

**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

**Telecommunications for the Deaf and Hard of Hearing
National Association of the Deaf
Association of Late-Deafened Adults, Inc.
Deaf and Hard of Hearing Consumer Advocacy Network
Cerebral Palsy and Deaf Organization
American Association of the Deaf-Blind
California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc.
Speech Communications Assistance By Telephone, Inc.
Rehabilitation Engineering Research Center on Telecommunication Access**

Dated: August 19, 2013

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SUMMARY

Consumer Groups are concerned that the Commission's efforts to improve the efficiency of the video relay service ("VRS") system may cause harm to the quality of VRS. They have seen no effort on the part of the Commission to compensate or reward providers for improving functional equivalency in VRS calls. The Commission needs to reward such competition-driven innovation even during any efforts to improve the efficiency of the VRS system.

Consumer Groups oppose the Commission's plan to set the compensation benchmark for the video communication service component at the contract price paid to the neutral video communication service provider because it will inhibit innovation. Fully integrated VRS providers should be appropriately compensated for technological advances. Applying the proposed benchmark may shift competition primarily to VRS Communications Assistant ("CA") service and reduce the number of competitive providers in the market.

Consumer Groups strongly oppose the Commission's proposal to auction a subset of VRS minutes of use ("MOUs") because of privacy and competition concerns. Using data to determine calling pattern as the first step in an auction process goes beyond appropriate oversight and intrudes on consumers' confidentiality rights. Moreover, consumers would not benefit from a single provider system. Rather than auctions, Consumer Groups support the existing tiered system which is most consistent with the Commission's long-held competition policy.

The proposed \$3 million budget for research and development is too low. Consumer Groups propose that the budget should be set as a percentage of all compensable and non-compensable research and development costs and that it should not expire.

Consumer Groups support quarterly updates to the TRS Fund contribution factor. Such a requirement would allow for flexibility in addressing increases or decreases in requests for reimbursement and projections of service requirements from TRS providers.

The Commission should revise its rules to allow hearing individuals to obtain ten-digit numbers. Hearing contacts who use American Sign Language (“ASL”) should be able to receive ten-digit numbers and access to necessary video phone software and/or equipment, which would permit more peer-to-peer calls and reduce the use of VRS-compensated services.

The Commission should expand and revise the composition of the existing TRS Advisory Council and not to replace it in its entirety. The Council must consist of representatives from (1) the deaf and hard of hearing and speech disability communities; (2) TRS users (voice and text telephone); (3) interstate service providers; (4) state representatives; and (4) TRS providers. Also, the Council should continue to advise on rate issues and its role should be expanded to encompass functional equivalency, service quality, outreach, and other issues.

Consumer Groups generally support extending structural reforms to all forms of Internet-based TRS (“iTRS”) but certain exceptions should apply, particularly the applicability of the neutral video communication service platform to other forms of iTRS. Consumer Groups support the proposal to decrease the permissible wait time to 10 seconds (from 120 seconds), and Consumer Groups strongly believe that VRS users should have the capacity to leave a video message regardless of whether the caller and called party use the same device/software.

Consumer Groups do not support the use of non-compete clauses in CA contracts as this creates an unnecessary restraint on the VRS system. VRS CAs should not be permitted to work from home given potential harms to VRS users, but if the Commission does permit VRS CAs to work from home, it should limit the time period to 2AM to 6AM.

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Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), National Association of the Deaf (“NAD”), Association of Late-Deafened Adults, Inc. (“ALDA”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), Cerebral Palsy and Deaf Organization (“CPADO”), American Association of the Deaf-Blind (“AADB”), California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc. (“CCASDDH”), and Speech Communications Assistance By Telephone, Inc. (“STC”) (collectively, the “Consumer Groups”) respectfully submit these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Further Notice of Proposed Rulemaking (“*FNPRM*”) in the above-referenced proceeding.¹ The Rehabilitation Engineering Research Center on Telecommunication Access (“RERC-TA”) also supports these comments.

Consumer Groups are concerned that the Commission’s efforts to improve the efficiency of the VRS system may cause harm to the quality of VRS. They have seen no effort on the part of the Commission to compensate or reward providers for improving functional equivalency in

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*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51 and 03-123, FCC 13-82 (rel. June 10, 2013) (“*FNPRM*”).

video relay service (“VRS”) calls. Consumer Groups have repeatedly stated that statutorily mandated functional equivalency has yet to be achieved and urge the Commission to focus more on achieving functional equivalency. Achieving functional equivalency is only possible with competition-driven innovation which is stifled when there are strict constraints on the use of funding. The Commission needs to reward such competition-driven innovation even during any efforts to improve the efficiency of the VRS system.

Consumer Groups also respectfully ask that the Commission considers the substantial impact of the reforms on the employment of qualified deaf and hard of hearing individuals in the relay service industry. As final decisions are made to initiate reforms of VRS, it is important to remember the gainful and meaningful use of relay services, including VRS, in employment and other life activity areas by deaf and hard of hearing individuals as well as their hearing and deaf and hard of hearing contacts.

