

August 24th, 2014

Rebecca Bond, Chief
U.S. Department of Justice
Civil Rights Division
Disability Rights Section - NYA
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Re: Overlap in the VRS Industry upon the ADA

Please allow me to introduce myself briefly. I am Todd Elliott, a Deaf person who uses American Sign Language (ASL). I utilize ASL interpreters in the workplace, receiving public services, and in using public accommodations.

I write to you about FCC's recent reforms concerning the use of Video Relay Services (VRS). More specifically, I want to cover potential unforeseen consequences that may occur for the 'Neutral Video Communications Service Provider' (NCP) concept currently under the rule-making process.¹

While the commenting period has long been since closed, the rule-making is still pending. The FCC also issued a RFI/RFP for a NCP.² I suspect that the FCC is quite advanced on the NCP issue and would issue an ORDER in the next few months.

I am of the opinion that the NCP will lower the barriers of entry for competitors in the VRS business. Basically, ASL interpreting agencies will apply in becoming a VRS provider at the expense of community interpreting. While more competition in the VRS industry is welcome, the unintended consequence of such increased competition will be its impact on scarce community interpreting resources.

This is not some hypothetical scenario; it already has happened. Prior to late 2009, the VRS industry was rife with fraud, waste, and misuse.³ Thousands of man-hours were misspent for interpreting resources that could have been better utilized in community settings. This led to a scarcity in community interpreting resources, and as a result, led to increased costs in using them in public and private settings, much to the detriment to Deaf consumers.

The FCC acted against these abuses in the VRS industry, implemented further rules and orders in reforming the VRS industry.⁴ Now, with their NCP concept, I am afraid that they may be revisiting

¹ See REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING, FCC 13-82 A1, paragraphs 87-115. https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-82A1.pdf

² The RFI for the Neutral Communications Provider is at https://www.fbo.gov/?s=opportunity&mode=form&id=d79df1e7e2023668ef122408b682a8f7&tab=core&_cview=0

The RFP for the Neutral Communications Provider is at https://www.fbo.gov/index?s=opportunity&mode=form&id=c40e00d3ad5f0b406eefeb5585c7c2e3&tab=core&_cview=1

³ DOJ Press Release about VRS arrests. <http://www.justice.gov/opa/pr/2009/November/09-crm-1258.html>

⁴ <http://www.fcc.gov/guides/vrs-reform>

familiar and unpleasant territory. The potential consequences are high for community interpreting, as public/private sectors struggle to fill demand for ASL interpreting at prevailing Federal reimbursement rates.

I would like for someone in the Disability Rights Section of the DOJ to consult/collaborate with their peers at the FCC⁵ on this NCP issue. ASL interpreting in the community is a civil right afforded to all Deaf people in the U.S., based on ADA's Titles I, II, and III. The FCC cannot simply operate in their regulatory silo of Title IV unabated, at the expense to the rest of the ADA.

I have touched upon the concept of 'dormant' powers of the ADA in my comments to the FCC regarding VRS reform.⁶ My premise is that the FCC is engaging in key rule-making proceedings that have a profound impact on the ADA, but seemingly without input/participation from key stakeholders in the Disability Rights Section of the DOJ. There has been little, if any, public comment by ordinary public and private entities regarding ASL interpreting access. The FCC may indeed be overstepping their regulatory boundaries on the ADA.

The Disability Rights Section of the DOJ should take a keen interest in key VRS matters now pending before the FCC and consult/collaborate with key FCC people in ensuring that unintended consequences regarding community interpreting are considered and/or mitigated.

Lastly, I would like to visit the idea of a Federal Communications Access Fund⁷, as a multi-agency collaboration effort between the DOJ and FCC in ensuring that the ASL access mandates of the ADA are afforded for all Deaf Americans. I invite your office on further dialogue regarding this issue and how to effectuate further rule-making along those lines.

Thank you for reading and for following up on this.

-Todd Elliott

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Electronically posted in FCC Docket 10-51

⁵ One good place to start is the Disability Rights Office at the FCC; <http://www.fcc.gov/encyclopedia/disability-rights-office> email: dro@fcc.gov

⁶ March 30, 2012 Comment, Page 15, "The ADA has created a host of civil rights for all persons with disabilities, and with it, possesses dormant powers." <http://apps.fcc.gov/ecfs/document/view?id=7021904879>

⁷ June 21st, 2012 Comment, Page 11, "CAF'S ARE THE MISSING LINK IN VRS REFORM".
<http://apps.fcc.gov/ecfs/document/view?id=7021950291>