

**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
)	

**OPPOSITION OF THE
AD HOC COALITION OF INTERNATIONAL TELECOMMUNICATIONS COMPANIES TO THE
IMPOSITION OF THE PROPOSED TRS FUND CONTRIBUTION FACTOR ON
INTERNATIONAL TELECOMMUNICATIONS SERVICES**

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May 23, 2014

I. Introduction

The Ad Hoc Coalition of International Telecommunications Companies ("Coalition") (www.telecomcoalition.com) hereby submits this Opposition on behalf of its members.¹ The Coalition requests that the Federal Communications Commission ("FCC" or "Commission") direct Rolka Loube Saltzer Associates ("RLSA"), the Administrator of the Telecommunications Relay Service ("TRS") Fund, to suspend the imposition of the TRS Fund factor on international telecommunications revenues. Concurrent with this suspension, the Coalition requests that the Commission open a rulemaking proceeding or otherwise undertake a study to determine and remedy the fundamental inequities in the current system of calculating and assessing contributions on international services.

The assumptions upon which the TRS Fund was established and administered have changed so dramatically that the FCC needs to rethink its approach to funding the program. Information that was not available when the TRS Fund was first established—such as the fact that international TRS is lightly used at best—is now critical to developing a new contribution methodology for the Fund. Upon information and belief, usage of international TRS/VRS is very small and grossly disproportionate to the percentage of the TRS Fund that is supported by revenue generated from international services. Accordingly, the TRS Fund rules and proposed funding mechanism are outdated, unfair, and unsupported by the evidence. As a result, the FCC must revise its rules.²

¹ The Ad Hoc Coalition of International Telecommunications Companies is a grassroots organization comprised of both U.S. and non-U.S. corporations, including prepaid calling card providers, international transport carriers, and a broad spectrum of entities engaged in the provision of wholesale communications services.

² It is settled law that agency decisions must be based on pertinent evidence. An "agency must examine the relevant data and articulate a satisfactory explanation for its action including a "rational connection between the facts found and the choice made." *Burlington Truck Lines, Inc. v. United States*, 371 U. S. 156, 168 (1962). Courts have consistently held that agency decisions which are unsupported by factual evidence are arbitrary and capricious and cannot be upheld. "...[A]n agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, *offered an explanation for its decision that runs counter to the evidence before the agency*, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Manufacturer's Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983) (emphasis added).

The Commission has historically applied the TRS Fund contribution factor equally to interstate and international services on the theory that the Fund supports both interstate and international TRS/VRS. However, in recent years, legitimate international TRS/VRS usage has been miniscule in comparison to domestic interstate usage, according to information gleaned from TRS/VRS industry experts and relay service providers. As a result, the FCC's presumptive reason for including international revenues in the TRS Fund contribution base, subject to the very same contribution rate as interstate services, is invalid.

Accordingly, the Commission must revisit its Order establishing TRS funding rules and adopt a more equitable contribution methodology reflecting actual TRS/VRS usage patterns. After suspending the current/proposed contribution factor, as an indispensable next step, the Coalition urges the Commission to conduct a careful study of the actual minutes of usage for interstate and international TRS and to make the data gathered in the study publicly available. Thereafter, the Commission should modify the current contribution rules consistent with actual usage patterns (and corresponding costs) as evidenced by the study.

II. Background

Section 225 of the Communications Act (47 U.S.C. § 225) requires the FCC to provide special interstate and intrastate telecommunications relay services ("TRS") to persons in the U.S. with hearing and speech disabilities. TRS is financed by two mechanisms: intrastate calls are paid for by rate adjustments and fees collected by the states, and interstate call costs are financed by contributions from interstate and international telecommunications providers. 47 C.F.R. § 64.604 (c)(5)(ii). Intrastate TRS is administered by the states, whereas the FCC administers interstate TRS. Interstate TRS is provided by companies that are licensed by the FCC and are compensated by a fund ("the TRS Fund" or "Fund") administered by RLSA, under the direction of the FCC. 47 C.F.R. § 64.604 (a)(5)(iii). For purposes of identifying TRS Fund contributors, the FCC has defined "interstate" telecommunications to include international services [47 C.F.R. § 64.604(c)(iii)(5)(A)]

even though Congress made no mention of “international” service in the governing statute.³ Accordingly, by virtue of the FCC’s expansive interpretation of Congressional intent, carriers providing interstate *and/or international telecommunications services* to end users must contribute to the TRS Fund on the basis of both interstate *and international* end-user revenues.

