

**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 IN SUPPORT OF SPRINT'S PETITION FOR RECONSIDERATION

**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
California Coalition of Agencies Serving the Deaf and Hard of Hearing**

Dated: December 5, 2013

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Pursuant to the Commission’s Public Notice,¹ Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), National Association of the Deaf (“NAD”), Association of Late Deafened Adults, Inc. (“ALDA”), Cerebral Palsy and Deaf Organization (“CPADO”), California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”) and Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”) (collectively, the “Consumer Groups”) respectfully submit these comments in support of the Petition for Reconsideration filed by Sprint in the above-referenced proceeding.²

I. Introduction and Summary

Sprint’s petition urges the Commission to suspend the changes to the Internet Protocol

¹ *Request For Comment On Petition Filed By Sprint Corporation For Reconsideration Of The Commission’s Internet Protocol Relay Rate Order*, Public Notice, DA 13-2258 (Nov. 25, 2013).

² *Petition for Reconsideration of Sprint Corp., 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* (filed July 31, 2013) (“Sprint Petition”).

Relay (“IP Relay”) rate regime established in its recent Order.³ Sprint argues that a return to the previous rate of \$1.2855 per minute is warranted because the new rate regime was calculated using costs from providers that no longer provide IP Relay services;⁴ the cost analysis used to derive new rates does not account for the capital costs the remaining providers will incur to add capacity;⁵ the IP Relay rates are virtually half of the TRS rates yet provide virtually the same service,⁶ and the new rate structure does not permit companies to provide adequate service leading to the exit of multiple providers and eliminating the ability of users to choose among multiple suppliers.⁷

The Consumer Groups support Sprint’s petition on the grounds that the Commission’s rate does not appear to provide companies sufficient compensation to provide service to users that meets the “functionally equivalent” standard set forth in the Americans with Disabilities Act (“ADA”).⁸ The Consumer Groups are deeply concerned that the exit from the market of Sorenson, AT&T and Hamilton Relay have limited the choices available to users of IP Relay services thereby reducing the incentive of the remaining participants to provide high-quality service. The Consumer Groups believe that the presence of multiple competitors in the market is crucial and that the Commission needs to adjust its pricing regime to foster additional entry and competition among providers.

³ *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*, Order, DA 13-1483 (July 1, 2013) (“*TRS Rate Order*”).

⁴ Sprint Petition, p. 3.

⁵ *Id.*, pp. 4-5.

⁶ *Id.*, pp. 6-7.

Id., pp. 10-11.

⁸ PL 101-336, July 26, 1990, codified at 47 U.S.C. § 225 of the Communications Act of 1934, as amended (“Act”).

IP Relay service provides a vital method of communication for individuals who are deaf or hard of hearing. This text-based service is used by a wide range of people who are deaf or hard of hearing such as by those who do not communicate in American Sign Language (“ASL”) as well as those who communicate in ASL and prefer using written English in their relay calls or lack access to Video Relay Service (“VRS”) such as when using mobile phones. More importantly, some individuals feel that this form of TRS gives users more control of their phone conversation. When one uses VRS, the interpreter translates from one language to another, but with IP Relay, individuals have control over their word choices as the CA will voice each word verbatim. Additionally, these individuals receive relayed messages verbatim and not translated.

The Consumer Groups urge the Commission to suspend its new rate structure for IP Relay, reinstate the prior compensation rate of \$1.2855 and adopt a compensation rate that will ensure the remaining IP Relay service providers have an incentive to remain in the market while delivering high-quality services that strive to meet the functional equivalence requirement. The Consumer Groups have consistently asked the Commission to adopt compensation rates for Relay services that encourage competition, adequately compensate providers, and are structured to promote quality service.² The Consumer Groups make the same request for IP Relay service rates. The Commission should establish rates for IP Relay service that provide existing providers adequate compensation so that they will continue to provide IP Relay services and compete to offer consumers high-quality choices for this essential Relay service.

² See *e.g.*, Ex Parte Letter Concerning The Establishment of VRS Rates, CG Docket Nos. 10-51 and 03-123 (dated May 13, 2013).

