

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

In the Matter of:)	
)	
Telecommunications Relay Services)	CG Docket No. 03-123
And Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	
)	
Structure and Practices of the Video Relay)	CG Docket No. 10-51
Service Program)	
)	
)	

COMMENTS OF NOBELTEL, LLC.

NobelTel, LLC (“NobelTel”), by its attorneys, hereby submits these comments in response to the *Public Notice* (the “*Notice*”)¹ in the above-captioned proceedings. NobelTel provides prepaid end-user telecommunications services in the United States. For the reasons stated below, NobelTel respectfully submits that the Commission should not allow the proposed increase in the Telecommunications Relay Services (“TRS”) Fund (the “Fund”) contribution factor to take effect. To avoid the harmful effects of the proposed increase, the Commission should correct an overestimate of funds required for 2013-2014 compensations in the Internet Protocol Captioned Telephone Service (“IP CTS”) program and adjust the recommended contribution factor accordingly.

¹ *Rolka Loube Saltzer Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the July 2013 through June 2014 Fund Year*; PUBLIC NOTICE, in CG Docket Nos. 03-123, 10-51 (rel. May 17, 2013) (the “*Notice*”).

I. THE SHARP INCREASE IN THE PROPOSED CONTRIBUTION FACTOR PLACES AN UNDUE BURDEN ON FUND CONTRIBUTORS

In the *Notice*, the Commission seeks comment on the Fund administrator's recommendation to adopt a contribution factor of .0233 per revenue dollar earned by all telecommunications service providers in order to support an estimated funding requirement of \$1,543.6 million for total TRS expenditures during the 2013-2014 Fund year.² This funding requirement represents an increase of more than **\$800 million** from the previous Fund year.³ According to the administrator's payment formula and fund size estimate, this increase results almost entirely from changes in demand for IP CTS and Tier III video relay services ("VRS").⁴ In fact, the change in estimated required funds for IP CTS—estimated at almost \$757 million, up from approximately \$128 million last year—by itself accounts for a vast majority of this increase.

The administrator's proposed contribution factor would be **more than twice** that of last year's factor, and by far the highest rate of any of the previous five years, which were themselves the highest in the history of the program.⁵ Such a radical change in the contribution factor is unfair to contributors and the end user customers that ultimately will be forced to pay for the increase. Put simply, the proposed rate should not be permitted to take effect. Companies like NobelTel cannot plan for contribution rates that double in a single year. Given the

² *Notice* at 3.

³ See Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, in CG Docket Nos. 03-123, 10-51, Exhibit 2 (filed May 1, 2013) ("*2013 Fund Estimate*"); see Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, in CG Docket Nos. 03-123, 10-51, Exhibit 2 (filed April 30, 2013) ("*2012 Fund Estimate*").

⁴ See *2013 Fund Estimate*; see *2012 Fund Estimate*.

⁵ See *Notice* at 2; see *Rolka Loube Saltzer Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the July 2012 through June 2013 Fund Year*; PUBLIC NOTICE, in CG Docket Nos. 03-123, 10-51 (rel. May 2, 2012) ("*2012 Notice*"); see *Relay Services' Reimbursement Rate, Contribution Factor & Fund Size History*, Rolka Loube Saltzer Associates, July 12, 2010, available at <http://www.r-l-s-a.com/TRS/RELAYRATESHISTORY.pdf>.

Commission's worthy fight against consumer "bill shock" in recent years, demonstrating its commitment not to subject individuals to hidden and unexpected after-the-fact charges, NobelTel urges the Commission to see in this proceeding the same principle. The proposed TRS contribution factor effects a hidden and unexpected charge on telecommunications end users.

Importantly, the contribution base against which this rate would be applied has already been set. As the Commission is aware, contributors will pay into the TRS Fund based on revenues from 2012, which were reported on the FCC Form 499-A in April. Obviously, NobelTel has no way to modify its contribution obligation for these past revenues, nor does it have any practical way to recoup the contribution obligation from those customers that generated the revenue causing the obligation.⁶ Moreover, it is extremely difficult to absorb a doubling of the contribution rate in rates for future services, and, even if NobelTel could do so, it would certainly have a negative impact on customers of telecommunications services.

The proposed contribution rate increase is particularly harmful to prepaid calling card providers like NobelTel. NobelTel operates primarily in the international market. TRS contributions typically represent the single largest regulatory obligation – larger than Universal Service Fund contributions, which have a much higher contribution rate per assessable revenue dollar. Consequently, changes large and small in the TRS contribution factor have a significant impact on NobelTel's operations. An increase of the magnitude proposed in the Public Notice could threaten the viability of prepaid card providers, who typically operate on razor-thin profit margins.

