues which focus on the development of solutions that will improve TRS programs generally. The Consumer Groups identified in the Policy Statement certain areas of the TRS Program that they believe need further attention, such as use of relay services by hearing people, resources devoted to ensuring program effectiveness and accountability, and outreach and research. Other forms of TRS also deserve equal attention and support to ensure reliable state-of-the art choices for every American, deaf or hard of hearing or hearing, and with or without a disability.

B. TRS Program Must Consider Hearing Users

The Consumer Groups note that the proposals in the *FNPRM* are focused primarily on deaf and hard of hearing consumers, to the detriment of their hearing contacts that make or receive relay calls. Each VRS call includes two parties, a hearing consumer and a deaf or hard of hearing consumer. As explained in the Policy Statement, relay services are just as useful and as critically important for those who are hearing and are without speech disabilities.[7]

[7] Policy Statement at p. 4.

To achieve functional equivalency, the Commission should promote and measure the satisfaction and use of VRS by both populations – hearing as well as deaf and hard of hearing. Failure to achieve functional equivalency for people without disabilities when making or receiving relay calls will diminish, if not defeat the purpose and benefits of a dual party relay system. The Commission must also consider the use of relay service by both populations with family members, neighbors, and friends as compared to use only in the workplace. Many employers in private and public sectors are not aware of relay services and do not understand the effectiveness relay services offer for communication with people who are deaf or hard of hearing or have speech disabilities. The Consumer Groups therefore urge the Commission to consider ways to measure the hearing population's use of and experience with VRS. The Consumer Groups posit that while technology and interpreter skill will be paramount to VRS users who are deaf or hard of hearing or have speech disabilities, hearing users of relay services will place more value on other functions (e.g., speed, emotive value from the conversation, etc.). The Consumer Groups also ask the Commission to fund outreach efforts to educate the hearing population regarding the availability and use of all forms of relay services.

Furthermore, the Commission should ensure that deaf and hard of hearing individuals have the equivalent ability to access VRS using the full array of technologies (e.g., wireline and wireless) as do their hearing contacts. This means ensuring that "the TRS experience for an individual who is deaf, hard of hearing, deaf-blind or speech-disabled, at a minimum, [is] equivalent to that of a call between two hearing persons on the telephone network or over the Internet" and that "TRS users [have] a wide selection of choices regarding equipment and software interfaces as well as hardware options, TRS program services and methods of making

and/or receiving relay calls."[8] For example, data shows that more than 97% of consumers in general have a choice of 3 or more mobile providers[9] and more than 69% of broadband subscribers report having more than 1 broadband provider serving their area.[10] Each consumer who needs VRS should have provider and equipment choices, and such choices should be functionally equivalent to the choices that consumers in the non-TRS telecommunications industry enjoy. A prime example in today's telecommunications environment is cloud computing. Cloud computing has emerged over the past five years as a dominant paradigm in the telecommunications and information technology industry and continues to make profound impacts on network architectures, data center architectures, and software applications. Server virtualization technology has led to increased efficiencies and the establishment of logical networks without the necessity of older physical networks. Yet, do all of the currently certified VRS providers operate "in the cloud"? No. Do all currently certified VRS providers even offer a mobile option to consumers? No. The Commission's top priority should be to address basic inequities such as these.

C. Devote Additional Resources To TRS Program

The National TRS program has grown substantially from its inception and is now approaching a size of $900 million. As the fund has grown, the need for additional support and resources to administer it and provide sufficient regulatory enforcement has also grown. Accordingly, the Consumer Groups urge the Commission to devote sufficient resources to the TRS program commensurate with the size of the program.

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[8] Policy Statement at p. 2.

[9] *See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fifteenth Report, WT Docket No. 10-133, FCC 11-103, ¶ 44 (rel. June 27, 2011).

[10] Home Broadband Adoption 2009, Pew Internet (June 2009).

Specifically, the Consumer Groups support the request by the Office of Inspector General ("OIG") for additional staff in connection with conducting audits and investigations of several funds, including the National TRS program.[11] The OIG has lost personnel since hiring several positions with monies transferred from the Universal Service Administrative Corporation ("USAC") to monitor the Universal Service Fund ("USF") program, and according to the report, these losses have affected OIG's ability to perform all audits and investigations. Given that audits of National TRS program recipients have increased in the last few years and can be expected to remain level or increase in future years, it is imperative that OIG have adequate resources to monitor this program.

The Consumer Groups also suggest making funding available to support additional Commission staff that implement and oversee the rules of the National TRS program. While the Commission has done a laudable job overseeing the National TRS program with the limited resources allocated to the program, the Consumer Groups note that many states devote specific resources to staff dedicated to policy, oversight, and enforcement of state TRS programs. For example, a specific budget is dedicated to California Public Utility Commission staff overseeing the California Deaf and Disabled Telecommunications Equipment and Relay Service Program.[12] Similarly, there is a dedicated budget for staff at the Maryland Department of Information Technology to oversee the Telecommunications Access of Maryland Program.[13] Thus, in meeting the full promise and potential that TRS can achieve for users, the Consumer Groups

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[11] Office of Inspector General Federal Communications Commission, Semiannual Report to Congress, April 1, 2011 through September 30, 2011.

[12] *See* Resolution No. T-17323 to Establish the Deaf and Disabled Telecommunications Equipment and Service Program Budget (Public Utilities Code Section 2881 Et Seq) for the 2012-13 Fiscal Year Budget, Public Utilities Commission of the State of California (rel. Aug. 18, 2011).

[13] *See* Maryland 2012 Operating Budget, Department of Information Technology, Telecommunications of Access Maryland – Office of Information Technology, *available* at: http://www.dbm.maryland.gov/agencies/operbudget/Documents/2012/Proposed/budperad.pdf.

recommend that the Commission ensure adequate, experienced staffing levels necessary to administer and enforce the current National TRS program. The Consumer Groups understand from discussions with staff that the FCC has a team devoted to TRS issues that includes staff from multiple offices and bureaus. The Consumer Groups suggest that the FCC identify the TRS "team" members to make transparent the personnel resources dedicated to TRS issues and include a report from the TRS team in the annual staff briefing presented to FCC commissioners.

II. SERVICE QUALITY AND TECHNICAL STANDARDS

The Consumer Groups believe that higher service quality for VRS will not only bring TRS services closer to true functional equivalency, but may also reduce the per-call (and possibly total) cost to the TRS program. For example, higher quality VRS calls could reduce the time spent on a single call and also reduce the need for additional calls as a follow up for calls that were mismatched, of poor quality, or both. Higher service quality will benefit all VRS users as well as the telecommunications providers that support the TRS program through contributions. To achieve higher service quality, however, the Commission will need to establish certain technical standards for VRS providers.

A. Service Quality

Service quality for VRS services has many components, included but not limited to: (1) the skill level and expertise of the Communications Assistant ("CA") and the appropriate matching of the CA to specific needs and/or preferences of the VRS user; (2) the time it takes to successfully initiate a call and other non-technical service benchmarks; (3) the speed and quality of the Internet connection used for the VRS call; and (4) the quality of the software and/or hardware used by the consumer. Would non-hearing or speech disabled persons tolerate a call that dropped random words or was so full of static it was impossible to understand? Would non-

hearing or speech disabled persons accept a wait of 30, 60, 90 or more seconds to get a dial tone? Would non-hearing or speech disabled persons be satisfied with video calls over dial-up connections? Would non-hearing or speech disabled persons quarrel with the concept of one size fits all?

In addition to addressing service quality through the establishment of technical standards, the Commission should also address service quality by allowing VRS users the option of flexibility in the pre-selection of CAs for their calls, setting standard qualifications for CAs, and establishing and enforcing minimum benchmarks for answer times.

1. VRS Users Should be Permitted to Select and Designate Preferred CAs

The Consumer Groups feel that the one-size-fits-all system of randomly placing VRS CAs with callers needs to be improved. This current system supports the bare minimum in interpreting services, which falls short of functional equivalence. We encourage the FCC to consider allowing VRS users to opt into a skills-based system that will better match VRS CAs' skills and expertise to callers' communications and stylistic needs. The Consumer Groups propose the following steps to bring deaf and hard of hearing consumers closer to functional equivalency:

(a) Require VRS providers to allow consumers to select VRS CAs according to skill sets, specialized communication needs such as choice of interpreting, transliteration and signing styles, and areas of knowledge. Communication needs vary among deaf and hard of hearing calls as does the subject matter of each call, which means that better matching of VRS CAs and callers with specific subject matters involved in their calls will improve functional equivalency. Consumer Groups envision an optional system where consumers can create profiles

containing their self-assessed communication needs and be matched accordingly when possible. For example, the ideal VRS experience would include a choice of interpreters based on expertise for certain calls. If you are calling an attorney, you want an interpreter with legal experience, and if you are calling a doctor, you want someone with medical experience.

(b) Require VRS providers to allow consumers to create a list of preferred CAs and be assigned a preferred CA when available. This will give consumers the power and ability to control the quality of their calls and allow them to select CAs they know will provide the most functionally equivalent call for their particular communication and language needs.

These steps will help remedy the current problem of assigning the "first available" CA to VRS users regardless of the caller or for the subject matter of the call. The Consumer Groups recognize that consumers who choose to select a particular CA or provide a list of preferred CAs to be assigned when available may experience a longer wait time than would occur if the first available CA was assigned to their call. The Consumer Groups believe that consumers would benefit from having a choice in relay services between those that provide the first available CA immediately and those that provide a CA that fits the situation and communication needs within a reasonable period of time but not necessarily immediately.

The Consumer Groups caution the Commission, however, that if these steps are implemented, VRS providers must be required to provide non-discriminatory access to the selected or preferred CAs. In other words, VRS providers must not be permitted to manipulate the queue for a particular CA to increase answer time, increase the number of calls processed by the VRS provider, or prevent a particular consumer access to a selected or preferred CA because

that consumer is a high volume user or is expected to have calls of longer lengths. The answer times for consumers that utilize a selected or preferred CA should not be subject to answer time calculations for purposes of meeting a minimum answer time service standard.

