

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

Interstate Telecommunications Relay Services Fund
Payment Formula and Fund Size Estimate for the
July 2014 Through June 2015 Fund Year

To: Secretary, FCC
For: Chief, Consumer & Governmental Affairs Bureau

COMMENTS OF HAMILTON RELAY, INC.

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SUMMARY

Hamilton Relay, Inc. appreciates the opportunity to file these comments in response to the TRS Fund Administrator's proposed compensation rates for the 2014-2015 funding year. As discussed in the comments below, Hamilton supports the adoption of MARS-based rates for traditional TRS, Speech-to-Speech ("STS"), Captioned Telephone Service ("CTS"), and IP CTS for the July 1, 2014-June 30, 2015 funding year. Consistent with 2013-2014 rate calculations, the MARS rate should include intrastate TRS and CTS data for Maine, Virginia, and the U.S. Virgin Islands. STS outreach funding should continue at the same level as prior years and in the same manner. Finally, Hamilton believes that any decision to change the IP CTS rate methodology would be premature and unwarranted for the reasons discussed in the comments.

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COMMENTS OF HAMILTON RELAY, INC.

Hamilton Relay, Inc. (“Hamilton”), by its counsel, hereby submits these comments in response to the *Public Notice* (“*Notice*”) issued May 9, 2014 by the Consumer & Governmental Affairs Bureau (“Bureau”) in the above-captioned proceedings.¹ In the *Notice*, the Bureau seeks comment on the compensation rates for various forms of interstate Telecommunications Relay Services (“TRS”) for the period beginning July 1, 2014 through June 30, 2015. The proposed TRS compensation rates were submitted by the interstate TRS Fund Administrator (“Administrator”) in its May 1, 2014 filing (“*2014 TRS Rate Filing*”).²

As discussed below, Hamilton generally supports the proposed rates for traditional TRS and Speech-to-Speech (“STS”) services, including the proposed additional per-minute amount

¹ *Rolka Loube Saltzer Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2014-2015 Fund Year*, Public Notice, CG Docket Nos. 03-123, 10-51, DA 14-627 (rel. May 9, 2014) (“*Notice*”).

² *See Rolka Loube Saltzer Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123, 10-51 (filed May 1, 2014) (“*2014 TRS Rate Filing*”).

for STS outreach, but believes that the intrastate TRS rates for Maine, Virginia, and the U.S. Virgin Islands should be included in the rate calculation, consistent with the approach taken by the Administrator in 2013-2014. In addition, Hamilton generally supports the proposed rates for interstate Captioned Telephone Service (“CTS”) and Internet Protocol Captioned Telephone Service (“IP CTS”), but believes that the intrastate CTS rates for Maine, Virginia, and the U.S. Virgin Islands should be included in the rate calculation, consistent with the approach taken by the Administrator in 2013-2014.

Finally, while Hamilton lacks sufficient information to analyze the Administrator’s average projected costs for IP CTS, Hamilton continues to believe that any change to the IP CTS compensation methodology would be premature and unwarranted at this time. Cost projections should not be used to establish rates for IP CTS when MARS presents a superior, competitively-based methodology for calculating IP CTS rates.

I. The MARS Calculations Should Include the Maine, Virginia, and U.S. Virgin Islands Intrastate TRS and CTS Rates

Since 2007, the Commission has used a weighted average of state TRS rates to calculate the Multi-state Average Rate Structure (“MARS”) compensation rates for interstate traditional TRS and STS, and a weighted average of state CTS rates to calculate the MARS compensation rates for interstate CTS and IP CTS.³ Hamilton supports the continued use of MARS for these

³ See *Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-12, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 (2007) (“2007 Order”). Hamilton and all other authorized IP CTS providers have separately opposed Sorenson’s efforts to change the IP CTS rate methodology from the predictability of MARS to the irrationality of cost-based or price cap rate regulation. See, e.g., Comments of Hamilton Relay, Inc., CG Docket Nos. 13-24, 03-123, at 1-10 (filed Nov. 4, 2013); Reply Comments of Hamilton Relay, Inc., CG Docket Nos. 13-24, 03-123, at 3-10 (filed Dec. 4, 2013); Comments of Purple Communications, Inc., CG Docket Nos. 13-24, 03-123, at 1-5 (filed Nov. 4, 2013); Reply Comments of Sprint Corporation, CG Docket Nos. 13-24, 03-123, at 2-4 (filed Dec. 4, 2013); see also Comments of Hamilton Relay, Inc. on Sorenson Petition for (continued)...

services because MARS: a) is administratively efficient; b) is based on competitively bid rates; c) provides regulatory certainty to the industry; and d) provides reasonable cost reimbursements to TRS providers. No other rate methodology offers these benefits. Other methodologies suffer from irreparable flaws, principally because they artificially attempt to mimic the results of competition.