This harm should not be allowed. As the Commission itself noted, "[t]he current rate-setting mechanism [for TRS] has also negatively affected the telecommunications carriers that

⁶ Moreover, carriers could not be expected to have anticipated an increase of the magnitude the Commission proposes. Thus, there was no way to recover the additional obligation in advance from end users.

are required to contribute to the TRS Fund.”⁷ In that order, the Commission acknowledged the need to “to create stability and long-term predictability in the compensation mechanism, to the benefit of the providers, contributing carriers, and all consumers.”⁸ The 2013-14 TRS contribution factor fails this test. There is nothing predictable or stable about a rate that increases by more than 100% in a single year. And there is nothing predictable or stable about proposing a significant change in the contribution rate well after the affected revenues are earned. Therefore, NobelTel respectfully urges the Commission to reject the proposed estimates and adopt a TRS contribution rate that furthers the goal of predictability and stability.

II. THE COMMISSION CAN LIMIT THE IMPACT ON CONTRIBUTORS BY ADOPTING MORE REASONABLE FUNDING ESTIMATES AND BY CONTINUING TO CURB IMPROPER CLAIMS

A. THE COMMISSION SHOULD TAKE INTO ACCOUNT THE INTERIM IP CTS COMPENSATION RULES IN COMING TO A FINAL FUNDING REQUIREMENT ESTIMATE

Responding to unchecked growth in the Fund, only a few months ago, the Commission adopted interim rules governing IP CTS compensation claims. Among the changes, these interim rules prohibit the use of rewards programs and other inducements for referrals and registration, establish a registration system for end users, and require a default setting in which captions would be turned off until actively chosen in each instance of use.⁹ In the *Order*

⁷ *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, FURTHER NOTICE OF PROPOSED RULEMAKING, ¶ 22 (rel. Dec. 15, 2011).

⁸ *Id.*

⁹ Specifically, the Commission adopted rules “(1) prohibiting all referrals for rewards programs and any other form of direct or indirect inducements, financial or otherwise, to subscribe to or use, or encourage subscription to or use of IP CTS; (2) requiring each IP CTS provider, in order to be eligible for compensation from the Fund for providing service to new IP CTS users, (i) to register each new IP CTS user, (ii) as part of the registration process, to obtain from each user a self-certification that the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users, and (iii) where the consumer accepts IP CTS equipment at a price below \$75 from any source other than a governmental program, to also obtain from the user a certification from an independent, third party professional attesting to the same; and (3)

adopting these interim measures, the Commission acknowledged the outrageous growth in the size of IP CTS expenditures—“growth that, if left unchecked, could exacerbate the potential for harm to both the Fund and legitimate users of TRS.”¹⁰ Without action, the Commission noted, such growth could drain the Fund of resources, resulting in either a violation of the Anti-Deficiency Act or “increasing mid-year the amount that telecommunications and VoIP providers must pay into the Fund in order to account for the rapid growth caused by these potentially improper practices.”¹¹

Due to this surge in the demand for IP CTS—whether legitimate or not—the Fund administrator has had great difficulty in predicting the demand for the coming year. As a result, in its fund payment formula and size estimate, the Fund administrator created three separate demand estimates for IP CTS. The first estimate of 290 million minutes is based on industry growth patterns over the past two years; the second estimate of 409 million minutes, which the administrator ultimately recommends, is based on combined results from individual historical growth patterns of each service provider from January 2011 to present; and the third estimate of 825 million minutes is based on company specific growth experiences of 2011.¹²

Critically, the administrator admits that none of its estimates offer an accurate assessment for the coming year.¹³ The Fund administrator concedes that, in the face of the interim IP CTS rules, it “does not expect that any of [its] demand projections will produce an accurate reflection

requiring IP CTS providers to ensure that equipment and software used in conjunction with their service have a default setting of captions off at the beginning of each call so that the consumer must take an affirmative step to turn on the captions each time the consumer wishes to use IP CTS.” *2013 Fund Estimate* at 27.

¹⁰ *Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket No. 13-24, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, ORDER AND NOTICE OF PROPOSED RULEMAKING, ¶ 7 (rel. Jan. 25, 2013).

¹¹ *Id.* at ¶¶ 7, 11.

¹² *2013 Fund Estimate* at 26-27.

¹³ *Id.* at 26.

of demand during the 2013-2014 funding year.” In fact, it calculated the estimated demand and fund requirement for IP CTS “[a]bsent adoption of those measures.”¹⁴ If the Commission were to accept any of these estimates, the projected funding requirements—and, thus, its proposed contribution factor—will prove largely inflated.