2. A National Certification Requirement Should be Established for CAs

The Consumer Groups firmly believe that a national certification system, independent of VRS providers, should be established and phased in over time so that ultimately all CAs are certified. Consumer Groups specifically recommend the RID-NAD National Interpreter Certification. Consumers deserve to have quality CAs on all VRS calls and a certification system is one way to assure such quality on an ongoing basis. Certified CAs who are experienced, educated professionals should be the standard and not a premium service. Certification requirements, which would establish minimum standards, are analogous to the minimum competency tests or certifications that many other professionals must pass before they can practice in their respective professions. The Consumer Group believe that the minimum standards should be established through a collaborative effort from existing certification groups, VRS providers, consumer groups and institutions providing training for CAs and other interpreters. Ultimately, such a certification would be mandatory before an interpreter is permitted to work as a VRS CA. However, due to a limited number of certified CAs in the marketplace, it will take time for a sufficient number of existing and prospective CAs to obtain the certification to satisfy current (and future) demand, the Consumer Groups suggest that the minimum standards and certification requirements be phased in over time.

3. Improve Speed of Answer to 1 Minute

The Consumer Groups continue to be concerned about the speed of answer for VRS providers. The current answer speed benchmark is that 80% of relay calls are to be answered

within two minutes.[14] While deaf and hard of hearing individuals have tolerated a two minute wait for answers from a VRS CA, hearing callers have indicated an unwillingness to wait for any VRS CA to answer. Without prompt answer speed, there cannot be functional equivalence. Competition for minutes/calls provides an incentive to VRS providers to beat the current two minute answer speed benchmark. Because of this competition, there is already a trend of VRS calls that are answered significantly less than two minutes, which in turn demonstrates that it is possible to reduce the answer speed benchmark. The Consumer Groups believe that the Commission should move the answer speed benchmark, perhaps through a phase-in, to one minute and perhaps even faster in the future.

B. Technical Standards

In addition to the proposed non-technical capabilities and requirements discussed above, establishing additional technical standards will help improve service quality for VRS. Not only should broadband be more accessible to VRS users, the Consumer Groups believe that minimum technical standards are necessary with respect to broadband speeds and quality, interoperability of off-the-shelf equipment and split-screen calls. If you consider the very foundations of the intercontinental telecommunications network, technical standards have been a requisite of participants. So many take for granted the ability of communicating freely with anyone, anytime, across the planet, the ability to remain connected and close to business colleagues and loved-ones and to instantly communicate with them while being thousands of miles away; being able to unlock barriers and break down walls and allow entire communities and nations to reach the "outside world." The key to the global nature of telecommunications – truly the world's largest social network – is the amount of standardization it involves. The Consumer Groups ask that the

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

Commission apply the same attention to developing and implementing commonly agreed upon standards in the VRS arena (which will then ensure interoperability and full interconnection between each telecommunications network to the extent that it will no longer matter which network is used or which device or software is used) as currently exist in the telecommunications industry for the general population.

1. Minimum Broadband and Video Camera Requirements

Good video quality, and therefore good VRS service, requires minimum broadband and video camera capabilities. VRS service is significantly affected in particular by the speed of both caller/callee and the VRS provider's broadband connection. While the Commission may not be able to ensure that VRS users have the optimal broadband connection or video cameras for VRS, the Commission can require VRS providers to themselves meet minimum broadband connection and video camera requirements, and also assist with and/or require outreach to consumers regarding the minimum broadband connection and video camera capabilities required for VRS service and describing the problems consumers may experience if they do not have those minimums.

Good video/audio quality requires a minimum broadband speed, as well as minimum frames per second and image resolution, light sensitivity for video cameras.[15] Further, VRS services should have maximum latency standards for both video and audio. The Commission should determine benchmarks for VRS providers for these technical standards based on testing of equipment and services. And, that benchmark should be higher than the minimum necessary

[15] For additional information regarding minimum standards for cameras, see the Comments of the Rehabilitation Engineering Research Center on Telecommunications Access, *In re Application of New and Merging Technologies for Video Relay Service Use*, CG Docket No. 10-51, ¶¶ 5-6, 15 and 16-17 (April 1, 2011).

for the VRS service to simply work, especially when others in the household may be using the broadband services for other purposes.

The Consumer Groups also believe that there needs to be a better troubleshooting process by VRS and broadband providers. These providers should be required to coordinate their troubleshooting so that VRS consumers calling or emailing the providers with problems are not simply bounced back and forth between the customer service departments of the providers with each indicating that the problem is on the others' end.

2. Interoperable Equipment

The Consumer Groups have consistently expressed their support for proposals to achieve interoperability and asked the FCC to set deadlines for implementing interoperability and apply any such standards not only to VRS calls, but also to peer-to-peer calls. While this interoperability should apply to all current hardware and software used to make peer-to-peer calls and VRS calls, the increasing use of off-the-shelf equipment makes this interoperability issue more relevant. As the Commission noted in the *FNPRM*, "off-the-shelf VRS access technology hardware…is becoming increasingly available and popular among both VRS providers and VRS users."[16] The Consumer Groups agree with the Commission that "all VRS access technology hardware used to make compensable VRS calls be 'off-the-shelf,'"[17] but also believe that the Commission should require the "off-the-shelf" equipment (as well as the equipment and software currently provided by VRS providers) be interoperable. This would require meaningful participation and involvement from mainstream companies in the information services industry as well as the VRS industry. Interoperability would have the added benefit of reducing VRS user lock in.

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[16] *FNPRM*, ¶ 48.

[17] *Id*.

3. Split Screen Conversation Capability Necessary to Achieve Functional Equivalency

The Consumer Groups believe that split screen conversation capability is paramount to achieving functional equivalency. Split screen technology enables a deaf or hard of hearing consumer to see both the hearing individual on the other end of the call and the VRS CA. Deaf and hard of hearing consumers do not have the luxury of hearing a speaker's tone of voice and, therefore, must rely on visual clues from the speaker to get the full import of a conversation. The Commission should encourage the evolution of technology that permits split screen conversations whenever possible.[18] Such split screen technology, provides a total conversation experience that is functionally equivalent to the one experienced in hearing-to-hearing consumer calls. This split screen technology should also be made available for peer-to-peer calls involving more than two users, which would be functionally equivalent to three-way and multi-party calls available to hearing callers.

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. There are several primary areas that the Consumer Groups believe require Commission action, all of which are intended to protect consumers and promote the advancement of relay services. In particular, the *FNPRM* seeks comment on a variety of consumer protection issues, including the prevention of unauthorized default provider changes, or "slamming."

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[18] *See, e.g.*, Emergency Access Advisory Committee, *Report and Recommendations* at 22 (published Jan. 26, 2012) (recommending "that standards and functional requirements be adopted that are technically and economically feasible to achieve..." the ability for consumers to, "[w]hen using video, see both the NG9-1-1 dispatcher and the emergency-trained sign language interpreter or video communication assistant (CA) of any type during the call."), *available at* http://www.fcc.gov/document/eaac-report-and-recommendations.

The Consumer Groups share the Commission's concerns about slamming and the number porting process, and provide suggestions on these topics as well as the overall need for the Commission to ensure consumer privacy, and the need for hearing users to obtain iTRS numbers. While the *FNPRM* focuses on issues of concern to VRS in particular, the Consumer Groups believe that all of the recommendations set forth below are equally important to all forms of relay services generally, and the rules adopted by the Commission for the prevention of slamming, protection of consumer proprietary network information ("CPNI"), and the porting of telephone numbers should apply broadly to relay services and not be specifically limited to VRS. A discussion of the Commission's authority to impose such requirements also follows.

A. Slamming, Number Portability and CPNI (Section V.A.)

1. Slamming Protections

The *FNPRM* seeks comment on whether the Commission should apply slamming rules to VRS providers, and if so, what rules should apply. Clearly, slamming protections would be beneficial to users of all relay services that chose a relay service provider. Accordingly, the Consumer Groups support the imposition of rules designed to prevent slamming of relay service customers. Doing so would be consistent with the Commission's protections for users of voice services, including interconnected VoIP services. The Commission should apply its slamming prevention and liability provisions under Rule 64.1100 *et seq.* to relay providers, with certain modifications to ensure consistency with the manner in which such services are provided. Once a relay user establishes a default provider, the Commission's slamming rules should become effective to prevent the unauthorized transfer of service providers from the one designated by the consumer to another. However, the Commission must ensure that the rules applied do not stifle or needlessly complicate legitimate requests by consumers to switch service providers.

Just as a voice telephone carrier may not effect a change of service order except in accordance with prescribed procedures, the same should apply to a relay provider. However, the Consumer Groups do not support applying to relay providers the requirement that providers use a third-party neutral entity to verify a request from users to change their default providers because those additional steps may unnecessarily confuse users and act as a barrier to effective competition. For that same reason, the Consumer Groups likewise do not believe that preferred carrier freezes should be allowed in the relay context, as they will likewise hinder competition in the market by installing an additional barrier to legitimate provider change requests. Due to the small number of service providers in the relay market, policing and enforcement of the slamming rules should prove much easier than in the wider telephone carrier context. Thus, until such time as slamming becomes more widely understood and also a significant real-world concern in the relay context, the Consumer Groups respectfully suggest that consumers should be afforded maximum flexibility to change default providers, and that the Commission should avoid imposing more burdensome third party verification processes at this time.[19] In addition, the Consumer Groups recommend that the FCC implement a convenient process for users to file a complaint regarding slamming practices or actions. They also recommend that the FCC post public notices about investigations and forfeiture decisions for slamming by VRS providers available on its website as it does in the non-TRS telecommunications industry.

With respect to the technical requirements that should apply to slamming in the relay context, the Consumer Groups believe that subscriber authorization should be allowed through a direct authorization from the consumer to the service provider, using the consumer's primary

[19] The Commission, of course, would retain authority to revisit the issue of third party verification and preferred provider freezes should slamming become a pervasive problem in the VRS or other relay service context.

language (including American Sign Language ("ASL")), and by means of electronic, verbal, written or sign language communication. The provider should be required to verify the following minimum information to ensure that the provider change authorization is legitimate: the date of the verification; the identity of the subscriber, including date of birth or last four digits of a social security number; confirmation that the person on the call wants to make the provider change; confirmation that the person on the call understands that a provider change, not an upgrade to existing service, or any other misleading description of the transaction, is being authorized; the names of the providers affected by the change (not including the displaced provider); the telephone numbers to be switched; and the types of services involved (including a brief description of a service about which the subscriber demonstrates confusion regarding the nature of the service).

