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

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

COMMENTS

IDT Telecom, Inc. ("IDT"), Intermedia.net ("Intermedia"), Vocalcity, Inc. ("Vocalcity") and Vonage Holdings Corp. ("Vonage") (collectively, the "Commenters") submit their Comments in response to the May 17, 2013 Public Notice released by the Federal Communications Commission ("Commission") concerning the proposed payment formulas and funding requirement for interstate telecommunications relay services ("TRS") for July 2013 through June 2014.[1]

The Commenters represent several different sub-sectors of the industry. IDT is a leading provider of prepaid services, with a particular emphasis on international calling. Intermedia is a provider of cloud services to small and medium-sized businesses. Intermedia offers a full suite of services including hosted Microsoft Exchange email, VoIP telephony, instant messaging, file management, security, backup, support for the full range of smartphones and tablets, and more. Vocalcity provides VoIP services and other innovative cloud-based communication service offerings to small and medium-sized businesses. Vonage is primarily focused on the retail

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[1] *See Rolke 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, DA 13-1137, CG Docket Nos. 03-123, 10-51 (rel. May 17, 2013) ("*TRS Public Notice*").

market both in the U.S. and internationally. Vonage provides VoIP as well as other communications services and connects customers through cloud-connected devices worldwide.

The various services provided through and funded by TRS contributions are essential to many deaf and hard of hearing individuals, and the Commenters support the work the Commission has done to ensure that those services are functionally equivalent to standard telephone services and available to everyone who needs access. While the Commission has made great strides in reducing suspected waste, fraud and abuse in the provision of these services as well as adopted emergency provisions to ensure that the services are being provided in the most efficient manner possible, the TRS fund projections and proposed contribution factor has reached an all-time high that is more than double the current funding level. If the proposal is adopted, smaller service providers such as the Commenters will be harmed, service to customers may be impaired and the TRS fund jeopardized. The Commenters respectfully request that the Commission find the TRS contribution factor proposed by Rolka Loube Saltzer Associates LLC ("RLSA"), a factor more than double of the current rate, to be unrealistic and unwarranted and to use its authority to reevaluate the funding level in order to avoid harm to service providers and consumers.

I. RLSA's Projections are Overly Expansionary and Results in an Unrealistic Contribution Factor

A. There is no justification for the massive increase in IP CTS minutes of use.

RLSA's analysis and rationale for the enormous increase in the predicted number of Internet Protocol (IP) captioned telephone service (IP CTS) minutes of use is erroneous and unjustified. RLSA has proposed an estimated demand of 409,268,995 minutes for the 2013-2014 funding year, which is nearly *three times* the estimated demand for the current funding year. In addition, the IP CTS Demand Projections shows that RLSA predicts that the demand for this service is likely to grow by an average of <u>1,000,000</u> minutes each month for the next few months and then continue to increase at an accelerating rate until the estimated minutes of use increases by over <u>8,000,000</u> minutes between May 2014 and June 2014.[2] This level of growth amounts to absurd levels of growth year over year. For instance, the RLSA projections provide for nearly a 32 million minute increase between March 2013 and March 2014, a 400% increase. It is impossible to comprehend how the use of IP CTS could grow by over 50,000,000 million minutes, resulting in a **453%** growth, from April 2013 through July 2014 with a 300% growth predicted over the course of the next funding year (July 2013 through June 2014). While the Commenters acknowledge that the use and demand for IP CTS has increased significantly within the last year, the estimated demand level and projection fails to take into account certain facts and several important changes made by the Commission that are very likely to result in a significant reduction in demand and the number of estimated minutes and is significantly different than the industry's 181,429,401 projected minutes of use.[3]

First, IP CTS is a relatively new type of TRS service and, as with any new service or product, there was a natural increase in use and the number of users as awareness of the service grew. While IP CTS provides an important service for deaf and hard of hearing individuals and it should continue to receive support, the Commenters believe that after the initial growth in interest, usage of the service will level off and remain steady. Even assuming, *arguendo*, that the minutes of usage were to increase as much as 20% over last year, there is no reason to assume an accelerated growth rate between 1,000,000 and 8,000,000 minutes over the next 12 months.

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[2] *See* Rolka Loube Saltzer Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, at Exhibit 1-4 (filed May 1, 2013) ("*RLSA Estimate*").