There are a number of technologies used to deliver TRS including, but not limited to, TRS, Video Relay Services (“VRS”) and IP Relay (collectively referred to herein as “TRS”). Each TRS provider is compensated on the basis of the number of minutes of service provided, as evidenced by submissions to RLSA on a monthly basis. The compensation rates vary for different types of TRS.⁴ Compensation rates for interstate TRS are decreasing: the current compensation rate for interstate traditional TRS is \$2.1647 per minute, while the proposed per-minute compensation rate for interstate traditional TRS for 2014-2015 is \$2.1170.⁵

Telecommunications and interconnected VoIP providers whose end-user revenue is derived primarily from international service are charged for contributions to the TRS Fund at the same rate as telecommunications and interconnected VoIP providers whose end-user revenue is derived primarily from interstate service. On May 1, 2014, RLSA issued a report proposing compensation rates for TRS by noting in part that the document “propose[s] compensation rates for interstate traditional TRS, interstate Speech-to-Speech (STS), interstate Captioned Telephone Service (CTS), and inter- and intrastate Internet Protocol (IP) Captioned Telephone Service (CTS).” There is no

³ 47 U.S.C. § 225; 47 U.S.C. § 153(28).

⁴ See *inter alia Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 28 FCC Rcd. 9219 (CGB 2013) (adopting TRS contribution factors for 2013-2014).

⁵ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 03-123, 10-51, Payment Formula and Fund Size Estimate Interstate Telecommunications Relay Services Fund For July 2014 through June 2015 at 12 (Filed April 30, 2014) (“2014 TRS Rate Filing”). In addition, the FCC has broadened the scope of services subject to TRS Fund contributions; for example, revenues from Voice over Internet Protocol (“VoIP”) service are now subject to the Fund. Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, § 103(b), 124 Stat. 2751, 2755 (2010) (codified at 47 U.S.C. § 616).

separate category in the report for international TRS; in fact, the word “international” hardly appears in the document.⁶

The Coalition opposes RLSA's proposed contribution factor because that factor—if approved by the FCC—will be applied equally to interstate and international services, a process which is unfair to international carriers because international carriers are forced to contribute to a Fund which supports services that are almost entirely interstate and, as discussed below, services which implicitly and, in some instances, explicitly prohibit international calling.

III. Discussion

A. Introduction

All FCC decisions must be supported by pertinent evidence or must be amended or reversed.⁷ In describing its rule-making process, the Commission itself has noted that “our ultimate decision has to be reasonable pursuant to the Administrative Procedure Act; we have to provide a basis for our decision and show how our rule will achieve its purpose.”⁸

The Coalition urges the Commission to recognize that the current TRS/VRS funding mechanism is unsupported by pertinent evidence and is, in fact, based on outmoded assumptions that are incapable of being supported by facts and evidence of any sort. Accordingly, the mechanisms on which the Fund is based are in serious need of revision.

As noted above, the TRS Fund contribution factor applies equally to interstate and international end-user revenues. Thus, carriers contribute at the same rate on revenues received from interstate and international telecommunications services provided to end users. The FCC initially justified contributions from international providers because the TRS Fund, in theory, supports international relay services.⁹ Upon information and belief, however, international TRS/VRS

⁶ See 2014 TRS Rate Filing.

⁷ 5 U.S.C. § 556(d); 5 U.S. C. § 706.

⁸ Federal Communications Commission, FCC Encyclopedia: Rulemaking Process at the FCC, <http://www.fcc.gov/encyclopedia/rulemaking-process-fcc> (last visited May 22, 2014).

⁹ Telecommunications Relay Services And Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Declaratory Ruling, 71 Fed. Reg. 35553, 35554 (June 21, 2006) (“Telco

accounts for a miniscule fraction of all TRS traffic. As discussed further below, this near non-existent international usage is due to a number of factors, including:

1. VRS calls from an international IP address are prohibited;¹⁰
2. International IP relay calls are not permitted;¹¹
3. Reduced reimbursement rates disincentivize TRS providers from offering international services;
4. Foreign language interpreter services are not widely available for TRS and calls to non-English speakers, therefore, often cannot be completed;
5. The FCC's investigations into fraudulent calling have revealed that a large number of historic international calls were illegitimate and unlawful.