The verification process should be conducted in the consumer's primary language (whether electronically, verbally, in writing, or by sign language) and 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. The provider shall inform both the subscriber and, where applicable, the CA relaying the call, that the call is being recorded, and whether the recording is in electronic, audio and/or video format.

Further, with respect to sales or transfers of entire or partial customer bases (*i.e.*, mass migrations), the Consumer Groups believe that the existing customer verification and notice requirements applicable to telephone companies would likewise be reasonable in the relay context. However, if the Commission does not permit preferred relay provider freezes (as recommended by the Consumer Groups above), then the Commission rules should be modified to remove references to such with respect to relay services.

Finally, provider liability will also be an important aspect of the slamming rules, as the liabilities imposed on service providers will likely constitute the Commission's primary deterrent against slamming. However, the existing slamming liability rules provide for liability of 150% of all charges paid to the submitting carrier (and the user's liability to the provider for services rendered),[20] which may need to be modified for the relay context because relay users do not pay the providers directly for the service. Because the TRS Fund, and not the user, compensates the provider, the payment that would ordinarily be due to the subscriber under the existing rules should instead be paid to the TRS Fund, and because the states do not administer the TRS Fund, relay-related slamming complaints should be jurisdictionally handled only by the FCC.

The Consumer Groups also believe that the forfeiture procedures under Section 503(b) of the Act, which authorizes the Commission to assess a forfeiture of up to $150,000 against common carriers for each violation of the Act or of any rule, regulation, or order issued by the Commission,[21] and the Commission's forfeiture guidelines that establish a base forfeiture amount of $40,000 for violations of the slamming rules[22] are reasonable, and should likewise apply to relay providers. The Consumer Groups note that the Commission has previously applied its liability guidelines, including its authority under Section 503(b), to interconnected VoIP providers (which have not been formally found to constitute telecommunications service providers) for failure to comply with Commission rules.[23] Finally, relay providers should be

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[20] *See* 47 C.F.R. § 64.1140.

[21] *See* 47 U.S.C. § 503(b)(2)(B); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (increasing maximum forfeiture amounts to account for inflation).

[22] *See* 47 C.F.R. § 1.80(b)(4).

[23] *See Cardinal Broadband LLC, aka Sovereign Telecommunications, a wholly owned subsidiary of Cardinal Communications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, File No. EB-07-SE-310 NAL/Acct. No. 200832100070, FRN No. 0018035063, DA 08-1920 (rel. Aug. 15,

prohibited from submitting for compensation to the TRS Fund those subscriber minutes that relate to a slammed customer, as doing so would constitute fraud and abuse.

2. Number Portability

Related to the prevention of slamming, the Commission should also establish a transparent process for the porting of numbers or services between relay providers. Just as hearing users of telecommunications (and interconnected VoIP services)[24] are entitled to number portability and can keep their 10-digit telephone numbers when they switch carriers or the form of service provided, functional equivalency requires that relay users should likewise be entitled to number portability when they switch default relay providers (including VRS), when they switch customer premises equipment, and when they switch forms of relay service. Establishing common number portability procedures would also help to prevent unauthorized provider changes, would give consumers a clear picture of the amount of time that a service transfer should take, and would give relay providers clear guidelines under which to operate when transferring customers.

With respect to provider-to-provider ports, the Commission should provide a transparent process for the porting of numbers both between relay providers, and from TTY or voice providers to relay providers (and vice versa). This should include not only those requirements that providers must follow between each other to verify and accomplish the port, but also between the winning provider and the VRS database administrator or other applicable relay-specific database to update the default provider associated with the customer. Further, the

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2008) (applying fines against an interconnected VoIP provider for failure to comply with Commission E911 requirements).

[24] *See Telephone Number Requirements for IP-Enabled Services Providers, etc.*, Report and Order, Declaratory Ruling, Order on Remand and Notice of Proposed Rulemaking, 22 FCC Rcd. 19531 (2007) ("*VoIP-Number Portability Order*").

Commission should develop a timeframe that should apply to the porting process for relay services similar to that imposed on voice services, including VoIP. Relay customers should not be subjected to porting delays that extend beyond the 48-hour requirement that applies to traditional simple ports, and the Consumer Groups would also support voluntary industry practices to reduce this interval even more.[25]

Similar to the rules applicable to provider change authorizations, and to minimize the potential competitive barriers that overly burdensome porting procedures may create, relay providers should only require the minimum information necessary to complete a port. For simple ports of traditional telephone service (including wireless), Commission rules limit the information required to: (1) the 10-digit number being ported; (2) the customer account number; (3) the 5-digit zip code; and (4) the customer pass code (if applicable). As the Commission determined in the VoIP local number portability context, those four fields should sufficiently protect consumers from slamming, and will minimize the burdens on service providers and consumers to complete port requests.[26] In the VRS context, it is not clear whether the underlying provider of the telephone service (including wireless) has a customer account number for the deaf and hard of hearing consumer or that the consumer is aware of any such account number. The Commission should ensure that (1) whatever minimum information it requires for VRS ports is relevant to how the service is provisioned today and (2) the consumer seeking to change her service provider has ready access to the necessary information.

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[25] For example, the wireless industry standard for ports is two and a half hours. *See Telephone Number Portability*, Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 18515, ¶ 2 (2004).

[26] *See VoIP-Number Portability Order*.

3. Customer Proprietary Network Information

Given the increased importance of service provider changes in the relay context (and VRS context in particular), the Commission should also adopt rules to protect relay users against improper use of their CPNI by service providers. Again, the Consumer Groups believe that the CPNI rules adopted for relay services should closely mirror those adopted for voice services, including VoIP services,[27] with certain modifications to reflect the differences between relay services and telephone/VoIP services. Protection of CPNI is a fundamental obligation under Section 222 of the Act, and like voice subscribers, relay users are concerned about the security of the personal data they provide to their service providers. Given the potential use of a national registration system that will contain information on virtually all of the deaf and hard of hearing people who use ASL, consumer privacy in the VRS context is even more critical. All categories of consumers expect the same level of privacy protections, and in the case of TRS, functional equivalency requires it. Moreover, the Consumer Groups do not see any clear disadvantage to applying CPNI protections to TRS users, so long as the additional protections needed due to the unique nature of TRS discussed herein are also applied. Therefore, the rules governing the disclosure of CPNI to third parties that apply to voice services should also apply to TRS services.

Relay providers should be required to establish and maintain systems necessary to ensure that consumers' CPNI is protected. Training of all relay personnel is a key and first step to ensure compliance. Providers should also be subject to the Commission's annual certification requirement to document their compliance processes with CPNI rules, and to provide

[27] *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) ("*VoIP-CPNI Order*").

information on any complaints or problems. Users should have the right to access their CPNI and direct providers to disclose CPNI to persons designated by the user.

Due to certain inherent differences between voice telephone services and relay services (and VRS in particular), additional protections should be applied. First, in order to protect the viability of the TRS Fund, providers should be prohibited from using CPNI for consumer outreach purposes that suggest, urge, or tell a VRS user to make more or longer VRS calls. On the other hand, because Section 64.2005(a) of the current rules permit voice telephone companies to access CPNI for the purpose of marketing services within the same category of service to its subscribers, the Consumer Groups do not object to a relay provider marketing relay services and features to a user who has registered with that provider as his or her default provider (without the user's explicit consent) for the types of services that the consumer already receives from that provider. However, just as a serving wireless carrier may not access CPNI for the purpose of marketing to a roamer (because a wireless roamer is not a subscriber of the serving carrier), this policy should not be extended to an incidental user of a relay provider (*i.e.*, a user placing a call through a provider other than his or her default provider, for purposes of using the provider's relay services or for the placement or transmission of any point-to-point call that may intersect with the non-default provider's database or be carried over the non-default provider's network or system).

Finally, the Consumer Groups believe that relay services are analogous to dial tone services for hearing consumers, and as such, relay users should be afforded similar protections against unwanted advertising, including on those webpages used to place relay calls. The CPNI rules should prohibit a relay provider from using CPNI for the purpose of contacting a relay user for political and regulatory advocacy purposes, unless the user affirmatively agrees to such

contacts through a clear opt-in procedure with unambiguous language that the user would be receiving requests from the provider to participate in political issues before Congress and other legislative bodies and regulatory issues before the FCC and state commissions on issues of concern to the provider that the provider believes are also of interest to the user. Such language should be made available in ASL on the providers' websites, and providers should be required to make available a simple method for withdrawing the opt-in consent.[28] The Consumer Groups consider it important that the Commission remind relay providers that their services are the equivalent of dial tone, and just as voice telephone users do not receive political and regulatory advocacy messages when picking up a telephone to make a call, the Commission should emphasize that although TRS providers are permitted to advocate political and regulatory issues on their websites, they may not advocate such issues (or for that matter promote or advertise anything) on those web pages that must be navigated to make a relay call.

4. Commission Authority to Adopt Slamming, Porting and CPNI Requirements

The Consumer Groups believe that the Commission is well within its authority to apply slamming, porting, and CPNI requirements to relay providers, including VRS and other IP-relay providers.

First, Section 225 of the Act gives the Commission plenary jurisdiction over the regulation of TRS providers, the provision of TRS, and the administration of the TRS Fund. Because the Commission has plenary jurisdiction, it has the authority to regulate TRS change of service orders, which necessarily includes customer slamming and number porting. In particular, Section 225(a)(3) of the Act requires that TRS be functionally equivalent to voice

[28] As described in Section IV.C. *infra*, the Consumer Groups also urge the FCC to provide ASL versions of public notices.

communications service. Since voice telephone users enjoy the protections of the Commission's anti-slamming regulations, as a matter of functional equivalency, TRS users should enjoy the same protections once they select their default TRS providers. The Commission also holds plenary authority to regulate numbering in the United States under Section 251 of the Act, and therefore may apply porting and other related requirements on those entities that utilize numbering resources.