I. CONSUMER GROUPS OPPOSE PROPOSAL TO USE NEUTRAL VIDEO COMMUNICATION SERVICE PROVIDER CONTRACT AS BENCHMARK

Consumer Groups oppose the Commission’s plan to have the contract price paid to the neutral video communication service provider for the disaggregated video communication service component of VRS serve as the benchmark for setting compensation applicable to any VRS provider that chooses to offer a fully integrated service.²

Consumer Groups are concerned that basing costs on a single video communication service platform will inhibit innovation, particularly because the use of a neutral video communication service provider is untested. Competition-driven innovation is needed for all components of VRS – VRS access technology, video communications service, and relay service provided by communication assistants (“CAs”). A neutral platform for video communication

² *FNPRM* at ¶222.

service may eliminate a barrier to entry and allow innovation in the provision of CA interpretation service,³ but specific steps have not been identified to encourage innovation by the neutral video communication service provider to be established by contract. Will the contract allocate funding to the neutral provider for research and development? Will such costs be included in the National Science Foundation (“NSF”) research and development budget? (See Section III. below). Will fully integrated providers be compensated for their innovation to the video communication service component such as quality of service improvements or redundancy developments to prevent network outages? Consumer Groups insist that the neutral provider’s video service component provide the “floor” and not a ceiling on functionality similar to the concept for the neutral party maintaining the VRS access technology reference platform against which providers can test their own devices and applications to ensure they meet interoperability standards.⁴ Fully integrated VRS providers should be appropriately compensated for technological advances to the video communication service component, and Consumer Groups do not believe the neutral video communication service provider costs will be an adequate benchmark.

In addition, Consumer Groups are concerned that the use of the neutral provider’s video communication service platform as the cost benchmark may substantially affect the availability of community interpreters. If the neutral video communication service provider costs are used as a benchmark and provider competition shifts primarily or solely to VRS CA service, VRS providers may be able and willing to offer higher compensation to community interpreters (*i.e.*, those who provide face-to-face interpreting services for meetings and gatherings between hearing individuals and deaf and hard of hearing individuals) than they are currently paid and

³ *Id.* at ¶90.

⁴ *Id.* at ¶60.

reduce the availability of community interpreters. Consumer Groups support promoting more efficient and effective VRS CA service but not to the detriment of choices in community interpreting services. Consumer Groups suggest that the Commission ask VRS providers to provide periodic reports on how they recruit and maintain their interpreter pool so that community-based interpreting is not negatively impacted in the communities where they have call centers.

The proposed cost benchmark may also shift competition primarily to VRS CA service and have the unintended effect of reducing the number of competitive providers in the market – fully integrated providers, as well as future standalone VRS CA providers. Consumers have already experienced a reduction of competitive choices in the IP Relay service market as a result of the Commission’s rate-setting mechanism that ignores the realities of the market, and they do not want a similar outcome to occur in the VRS market. As of August 1, 2013, consumers have only two choices in IP Relay service providers. The drastic reduction in IP Relay service providers is directly the result of an unrealistically low reimbursement rate set by the Commission for IP Relay services, which led to providers having a Hobson’s choice between exiting the market or lowering the quality of service to avoid operating at a loss. Consumer Groups are concerned that the same rate-setting mechanism is creating the same result in the VRS providers market. The Commission should therefore carefully consider the appropriate cost measure for the video communication service component to ensure that it does not reduce consumer choices among fully integrated providers or possible future standalone VRS CAs.

II. CONSUMER GROUPS OPPOSE AUCTION PROPOSAL

The Commission proposes that an auction of the right to provide VRS CA service for all calls terminated to an appropriately selected set of telephone numbers representing a sufficient

number of minutes of use could be used to establish a market rate for all minutes of use (“MOUs”) of VRS CA service—including VRS CA service delivered by integrated VRS providers.⁵ Among other things, it requests comment on the number of auction winners, the form of bids, bidder qualifications, frequency of auctions and reserve price, how to ensure that auction winners provide an appropriate level of service and how to ensure that there are sufficient bidders for a competitive auction.⁶

Consumer Groups strongly oppose the Commission’s proposal to auction a subset of VRS MOUs. Given the privacy and competition concerns raised by the proposed auction process, which are described below, Consumer Groups urge the Commission to refrain from artificially designating a VRS provider for the termination of calls to any particular number or numbers. Rather than auctions, Consumer Groups support the existing tiered system, and further advocate for tighter controls within the existing system. This process will ensure that all VRS providers meet the minimum requirements specified in the Commission’s rules and will increase accountability and responsiveness to consumers. Competition in this space results in the introduction of new features, products and services, which will not be served by a monopoly service provider for termination to high volume called numbers.