As a result of the infinitesimal international TRS/VRS usage resulting from the aforementioned factors, international service providers are bearing an unreasonable, unfair and disproportionate share of the financial burdens associated with maintaining the TRS Fund.

B. Proposed Remedy

To remedy this inequity, the Coalition urges the Commission to order RLSA to implement a bifurcated contribution scheme, where RLSA would:

1. Calculate the total Fund requirements;

Declaratory Ruling") ("Unlike USF assessments, contributions to the Interstate TRS Fund are used, in part, to reimburse international relay calls. Therefore, in this case, the public interest lies in ensuring adequate funding for interstate TRS--including international TRS--by assessing contributions on as broad a revenue base as can be justified.").

¹⁰ 47 C.F.R. § 64.604(a)(7) ("VRS calls that originate from an international IP address will not be compensated, with the exception of calls made by a U.S. resident who has pre-registered with his or her default provider prior to leaving the country, during specified periods of time while on travel and from specified regions of travel, for which there is an accurate means of verifying the identity and location of such callers. For purposes of this section, an international IP address is defined as one that indicates that the individual initiating the call is located outside the United States.").

¹¹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 19 FCC Rcd. 12224, 12242 para. 48 n.121 (CGB 2004) (noting that the Fund "does not currently reimburse providers for the costs of providing international calls via IP Relay.").

2. Separately identify the total number of compensable minutes of interstate and international TRS/VRS calling;
3. Determine the percentage represented by interstate and international TRS/VRS minutes, respectively, of the total compensable interstate and international TRS/VRS minutes;
4. Apply separate contribution factors to interstate and international telecommunications services revenue as follows:
 - a. For international telecommunications services revenue: apply a fee factor proportionate to the percentage of the base of compensable international and interstate TRS/VRS minutes represented by compensable international minutes (see #2 above).
 - b. For interstate telecommunications services revenue: apply a fee factor proportionate to the percentage of the base of compensable international and interstate TRS/VRS minutes represented by compensable interstate minutes (see #2 above).

A bifurcated approach would involve minimal effort on the part of the Commission and RLSA,¹² but would apply the surcharge more equitably to the two types of revenue.

C. Outmoded Assumptions and Out of Date Practices That Compel a Reconsideration of the TRS Funding Mechanisms

i. First Outmoded Assumption: that international service providers must contribute to the TRS Fund.

The inclusion of international services revenues in the TRS Fund contribution base appears to result from an arbitrary re-definition of the word "interstate" by the FCC and an unsupported assumption that international TRS would be used at the same rate as interstate TRS.

By statute and FCC rules, TRS compensated by the interstate TRS Fund is limited to "interstate" services; indeed, the words "international services" do not even appear in the rules. In

¹² For example, the Commission would only need to revise the Form 499-A to allow for the reporting of revenues consistent with this approach.

1993, the Commission adopted an order which "finalized the contribution methodology for payments into the Fund and defined the interstate services subject to the contribution assessment."¹³ In that Order, the Commission adopted a regulation providing that "[c]ontributions shall be made by all carriers who provide interstate services, including, but not limited to ... international ... services."¹⁴ In other words, for purposes of identifying contributions to the TRS Fund, the FCC defined "interstate" service to include "international" services by fiat, not through rule-making.

International revenues were pulled into the TRS Fund contribution base only because international TRS is technologically possible, not because of an overwhelming demand by customers for such a service. In fact, many contemporary descriptions of TRS actually ignore the fact that TRS can be used to make international calls. For example:

1. In a study published in August 2012, the Equal Rights Center noted that "For many such individuals, TRS is a lifeline to government services, medical care, employment, and housing," all of which are distinctly local services. The author of the study continued, "TRS is a particularly useful tool when seeking rental housing," another local service.¹⁵
2. The Hearing Loss Association of America advised its members in early 2014 that "TRS is available in all 50 states, the District of Columbia, Puerto Rico, and the U.S. territories for local and/or long distance calls" but never mentioned the availability of international calls, presumably because consumers with hearing loss do not make a lot of international calls.¹⁶ Barriers to completing international calls, such

¹³ Telco Declaratory Ruling, 71 Fed. Reg. at 35554 (*citing Telecommunications Services, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Third Report and Order, 8 FCC Rcd. 5300 (July 20, 1993)).