Further, since voice telephone users enjoy the privacy protections of the Commission's CPNI regulations, the Act's mandate of functional equivalency confers jurisdiction on the Commission to require that relay users enjoy the same CPNI privacy protections. There is no basis to distinguish traditional (TTY or non-Internet based) TRS providers from Internet-based TRS providers. Therefore, the Commission should confer CPNI protections on all TRS users, no matter what method of transmission is used for the particular service.

Further, taking an analogy from the Commission's regulation of interconnected VoIP providers, the Commission could also impose common carrier-type requirements under its ancillary authority under the Act. As recently stated by the U.S. Court of Appeals for the District of Columbia Circuit, the Commission may exercise ancillary authority when "(1) the Commission's general jurisdictional grant under Title I [of the Act] covers the regulated subject; and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities."[29] The provision of relay service, and in particular VRS service, is "communication by wire or radio" within the general jurisdictional grant of section 2 of the Act.[30] And the application of slamming, number porting, and CPNI rules in furtherance of

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[29] *Comcast Corp. v. FCC*, 600 F.3d 642, 646 (D.C. Cir. 2010) (quoting *Am. Lib. Ass'n v. FCC*, 406 F.3d 689, 691-92 (D.C. Cir. 2005)).

[30] 47 U.S.C. § 152; *see also, Comcast*, 600 F.3d at 646-47.

the Commission's oversight of relay services is "reasonably ancillary" to ensuring that consumers of relay services, including VRS services, are protected from harmful practices similarly to those of hearing users under Sections 225 (relay services), 222 (CPNI), 251(e) (numbering), and 258 (slamming) of the Act.

Although point-to-point services do not fit within the Act's Section 225(a)(3) definition of TRS, the Commission likewise retains ancillary jurisdiction to extend the slamming, porting and CPNI rules to point-to-point services. Since point-to-point video calls are a primary means by which people who use sign language, for example, communicate with each other, point-to-point calls are an integral part of a "Nation-wide. . . communication service," and to exclude such calls from a the definition of a "Nation-wide. . . communication service" would be discriminatory against people who are deaf.[31] In its *VoIP-CPNI Order*, and *VoIP-Local Number Portability Order*, the FCC extended CPNI and porting obligations to providers of interconnected VoIP services. In the *VoIP-CPNI Order*, the FCC noted that it is reasonable for "American consumers to expect that their telephone calls are private irrespective of whether the call is made using the services of a wireline carrier, a wireless carrier, or an interconnected VoIP provider, given that these services, from the perspective of a customer making an ordinary telephone call, are virtually indistinguishable."[32] Likewise, in the *VoIP-Local Number Portability Order*, the Commission found: "VoIP service 'is increasingly used to replace analog voice service,' including, in some cases, local exchange service" and "consumers reasonably expect interconnected VoIP services to include regulatory protections such as emergency 911 service and LNP."[33] The same holds true for relay services.

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[31] *See* 47 U.S.C. § 151.

[32] *VoIP-CPNI Order*, ¶ 56.

[33] *VoIP-Local Number Portability Order*, ¶ 18.

Since a TRS call must be functionally equivalent to a voice telephone call, as required by Section 225(a)(3) of the Act,[34] TRS users must be afforded the same rights with respect to slamming, number portability, and CPNI privacy as enjoyed voice telephone users. Moreover, to a VRS user, point-to-point video calls are simply another type of call, and the user expects the same privacy with a point-to-point video call that he or she would expect, and be entitled to, with a TRS, VoIP, wireline or wireless call.

B. Hearing Users Should Be Entitled to iTRS Numbers to Make Peer-to-Peer Calls

On January 29, 2009, the Consumer Groups filed a Petition for Partial Reconsideration in Dockets 03-123 and 05-196 asking that iTRS telephone numbers be made available to hearing people who use ASL or use other visual forms of communication with people who are deaf, hard of hearing, deaf-blind or speech-disabled so that they can have direct point-to-point video calls without the need to utilize VRS. This request was made because the FCC authorized Internet-based TRS providers to assign ten-digit numbers only to individuals who are deaf or hard of hearing or who have a speech disability, and not to hearing individuals.[35] As the Consumer Groups have stressed, it is critical (and also fair, in that all individuals indirectly fund relay through their other phone subscriptions) that all individuals, including hearing individuals, have the ability to obtain ten-digit numbers for the purpose of communicating with individuals who are deaf or hard of hearing or who have a speech disability who use videophones. At this time, a hearing person has no ability to obtain a ten-digit number from any source to engage in point-to-point videophone telecommunication with an individual who is deaf or hard of hearing or who

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[34] *See* 47 U.S.C. § 255(a)(3).

[35] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities E911 Requirements for IP-Enhanced Service Providers*, Second Report and Order and Order on Reconsideration, CG Docket No. 03-123, CC Docket No. 98-67 & WC Docket No. 05-196, FCC 08-275, ¶ 34 (2008) ("*iTRS Order*").

has a speech disability. The Consumer Groups continue to believe that it is imperative and within the FCC's mandate and authority to enable direct videophone telecommunication between hearing family members, friends, co-workers, service providers and others and individuals who are deaf or hard of hearing or who have a speech disability.

Section 225(b)(1) of the Act mandates that the FCC make available TRS "to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States" in order to carry out the purposes of the Act, which are "to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation."[36] Section 255(a)(3) of the Act further defines TRS to mean "telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio *with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio*."[37] As such, enabling direct videophone communication between hearing individuals and VRS users furthers the purposes of the Act and results in telecommunications services that are closer to or result in the actual functional equivalency mandated by the Act than are currently allowed under Commission rules. Further,

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[36] 47 U.S.C. § 225(b)(1) (emphasis added).

[37] 47 U.S.C. § 225(a)(3) (emphasis added). The term "TRS" includes, but is not limited to, "services that enable two-way communication between an individual who uses a TDD or other non-voice terminal device and an individual who does not use such a device." *Id.* The FCC acknowledged as much when it determined that it possessed "ample authority to regulate the provision of point-to-point calls between Internet-based TRS subscribers." *iTRS Order* , ¶ 66.

allowing hearing persons to obtain iTRS numbers will reduce costs to the TRS Fund by decreasing the number of relay calls and telephone calls made through VRS.[38]

The Commission sought comment on the Consumer Group's petition.[39] Notwithstanding the fact that all commenters supported the petition, the Commission has yet to act. The Consumer Groups request that the Commission act on the petition, and believe that it can do so in the context of this proceeding.

IV. RESEARCH AND DEVELOPMENT

The FCC is mandated by Congress to encourage innovation, including research and development, of communications devices and services for people with disabilities. The ADA specifically requires that the Commission ensure that its Title IV regulations encourage "the use of existing technology and do not discourage or impair the development of improved technology."[40] Congress intended that the ability to provide a functionally equivalent service is tied to innovation and development, which is essential as new telecommunications technologies are developed. As with any technology, rigorous research and development will continually improve TRS technology, resulting in meaningful services and applications. As noted by the Consumer Groups in the Policy Statement, innovations and improvements in technology for people with disabilities are dependent upon research and development, and are mandated under Section 225(d)(2) of the Act.[41]

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[38] Once a number has been assigned, the cost to facilitate direct videophone telecommunications between hearing individuals and VRS users, through automated look-ups and link-ups of videophone numbers with IP addresses, is negligible, especially when compared to the cost of providing video interpreter communication assistant services for the same call if placed through VRS.

[39] *See* Public Notice, DA 09-870 (rel. April 20, 2009). This public notice also sought comments on a similar petition filed on the same date by GoAmerica, Inc.

[40] 47 U.S.C. § 225(d)(2).

[41] Policy Statement, Goal 3.1, p. 8.

A. Compensation Rates Should Take into Account Research and Development and Marketing

When setting VRS rates, the Commission must take into account research and development needs to encourage VRS providers to innovate and provide ever improving functional equivalency. Among the possible improvements that could emerge as results of research and development are mobile VRS applications, split-screen technologies and E911 advances which show both the interpreter and the other party on the screen, and total conversation set-up in which the screen shows both video and text and includes the ability to hear the audio as well as speech-to-speech services and captioning for hard of hearing consumers.

B. Brand Name Marketing

Brand name marketing also encourages research and development. With brand name marketing, providers can compete and distinguish themselves with their innovations by informing users about their new technology and services. To the contrary, without brand name marketing, the development of improved technology may be discouraged or impaired, in violation of the mandates of Section 225(d)(2) of the Act. Brand name marketing is utilized in telephone competition which drives the improvement of technology, and the same is true with respect to relay services.

Brand name marketing is a critical component of providing service since it allows VRS providers to more effectively reach their markets and allows them to educate potential customers by providing them with information that distinguishes their services from those provided by other companies. The ability to market their brands gives VRS providers an incentive to develop better services and achieve greater functional equivalency. Without brand name marketing, these providers have no method of letting potential users know how they are different or provide better

services. When setting VRS rates, the Commission must therefore make them generous enough to account for at least a small percentage of brand name marketing needs to encourage the additional innovations and improvements to the service needed to bring about functional equivalency.

C. Any Changes to the Compensation Rate or Methodology Should Not Act as a Cap

While the Consumer Groups share the FCC's goal of reducing waste, fraud and abuse, they caution the Commission not to lose sight of the need to ensure that any changes to the VRS compensation methodology not act as an effective cap on improvements in other areas discussed herein, such as outreach to expand the program to new users or encourage research and development that leads to service innovation. One such positive example is the Commission's proposal to provide a new-to-category payment that could effectively award providers for increasing outreach activities to unserved deaf and hard of hearing consumers. As the Consumer Groups established in its Policy Statement, advances in the delivery of relay services and associated technology will contribute to both the quality and efficiency of TRS, and meet the mandate by Congress to encourage innovation, including research and development, of communications devices and services for people with disabilities.[42]

V. OUTREACH TO CONSUMERS AND BUSINESSES

To address deficiencies in outreach, the *FNPRM* seeks comment on ways to provide incentives for providers to be more efficient in their marketing and outreach efforts, and to ensure that their outreach efforts build familiarity about VRS within the general public.[43] The

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[42] *Id.* at p. 8-9.

[43] *FNPRM*, ¶ 32.

Consumer Groups support the FCC's plans for a neutral third party to handle non-brand name outreach and education for VRS.