A. Auction Proposal Raises Concerns Over Privacy and Confidentiality and Functional Equivalency

The proposed process, using data obtained from a review of the calling patterns of the deaf and hard of hearing community, raises serious concerns about privacy and confidentiality. The Commission recognized the seriousness of such confidentiality issues when it adopted

⁵ *FNPRM* at ¶224.

⁶ *Id.* at ¶¶225-235.

Customer Proprietary Network Information (“CPNI”) rules for VRS services.⁷ The use of calling data to determine which numbers or points of termination should be included in such an auction violates the spirit, if not the letter, of the newly adopted CPNI protections. The Commission found that “applying these same [CPNI] protections to TRS users advances the Act’s mandate of functional equivalency.”⁸ Section 222(h)(1) defines CPNI to include information related to the destination and frequency of communications.⁹ The purpose of applying the CPNI rules to Telecommunication Relay Services (“TRS”) services was to afford TRS consumers the same protections afforded other telecommunications service users with respect to the destination and frequency of VRS communications.¹⁰ Consumer Groups believe that the government can use VRS calling data for fund reimbursement and audit purposes. Using that data to determine calling patterns in the deaf and hard of hearing community as the first step in an auction process goes beyond appropriate oversight of VRS minutes and reimbursement and intrudes on consumers’ rights to protect the confidentiality of the destination and frequency of calls placed. Using call data to carve out a subset of VRS calls to be auctioned to a single provider would also be inconsistent with the mandate of functional equivalency. Hearing Americans have a choice of communications providers that meet federal and/or state requirements (*e.g.*, incumbent and competitive local exchange carriers, wireless providers, Voice over Internet Protocol (“VoIP”) providers, etc.) to place all of their calls. VRS consumers should

⁷ *Id.* at ¶¶164-172.

⁸ *FNPRM* at ¶170.

⁹ *Id.* at ¶156.

¹⁰ *Id.* at ¶172 (“...governmental interest in protecting the privacy of its citizens in the VRS context is at least equal to that of protecting the interest of customers served by telecommunications carriers or interconnected VoIP providers.”).

have the same right to choose from a group of providers that meet minimum Commission standards for the provision of all VRS calls.

B. Proposal Raises Competition Concerns

The *FNPRM* proposes that the Commission use an auction for two purposes. First, an auction would establish a provider's right to serve calls that terminate in a certain set of telephone numbers, and second, the auction would serve to set a benchmark VRS-CA rate for all other providers.¹¹ While Consumer Groups appreciate that the Commission elected not to pursue a per-user rate methodology,¹² the auction proposal raises similar concerns. In particular, Consumer Groups are concerned that a single provider — or even two providers — that obtains the right to serve a group of telephone numbers via an auction will not face enough competitive pressure to maintain robust service and to provide customers with the level of service they need. This principle of competition-driving innovations in business services is the basis of the American economic system, and any policy or practice that promotes a single provider would dampen such innovation and curb economic development. Such a policy or practice runs afoul of antitrust principles. Moreover, consumers would not benefit from a single provider system as they will lose the ability to dial around the default provider when there are network issues preventing or delaying a call.

Consumer Groups have consistently explained to the Commission that they are concerned with any VRS rate proposal that restricts users “to using only one VRS provider or platform.”¹³ This is in large part because “[i]f consumers have to use one provider with no dial-around option

¹¹ *FNPRM* at ¶224.

¹² *Id.* at ¶187.

¹³ See e.g., Ex Parte Letter of T. Finn, Counsel for TDI, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 at p. 1 (filed Feb. 27, 2013).

for certain calls and they are not happy with the provider, they are stuck with a service that does not meet their needs until the contract period expires.”¹⁴

The outcome of an auction as proposed in the *FNPRM* — even for just a specific set of called telephone numbers — would be tantamount to applying the Commission’s now abandoned per-user rate methodology to those telephone numbers. This ignores previous comments of Consumer Groups and others in the user community that have

asked the FCC to consider the dilemma that consumers who are deaf or hard of hearing may experience if the FCC adopts the one provider, one customer model. For example, if there is congestion between the consumer’s ISP 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.¹⁵

The use of an auction system, even for a subset of the total called numbers as the *FNPRM* proposes, and even with two winning bidders, undermines the competitive incentive built into the current system where customers maintain a competitive choice even where they have a default provider. The current system is most consistent with the Commission’s long-held competition policy.

That policy seeks to “facilitate increased competition in telecommunications markets” including in markets “already subject to competition.”¹⁶ The Commission’s competition policy generally has sought to foster more competitors, not less. For example, the Commission

¹⁴ *Id.* pp. 1-2.

¹⁵ See Ex Parte Letter of T. Finn, Counsel for TDI to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 at p. 2 (filed Feb. 8, 2012).

¹⁶ See *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, 8624, ¶4 (2010) (“*Qwest Phoenix Forbearance Order*”) *aff’d* *Qwest Corp. v. FCC*, 689 F.3d 1214 (10th Cir. 2012).

mandated data roaming because it would “provide consumers with greater competitive choices in mobile broadband”¹⁷ by encouraging “investment in and deployment of broadband networks by multiple service providers.”¹⁸ And the benefits of competition are not limited to price — vigorous competition is “essential to ensuring continued innovation.”¹⁹ Thus, at least for wireless broadband the Commission sought to spur more choice for consumers — not less. It should do the same here.