For the 2014-2015 funding year, the Administrator has proposed that the intrastate TRS and CTS rates for all states other than Michigan, Virginia, and Maine be included in the MARS calculation.⁴ Specifically, the Administrator suggests that “Michigan continues to recover their relay service providers [sic] costs on a flat rate per subscriber basis instead of per minute basis and thus does not have data that can be used for MARS calculation purposes. Similarly, both Maine and Virginia provide service under a flat rate monthly contract, and do not have data that can be used for MARS calculation purposes.”⁵

Hamilton objects to the exclusion of Maine and Virginia from the TRS and CTS MARS calculations because such an approach is inconsistent with the Administrator’s 2013-2014 filing. In last year’s filing, Maine and Virginia were clearly included.⁶ The Administrator has not

Rulemaking, CG Docket Nos. 13-24, 03-123 (filed Mar. 25, 2013); Hamilton Ex Parte Letter, CG Docket Nos. 13-24, 10-51, 03-123 (filed May 2, 2013); Miracom USA, Inc. Opposition to Petition for Rulemaking, CG Docket Nos. 13-24, 03-123, at 2-7 (filed May 10, 2013).

⁴ *2014 TRS Rate Filing*, at 11, 13. The TRS rates for 47 states, the District of Columbia and Puerto Rico were included in the MARS calculation. *See id.*

⁵ *Id.* Upon information and belief, the intrastate TRS provider in Michigan, AT&T, possesses the data necessary to include Michigan in the MARS calculation, including the total dollar costs for intrastate TRS and CTS, and the total conversation minutes of use for those intrastate services. To the extent that AT&T, other relay providers and/or the Michigan Public Service Commission can provide that information to the Administrator, Hamilton believes that the Michigan data can and should be included in the MARS TRS/CTS calculations.

⁶ *See Rolka Loube Saltzer Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123, 10-51 (filed May 1, 2013) (“*2013 TRS Rate Filing*”) (excluding only Michigan).

explained why it was capable of calculating the TRS/CTS rates for those states last year but is unable to do so this year.⁷ Hamilton is unaware of any sudden change in TRS/CTS rate methodologies in those states. Hamilton therefore believes that it is unnecessary and improper to exclude Maine and Virginia as the Administrator has proposed.

In addition, unlike in previous years, the TRS/CTS rates for the U.S. Virgin Islands (“USVI”) apparently were excluded from the Administrator’s MARS TRS/CTS calculations this year, without any explanation as to why those rates were excluded.⁸ Indeed, the failure to include the USVI is inconsistent with the Administrator’s own statement that only Michigan, Maine, and Virginia were excluded. The USVI, through the Virgin Islands Public Service Commission, is a certified state TRS program, and there is no indication in the record that the USVI rates for TRS and CTS cannot be calculated for purposes of MARS.⁹ Accordingly, consistent with the Administrator’s approach in prior years, Hamilton requests that the rates for the USVI be included in the MARS calculations.¹⁰

II. The Interstate STS Rate Should Continue to Include an Additional Per-Minute Amount for STS Outreach

Consistent with past years, the Administrator recommends adding an additional per-minute amount of \$1.131 to the MARS-based STS rate, to be used for STS outreach.¹¹ Hamilton agrees with this recommendation. However, Hamilton disagrees with the Administrator’s

⁷ Rolka appears to have divided total minutes by total dollars for these states last year, which produces a MARS-compatible per-minute for each state.

⁸ Compare *2014 TRS Rate Filing*, at 11 (excludes USVI rates), to *2013 TRS Rate Filing*, at 11 (included USVI rates), and *2012 TRS Rate Filing*, at 9 (included USVI rates).

⁹ File No. TRS-61-12; see DA 13-1350, at 4 (CGB rel. July 8, 2013).

¹⁰ In addition, the Administrator does not appear to be including Saipan in the MARS calculations, even though that jurisdiction has an authorized state TRS program. *See id.*; see also File No. TRS-62-12. At the very least, the Administrator should explain its rationale for excluding Saipan from its MARS calculations.

¹¹ *2014 TRS Filing*, at 12-13.

suggestion that “[i]t is not clear that the outreach additive . . . is having the desired effect. The Commission may wish to revisit this issue”¹² While STS demand continues to be small compared to other TRS services, Hamilton notes that STS demand has remained steady over the last several years. Demand for traditional TRS, in contrast, which does not have an outreach additive built into its rate, continues to decline significantly.

Specifically, taking the month of August as a representative sample, traditional TRS minutes of use industry-wide over the past three years have declined as follows:

<u>MONTH/YEAR</u>	<u>TRADITIONAL TRS MINUTES OF USE</u>
August 2011	451,094
August 2012	352,388
August 2013	315,256

In contrast, STS minutes of use industry-wide have remained remarkably steady over that time period, as follows:

<u>MONTH/YEAR</u>	<u>STS MINUTES OF USE</u>
August 2011	12,274
August 2012	12,025
August 2013	12,517

Hamilton believes that, absent the STS outreach additive, demand for STS would have experienced a decline similar to traditional TRS. Given the unique nature of STS as a service, and the particularized needs of the individuals who benefit from STS, Hamilton believes that the

¹² *Id.* at 12.