A. The Commission Should Take Immediate Steps to Identify and Reach Out to Unserved and Under-Served Americans Who Would Benefit From VRS

At the outset, it should be noted that data on people's interaction with TRS services generally, including VRS, is sparse or nonexistent.[44] As such, there is an urgent need to research the availability of service, user trends and habits, including the use of VRS, in emergencies,[45] and new and emerging technologies.[46] Collection of this data will drive informed decisions by consumer, the industry, the FCC and Congress toward fulfilling the functional equivalency mandate of the ADA.[47]

As recommended by the Consumer Groups in the Policy Statement, immediate steps should therefore be taken to identify and reach out to unserved and under-served Americans who are deaf, hard of hearing, deaf-blind or speech-disabled who have not discovered TRS or VRS, or been extended the freedom and independence offered by the type of TRS that best matches their communication requirements.[48] Despite the growth of these services and the growth in the number of users, many people who are deaf, hard of hearing, deaf-blind and speech-disabled remain unaware of the services offered and how to access them or how to use them to most

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[44] Policy Statement at p. 3.

[45] *See e.g.*, "Emergency Access Advisory Committee (EAAC) Report and Recommendations," (rel. Jan. 25, 2012) *available at*: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-312161A1.doc (recommending a targeted education campaign for individuals with disabilities to ensure accurate information about the NG9-1-1 system and recommending that the FCC work with the appropriate agencies to issue contracts and/or grants to knowledgeable organizations or agencies to do outreach programs for specific populations).

[46] *Id*.

[47] *Id*.

[48] *Id*.

effectively meet their individual communication needs.[49] In addition, hearing families that have deaf or hard of hearing children may not be aware of TRS or VRS options. The Consumer Groups believe that there are Americans who are on fixed incomes and unaware of available resources for access to VRS services, or who live in rural areas or on Tribal Lands where broadband access is lacking.[50] The data that the Consumer Groups propose gathering will help policy makers and the industry identify and fill these gaps.

B. The Commission Should Conduct or Direct a Wider Outreach to Those People and Businesses Who Place or Receive VRS Calls

Separately, but equally important, there is a need to educate those people and businesses who may potentially place communications to or receive communications from deaf, hard of hearing, deaf-blind and speech-disabled individuals. As made clear in the Policy Statement, VRS promotional activities should be conducted to instill responsibility of the public and private sectors to make and receive VRS calls on a regular basis (including but not limited to employers, educational programs at all levels, service providers, public officials, businesses, legislators and political office candidates, and pollsters/research entities).[51] The vast majority of hearing persons do not realize these services even exist, how to use them to place calls or how to react should they receive a call. Since a call requires someone at each end, to achieve functional equivalency, educational outreach efforts targeting these potential users are necessary. For example, just as any hearing person might pick up the telephone to call a local business to inquire about their services, prices and hours of operation, deaf, hard of hearing, deaf-blind and speech-disabled individuals have the same need to contact businesses. However, hearing recipients of calls

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[49] *Id.*

[50] *Id.*

[51] Policy Statement, Goal 2.3, p. 8.

handled by VRS providers may not accept the call, or if they do accept the call, may not fully understand how the service works and how to effectively communicate with a deaf, hard of hearing, deaf-blind or speech-disabled individual through a CA.[52] Thus, employers should offer VRS training activities for their employees as part of workplace accommodations, as noted in the Policy Statement.[53] Furthermore, outreach efforts may help minimize hang-ups by business people who are skeptical of fraud and other abuses.

Additional outreach efforts to recipients of VRS calls, whether deaf or not, are necessary for these services to be functionally equivalent to voice telephone services. The Consumer Groups therefore recommend that the Commission contract a third-party unaffiliated with any VRS provider to engage in education and outreach activities and to fund the activities from the Interstate TRS Fund. To that end, the Policy Statement recommends that the Commission also collaborate with agencies and entities such as with the Department of Commerce and the Small Business Administration Office of Advocacy to build trust and confidence for all businesses to use relay service for transactions.[54]

Without question there is still a need for extensive outreach for all Americans, whether VRS users or not, to build familiarity and acceptance of VRS nationwide.[55] Funding for outreach must focus on educating deaf, hard of hearing, deaf-blind and speech-disabled individuals 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. Legitimate outreach efforts should

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[52] *See* http://www.ada.gov/wells_fargo/wf_fact_sheet.htm; in which the Department of Justice entered into a settlement with Wells Fargo regarding their alleged refusal to accept relay calls from bank customers or potential customers.

[53] *Id.*, Goal 2.5.

[54] *Id.*, Goal 2.6.

[55] *Id.*, Goal 2.2. The Consumer Groups recommend that the FCC first separate and distinguish outreach efforts from marketing and suggest that outreach should focus on education.

include education of deaf, hard of hearing, deaf-blind and speech-disabled individuals as well as the individuals in other sectors of the general community, and businesses so that they can effectively communicate via VRS services.

C. Outreach Requested by Consumer Groups is In Line With Prior Outreach Efforts

The type of outreach recommended by the Consumer Groups is in line with similar relay service outreach efforts previously undertaken by the FCC. For example, in response to inquiries concerning the appropriate use of IP Relay Service, the Commission issued a Public Notice to provide guidance to consumers, TRS providers, and merchants that conduct business via telephone.[56] The Commission should proactively issue such Public Notices or other guidelines to inform VRS users, business, and the VRS industry about program developments and areas where additional explanation or education may be helpful or necessary. At the same time, the FCC should post ASL versions of such public notices.[57]

The Commission has overseen and directed outreach efforts in a number of different program areas that might be instructive in the VRS context. As the Commission noted in its recent *Lifeline Order*, "[o]ver the years, the Commission has highlighted the importance of outreach to low-income consumers and in 2004 adopted outreach guidelines for [Lifeline providers] and states to ensure that those in need of Lifeline service would be made aware of the

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[56] *See FCC Reminds Public of Requirements Regarding Internet Relay Service and Issues Alert,* Public Notice, DA 04-1738 (rel. Jun. 8, 2004).

[57] The Consumer Groups also note that the FCC's comment system at www.fcc.gov/comments has been down for several days prior to the deadline for these Comments and although it is functional, it is complex for a lay person to use or access. The Consumer Groups also have expressed concern about the inability to submit video comments in ASL, the language of a very significant number of VRS users.

program."[58] In the recent *Lifeline Order*, the Commission took significant steps to increase the quality of information Lifeline providers must provide to potential Lifeline customers, including requiring marketing and uniform language to describe Lifeline, setting forth outreach guidelines, and establishing consumer education initiatives.[59] Notably, the basis for many of the new Lifeline rules was to prevent waste, fraud and abuse. Like the changes to the Lifeline program, the Commission could adopt changes to the VRS program so that outreach not only informs consumers about the benefits of VRS services, but also explains that VRS is a government benefit and fraudulent use of VRS violates Commission rules. The Commission has also provided for and mandated outreach efforts in the National Deaf-Blind Equipment Distribution Program.

USAC regularly conducts outreach efforts as part of its responsibility administering the federal Universal Service Fund. For example, USAC's outreach program called HATS (Helping Applicants To Succeed), originally created in 2006, was redeveloped in January 2009 to begin a new phase of customized programmatic education.[60] The purpose of redeveloping the HATS Outreach Initiative was to create a more comprehensive method of assisting beneficiaries who have experienced various difficulties with the Schools and Libraries Program. In addition, the initiative provided targeted training and outreach that helped beneficiaries become more successful. VRS providers may benefit from similar outreach and training programs conducted by the TRS administrator. The Commission should look to these and other models of USF and state TRS administrator outreach programs for best practices.

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[58] *Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 11-42 *et al.*, FCC 12-11, ¶ 271 (rel. Feb. 6, 2012) ("*Lifeline Order*") (citations omitted).

[59] *Id.*, ¶¶ 275-282.

[60] *See* USAC, HATS Overview, *available at*: http://www.usac.org/sl/about/hats-outreach/.

VI. TRS BROADBAND PILOT PROGRAM

The Consumer Groups strongly support establishing a "TRS Broadband Pilot Program" ("TRSBPP") to provide discounted broadband Internet access to low-income deaf, hard of hearing, deaf-blind, and speech disabled Americans who use ASL as their primary form of communication.[61] As noted by the Commission, the proposed TRSBPP could make VRS available to a significant pool of new-to-category potential VRS users.[62]

However, the Consumer Groups caution the Commission not to create a "separate but equal" system for hearing and speech disabled persons for fear that such a system would in reality become separate and unequal. While it was stressed at the roundtable discussion that the TRSBPP must include training for deaf and hard of hearing people on how to use and benefit from broadband access,[63] the Consumer Groups do not want there to be broadband silos, with the focus of the Lifeline broadband pilot on hearing consumers and the TRSBPP on deaf and hard of hearing consumers. The Consumer Groups agree that without proper training, potential deaf or hard of hearing users will not be able to fully utilize the service and will not be able to take full advantage of the Lifeline broadband pilot. They therefore encourage the Commission to view the TRSBPP as a supplement to the Lifeline broadband pilot and to coordinate the two programs closely. Also, to the extent that TRSBPP must be initially administered under the TRS Fund, Consumer Groups recommend transitioning its administration to the Lifeline program under USF and requesting any statutory changes necessary to do so.

As discussed in more detail in the quality of service section, the quality of broadband service provided through the TRSBPP must offer sufficient bandwidth to support sign language

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[61] *FNPRM*, ¶ 30.

[62] *Id*., ¶ 64.

[63] *Id*.

communication in video conferencing calls. Sufficient bandwidth will ensure that deaf and hard of hearing people benefiting from the program will be able to make and receive video and VRS calls.

Lastly, while the Consumer Groups are encouraged that the Commission seeks to ensure that any such program expands the potential base of VRS users to include those who could not otherwise afford broadband,[64] it should be noted that a low income consumer may not want a videophone to access VRS. Rather, a low income consumer may want a captioned telephone to make captioned telephone service calls. Thus, the TRSBPP should be expanded as quickly as possible to meet the needs of varying types of iTRS users.

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

The Consumer Groups organized these comments to focus first on needed service quality and VRS program improvements. Adopting rules to implement these VRS program improvements should be the Commission's top priority. It is the Consumer Groups' strong preference that the Commission not change the 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; and (3) evaluating whether more can be done to police, audit, and enforce compliance with current rules designed to prevent fraud.