Reducing the ability of VRS users to select from multiple providers each time they place a VRS call to particular telephone numbers will lead to lower quality and less reliable service. Avoiding that risk has been a consistent theme underlying the Commission’s policy favoring competition among multiple firms — because effective competition is unlikely to occur in highly concentrated markets.²⁰ Historically, the Commission has recognized the dangers of concentrated markets and has actively promoted policies to spare consumers the harmful effects of concentrated markets.²¹ Thus, part of the Commission’s competition policy has been aimed

¹⁷ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd. 5411, 5422, ¶20 (2011) (“Data Roaming Order”) *aff’d* *Cellco Partnership v. FCC*, 700 F.3d. 534 (DC Cir. Dec. 4, 2012).

¹⁸ *Data Roaming Order*, 26 FCC Rcd at 5419, ¶16.

¹⁹ *U.S. et al v. AT&T, Inc. et al*, Civ. Action No. 11-1560, D. D.C., Second Amended Complaint, ¶1 (Sep 30, 2011).

²⁰ *See, e.g., SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18325-34, ¶¶65-78 (2005); *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, 10789, ¶64 (2003); *Application of EchoStar Communications Corp. (a Nevada Corporation); Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, 12 FCC Rcd 19985, 2008-09, ¶137 (1997); *Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Amendment of the Commission's Cellular/PCS Cross-Ownership Rule*, 11 FCC Rcd 7824, 7872-73, ¶100 (1996).

²¹ *See Applications of AT&T Inc. and Deutsche Telekom AG for Consent To Assign or Transfer Control of Licenses and Authorizations, Description of Transaction, Description of*

at reducing the possibility of concentrated markets that occur when “a market [is] dominated by a few firms.”²²

One of the principal concerns underlying this policy is the recognition that with fewer competitors there exists “the potential for [the exercise of] either individual or joint market power.”²³ For example, the Commission has recognized that a reduction in consumer welfare “may be a concern where there is a duopoly or a market dominated by a few firms.”²⁴ This threat to consumer welfare occurs because “duopolies may present significant risks of collusion.”²⁵ The Commission has recognized that “when there are only a few firms in a market, they are more likely to engage in coordinated interaction that harms consumers than when there are a greater number of firms.”²⁶

The Commission’s policy of avoiding concentrated markets is consistent with the principles and methodology employed in the FTC/DOJ Horizontal Merger Guidelines.²⁷ Under these guidelines, a market — such as the market for serving the pool of telephone numbers subject to the auction — with two competitors or one competitor is certain to be highly concentrated. The DOJ, for example has stated that its merger review process “starts from the

Transaction, Public Interest Showing, and Related Demonstrations, WT Docket No. 11-65, Staff Analysis and Findings, at ¶266 (Nov. 29, 2011); *General Motors Corp, and Hughes Electronics Corp. (Delaware Corporations) (Transferors) and EchoStar Communications Corp. (a Delaware Corporation) (Transferee)*, 17 FCC Rcd 20559, 20624-26, ¶¶170-74 (2002).

²² See *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8624 ¶4.

²³ *Id.*

²⁴ *Id.* at ¶29.

²⁵ *Id.*

²⁶ *Id.* at ¶30.

²⁷ U.S. Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines*, § 9.1 (2010), available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf>.

presumption that in highly concentrated markets, consumers can be significantly harmed when the number of strong competitors declines from four to three.”²⁸

The *FNPRM*'s proposal to subject a certain percentage of the VRS market to a monopoly or duopoly market makes little sense and conflicts with long-standing Commission policy. It is unprecedented for the Commission to take a market with multiple competitors and reduce competition to monopoly or duopoly levels. That simply cannot be squared with the Commission's long history of fostering competition from multiple providers and should not be adopted.

III. SET HIGHER RESEARCH AND DEVELOPMENT BUDGET

The Commission proposes to set the initial budget for research and development conducted by the NSF at \$3 million, which is approximately 40% of the \$7 million of expenditures reported by VRS providers for Fund year 2012 for compensable research and development.²⁹ Consumer Groups submit that a \$3 million budget for research and development is too low and propose that the budget should be determined after reviewing all research and development costs, regardless of whether the amounts were compensable or non-compensable.

Providers have reported to the Commission their actual costs for research and development to enhance VRS services and equipment, and although no information was found in the record regarding how much of those actual costs are compensable versus non-compensable, total expenditures must be more than the approximately \$7 million compensable for Fund year 2012. It is imperative that the Commission considers all costs when setting its budget. To the extent that the non-compensable research and development funds spent by providers may be for

²⁸ See Ex parte Submission of the United States Department of Justice, GN Docket 09-51, at p.15 (filed Jan. 4, 2010).