[3] *See id.*

Beyond the normal increase in usage that would be found for any new service, the FCC has already determined that the dramatic increase in usage of IP CTS is largely attributable to "the offering of incentives for referrals to use this service."[4] In January 2013, upon learning of the "extraordinary escalation in this service's usage [in the recent months], as well as the existence of the referrals for rewards programs and the lack of specific eligibility criteria for new users,"[5] the FCC took emergency measures to stem the growth of IP CTS usage. Specifically, the FCC is "(1) prohibiting all referrals for rewards programs … and any other form of direct or indirect inducements, financial or otherwise to subscribe to or use of, IP CTS; (2) requiring each IP CTS provider" to register each user and obtain a self-certification that the user suffers from hearing loss and "(3) 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."[6] While these changes are only interim measures that will be rolled out over time, the purpose is to reduce the number of IP CTS minutes of use. Even though RLSA acknowledges the adoption of these new interim guidelines, they failed to take them into account when estimating the number of minutes of use for the upcoming funding year.[7] In fact, RLSA goes so far as to say that "[i]n light of the recently adopted interim measures, RLSA does not expect that any of the above demand projections will produce an accurate reflection of demand during the 2013-2014 funding year."[8] Thus, by RLSA's own admission, the projections are at best wild speculation. In its request for comments in this proceeding, the FCC also notes that "RLSA's demand projections … do not take into account the effects of an emergency order and Notice of

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[4] *See Contributions to the Telecommunications Relay Services Fund*, Report and Order, 26 FCC Rcd 14532, ¶ 6 (2011) ("*TRS Order*").

[5] *Id*. at ¶ 7.

[6] *Id*. at ¶ 1.

[7] *RLSA Estimate* at 28.

[8] *Id*.

Proposed Rulemaking that were recently adopted."[9] If RLSA has no confidence in the proposed minute of use for IP CTS, and does not consider the demand-reducing effects of the emergency order, then the Commission should be cautious about accepting the projections as drafted. The Commenters assert that the FCC along with consumers and carriers can not have any confidence in the numbers and the projections should not be accepted.

Given the extreme harm that carriers will incur in order to comply with the proposed contribution rate, largely due to the gross increase in IP CTS estimated minutes of use projection, RLSA and the FCC must do more than merely guess at the number of minutes of use for the next funding year. Even if forced to make an educated guess, such an estimate must necessarily take into account the emergency measures adopted by the FCC to control the growth of this service, which RLSA failed to do here. As such, the projection must be reviewed and reduced.

B. If the IP CTS projected growth rate is accurate, there should be a corresponding decline in use of other services.

Even though the actual IP CTS minutes of use are likely to be significantly less than RLSA's predicted level, the Commenters agree that the growth rate of IP CTS can reasonably be expected to increase over time. However, the increased usage of IP CTS should correspond with a decrease in use of other TRS services. For example, if RLSA is correct and the use of IP CTS will increase by millions of minutes each month, then that dramatic increase must either be the result of an enormous increase in the numbers of users, or must be offset by a decrease in use of other TRS services as users transition from those services to IP CTS. It is simply illogical to assume that the use of IP CTS could increase at such an enormous rate and yet not result in a decrease in the usage of other TRS funded services. As users of alternative services look for alternative communications methods, they may find IP CTS better meets their needs than older

[9] *Public Notice* at 3.

services and may migrate to IP CTS from other services. The result of this shift would be a decline in the use of other services, not merely an increase in IP CTS use. While the Commenters acknowledge that the U.S. has a growing aging population, which may result in a slightly higher demand for TRS services, there is a logical limitation on how many new users, and therefore how many more minutes, may be necessary each month. Given there is no evidence in the record that there has been a significant growth in the number of individuals who have need of this service, the IP CTS usage will reach a normalized and steady state. In addition, while new users may have swollen the number of minutes of use for IP CTS initially, such use will be reduced through the FCC's interim measures as well as a natural reduction in use as the service is no longer novel. Not only are RLSA's projected minutes of use for IP CTS astronomical and irrational, but RLSA also failed to account for any offset in the use of other TRS services. As the FCC reviews and adjusts the predicted usage of IP CTS, it must also review the projected usage of the other TRS services to account for the shift in usage and resulting reduction of use of those other services.

C. The projected increase in rate and contributions does not account for economies of scale.

As the demand for IP CTS services grows and providers extend services to a growing number of people, those providers will achieve certain efficiencies through economies of scale and therefore, the amount of reimbursement given to the largest providers may be reduced. The Commission recognized and accounted for the development of economies of scale within the TRS services. When IP CTS was implemented, the Commission used the existing CTS rate as a proxy for the nascent IP CTS service. While this approach may have made sense when the service was new, it now dwarfs CTS service in terms of minutes of use by (using the projections of RLSA) 4,000 percent. Given the growth of IP CTS, it would be prudent to conduct a more thorough review of the service given that the same claims of insufficient data that were raised six years ago cannot possibly remain true. Because the IP CTS cost structure has never been fully vetted past this initial tying to the CTS rate, a conservative approach is warranted. The Commenters suggest that, just as the Commission has done for other services, through the adoption of the Multistate Average Rate Structure, the Commission should undertake an in-depth analysis of the data underlying the IP CTS rate and develop a more predictable rate that is thoroughly supported by the data on record.