The Consumer Groups have very strong concerns that this mechanism, as proposed, would shift the burden of VRS fraud from the population as a whole (which effectively funds TRS services through contributions on telecommunications service) to only the deaf and hard of hearing community and their hearing contacts. The Consumer Groups believe that such burden

[64] *FNPRM*, ¶ 30.

shifting is contrary to the statute, which is designed to protect deaf and hard of hearing consumers by making available functionally equivalent communications services. In addition, this proposed methodology raises numerous questions regarding how it would be implemented in a manner that does not compromise the functional equivalency achieved to date.

A. Defining a VRS "User" (Section V.B.4)

The Consumer Groups share the Commission's goal of ensuring 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."[65] The Consumer Groups respectively submit that defining a VRS "user" for purposes of a per user compensation mechanism is difficult and presents numerous new opportunities for fraud. It is hard to define what per user means. Does it mean per person, per device, per location, or some combination of these three? For example, could a deaf and hard of hearing "user" choose one provider for home wireline, another for wireless, and a third for business? What if one person in the house prefers ZVRS and another person in the same house sharing the same IP address prefers Purple? Would the per user reimbursement methodology permit each individual to use a different provider? If so, would that make it more difficult to detect fraud and create incentives to create multiple "users" in the same household? Would the Commission need to adopt a one user per household rule similar to the one it adopted recently in the Lifeline proceeding? Would the Commission need to impose age limits so providers did not increase their eligible reimbursement by signing up each member of a household? Would such limits meet the functionally equivalent mandate when hearing households can and often do buy "family plans" of wireless service that include a handset for each household member? The Consumer Groups would also like the FCC to address the question

[65] *FNPRM*, ¶ 11.

of providing the capacity for VRS calling, and video peer-to-peer communication in libraries, airports, and public places. There are some deaf and hard of hearing people on low income that just cannot afford broadband access, even if they get a device for free, and are allowed to pay a discounted fee as per the Connect America Fund. These individuals would benefit from access to VRS in public places, and it is not clear if or how a per user methodology would accommodate such VRS use. These and other difficult questions must be evaluated carefully to balance the potential for additional fraud under a per user system against a deaf or hard of hearing consumer's right to functionally equivalent communications services.

The difficulty of defining a "user" provides just one example of the new kinds of waste, fraud, and abuse that might occur under a new per-user compensation methodology. In contrast, the FCC has had some ten years' experience with the per-minute methodology. It has responded to fraud under the per-minute methodology with legal action, certification reforms, and additional audit and enforcement activity.[66] As explained in Section VIII below, the Commission should first evaluate whether these actions are sufficient to keep future fraud to a minimum before embarking on a wholesale programmatic change that may introduce new fraudulent activity that is just as difficult, if not more so, to deter, detect and prevent.

The Consumer Groups are also concerned that the "active user" proposal does not recognize that hearing consumers are "users" of TRS. Does the Commission or the TRS Administrator track how many hearing user initiate VRS calls? The proposed definition of

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[66] According to Chairman Genachowski, reforms to the VRS program to eliminate incentives for fraud have already saved taxpayers approximately $250 million. *See e.g.*, Statement of Chairman Julius Genachowski, Federal Communications Commission, Hearing on "FCC Process Reform", Subcommittee on Communications and Technology, Committee on Energy and Commerce, U.S. House of Representatives (dated July 7, 2011); Prepared Statement of FCC Chairman Julius Genachowski, Hearing on "The Budget and Spending of the Federal Communications Commission", Committee on Energy and Commerce Subcommittee on Communications and Technology, U.S. House of Representatives (dated February 16, 2012).

"active user" is a "VRS user who makes at least two minutes of outbound calls to parties that are not affiliates of any VRS provider during that month."[67] Any definition of active user should include deaf and hard of hearing consumers that ***receive*** VRS calls, even if they do not place such calls.

The term "enterprise user" appears to be limited to traditional commercial establishments with fixed locations that employ numerous individuals. This is ironic given the Commission's focus on how broadband can empower small businesses, work-at-home businesses, and telecommuting individuals. Given the nature of broadband technology, the choice between residential and business is not black and white, and these non-traditional business arrangements are not adequately accounted for in the proposed definition of enterprise user. Consequently, how would a deaf or hard of hearing individual who works from home be treated in terms of selecting a VRS provider under the per-user system? Would that individual have to choose one VRS provider for all intents and purposes, or would that individual have the option of choosing a different VRS provider for the business work within the home environment?

B. Contract Lock-In and Dial Around (Sections V.B.4 & 5)

One aspect of the Commission's interoperability rules is working, namely that VRS users can make and receive calls through any VRS provider. For example, a deaf and hard of hearing consumer may have a video phone from one provider but can "dial-around" that provider by inputting a point-to-point address that permits the user to reach the second provider directly without using the video phone provider's VRS service. After connecting to the CA through this point-to-point call, the user can make a VRS call using the second provider. This dial-around capability is important, for example, when the first provider's wait times are too long, the

[67] *FNPRM*, App. C at ¶ 9.

connection to the first provider is inadequate or not working for whatever reason, or the consumer is dissatisfied with the first CA's skill set. Consumers not only want and value this ability to dial-around, it is also necessary to achieve functional equivalency. Hearing consumers can today dial-around their chosen long distance carrier by using access codes, calling cards, or collect calls. While it is true that hearing consumers must pay (at times) for these dial-around calls in addition to the plan they purchase from their primary service provider, requiring deaf and hard of hearing consumers to pay for dial-around in addition to paying for various forms of Internet access at home and via a wireless device is not functional equivalency. Depriving deaf and hard of hearing consumers of the capability to dial-around frustrates, rather than promotes, functional equivalency.

The Consumer Groups understand that the proposed per user methodology would require each user to choose one service provider for a specified contract length (for example, one year) and would permit dial-around only for 911 calls. The Consumer Groups have a number of concerns with this restriction:

- Deaf and hard of hearing consumers should not be restricted to one service provider for both fixed and mobile services. Hearing consumers have different choices for fixed and mobile service. Although the Commission has measured the prevalence of voice, Internet, and video bundles, the Consumer Groups are not aware of any statistics that measure whether and how many hearing consumers choose one provider for both fixed and mobile service. Today, deaf and hard of hearing consumers use multiple devices and have multiple telephone numbers for different technologies. It would not be functionally equivalent to restrict deaf and hard of hearing consumers to one number and one provider for all forms of telecommunications including fixed and mobile.

- Deaf and hard of hearing consumers need the ability to change service providers if service quality deteriorates, just as hearing users have the ability to switch telephone providers (*e.g.*, wireline to cable). Many mobile phone plans allow people to opt out of their plans early. Monthly mobile, VoIP, and wireline phone plans are also available. The VRS program should give VRS users functionally equivalent options of month-to-month plans and early termination.

- Limiting dial-around to 911 calls is problematic as many emergency or urgent calls are made not to 911 but to family members, friends, or co-workers. Emergency non-911 situations could occur if a deaf or hard of hearing person needed a friend to help with transportation to the doctor, or was in a car accident and needed to reach a friend to ensure a pick-up of one's child from daycare.

The FCC should consider the dilemma experienced by consumers who are deaf or hard of hearing if the FCC limits a consumer to using one provider, either for fixed and mobile or restricting dial-around. For example, if there is congestion between the consumer's Internet service provider and VRS provider A, the packet loss can become so bad that the video is unintelligible and the call cannot continue. Today, a consumer could dial-around to another provider whose Internet connection may not experience the same problems. Under a one-provider model, however, consumers would not have this option unless they paid for the ability to dial-around. There is a much higher likelihood of Internet connection difficulties with respect to video transmissions than there is of telephone communications for hearing consumers, and therefore functional equivalence requires more options with respect to Internet connections and services be available to deaf and hard of hearing consumers to ensure telecommunications access.

C. High Volume Users (Section V.B.13)

Section 225(d)(1) of the Act directs the Commission to adopt regulations that "prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services." Because the proposed per user compensation methodology reimburses VRS providers based on an average time of use per user, it violates this directive.

The *FNPRM* estimates that the average VRS residential consumer uses 70 minutes of VRS per month and the average enterprise consumer uses 140 minutes of VRS per month. While

acknowledging that the cost of interpreters is variable, the FCC attempts to translate that variable cost into a fixed, per user cost, by calculating a flat rate based on the variable cost multiplied by the average minutes. Under the per user method, the FCC believes a reasonable amount of compensation is:

> (1) $528 a month per enterprise user (528 / an estimated 140 minutes per month = about $3.77); and
> (2) $283 a month per residential user (283 / an estimated 70 minutes per month = about $4.04).[68]

By design, this reimbursement methodology will provide incentives for VRS providers to limit VRS use in general to all consumers. In fact, VRS providers would want to see every consumer use as little of their service as possible. Notwithstanding their best intentions to provide quality VRS service that complies with program rules, VRS providers will have strong incentives to seek out low volume consumers to maximize profit under a per user reimbursement. In short, the per-user methodology will most likely shift the incentives for VRS companies from encouraging deaf and hard of hearing individuals to exercise the freedom to make VRS calls to discouraging them from making VRS calls to maximize their profits. This incentive shift would mean that VRS companies have little motivation to provide high quality interpreter services in their CAs, and thereby discourage long calls when consumers are frustrated with the CA quality.

D. User Certification (Section V.B.11)

Unlike 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. For those who have been deaf or hard of hearing since birth, they are not likely to have a recent audiologist report. Requiring consumers who are deaf

[68] *FNPRM*, ¶¶ 93-94.

or hard of hearing to make a trip to the doctor to certify hearing loss is an economic burden on many of them. Although Consumer Groups are very wary about the creation of any national database of VRS users, they understand the Commission's desire to get better data on VRS use and commitment to protect the privacy of any such data. The Consumer Groups make recommendations herein regarding privacy protection measures. Data protection measures regarding access to any such database will also be key and both must be in place before any national database is created. Although the Consumer Groups are still discussing potential viable options for identifying deaf or hard of hearing users that qualify for VRS services, one possible means may be to combine self-certification with a non-usage policy.