²⁹ *FNPRM* at ¶241 (citing Letter from David Rolka, President, RLSA, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51, 03-123, at p. 3 (filed Apr. 23, 2013)).

“similar or identical enhancements,” the budget might be reduced for such duplicative costs. Nonetheless, Consumer Groups believe that funds expended by providers – whether compensable or not – have resulted in technological advancement in furtherance of the Commission’s statutory goal, and these costs should not be ignored when determining an appropriate budget. Accordingly, Consumer Groups urge the Commission to review all actual research and development costs and set the NSF budget as a percentage of all costs and not the proposed \$3 million budget which does not consider all research and development costs.

Consumer Groups also request that the research and development budget not contain an expiration date but be open-ended. Consumer Groups are concerned that setting an expiration date for the research and development budget may result in sufficient funding not being available in the future to encourage innovation, adversely affecting the functional equivalency of VRS services and equipment. To the extent that the budget needs to be changed, Consumer Groups suggest conducting a bi-annual review which may also be used to identify areas for particular research and development (*e.g.*, accessible text conversation services between CAs and deaf-blind using Braille/large visual display and keyboards).

With respect to the Commission’s request for comments on the mechanism by which research and development should be funded under the NSF arrangement, Consumer Groups propose that the Commission allocate a percentage of the budget for VRS providers to conduct research. Such an arrangement might require VRS providers to provide a matching funding commitment (*e.g.*, 10%) and require any of their technology to be licensed by other VRS providers which could allow the technology-creator to recoup their investment. The Commission and NSF might review other grant programs, such as the Broadband Technology Opportunities Program, and licensing arrangements to develop the particular requirements for

VRS providers to be awarded funds for VRS research and development. Because of the unique needs of VRS users, Consumer Groups are concerned about adequate representation during the grant proposal solicitation process. It is therefore imperative that not only the scientific community be involved in the review process, but also other stakeholders in VRS, including consumers and experts in the area of VRS. As an alternative, the Commission should permit companies that develop their own platforms to be reimbursed for their research and development expenses. Companies should be compensated for more innovations on top of those that the NSF arrangement delivers.

IV. REVISE RULES TO REQUIRE QUARTERLY CONTRIBUTION UPDATES

The Commission proposes to amend its rules to require quarterly updates to the TRS Fund contribution factor to match the frequency required with respect to the Universal Service Fund. Under this proposal, the Fund administrator would request TRS providers to revise their projected minutes of use, and the Office of the Managing Director (“OMD”) would put the contribution factor proposals on public notice and adopt a new contribution factor each quarter based on the TRS Fund administrator’s proposal under OMD’s delegated authority.

Consumer Groups support this proposal and agree that it would allow for flexibility in addressing increases or decreases in requests for reimbursement and projections of service requirements from TRS providers. For example, projections of the Internet Protocol Captioned Telephone Service growth by the interstate TRS fund administrator have never been in close alignment with the actual growth in minutes for any reporting period.³⁰ More frequent revisions

³⁰ *In the Matter of Misuses of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Comments of the Rehabilitation Engineering Research Center on Telecommunications Access, CG Docket No. 13-24, CG Docket No. 03-123, at p. 5 (filed Feb. 26, 2013).

of the projections and corresponding adjustments to the contribution factor would more closely align these two variables and allow the TRS Fund administrator to address reimbursement needs more effectively.

V. REVISE RULES TO ALLOW HEARING INDIVIDUALS TO OBTAIN TEN-DIGIT NUMBERS TO MAKE POINT-TO-POINT CALLS

The Commission seeks comment on Consumer Groups' request that the Commission adopt "rules that would permit hearing individuals to obtain ten-digit numbers that would allow them to make point-to-point calls with VRS users," noting that "[i]f all registration is done through a central database, it presumably would be easier to flag a hearing person's ten-digit number in the system so that it is not eligible for VRS reimbursement while still allowing them to use the system to make direct calls to their deaf or hard of hearing contacts."³¹

Consumer Groups urge the Commission to revise its rules to allow hearing individuals to obtain ten-digit numbers. Deaf and hard of hearing consumers should not exist in silos. Consumers would also like their hearing contacts who use American Sign Language ("ASL") to receive ten-digit numbers and access to necessary video phone software and/or equipment, which would permit more peer-to-peer calls, and thus reduce the use of VRS-compensated services.

Consumer Groups have long advocated for such a rule change. On January 29, 2009, 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

³¹ *FNPRM* at ¶243.

speech disability, and not to hearing individuals.³² As Consumer Groups have stressed, it is critical 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.

Currently, a hearing person has no ability to obtain a ten-digit number from any source to engage in point-to-point videophone communication with an individual who is deaf or hard of hearing or who has a speech disability. Consumer Groups continue to believe that it is imperative, reasonable and within the FCC's mandate and authority to permit direct videophone communication 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."³³ Section 255(a)(3) 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*

³² *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*").

³³ 47 U.S.C. § 225(b)(1) (emphasis added).