¹⁴ *Id.*

¹⁵ EQUAL RIGHTS CENTER, DISCONNECTED: HOUSING DISCRIMINATION AGAINST THE DEAF AND HARD OF HEARING (2012).

¹⁶ Hearing Loss Association of America, Telecommunications Relay Services (TRS), <http://www.hearingloss.org/advocacy/telephone-mobile-devices/telecommunications-relay-services> (last visited May 22, 2014).

as lack of translation services for TRS calls, prevent customers from making these calls.

3. In January 2013, the University of Washington, describing a research project undertaken by faculty members at the university, noted that TRS is a service that facilitates “telephone calls, local and long distance, at no cost to the user, 24 hours a day, 7 days a week.”¹⁷ Again, there is no mention of the fact that TRS can be used to make international calls, presumably because this feature of TRS is so negligible that it does not deserve mention.

Indeed, providing international TRS is cost-prohibitive for those providing the service, particularly when contrasted with the available compensation rates for international calls. It is no surprise that Hamilton Relay, which offers CapTel services, posts on its website that the incoming caller is responsible for paying for the per-minute costs associated with any international TRS call.¹⁸ Hamilton’s approach to “promoting” and “making available” international TRS supports the conclusion that there is no economic incentive for TRS providers to make international, multi-lingual TRS available.

This fact, combined with prohibitions on international TRS calling, lack of available foreign language interpretation services, findings by the FCC of fraudulent international TRS calls, and a lack of consumer publications regarding the availability of international TRS, demonstrates that legitimate and compensable international TRS usage is infinitesimal. International service revenues should not be burdened at the same rate as their interstate counterparts. The current system, and that which is being perpetuated by RLSA’s proposal, is fundamentally unfair and inequitable and warrants a closer look by the FCC.

¹⁷ The Alliance for Students with Disabilities in STEM, What are Telecommunications Relay Services?, <http://www.washington.edu/doit/Stem/articles?230> (last visited May 22, 2014).

¹⁸ See Hamilton Relay, Inc., Terms & Conditions for Use of Internet-based Relay Services, http://www.hamiltonrelay.com/corporate/policies/terms_and_conditions_pop.html (last visited May 22, 2014).

The legal basis for international contributions to the TRS Fund is questionable, for the reasons discussed above. Nonetheless, the Coalition does not oppose the application of a fair and equitable surcharge to international services revenue. Given that the demand for international TRS is quite low relative to demand for interstate TRS, a more equitable surcharge for international services is warranted relative to the de minimis usage of international telecommunications services by customers who are deaf and hard of hearing.

ii. Second Outmoded Assumption: that the underlying purpose of the TRS Fund and the Universal Service Fund ("USF") are different.

A decade ago, on July 26, 2004, Telco Group, Inc. ("Telco") filed a Petition for Declaratory Ruling with the FCC asking, *inter alia*, that international revenue be excluded from the revenue base used to calculate payments due to the TRS Fund on the grounds that just such an order had issued from the United States Court of Appeals for the Fifth Circuit in *Texas Office of the Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) ("TOPUC") in a case involving the Universal Service Fund ("USF"). The Commission dismissed Telco's request on the grounds that the USF and the TRS Fund were established under different statutory language with only the former based on a mandatory "equitable and nondiscriminatory contribution" from "all providers of telecommunications services."¹⁹

Although the USF and the TRS Fund were created using different statutory language, the purpose of both funds is the same: to subsidize a particular communications service. Even though the language creating the TRS Fund does not compel equitable and non-discriminatory contribution, the Communications Act's general "just and reasonable" standard still applies.²⁰ The USF was established in the early days of the regulated telephone network while the TRS Fund is much newer, but both programs have a comparable funding mechanism: a surcharge on end-user telecommunications and interconnected VoIP revenue. With the USF, carriers providing both

¹⁹ Telco Declaratory Ruling, 71 Fed. Reg. at 35553 (denying petition for declaratory ruling filed by Telco Group, Inc. requesting either exclusion of international revenues from end-user revenue calculation for Interstate TRS Fund or a waiver for Telco Group).