II. The Commission Should Reconsider The New Rate Structure For IP Relay As It Does Not Support High Quality Service and Competition Leading To Market Exits

There is strong evidence that the Commission's decision to reduce immediately IP Relay rates by nearly 20%, and to mandate further annual six percent reductions for the next two years, has had a dramatic and negative impact on the ability of deaf and hard of hearing consumers to have a choice of multiple providers from which they can obtain high-quality IP Relay services. Following the program administrators' filing of its proposed 20% rate reduction at the beginning of May of this year,¹⁰ two providers exited the IP Relay market. At the time of the Commission's Public Notice¹¹ there were only three companies offering IP Relay: Sprint, Purple and Sorenson. A fourth provider, Hamilton Relay, one of seven providers previously offering IP Relay,¹² exited the market four days before the public notice (two weeks after the Administrator filed its proposal).¹³ Sorenson announced its July 31, 2013 departure from the IP Relay market on July 8, 2013, one week after the Commission adopted the administrator's proposed decrease in IP Relay compensation.¹⁴ In short, the Commission's decision to reduce IP Relay compensation by

¹⁰ 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, (filed May 1, 2013).

¹¹ *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, DA 13-1137 28 FCC Rcd 7296 (May 17, 2013).

¹² See Sprint Nextel Corp. Comments, *In the Matter of Structure and Practices of the Video Relay Service Program*, 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, at pp. 2-3 (May 31, 2013).

¹³ 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, (filed May 1, 2013).

¹⁴ Press Release, Sorenson to Exit IP Relay Business, July 8, 2013. Available at http://www.sorenson.com/press_releases#2013_7_8.

virtually twenty percent, coupled with 6% decreases the next two years, appears to have reduced the choices for deaf and hard of hearing IP Relay users from five to two providers. And every indication suggests other providers may have no choice but to follow.¹⁵

There is enough evidence in the record for the Commission to conclude that the drastic reduction in IP Relay service providers is the direct result of an unrealistically low reimbursement rate. These rates forced providers into a Hobson's choice between exiting the market or lowering the quality of service to avoid operating at a loss. As a consequence, deaf and hard of hearing consumers are left with only two IP Relay providers – a duopoly that may soon become a monopoly. This change will adversely affect the IP Relay experience for deaf and hard of hearing users as competition is vastly reduced. There is also a real danger that one or both of the remaining providers will exit the business due to additional costs they must bear but cannot recoup.¹⁶ Most significantly, the lack of choice will impact deaf-blind users because IP relay may be the only form of relay service accessible to them.

The Commission had ample warning that its proposed IP Relay rate cuts would likely lead to providers leaving the market. The Consumer Groups' June 26, 2013 ex parte letter expressed strong concerns that the IP Relay rate decrease would lead to providers leaving the business and stressed the need to compensate providers adequately and promote quality service.¹⁷

The Bureau barely acknowledged these warnings, claiming “providers may leave the market for a number of reasons ...”such as being “unable to compete effectively with more

¹⁵ Sprint Petition, pp. 5-6.

¹⁶ See Sprint Petition, p. 4 (identifying costs Sprint will need to incur to absorb calls that would have been handled by other providers that have departed the market).

¹⁷ *Ex Parte* Letter from Claude Stout, TDI at pp. 1-2 (June 26, 2013).

efficient providers.”¹⁸ But the *TRS Rate Order* lacks any substantive analysis of the market and fails to offer any evidence supporting its hypothesis. Thus it is imperative that, at a minimum, the Commission pause and evaluate the impact of imposed rate reductions on market entry and exit. In order to preserve the status quo while it considers adjustments to the pricing regime, the Commission should restore the rate in effect during 2012.

III. The Commission Should Investigate the Allegations in Sprint’s Petition Regarding Reduced Quality in IP Relay Service

Sprint’s petition argues that its remaining competitor in the IP Relay market has sacrificed quality service in order to remain profitable under the decreased compensation levels.¹⁹ In support of this charge, Sprint refers to a study performed by the Paisley Group.²⁰ Using the Paisley study, Sprint alleges that its remaining competitor in the IP Relay market provides lower quality of service referring to a number of metrics, including those purporting to measure the quality of service provided by each company’s Communications Assistants (CA) efficiency measured by words typed per minute and typing accuracy.