*communication services by wire or radio.*³⁴ 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, 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.³⁵

The Commission sought comment on the Consumer Group's petition.³⁶ It has done so again in this proceeding, notwithstanding the fact that all commenters supported the petition when it was first put out for public comment. Consumer Groups therefore continue to request that the Commission act on the petition and allow for the assignment of ten-digit numbers to hearing individuals as outlined in the petition.

³⁴ 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.

³⁵ 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.

³⁶ 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.

VI. REVISE TRS ADVISORY COUNCIL MEMBERSHIP AND DUTIES

In place of the existing Interstate TRS Fund Advisory Council (“TRS Advisory Council”), the Commission proposes to form a new advisory committee to provide advice on specified matters related to the TRS program. The Commission seeks comment on the composition of the new committee and seeks input as which of the following areas (and specific matters within these general areas) should be the focus of the committee: (1) technology; (2) efficiency; (3) outreach; (4) user experience (reference functional equivalency requirement); (5) eligibility, registration, and verification; and (6) porting and slamming.

A. The Majority of the TRS Advisory Council Should be Composed of Consumer Representatives

Consumer Groups urge the Commission to expand and revise the composition of the existing TRS Advisory Council and not to replace the existing TRS Advisory Council in its entirety. The TRS Advisory Council must consist of representatives from the following groups:³⁷

- The deaf and hard of hearing and speech disability communities;
- TRS users (voice and text telephone);
- Interstate service providers;
- State representatives; and
- TRS providers.

As of July 12, 2013, the TRS Advisory Council had a total of thirteen (13) members. Four of these members are state representatives, two represent interstate TRS service providers (Purple Communications and Sprint), two represent TRS Contributors (AT&T and Hamilton Telephone), three represent TRS users, and approximately five represent the deaf and hard of

³⁷ 47 C.F.R. § 64.604(c)(5)(iii)(H).

hearing and speech disabled communities.³⁸ If the mission of the TRS Advisory Council is expanded to include other important areas which directly affect the consumer experience, the number of consumer representatives on the TRS Advisory Council needs to be significantly increased in order to give the consumer needs greater weight. Consumer Groups respectfully ask that consumer representatives make up a majority of the TRS Advisory Council. Consumer Groups suggest that, at a minimum, the consumer representatives include one representative from each national advocacy program (*e.g.* TDI, NAD, Hearing Loss Association of America, ALDA and DHHCAN). Additional possible consumer representatives include state relay administration officials or individuals with significant experience with relevant policy issues that represent certain disability communities (*e.g.*, deaf-blind (AADB), speech-disabled (SCT), and deaf with mobility issues (CPADO)).

In addition, in light of rapid advances in technology and medical science, there is a critical need for the research community to be adequately represented on the TRS Advisory Council. As such, the TRS Advisory Council should include a representative from the non-profit research community and Gallaudet University.

Finally, Consumer Groups believe that providers bring valuable insight to the TRS Advisory Council and that they should be allowed to participate but not to vote on matters where there may be conflicts of interests. If the Commission decides that those representing providers should not be allowed to vote at all, Consumer Groups recommend that providers receive reimbursements for TRS Advisory Council-related travel and other expenditures commensurate with other Council members.

³⁸ See <http://www.r-l-s-a.com/TRS/AdvisoryCouncil.html>.

B. The TRS Advisory Council Should Continue to Advise on Rate Issues and Its Role Should be Expanded to Encompass Functional Equivalency, Service Quality, Outreach, and Other Issues

Consumer Groups recommend that TRS Advisory Council continue to advise the Commission on TRS cost recovery matters and rates, including the research and development budget and oversight of NSF's management of the research and development. Such matters impact functional equivalency, and as Consumer Groups have emphasized, "functional equivalency must be the standard filter" through which all, ever-changing TRS program actions proposed or taken by the Commission are assessed.³⁹ Functional equivalency is an evolving concept that changes with new technology, developments, and trends in telecommunications and the provision of interpreting services. The rapid advancement of communications technology in the commercial marketplace means that "functional equivalence" for deaf, hard of hearing, deaf-blind, deaf with mobile disabilities, and speech-disabled individuals is an evolving concept and continuous challenge that must be addressed on a continuous basis to ensure that these communities of consumers are not left behind and share in the benefits of the emerging communications technologies. This challenge requires the Commission, TRS providers, Consumer Groups, research institutions and others to collaborate to ensure that the technologies and capabilities that become available to consumers in the mainstream marketplace are harnessed and made available to the deaf and hard of hearing communities through TRS programs and that the cost recovery for such technologies and capabilities is reasonable and efficient.

In addition, Consumer Groups recommend expanding the focus of the TRS Advisory Council. Prudent service quality regulation of TRS services by the Commission is needed to

³⁹ *In the Matter of Structure of the Video Relay Service, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 10-51, 03-123, Consumer Group Comments, at i (Mar. 9, 2012).

ensure that TRS services are functionally equivalent. The TRS program and its service quality standards must adapt to the continuing advances in technology. Thus, there is a need for continuous input from the TRS Advisory Council to guide the process of developing service quality regulations and other issues as technology advances.