NobelTel recommends two straightforward adjustments to the funding estimate for IP CTS. First, the Commission should begin with, at the most, the more reasonable first estimate of 290 million minutes, keeping in mind that even this number may prove unnecessarily large after the effects of the interim rules are determined. Second, the Commission should lower the funding estimate based on this demand in order to account for the impact of the interim rules. These interim rules will lessen demand during at least the first six months of the upcoming TRS funding year, and quite possibly for the entire year, if the Commission acts on its pending Further Notice of Proposed Rulemaking in the docket. Considering the *Further Notice of Proposed Rulemaking* accompanying the interim rules *Order*, the Commission appears poised to take longer term action at the expiration of the interim rules. NobelTel thus encourages the Commission to adopt a lower, more reasonable estimate for IP CTS demand and impose a less harmful contribution factor on service providers for the time being. In the unlikely event that the Commission decides not to adopt the interim rules for longer term application, it may revisit the contribution factor in the coming months and revise contributors’ obligations. Such an approach would impose the lowest risk of unnecessary harm to the industry and allow the Commission more time to determine the actual effects of its actions to curb IP CTS demand. NobelTel believes that contributors should not bear the total weight of the uncertainty in estimating the impact of the FCC’s IP CTS interim rules.

¹⁴ *Id.*

B. THE COMMISSION SHOULD CONTINUE ITS EFFORTS TO ELIMINATE THE ABUNDANCE OF WASTE, FRAUD, AND ABUSE THAT BALLOONS THE SIZE OF THE TRS FUND

Second, the Commission can offset the increase in the funding requirement by vigorously enforcing its rules to prevent improper TRS reimbursement requests. NobelTel commends the Commission for its efforts to reduce waste, fraud, and abuse that have become too common in claims for TRS compensation. NobelTel encourages the Commission to continue its focus on enforcements against abusers. This will be one of the most significant ways that the Commission can control costs in the 2013-14 TRS Fund year. By ensuring that the demand projections only include *legitimate* demand, the Commission can both ensure the availability of services to those who need them and avoid imposing an unsustainable burden on telecommunications carriers and their customers.

So far, more than \$55 million has been recovered through the Commission's TRS-related enforcement proceedings, with millions of that being refunded directly to the TRS Fund.¹⁵ At least one such instance resulted from a company's program so egregiously insufficient as to allow for claims made for providing service without even asking for customers' names.¹⁶ Following a settlement earlier this month by AT&T for improper billing of the TRS Fund,¹⁷ only this week Sorenson Communications settled with the Commission and agreed to pay more than \$15 million to the Fund and the U.S. Treasury.¹⁸

¹⁵ FCC Announces that Sorenson Communications Inc. to Pay \$15.75 Million to Settle Investigation into Improper Billing of TRS Fund (rel. May 28, 2013) ("*Sorenson Settlement Notice*").

¹⁶ AT&T to Pay \$18.25 Million to Settle FCC Investigation of Improperly Billing Fund that Supports Accessibility of Telecommunications Services to Persons with Disabilities (rel. May 7, 2013) ("*AT&T Settlement Notice*").

¹⁷ *Id.*

¹⁸ *Sorenson Settlement Notice.*

Perhaps even more important than the reimbursements to the Fund, however, are the compliance plans agreed to by these providers. As a part of these settlements, each company “must implement a robust compliance plan, requiring detailed operating procedures, comprehensive training of [their] employees, and immediate reporting of possible violations.”¹⁹ These compliance plans should help to prevent future waste and/or fraud, thereby lowering the ultimate demand for these programs. NobelTel supports the Commission in these enforcement efforts and urges it to continue to strengthen compliance and reporting duties of those offending parties as necessary to ensure that some TRS providers do not take advantage of this program intended to help disabled American consumers and do not profit undeservingly on the backs of other service providers paying into the Fund.

III. CONCLUSION

NobelTel recommends that the Commission reconsider the administrator’s current estimates of funds required in the 2013-14 Fund year necessary for compensation paid out to IP CTS service providers. This estimate represents an admittedly inaccurate assessment of the program’s actual needs and places an unfair and unnecessary burden on telecommunications carriers paying into the system but receiving nothing from it. Furthermore, NobelTel urges the Commission to continue its efforts to curb the rise in waste, fraud, and abuse in TRS compensation claims and to remain dedicated to imposing thorough compliance obligations on offenders. Such problems in the program—none of which have to do with actually providing important services to those intended end users—have caused costs to unnecessarily balloon and have placed strenuous burdens on Fund contributors.

¹⁹ *Id.*

Respectfully submitted,

A handwritten signature in black ink that reads "Steven A. Augustino". The signature is written in a cursive style with a large, stylized initial 'S'.

Steven A. Augustino
David Darwin
Kelley Drye & Warren LLP
3050 K Street, NW
Suite 400
Washington, D.C. 20007
Tel: 202-342-8400
Fax: 202-342-8451
saugustino@kelleydrye.com
ddarwin@kelleydrye.com

Counsel for NobelTel, LLC.

May 31, 2013