While the Commission is in the process of reforming the reimbursement rate for these services, the undeniable economics remain the same: that as use grows, marginal costs decline. As such, if the reimbursement system is not reviewed as usage patterns shift, the Commission may again be forced to adopt emergency measures to stem the flood of users to this service. Instead of doubling the contribution burden for service providers, who have not been able to prepare adequately for this unpredictable increase in the contribution factor, the Commenters urge the Commission to revisit the current reimbursement rate and structure for IP CTS as part of this proceeding or in the near future in order to avoid unjust compensation to larger providers who have achieved efficiencies through economies of scale.

II. The Commission Must Use Its Authority to Avoid Carrier Rate Shock

The combined rates for the various TRS-funded services and estimated usage has resulted in an astronomical proposed contribution rate and funding level that have never been seen before. Specifically, if adopted, the proposed TRS funding would result in a contribution factor of 0.0233 for total funding level of $1,543,600,000.[10] As compared to current funding year, for which the FCC adopted a contribution factor of 0.01053 and total revenue goal of

10 *Id.* at 2.

$711,383,582,[11] the proposed amount more than doubles the contribution factor and revenue amount. A review of the contribution factor and TRS revenue from previous years shows that the FCC has *never* adopted such a significant jump in revenue and this doubling of the rate will constitute a material change in carriers' cost structures. Carriers contribute to the TRS Fund based on their previous year revenues and are not allowed to seek reimbursement of this fee through a separate line item charge to customers, but instead must integrate the additional cost into their rates. Given that the rates and service charges that will form the basis of their contribution have already passed, carriers are now at a significant disadvantage as to how they can obtain and pay a TRS contribution that has more than doubled when they had no way to predict or prepare for such a significant increase.

In addition, any attempt to recover this increased contribution amount going forward would be problematic. Generally, service rates tend to remain fairly stable and an abrupt change in rates in order to meet the TRS contribution requirements will be disruptive both for carriers and consumers. This doubling of the contribution amount will have the most significant impacts on smaller providers and those who operate with a low profit margin and those providers, such as IDT, who primarily serve low income population will suffer the most harm since their customers are the least able to absorb this increase going forward. This harm would be felt most keenly by residential customers and small businesses that purchase telecommunications or VoIP services from Commenters, for which these rate increases may be especially difficult to absorb and which are less likely to have long-term contracted rates as enterprise or large business customers may.

Even if RLSA's analysis is correct, the FCC must take action to avoid harm to service providers and the reduction of services to consumers. In other proceedings related to the

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[11] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (2012-2013 Fund Compensation Rates)*, Order, 27 FCC Rcd 7150, ¶ 13 (2012)

collection of revenue, the FCC has taken actions to avoid this type of rate "shock" resulting from FCC action. Specifically, in the current regulatory fee proceeding, the Commission has adopted a 7.5% cap on the increase in regulatory fees in order to avoid fee shock to the industry.[12] In other cases, the FCC has repeatedly stepped in to ensure that carriers are not unjustly penalized or harmed by dramatic and unpredictable increases in fees or contributions.[13] The Commission must protect consumers and their providers by doing the same in this case.

III. The Commission Should Revisit Its Prohibition Against a Separate TRS Line Item

Currently, interstate TRS services are funded through a cost recovery system whereby carriers and interconnected VoIP services collect contributions from "all subscribers for every interstate service" which are placed in the TRS Fund and then distributed to TRS providers.[14] Unlike the Universal Service Fund contribution, which may be listed as a separate line item from the service charges on customer bills, the carrier's contribution to the TRS Fund may not be listed separately, but instead must be integrated into the rates which are charged to customers. The Commenters request that the FCC review this policy and allow TRS contributions to be listed separately. A separate TRS line item charge would increase transparency, provide additional information to the consumer and is supported by the Commission policy of clear and understandable telephone bills.[15] In addition, by allowing a separate line item charge, carriers

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[12] *See Procedures for Assessment and Collection of Regulatory Fees, Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Notice of Proposed Rulemaking, MD Docket Nos. 12-201, 13-58, FCC 13-74, at ¶ 17 (rel. May 23, 2013).

[13] *See Investigation of Certain 2012 Tariffs Annual Access*, Order, 27 FCC Rcd 15577, ¶ 33 (2012) ("To avoid any carrier receiving a cash flow shock from differences in timing of USAC adjustments and the NECA pooling adjustments, we direct USAC and NECA to coordinate the timing of their adjustments to minimize cash flow disruptions.").

[14] *TRS Order*, at ¶ 4.

[15] *See generally, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Sixteenth Report, 28 FCC Rcd 3700, ¶ 313 (2013) (discussing the Commission's efforts to "clear up consumer confusion surrounding bill shock").

could more easily recover the increased TRS charges without risking financial harm and allow customers to more accurately compare the rates and costs of various service providers.

IV. Conclusion

For the foregoing reasons, the Commenters request that the Commission reject the proposed contribution rate and funding level for the 2013-2014 funding year and adjust the predicted minutes of use for IP CTS to reflect recent emergency measures adopted by the Commission.

Respectfully submitted,

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Dated: May 31, 2013