There is also a need for a neutral third party to manage non-brand name outreach and education for emerging TRS technologies and solutions. Outreach programs are important to build familiarity and acceptance of TRS, VRS and other technologies as they emerge. Accordingly, the scope of the TRS Advisory Council's authority should be increased to include making recommendations to the Commission regarding service quality, outreach programs, and other issues.

VII. CONSUMER GROUPS GENERALLY SUPPORT EXTENSION OF RULES TO ALL FORMS OF iTRS

Noting the commonalities among VRS, IP Relay, and other forms of iTRS, the Commission seeks comment on extending the structural reforms of this Order to all forms of Internet-based TRS ("iTRS"). Consumer Groups generally support this proposal, but as specified below, Consumer Groups believe certain exceptions should apply, particularly the applicability of the neutral video communication service platform to other forms of iTRS.

Consumer Groups support the registration of all users in the TRS User Registration Database ("TRS-URD"). This measure would hold the FCC more accountable to Congress with respect to TRS Fund distributions and administration. Consumer Groups also support extending the VRS requirements for certification of eligibility (*e.g.*, self-certification)⁴⁰ and verification of identity⁴¹ to IP Relay services. Consumer Groups, however, reiterate that information contained

⁴⁰ *FNPRM* at ¶80.

⁴¹ *Id.* at ¶86.

in the TRS-URD must not be used for anything other than its intended purpose and must be afforded the highest level of privacy protection.

Consumer Groups oppose extending the capabilities of the neutral video communication service platform to all other forms of iTRS. As discussed in Section I. above, the neutral video communication service platform is untested, and the results of its use should be thoroughly reviewed before it is expanded to other forms of TRS. Consumer Groups envision difficulties associated with integrating a neutral platform into other forms of TRS, particularly those services with specific hardware requirements.

VIII. THOROUGHLY CONSIDER TECHNICAL AND OPERATIONAL REQUIREMENTS PRIOR TO DISAGGREGATING EMERGENCY CALLS

The Commission seeks comment on whether CAs who handle emergency calls should be integrated into general-purpose VRS centers or separated out into centralized or regional call centers.⁴² In its March 2013 report, the Commission’s Emergency Access Advisory Committee (“EAAC”) recommended the implementation of Media Communication Line Service (“MCLS”) call centers through either a national entity or regional entities.⁴³ Consumer Groups do not take a position on whether emergency calls should be handled by general-purpose VRS providers or specialized call centers but agree with EAAC’s recommendations that technical requirements, operational requirements, training requirements and funding continuity must be thoroughly considered prior to establishment of MCLS.⁴⁴ However, Consumer Groups have strong

⁴² *FNPRM* at ¶257.

⁴³ *See Emergency Access Advisory Committee Working Group 3 Recommendations on Current 9-1-1 and Next Generation 9-1-1: Media Communication Line Services Used to Ensure Effective Communication with Callers with Disabilities*, at 14 (March 1, 2013), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-319394A1.pdf.

⁴⁴ *Id.* For example, EAAC’s Recommendations include specific steps to prepare MCLS call centers for transition to a NG911 environment.

reservations with selecting one provider to provide all emergency services since this would likely lead to the kind of problems raised in opposition to the auction model in Section II. above.

IX. REDUCE SPEED OF ANSWER REQUIREMENTS

The Commission asks whether the permissible wait time for VRS calls to be answered 85 percent of the time should be reduced to within 10 seconds.⁴⁵ As the Commission recognized, such a reduction would harmonize the permissible wait time for VRS with that for other forms of TRS. Consumer Groups support the proposal to decrease the permissible wait time to 10 seconds (from 120 seconds). Doing so would advance the goal of functional equivalency as expressed by Consumer Groups' Policy Statement. Further, while Consumer Groups believe that the alternative formula proposed by the Commission is the more appropriate measurement of the two, Consumer Groups argue that any measurement should include in the denominator unanswered calls when over the time limit. If the Commission reduces the permissible wait time, the formula to measure VRS speed-of-answer compliance must be adjusted accordingly.

In addition, in parallel with the National Emergency Number Association ("NENA") Call Answering Standard/Model Recommendation, Consumer Groups support a requirement for ninety percent (90%) of all 911 calls using VRS arriving at the Public Safety Answering Point ("PSAP") to be answered within 10 seconds during the busy hour (e.g. the hour each day with the greatest call volume) and ninety-five percent (95%) of all 911 calls using VRS to be answered within 20 seconds.⁴⁶ The FCC does not have specific speed-of-answer regulations for emergency calls using VRS, and the current distinction between the FCC regulations for VRS

⁴⁵ *FNPRM* at ¶ 265.