²⁰ See 47 U.S.C. §§ 201 & 225.

international and interstate services must contribute because they are verified cost-causers to the network. With the TRS Fund, carriers providing both international and interstate services must contribute because, in theory, customers will use both international and interstate TRS, and the Fund is capable of supporting both interstate and international TRS. However, in reality, the Fund hardly supports international services because international TRS/VRS are seldom used.

USF funding supports the network itself, and allocating portions of the network to different services is an entirely theoretical proposition. But with TRS, the Fund supports actual calls—actual minutes of usage that can be counted; thus, determining that a certain number of calls were international while a certain number of calls were interstate is an entirely practical proposition. As a result, it would be simple to establish a budget for each service (interstate and international) and contribution factors based upon actual minutes of use.²¹

The Telco decision was based on the Commission's continuing assumption that international TRS needed broad support.²² But the Commission's own data suggests that wide support for international TRS is no longer necessary. According to the 2011 USF Annual Monitoring Report, international revenue comprised approximately 11.5% of the TRS Fund base.²³ If international relay minutes comprise only 1% of relay service compensation but 11.5% of the

²¹ Ironically, the Commission itself seems to be using this approach (requiring the theoretical cost-causers to pay the cost of a service) with its interstate telecommunications service provider regulatory fee. The Commission is looking to ensure that contributors are paying only the costs associated with the bureaus of the Commission that are associated with the contributor's business/revenue (*e.g.*, the Wireless Bureau should be funded solely from wireless provider revenue while the International Bureau should be funded solely from international provider revenue). *Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking, FCC 12-77, at paras. 13-17 (rel. July 17, 2012) (FY 2012 NPRM). In essence, the Coalition is asking the Commission to extend its own funding logic to the TRS Fund.

²² See Telecom Declaratory Ruling, 71 Fed. Reg. at 35554.

²³ See Universal Service Monitoring Report 2011, CC Docket No. 98-202, table 1-6 (Rel. Dec. 2011), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311775A1.pdf.

Fund's revenue base, international providers are being "taxed" at a much higher rate than interstate providers.²⁴

iii. Third Outmoded Assumption: that the TRS Fund can work well when the data that is the basis for calculating the contribution factor is not publicly available.

In the early years of the TRS Fund, the National Exchange Carrier Association ("NECA"), the first Fund Administrator, sought disaggregated data on international and interstate minutes of usage of TRS and VRS from service providers.²⁵ RLSA discontinued the practice when it took over the Fund three years ago. This lack of public data underscores the need for the Commission to conduct a thorough examination of actual TRS/VRS usage to ensure equitable contributions to the Fund that reflect actual usage patterns.

iv. Fourth Outmoded Assumption: that outdated unreliable data supports TRS Funding.

The TRS industry has undergone a fundamental transformation since the FCC took significant steps to root out the fraud and corruption in the industry. Major carriers (such as

²⁴ Interestingly, an agency's misallocation of costs to regulated parties will be overturned by a court where the funding mechanism lacks justification. *See Allied-Signal, Inc. v. United States Nuclear Regulatory Commission*, 988 F.2d 146, 148 (D.C. Cir. 1993), wherein the D.C. Circuit reviewed an action by the Nuclear Regulatory Commission ("NRC") to apportion costs among various regulated parties. The NRC's governing statute directed it "to recover 100% of its costs from those who receive[d] its regulatory services and to allocate the costs fairly and equitably among those recipients." *Id.* (internal citations omitted). The NRC's proposed regulation would have recovered costs from each regulated class in proportion to the level of waste produced by the class's overall membership. *Id.* at 152. But the NRC still placed a uniform charge on each waste producer, without regard to that individual producer's waste output. *Id.* Because the NRC justified its action based on a "conclusory statement" that the charges "should be the same for all large fuel facility licensees," the D.C. Circuit invalidated the NRC's determination as arbitrary and capricious. *Id.* at 152-53. The court further explained that "no rationale [was] readily apparent" for the agency's decision, and the court "g[a]ve little weight to the possibility that the [agency] could pull a reasonable explanation out of the hat" based on the administrative record. *Id.* at 152.

²⁵ *See, e.g.,* Jim Lande, Telecommunications Industry Revenue: TRS Fund Worksheet Data at 4, Industry Analysis Division Common Carrier Bureau (Dec. 1996), available at http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trsrv-95.pdf.