VIII. ALTERNATIVE METHODOLOGY WITH CONDITIONS

The Commission has recognized that part of its statutory Universal Service mandate involves an obligation to ensure that speech impaired, and deaf and hard of hearing individuals have access to communications networks,[69] and that services are "functionally equivalent" to those available to individuals without speech or hearing impairments.[70] The Commission's VRS program has also sought to promote "consumer choice and effective competition" within the program.[71] As Consumer Groups have explained "intense competition among a number of qualified vendors in the… market … give[s] the … user population a range of choices in features and services."[72] The Commission has regularly espoused the benefits of competition between multiple providers. The Commission has recognized that a provider's commercial success "should be driven by technological innovation, service quality, competition-based

[69] *FNPRM*, ¶ 2.

[70] *Id.*, ¶ 3.

[71] *Id.*, ¶ 15.

[72] *Id.*, ¶ 14 (citing Policy Statement at p. 9).

pricing decisions, and responsiveness to consumer needs — and not by strategies in the regulatory arena."[73] And even where pricing may not distinguish the services provided by competing firms, the Commission has recognized the benefit to consumers from "competition over service quality and features."[74] Market power may be able to "reduce competition on dimensions other than price, including innovation and service quality."[75] Further, the Commission has acknowledged that the goal of the 1996 Act was to promote competition for all telecommunications services over the long run to reduce reliance on regulation.[76]

With respect to the VRS program, the Commission has explained that it seeks to alter the rate structure to provide for long term sustainability of the program while reducing and deterring fraud. Under the current VRS reimbursement scheme based solely on minutes of use, the Commission is concerned that providers seek to generate minutes rather than serve customers and that incentive invites fraudulent reimbursement requests.[77]

In an effort to reduce the incentive for abuse, the Commission proposes to change the VRS provider reimbursement rate from a per-minute rate to a per-user rate.[78] Under such a framework, consumers, despite the Commission's preference for competition, may have to

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[73] *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1420 (1994).

[74] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, 25 FCC Rcd 8622, ¶ 75 (2010).

[75] *See, e.g., Verizon Wireless and Atlantis Holdings LLC (Transfer of Control)*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, ¶ 40 (2008); *Sprint Nextel Corp. and Clearwire Corp. (Applications for Consent to Transfer Control)*, Memorandum Opinion and Order, 23 FCC Rcd 17570, ¶ 24 (2008); and *AT&T Wireless Services, inc. and Cingular Wireless Corp. (Transfer of Control)*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶¶ 68-69 (2004).

[76] *See Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 325 (1997) (finding that "intent of the 1996 Act [was] to rely on market forces and to minimize regulation").

[77] *FNPRM*, ¶ 26.

[78] *Id.*, ¶ 54.

choose a single VRS provider and that VRS provider will receive a flat amount of compensation per month for each consumer, regardless of how many minutes of VRS the company's customers use.

The Commission's rationale for a per-user regime is premised on its contention that most of the costs VRS providers incur are themselves fixed, and that fixed costs should be recovered through flat rates. For example, the Commission identifies iTRS access technology, installation, customer care, general and administrative costs, and call center infrastructure as fixed costs involved in the provision of VRS.[79]

The *FNPRM* acknowledges that provider's costs for CAs vary with use, but argues that because average minutes of VRS use per consumer is constant, CA cost can be translated into a per user or fixed cost.[80] Consumers are naturally concerned that under a strict per-user compensation scheme, any user who does not fit an "average user" profile will be more expensive to serve and providers will have an incentive to avoid such "power" users. Providers operating under such a structure will quickly realize that the path to profitability lies not in providing quality service and winning the loyalty of VRS users, but instead on acquiring low usage customers and collecting a flat per-user fee that exceeds the costs the provider incurs. As a result, the "power-users" will gravitate to other firms but those firms will be unable to recoup their costs under a flat rated per-user structure. This will result in a cycle of declining service quality, and provider consolidation or exit that threatens the Commission's core goals of providing competitive and functionally equivalent services for speech impaired and/or deaf and hard of hearing Americans.

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[79] *Id.*, ¶ 56.

[80] *Id.*, ¶ 55.

A. Condition of Functional Equivalence Guarantees

The Consumer Groups are adamantly opposed to the per-user compensation methodology in the belief that it would decimate the level of functional equivalence achieved with the current system. As described above, the per-minute compensation methodology with the recent rule changes to combat fraud and abuse remains the best rate compensation methodology at the present time to support the current level of functional equivalence for deaf and hard of hearing consumers and speech impaired consumers.

Should the Commission proceed with a system that does not use the current per-minute compensation methodology against the strong recommendations of the Consumer Groups, the Consumer Groups oppose any system that uses the per-user compensation methodology as it is proposed in the *FNPRM*. Rather, the Consumer Groups are prepared to work with the Commission on any new rate compensation methodology that addresses all concerns about functional equivalence prior to implementation. The Consumer Groups propose a working group such as those that were utilized by the Commission to implement the various standards under the 21st Century Communication and Video Accessibility Act. With such a working group involving all stakeholders, the various challenges and disadvantages of any rate structure changes would be well dissected and vetted prior to adoption and implementation, and thereby avoid a large scale disruption to the civil rights of speech impaired and deaf and hard of hearing individuals seeking functional equivalence in their telecommunications usage.

B. Possibility of a Hybrid Rate Structure Contingent on Functional Equivalence Guarantees

Subject to functional equivalence guarantees that need to be established in advance of any adoption and implementation, the Consumer Groups are prepared to discuss the possibility of a hybrid rate structure. Instead of a per-user compensation regime that compromises

competition, a hybrid rate structure would recover fixed costs through a per user reimbursement rate with one provider and recover usage sensitive costs (CA costs) through a per-minute reimbursement rate that can be used through any provider directly as well as through the use of dial-around.

The Commission has a well-settled and long standing ratemaking policy that non-traffic sensitive costs should be recovered through non-traffic sensitive (fixed) rates and traffic sensitive costs should be recovered through traffic sensitive (per-minute) rates.[81] The proposal floated in the *FNPRM* would impermissibly deviate from this ratemaking policy by trying to wedge costs that the Commission recognizes are usage sensitive into fixed rates. A hybrid structure would be more consistent with the Commission's modern ratemaking policy.

Under a hybrid rate structure, VRS providers' compensation would be comprised of two separate components: (1): a lower per-minute rate to recoup traffic sensitive costs — the cost of compensating CAs; and (2) a fixed per-user rate to recover the remainder of VRS fixed costs which do not vary with usage.[82]

There are significant advantages to such a hybrid structure when compared to the *FNPRM*'s proposed per-user regimes. Unlike with the *FNPRM*'s per-user only compensation, a hybrid structure fulfills the Commission's competitive mandate by providing users with the ability to be able to choose from multiple providers in the program for their VRS minutes. Limiting VRS users to one provider impedes competition and innovation and is antithetical to core FCC goals under the Act. A framework that allows built-in competition for minutes will require providers to provide quality service even where they receive per-user compensation.

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[81] *MTS and WATS Market Structure (Access Charge)*, Third Report and Order, 93 FCC 2d 241, 268-69 (1983) ("*Access Charge Order*").

[82] *See FNPRM* , ¶ 56 (describing non traffic sensitive VRS costs).

Under a hybrid rate regime, a customer of one provider can use another provider if faced with long wait times to reach a CA and other competing providers know they will get paid for the minutes these customers consume even when the user has not "switched."

In short, the hybrid structure offsets the weaknesses inherent in using solely a per user rate. Consumers know they will not be forced to use one carrier that will have little incentive to innovate and provide excellent service once it has "won" the customer and received the per-user fee. Similarly, under such a regime, any individual consumer may use more than the average minute of use on which per user reimbursement is based thus removing the per user regime's incentive to avoid serving "power" users. And of course, because the per minute rates only recover CA costs, there is a reduced incentive for fraud regarding compensable minutes.

The Commission has adopted similar types of hybrid compensation structures in the past. Most prominently, in developing the structure for access charges, the Commission recognized it was economically inefficient to recover non traffic sensitive costs through traffic sensitive (per-minute) rates.[83] As a result, the Commission's 1997 *Access Charge Reform Order* initiated a transition that eventually eliminated reliance on a per-minute rate element — Carrier Common Line to recover the fixed costs of the local loop assigned to the interstate jurisdiction.[84] Although the Commission's recent *USF/ICC Transformation Order* shifts access compensation from per minute recovery altogether, that is not a repudiation of the well settled economic principle that rate structure should mirror the manner in which costs are incurred, but instead reflects the Commission recognition that the costs for providers to exchange traffic with each other using IP-

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[83] *See Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, ¶¶ 67-69 (1997) ("*Access Charge Reform Order*"); *Access Charge Order*, ¶¶ 27-35.

[84] *Id.*, ¶¶ 99-102; *see also Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 19613, ¶¶ 61-63 (2001).

based networks do not vary based on usage,[85] and that those costs, for the market to function properly, should be recovered from each carrier's end users, rather than through a byzantine series of carrier-to-carrier exchanges of compensation.[86] In VRS, the Commission has acknowledged that the cost of maintaining a staff of competent CAs to handle VRS calls varies depending on the volume of calls the VRS provider needs to handle. Thus, unlike with IP-based networks, VRS will inevitably always have a usage sensitive component.

The Consumer Groups however remain concerned that any such hybrid system is fraught with problems in its implementation for all of the reasons stated in these Comments with respect to the per-user model. Many of the concerns expressed herein remain with a hybrid system that utilizes any aspect of the per-user methodology. For example, there remain questions about the eligibility and verification of consumers seeking to obtain VRS services. In addition, the Consumer Groups cannot support the hybrid methodology without a clear explanation of how the Commission would assure that consumers would be able to dial-around the primary VRS provider.

For the aforementioned reasons, the Consumer Groups fully oppose the per-user methodology and urge the Commission to reject its own proposal for a VRS compensation regime based solely on a per-user rate. The Consumer Groups also oppose any adoption or implementation of a hybrid compensation regime without clear functional equivalence

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[85] It bears noting that during the transition from the current access charge regime to the bill and keep model, the Commission expects carriers to continue exchanging traffic in TDM and that many of its existing rules governing the rate structure remain in place, while certain elements are phased out and rates reduced. During this transition, LECs will still recover traffic sensitive costs through per-minute rates (i.e. for local switching; tandem switching, common transport; and will recover non-traffic sensitive costs — for dedicated facilities and switch ports — through flat rated charges.