STS outreach additive continues to be extremely helpful in reaching those who need the service most.¹³

III. The IP CTS Rate for 2014-2015 Should Be Adopted Using the MARS Formula

The Administrator has proposed an interstate CTS/IP CTS compensation rate of \$1.8205 per conversation minute, based on the MARS formula,¹⁴ which the Administrator recognizes as a “modest \$0.0328 increase” from the current rate.¹⁵ Hamilton agrees with the \$1.8205 calculation and recommends its adoption for the 2014-2015 funding year.

The Administrator also requested 2012 and 2013 historic cost data from IP CTS providers, as well as projected costs for 2014 and 2015 based on the cost categories submitted by IP Relay providers.¹⁶ Based on the average of the projected costs for 2014 and 2015, the Administrator calculated an alternative IP CTS rate of \$1.7180.¹⁷ The Commission seeks comment on whether the Administrator has correctly calculated the average projected costs for IP CTS.¹⁸

Hamilton is unable to verify whether the Administrator has correctly calculated the providers’ projected costs because Hamilton lacks access to the projected cost information submitted by other providers. However, Hamilton notes that the differences between IP CTS and

¹³ This is not to say that STS outreach cannot be improved. As Hamilton has suggested previously, the Commission should host a summit with state coordinators, consumer groups, providers, and other stakeholders in an effort to gather additional information about how best to conduct STS outreach, given the particularized needs of the individuals who need the service. The Commission could then direct the state TRS programs, and providers as necessary, to adopt recommended outreach practices based on the lessons learned from that summit. This approach would be more beneficial to STS users than a centralized outreach coordinator. *See* Comments of Hamilton Relay, Inc., CG Docket Nos. 08-15, 03-123, at 1-4 (filed Sept. 16, 2013).

¹⁴ *2014 TRS Rate Filing*, at 13.

¹⁵ *Id.*

¹⁶ *Id.* at 13-14.

¹⁷ *Id.* at 14.

¹⁸ *Notice* at 2.

IP Relay, in terms of how the services are provisioned, how customers interact with the services, and the technology used, are significant. Therefore, Hamilton questions the accuracy of using IP Relay cost categories for IP CTS. Until the Commission analyzes appropriate cost categories for IP CTS, and provides the public with an opportunity for notice and comment on those proposed cost categories, the data gathered by the Administrator does not produce an accurate assessment of IP CTS providers' true costs of providing the service. As a result, Hamilton objects to any suggestion that the \$1.7180 rate should be used for the 2014-2015 funding year, and it objects to any suggestion that providers' average projected costs, based on IP Relay cost categories, can be used to derive a rational reimbursement rate for IP CTS.

As Hamilton has explained previously, the Commission should continue to rely on the MARS for IP CTS. MARS is far superior to the other mechanisms currently under consideration, including average projected costs. Because MARS relies on IP CTS providers' competitive bids at the state level, MARS best reflects the market price for the service – the lowest price consistent with recouping providers' costs for provisioning the service. Providers bidding in an open market environment have both the incentive and the ability to ensure that their bids reflect all relevant shifts in cost, and to formulate bids accordingly, in order that they may offer the most competitive price possible that will still recoup their costs. Under MARS there is no incentive for providers to overestimate costs, because they are unlikely to be the successful bidder if they do.¹⁹ Thus, if costs fall, providers have every incentive to bid lower rates and to win business at the state level, which would, in turn, reduce MARS rates. This is the fundamental premise of market competition: Providers will seek to win market share by

¹⁹ In contrast, there is every incentive over time for providers to overestimate projected costs.

reducing their prices to beat out competitors' prices, so long as they can do so while recouping their costs.

This downward pressure has, in fact, resulted in a *reduction* in the inflation-adjusted IP CTS rate. As Hamilton has previously noted, the total increase over the entire time the MARS rate has been in effect for IP CTS has averaged 1.6% per year, which is *less* than the increase in the Consumer Price Index for the same period.²⁰ Annual changes in the IP CTS rate are summarized by the following chart:

Year	Rate	Increase	% change
2008-09	\$1.6569		
2009-10	\$1.6778	\$0.0209	1.26%
2010-11	\$1.6951	\$0.0173	1.03%
2011-12	\$1.763	\$0.0679	4.01%
2012-13	\$1.773	\$0.01	0.57%
2013-14	\$1.7877	\$0.0147	0.83%
2014-15	\$1.8205	\$0.0328	1.83%
Average		\$0.0273	1.59%

Notably, over the past year, the IP CTS rate rose only 1.83%, whereas the Consumer Price Index rose 2.0 percent between April 2013 and April 2014.²¹ IP CTS price increases, which the Administrator recognized as being “modest,”²² are almost entirely the result of increases in labor prices, which is the main driver of costs in the TRS industry. Tellingly, the Commission has never found it necessary to adjust the MARS rates, despite reserving the right to do so.²³ On the contrary, the IP CTS rate has shown remarkable consistency when compared to other TRS rates.