AT&T) and specialized carriers (such as Purple Communications) were fined for transgressions that included overstating the number of minutes of use for international TRS/VRS.²⁶

Like the Commission, the Coalition remains concerned about fraud and abuse in the funding of TRS. The Commission's multitude of investigations and enforcement actions related to fraudulent billing for international TRS/VRS calls has led to a material reduction in this type of fraudulent activity that deprives the TRS Fund of critical resources without providing any benefit to the deaf and hard of hearing community. These enforcement activities have resulted in a massive reduction in the volume of international TRS/VRS calls during the past few years. This leads to the reasonable conclusion that the pre-enforcement international call volume was unrealistic, illegitimate, and an unsound basis for imposing the proposed TRS Fund factor on international carriers in the same manner and amount as applied to interstate services.

v. Fifth Outmoded Assumption: that deaf and hard-of-hearing customers would find international TRS easy to use and that carriers would offer a wide variety of international TRS.

TRS allows people with hearing and/or speech disabilities to make and receive telephone calls using a variety of technologies that involve, in most cases, the assistance of a Communications Assistant ("CA"). In principle, international calls can be placed using any of the available technologies, but problems arise when translation services are needed.

The FCC only requires that TRS providers offer services in English and Spanish.²⁷ Obviously, this service is not helpful for a deaf customer who only speaks German; but, according to the Commission's rules, carriers are under no obligation to offer non-English/Spanish translation service

²⁶ See Press Release, FCC, 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 (May 7, 2013), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-320774A1.pdf; Press Release, FCC, FCC Plans \$11.9 Million Fine Against Purple Communications, A California Company (May 2, 2014), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0502/DOC-326891A1.pdf.

²⁷ See 47 C.F.R. § 64.603.

for making international TRS calls.²⁸ Providers may voluntarily offer French or Russian translation services, for example, but the economic burden of employing a pool of CAs with multiple language interpretation skills is significant, and the low reimbursement rate from the TRS Fund hardly offsets these costs.²⁹ The practical effect of this situation is that only international called parties capable of speaking English or Spanish may be contacted using TRS/VRS, thereby severely limiting the number of international calls that can be placed by the deaf and hard-of-hearing community. As a result, international TRS is not widely used.

vi. Sixth Outmoded Assumption: that TRS Fund contributors have no due process rights with respect to their contribution obligations.

Title IV of the Americans with Disabilities Act ("ADA") provided for TRS to the deaf and hard of hearing. 47 U.S.C. § 225 (1990). Any measures taken to deprive those communities of this vital service will surely be met with a claimed due process violation by deaf and hard of hearing customers. But it would be anomalous to suggest that the customers have due process rights here, but that the companies funding these services have no such rights.

The FCC expanded the meaning of "interstate" in the statute to include international services on the assumption that deaf and hearing-disabled customers would use international TRS/VRS, but practical experience suggests that these customers do not use this service in nearly the volume that was anticipated or in a volume that reasonably reflects the contributions international carriers make to the TRS Fund. Accordingly, where a rule is based on an assumption that later proves to be untrue, maintaining the rule would constitute a deprivation of due process.³⁰ Imposing a Fund factor on international carriers that reflects actual usage of international TRS, therefore, is only fair.

²⁸ See *id.* (requiring Spanish language relay service for interstate calls only and not requiring relay service for any other non-English language); see also FCC, FCC Encyclopedia: Telecommunications Relay Service, <http://www.fcc.gov/guides/telecommunications-relay-service-trs> (last visited May 22, 2014).

²⁹ See *supra*, page 4.

³⁰ See, e.g., *Ibrahim v. Dep't of Homeland Sec.*, 538 F.3d 1250 (9th Cir. 2008).

IV. Conclusion

For the foregoing reasons, the Coalition hereby respectfully requests that the Commission suspend the imposition of the TRS Fund factor on international telecommunications revenues. Concurrent with this suspension, the Coalition requests that the FCC open a rulemaking proceeding or otherwise undertake a study to determine the fundamental inequities in the current system of calculating and assessing contributions on international services, culminating in the adoption of unique TRS Fund contribution factors for end-user revenues derived from each of the following: (1) interstate telecommunications services; and (2) international telecommunications services.

Respectfully submitted,

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