[86] *See Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., FCC 11-161 (rel. Nov. 18, 2011) ("*USF/ICC Transformation Order*").

guarantees prior to the implementation, but ask that the per-minute compensation regime be allowed to continue with the Commission's recent anti-fraud rule changes and efforts until such time as the working group proposed above makes recommendations regarding revisions to the compensation methodology, if any.

IX. COLLABORATIVE PROCESS

The Consumer Groups appreciate the extension the Commission granted for filing comments and reply comments, the February 13, 2012 roundtable with consumer representatives and VRS providers, and the multiple meetings FCC staff have held with the Consumer Groups throughout this process. The Consumer Groups look forward to continuing to work cooperatively with the FCC as it strengthens and updates the VRS program.

The Consumer Groups are still concerned, however, about the Commission's ability to develop a record on which to make informed decisions on the numerous, far-reaching proposals included in the *FNPRM*. As one commentator noted:

> In its current drive to be "data driven," the FCC has spared no detail. The Notice of Proposed Rulemaking runs 109 pages, with 312 question marks and the phrase "we seek comment" appearing 167 times. By using a bulldozer rather than a pastry tray to dish out its proposals, the FCC might inadvertently be handing an advantage to the largest commercial firms, who might be the only ones with the resources to address all of the FCC's issues.[87]

While the roundtable was useful for those who participated, the Commission has not done any live webcasts, forums, or other types of outreach to inform deaf and hard of hearing consumers directly about the significant proposals in the *FNPRM*. The Consumer Groups would like to work with the FCC to help get the message out through FCC attendance at conferences and/or jointly hosting an event where the Consumer Groups and FCC can invite and speak directly with

[87] Peter Tannewald, *FCC Proposes to Reform Video Relay Service*, CommLawBlog, *available at*: http://www.commlawblog.com/2011/12/articles/internet/fcc-proposes-to-reform-video-relay-service/.

members of the deaf and hard of hearing community. In addition, the Consumer Groups also recommend that information released by the FCC be available in ASL on the FCC's website at the same time it is released to the public. While we appreciate the FCC's efforts to provide ASL videos for consumers who communicate using ASL as their first language, and Mr. Hlibok's blog, we strongly encourage the FCC to make the ASL videos available on a more timely basis. Importantly, at least one consumer representative has expressed concern that the ASL video does not convey the significant changes a deaf and hard of hearing consumer would experience if the VRS reimbursement methodology is switched to per user compensation. Today, VRS users enjoy the ability to obtain free equipment from VRS providers, to dial-around to alternative providers, and to switch their default provider at any time. Any system that restricts these freedoms could be viewed with skepticism by the community of VRS users. Providing timely and complete information about the proposals in ASL would improve the notice and comment process by allowing all members of the public, including those who communicate using ASL as their first language, the opportunity to participate fully in the FCC's rulemaking process.

As the Commission notes in the *FNPRM*, it has recently taken significant steps to reduce waste, fraud and abuse in the VRS program:

> In addition to extensive (and ongoing) actions taken by the Commission's Inspector General in collaboration with the Department of Justice, which have resulted in several criminal convictions, the Commission recently issued Orders (a) taking significant, targeted actions to protect the TRS Fund from obviously fraudulent and abusive practices, and (b) revising the provider certification process to ensure that iTRS providers, including VRS providers, receiving certification are qualified to provide services in compliance with the Commission's rules, and enhancing the Commission's ongoing oversight of such providers. The *VRS Call Practices R&O and Certification FNPRM* and the *2011 VRS Certification Order* were important tactical actions taken to complement the structural improvements to the VRS program proposed in this *Further Notice*, and were designed to reduce both the occurrence of and the incentives for waste, fraud, and abuse. Further, the Commission recently conducted a competitive

> procurement to select the TRS Fund Administrator, which included requirements that the Administrator take steps to mitigate waste, fraud and abuse.[88]

The Consumer Groups applaud these efforts and stand ready to work with the FCC to take additional and necessary measures to combat fraud. The Consumer Groups will work with the FCC to ensure that the burdens of reducing fraud do not fall primarily on deaf and hard of hearing consumers, the very population the TRS program is intended to serve. As part of these efforts, the Consumer Groups recommend that the Commission evaluate the effectiveness of its measures to combat fraud, which resulted in reducing the previous count of 59 (both certified and white-labeled) VRS providers to 12 (certified, and conditional certified). The Consumer Groups also recommend that whatever reforms the Commission ultimately adopt be implemented cooperatively with consumer participation to ensure that any new processes take into account the impact on a VRS user's experience and VRS users understand the changes and are able to make informed choices about their communications services.

[88] *FNPRM*, ¶ 6 (footnotes omitted).

X. CONCLUSION

The Consumer Groups respectfully request, as detailed herein, that the Commission make the implementation of service quality and other VRS program improvements to ensure functional equivalency its top priority. It is their strong preference that the Commission not change the reimbursement methodology without a fully developed record, evaluating recent FCC actions to combat fraud, waste, and abuse, and evaluating whether more can be done to police, audit and enforce compliance with current rules. Further, the Consumer Groups fully oppose the per-user methodology and oppose any adoption or implementation of a hybrid compensation regime without clear functional equivalence guarantees prior to implementation.

Respectfully submitted,

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Dated: March 9, 2012

Attachment B

Ex Parte Letter of the Consumer Groups, CG Docket Nos. 10-51 and 03-123 (May 31, 2012)

BINGHAM

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May 31, 2012

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: CG Docket Nos. 10-51 and 03-123
In re Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

Dear Ms. Dortch:

Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN"), Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI"), through its undersigned counsel, National Association of the Deaf ("NAD"), Association of Late-Deafened Adults, Inc. ("ALDA"), California Coalition of Agencies Serving the Deaf and Hard of Hearing ("CCASDHH"), 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 ("AGBELL") (collectively, the "Consumer Groups") submit this letter to address a few topics raised in reply comments to the Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced proceeding.[1]

The Consumer Groups support upgrading the video relay service ("VRS") speed of answer benchmark from 80% of relay calls being answered within 120 seconds measured on a monthly basis,[2] to 80% of all calls being answered within 30 seconds measured on a daily basis.[3] With this recommendation, the Consumer Groups acknowledge that calls using skills-based routing or a preferred Communications Assistant (CA) should not be subject to the same speed of answer benchmark for purposes of meeting a minimum

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[1] *See 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).

[2] 47 C.F.R. §64.604(b)(2)(iii).

[3] *See* Consumer Groups Reply Comments, p. 3.

answer time standard.[4] As described in the Consumer Groups' Comments, the Commission should allow VRS users to opt into a skills-based system to be matched with a CA with the skills and expertise matched to the callers' self-assessed communications and stylistic needs.[5] Further, if a consumer chooses to use the skills-based routing or preferred CA option, the consumer should understand that they may experience longer answer times than would occur if they opted to use the first available CA assigned to the call.[6] Calls using skills-based routing or a preferred CA should therefore be exempted from the new, upgraded speed of answer benchmark requirement for a short period of time to determine the appropriate and fair speed of answer requirements to apply. For example, the Commission might give VRS providers 12 months to implement skills based routing and preferred CA options (comprised of six months for systems design and six months for a trial period), and then the Commission might take 12 months to evaluate average speed of answer times appropriate for such routing after the initial 12 month implementation period. Following the evaluation period, the Commission might adopt the new, recommended average speed of answer time and require implementation within 12 months. Accordingly, the Consumer Groups recommend that the Commission adopt an implementation schedule for skills-based routing and preferred CA options and set speed of answer requirements no later than 3 years after skills-based routing and preferred CA options are implemented.

Allowing consumers to create a list of preferred CAs will give them the ability to control the quality of their calls by selecting CAs they know will provide the most functionally equivalent call for their particular communication and language needs.[7] As part of the implementation process, narrowly-tailored procedures might be developed to allow a CA to block a specific user from adding him or her to a preferred CA list, such as requiring supervisor approval and proper documentation. While the Consumer Groups agree that CAs should not be subjected to abusive, harassing or inappropriate calls,[8] procedures should be developed to ensure that blocking does not occur without good cause and that blocking will not be permitted in the traditional context when a caller uses VRS without a preferred CA list and is randomly assigned to a CA.

The Consumer Groups re-emphasize their support for requiring national certification for CAs and specifically the RID-NAD National Interpreter Certification.[9] Certification will help ensure ongoing quality of service to consumers, and the imposition of a certification requirement will not adversely impact the availability of CAs provided that the

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[4] *See* Consumer Groups Comments, p. 11. *See also*, Sorenson Reply Comments, pp. 50, 52; Purple Comments, p. 18.

[5] *See* Consumer Groups Comments, pp. 9-10.

[6] *Id.*

[7] *Id.*

[8] *See* Sorenson Reply Comments, p. 52.

[9] *See* Consumer Groups Comments, p. 11 and Consumer Groups Reply Comments, p. 2.

requirement is phased-in over time.[10] The Consumer Groups are not opposed to a 5-year transition period that would, for instance, require a VRS provider to have a certain percentage of CAs certified each year until reaching 100%. Nationally certified CAs who are experienced, educated professionals should be the standard.

Furthermore, the Consumer Groups support the RID-NAD certification because it is, to date, the only national standard developed independently of VRS providers, and importantly, the Consumer Groups believe that the RID-NAD certification generally establishes the minimum standards necessary to ensure quality of service. Adopting RID-NAD certification as the national certification standard will establish minimum standards and will not prevent states or VRS providers from imposing additional requirements.[11] Also, the Consumer Groups are committed to working with the Commission, existing certification groups, and institutions providing training for CAs during the transition period to amend the RID-NAD certification to develop appropriate standards for ASL-Spanish bilingual speakers, deaf and hard of hearing individuals with mobility disabilities, or others.[12]

Respectfully submitted,

/s/ Danielle Burt

Tamar E. Finn
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[10] *See* Consumer Groups Comments, p. 11; s*ee also,* Sorenson Reply Comments, p. 61.

[11] *See* Sorenson Reply Comments, p. 61 (referring to certification by the Board for Evaluation of Interpreters).

[12] *See* Consumer Groups Reply Comments, p. 3.