⁴⁶ NENA 56-005, Section 3.1, Standard for Answering 9-1-1 Calls available at http://www.nena.org/resource/collection/ABEAA8F5-82F4-4531-AE4A-0AC5B2774E72/NENA_56-005_9-1-1_Call_Answering_Standard.pdf. *See also*, NENA 52-505 available at http://www.nanc-chair.org/docs/NENA52_502VRSIPRelay.pdf.

speed-of-answer and the NENA standard for 911 calls is inconsistent and unsafe -- a delayed response by even a few seconds delay can lead to death. Also, even though the Commission has indicated that the 911 relayed calls should be prioritized for response, it has not adopted speed-of-answer requirements to connect a VRS call to the PSAP; in fact, numerous FCC filings have shown that the bulk of the time is taken up by connection to the PSAP.⁴⁷ Every second counts; therefore, all 911 relayed calls using VRS should be connected to the PSAP within 10 to 20 seconds, which should include the total time it takes for the caller to initiate and reach the PSAP via relay service.

Consumer Groups submit that a reduction in speed of answer requirements will lead to an increase in costs, even though the Commission's proposed rate does not factor in such an increased cost. Consumer Groups have concerns that, like the IP Relay services, consumers will see providers drop out of the market or the quality of services will deteriorate to meet this demand without additional funds.

X. ENSURE ACCESS TO VIDEO MAIL

The ability to leave a message when the called party does not answer is an important feature to both traditional telephone services and TRS. Callers in a traditional telephone service are able to leave a voicemail message for any called party who has set up a voicemail account regardless of whether the caller and called party use the same service provider. Currently, VRS users are not always able to leave a video message for a called party when both parties do not use the same provider or equipment. Consumer Groups strongly believe that VRS users should have the capacity to leave a video message regardless of whether the caller and called party use the

⁴⁷ See e.g., Reply to Comments of Krystallo Tzialliala, PS Docket No. 10-255 (filed Dec. 15, 2011); Reply to Comments of William Ennis, PS Docket No. 10-255 (filed Jan. 10, 2012); Reply to Comments of Donna Platt and Richard Ray, PS Docket No. 10-255 (filed Feb. 10, 2012).

same device/software. Without such capability the goal of functional equivalency for VRS services is not met.

XI. NON-COMPETE PROVISIONS IN CA CONTRACTS ARE UNNECESSARY

Consumer Groups do not support the use of non-compete clauses in CA contracts. While there may be limited legitimate reasons to utilize non-compete clauses, such as preventing the disclosure of trade secret/proprietary information that a CA may acquire during the term of their employment with one provider when the CA moves to another provider, such legitimate justifications are outweighed by the harms such clauses create and there are less harmful ways to protect trade secrets than expansive non-compete clauses.

First, to Consumer Groups' knowledge, CAs acquire minimal trade secret/proprietary information about their employer as a result of their duties. To the extent CAs do acquire such information, the providers can protect their trade secret/proprietary information with more limited contractual restrictions regarding the confidential nature of such information rather than expansive non-compete clauses.

Second, Consumer Groups believe that non-compete clauses create an unnecessary restraint on the VRS system. A CA should not feel captive to his first employer as both the VRS system along with other needs for interpreters within the community require the mobility of such trained persons, particularly given the limited pool of interpreters for all purposes. It is a fundamental principal of the American capitalist system that each person is entitled to be recruited and paid at rates that are commensurate with their specific skills, experience, and other assets. These non-compete clauses thwart that principal but also harm the VRS system by not permitting CAs to select their employer of choice after signing on with a particular provider.

XII. VRS CAS SHOULD NOT BE PERMITTED TO WORK FROM HOME

Consumer Groups do not believe that VRS CAs should be permitted to work from home given the potential harms to VRS users. While there may arguably be some cost saving to permitting CAs to work from home, Consumer Groups do not believe that benefit is sufficient given the potential harms to VRS users. VRS users must have complete confidence that their calls are being handled confidentially. Many homes do not have an environment that would ensure such confidentiality. Consumer Groups maintain that call centers provide a more controlled environment to maintain confidentiality. The CA is not the only party responsible for maintaining call confidentiality; the VRS provider is also responsible for ensuring that the environment where calls are handled is well-secure. If a CA works from home, the VRS provider does not have the same kind of controls to make sure the call is handled properly and securely as per the FCC's requirements.

If the Commission decides to permit VRS CAs to work from home, the Commission should limit the time period that CAs can do so. Consumer Groups suggest that, at most, the Commission permit CAs to work from home during the period from 2AM to 6AM because it poses the least risk to confidentiality since other household members will most likely be sleeping. However, the Commission should (1) impose strict requirements for the environment for home offices to maintain confidentiality such as requiring that CAs have a dedicated enclosed room for providing the service and (2) not relax the technical standards that currently apply to calls centers for those CAs working at home. To do otherwise could compromise the quality of VRS service and impair the goal of functional equivalency.

XIII. CONCLUSION

Consumer Groups request that the Commission consider the points discussed herein when developing further VRS compensation rates and requirements.

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