²⁰ See Comments of Hamilton Relay, Inc., CG Docket Nos. 10-51, 03-123, at 5 (filed May 31, 2013).

²¹ See Bureau of Labor Statistics, *Consumer Price Index – April 2014*, available at <http://www.bls.gov/news.release/pdf/cpi.pdf>.

²² 2014 TRS Rate Filing, at 13.

²³ 2007 Order, 22 FCC Rcd 20140, paras. 21, 35 & nn. 86, 106.

So, too, MARS has avoided the negative unintended consequences that have plagued other ratemaking methodologies, such as the Commission’s early approach to VRS rates (which resulted in “waste, fraud, and abuse” and “compensation rates that ... bec[a]me inflated well above actual cost”)²⁴ and the price-cap approach applied to IP Relay services (which led to an unanticipated 20% reduction in rates between 2012 and 2013, forcing market exit by leading providers). As Purple has argued, there is “no reason to artificially develop other forms of market-based rates given the effectiveness of the MARS policy.”²⁵

The Commission should not eschew these benefits in favor of a rate-of-return mechanism for IP CTS rates based on providers’ projected costs. In the Commission’s words, “rate regulation can only be, at best, an imperfect substitute for market forces,”²⁶ and “cannot replicate the complex and dynamic ways in which competition will affect [providers’] prices, service offerings, and investment decisions.”²⁷ The rate-of-return approach is especially inappropriate for a service such as IP CTS, which is labor-intensive rather than capital-intensive. Traditional rate-of-return regulation provides return only on capital investments, and thus would provide inadequate returns on IP CTS costs.²⁸

The Commission should also reject a “price cap” approach to IP CTS, which would rely on regulation, rather than the open market, to set rates. MARS bases interstate CTS rates on

²⁴ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 28 FCC Rcd 8618, 8620 ¶ 1 (2013) (“*VRS Reform Order*”).

²⁵ Comments of Purple Communications, Inc., CG Docket Nos. 13-24, 03-123 at 3 (filed Nov. 4, 2013) (“*Purple Rate Comments*”).

²⁶ *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges*, 12 FCC Rcd 15982, 16107 ¶ 289 (1997) (emphasis added).

²⁷ *Id.*

²⁸ See also *Purple Rate Comments* at 2.

competitively bid intrastate CTS rates, eliminating the complexities inherent in rate-of-return or price-cap ratemaking while relying on providers' strong incentives to estimate their costs accurately as part of the competitive bidding process. Moreover, MARS eliminates the need for *ad hoc* exogenous cost adjustments and the administrative complexities they bring. Rather than relying on arbitrary "productivity factors" that can only guess at expected efficiency gains, MARS produces rates based on *actual* changes in providers' costs.

Even if the Commission were inclined to alter its IP CTS ratemaking methodology, now is not an appropriate time for it to effectuate such a change. Specifically, the Commission should delay any decision to modify the IP CTS rate methodology until it has determined whether or not to devolve such ratemaking authority to the states.²⁹ Hamilton notes that the Arizona Commission for the Deaf and the Hard of Hearing recently submitted a proposal for a pilot program for state management of IP CTS.³⁰ While Hamilton is not taking a position on the proposed pilot program at this time, it believes that such proposals need to be fully vetted in order for the Commission to determine whether the states should regulate IP CTS.

In the meantime, any move away from MARS would impose new costs on providers and the Commission alike. There is no reason for parties to incur such costs only to find just a short time later that the Commission has devolved oversight and administration of IP CTS to the individual state TRS Programs.

²⁹ *Misuse of Internet Protocol (IP) Captioned Telephone Service, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 13420 at ¶¶ 131-140 (2013).

³⁰ *See Arizona Commission for the Deaf and the Hard of Hearing, Ex Parte Filing, CG Docket Nos. 13-24, 03-123, at 2 (filed May 22, 2014).*

IV. Conclusion

Hamilton supports the adoption of MARS-based rates for traditional TRS, STS, CTS and IP CTS for the July 1, 2014-June 30, 2015 funding year. The MARS rate should include intrastate TRS and CTS data for Maine, Virginia, and the USVI. STS outreach funding should continue at the same level as prior years and in the same manner. Finally, Hamilton objects to any shift in the IP CTS rate methodology because such a change would be premature and unwarranted.

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