The Consumer Groups lack the ability to substantiate the analysis in the Paisley Group study. But as TDI and the NAD have observed, there are concerns about the quality of the CAs certain providers use in their IP Relay services.²¹ In a prior *ex parte* letter, TDI and NAD explained that certain providers use “overseas communication assistants (CA)” and that NAD has “received complaints from people about CAs who are non-native English speakers for whom English is a second language and believe that using these CAs is a departure from functional

¹⁸ *TRS Rate Order* ¶ 15.

¹⁹ Sprint Petition, p. 8.

²⁰ *Id.* at n.21.

²¹ Ex Parte Letter from Andrew S. Phillips, Policy Counsel, NAD.

equivalence.”²² The Consumer Groups are concerned that the compensation rates adopted in the *TRS Rate Order* may require some type of “cost saving measures”²³

The Consumer Groups are concerned that the Commission is focused on reducing compensation levels at the expense of the core mission of IP Relay and other Relay services. The ADA requires the Commission to ensure that deaf, hard of hearing, deaf-blind and speech-disabled individuals have nationwide access to the telephone 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.”²⁴ The Commission has recognized that “functional equivalence” requires “periodic reassessment” in light of the “ever-increasing availability of new services and the development of new technologies.”²⁵

For the Consumer Groups, functional equivalency remains 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 IP Relay compensation regime. Assessments must be proactive and in so keeping must be routinely, periodically, and proactively made to determine how Commission action — including compensation levels — will impact functional equivalency. Unfortunately, the *TRS Rate Order* lacks any analysis of how the revised rate regime may impact the ability of providers to deliver on the promise of functional equivalence. Only the Commission is in a position to conduct such

²² *Id.* at p. 2.

²³ *Id.*

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

²⁵ *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).

an evaluation and it is a critical component of any proposed rate change.

As discussed above, the Consumer Groups urge the Commission to revisit its compensation regime for IP Relay services. As part of that effort, the Commission needs to place a greater emphasis on evaluating and measuring service quality. It is also necessary that any new IP Relay compensation rate structure should promote and reward quality service that meets the “functional equivalence” standard.

To this end, the Consumer Groups urge the Commission to investigate existing service quality issues, evaluating the ability of providers to perform with respect to typing words per minute, typing accuracy and answering speed, among others. As discussed above, service quality also includes the clarity of the CAs’ speaking voices — CAs for whom English is a second language diminish the quality of service. While the Paisley Group study offers a starting point for such an analysis, the Commission is not bound by such study or its results. Although the Consumer Groups are deeply concerned about the findings in the Paisley Group study included in Sprint’s petition, it is imperative that the Commission undertake its own Relay service performance study to evaluate performance independently. This is critical in the IP Relay market where there are now only two providers.

While the Paisley Study is not the definitive word on IP Relay service quality, the Commission should be disturbed by the evidence in that report suggesting that the providers delivering the highest quality service — and thus striving to meet the statutory functional equivalence goal — have had to exit the IP Relay Market. Free-Market competition will only benefit the quality of services in the future! The Consumer Groups agree with Sprint that these exits are most likely due to the decreased compensation levels, including the reductions in the *TRS Rate Order*. There is enough correlation for the Commission to investigate the possibility

that its new rate regime has impeded the statutory goal of providing deaf and hard of hearing users the functional equivalent communications services they deserve. Companies offering quality service are fleeing the market, depriving consumers of a viable choice among multiple suppliers offering quality service. This is the definition of a market failure requiring Commission intervention.

IV. Conclusion

For the aforementioned reasons, the Commission should grant Sprint's Petition for Reconsideration, suspend the rate structure adopted in the *TRS Rate Order*, reinstate \$1.2855 as the interim rate for IP Relay pending adoption of a new rate structure, and evaluate the performance of IP Relay providers under the ADA's functional equivalence standard.

Respectfully submitted,

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