

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Structure and Practices of the Video Relay Service) CG Docket No. 10-51
)

COMMENTS IN RESPONSE TO NOTICE OF INQUIRY

**Telecommunications for the Deaf and Hard of Hearing
Association of Late-Deafened Adults, Inc.
National Association of the Deaf
Deaf and Hard of Hearing Consumer Advocacy Network
American Association of the Deaf-Blind**

August 18, 2010

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SUMMARY

Telecommunications for the Deaf and Hard of Hearing (“TDI”), through its undersigned counsel, Association of Late-Deafened Adults, Inc. (“ALDA”), National Association of the Deaf (“NAD”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), and American Association of the Deaf-Blind (“AADB”) (collectively, the “Consumer Groups”), hereby respectfully submit these comments in response to the Federal Communication Commission’s (“FCC” or “Commission”) Notice of Inquiry (“*Notice*”) in the above-referenced proceeding.¹

The Consumer Groups applaud the Commission’s tireless efforts to improve telecommunications services for the deaf, hard of hearing, deaf-blind and speech-disabled communities, and this proceeding is an invaluable opportunity for the Commission to review a multitude of vital and important issues impacting Video Relay Services (“VRS”).

First, functional equivalency is the standard by which every action proposed or taken by the Commission and VRS providers should be assessed. Assessments should be routinely, periodically, and proactively made to determine the impact of an action on functional equivalency, whether an action will move us towards or improve functional equivalency, and what technology, equipment, or service needs to be developed or can be provided to achieve greater functional equivalency. As part of this ongoing discussion, going forward, we expect to provide the Commission with further input on the Consumer Groups’ “roadmap” to functional equivalency, which Consumer Groups intend to act as a guide for the Commission’s policy making and the services of TRS providers. At this time, and in response to the questions and issues raised in the *Notice* about VRS, the Consumer Groups offer the following comments.

¹ *In the Matter of Structure and Practices of the Video Relay Service Program*, Notice of Inquiry, FCC 10-111 (rel. June 8, 2010) (“*Notice*”).

The Commission should not establish a company-specific compensation scheme, but should maintain the current tiered approach with some modifications to improve and encourages efficiency. In addition, the Commission should adopt modified price caps for VRS providers. Price caps will drive providers to improve services and create efficiencies. These price caps should be based upon a forward looking cost model and be reevaluated every three to five years as costs are reduced. This price cap approach will provide the FCC with a simplified, predictable and fair way to establish reimbursement rates and provide VRS providers with predictability about revenues so that they may reasonably allocate revenue to programs that will improve functional equivalency and reduce costs in the future.

The Consumer Groups also strongly urge the Commission to address concerns about access to and operation of VRS equipment. VRS requires the use of specialized equipment which is considerably more expensive than a standard telephone. The majority of VRS equipment used today is obtained from VRS providers and will not work or will have limited functionalities should the user change VRS providers. VRS equipment that is expensive and not interoperable is not functionally equivalent to telephone equipment. Therefore, the Consumer Groups propose a three-prong approach to address these concerns. First, the Commission should authorize individual vouchers, provided directly to users every two to three years, which would be used to obtain equipment from any source chosen by the user. Second, the Commission should amend its rules to require that VRS customer premise equipment (“CPE”) that is sold or otherwise provided to end users to be universally usable, without the need for changes by the VRS user, and that CPE should not contain any software or other design elements that disables any features or function should the equipment be used on a different VRS network. Third, the Commission should act upon a pending petition to transition from CPE-based routing to server-

based routing. Server-based routing will promote greater fluency and functionality between diverse CPE and allow these devices to operate in secure environments and behind firewalls thereby extending accessibility.

The Consumer Groups also strongly support mandatory certification by the Commission for all VRS providers including re-certification every five years. This process will ensure that all VRS providers are meeting the minimum requirements specified in the Commission's rules and increase accountability and responsiveness to consumers. In addition, the Consumer Groups urge the Commission to not permit uncertified "white label" providers to offer VRS, but allow them and other companies handling less than a specified number of minutes of service a month to obtain a five-year provisional certification. Such a certification would make these companies known to the Commission and consumers while allowing them time to grow and expand their business. Furthermore, the Consumer Groups recommend that the Commission require the annual reports submitted by VRS providers to be made public and easily accessible thereby allowing the Commission and consumers to track and compare compliance and services.

The Consumer Groups further express their support for the Commission's work in the National Broadband Plan since the primary technological barrier to the use of VRS is access to broadband. VRS is particularly dependent upon high speed and high quality broadband access so that users can clearly see the hand shapes, movement and facial expressions without latency problems. Unfortunately, especially during peak hours, VRS users have found that speed and picture quality of the video deteriorates and harms the ability of users to communicate effectively. Therefore, the Consumer Groups support the Broadband Plan's recommendations to establish technical broadband measurements and recommend that the Commission include VRS as one of the applications to be tested for actual speed and performance. In addition, the

Commission must ensure that broadband is affordable for VRS users who are often unemployed or underemployed. As expressed in the Broadband Plan, the Commission should move forward with its recommendations to extend Universal Service Fund low income support to broadband access, but must also ensure that these services are available for broadband support without the requirement to also use voice services.

Finally, the Consumer Groups make several additional recommendations to improve VRS services and increase efficiency.

- In establishing rates for VRS, the Commission must take into account research and development needs to encourage VRS providers to innovate and provide ever-improving functional equivalency. Brand-name marketing is also a critical component of providing services and allows VRS providers to distinguish their services from competitors.
- Outreach efforts should focus on education of potential users who are deaf, hard of hearing, deaf-blind and speech-disabled as well as potential hearing users. Outreach and education should be managed by an independent third party.
- A procedure needs to be established in order to determine how deaf-blind users who cannot currently use VRS can have access to VRS.
- The quality of interpreting is a vital aspect of functional equivalency and the FCC needs to mandate minimum standards for highly trained, nationally certified interpreters.
- The Commission should not use competitive bidding, rate-of-return regulation or reverse auctions for VRS providers. These mechanisms would all work to reduce the number of providers, diminish competition and harm consumers.
- The Commission should institute a proceeding to address provider redundancy concerns and ensure that providers have dispersed call centers or agreements with other providers to address outages.
- The FCC, in collaboration with the Department of Justice and other agencies, should initiate a proceeding to determine how 911 services can be more effective and efficient for voice, text, and video communications.

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The Consumer Groups applaud the Commission’s tireless efforts to improve telecommunications services for the deaf and hard of hearing communities. This inquiry is an invaluable opportunity for the Commission to review a multitude of vital and important issues impacting Video Relay Services (“VRS”). Internet-based services, like VRS, are increasingly becoming the communications method of choice for people who are deaf, hard of hearing, late-deafened and deaf-blind, even while this community continues to use a broad range of technology. VRS currently provides access to individuals who communicate using American Sign Language (“ASL”). Unlike some other forms of Telecommunications Relay Services (“TRS”), VRS provides users with the ability to communicate in near real-time, without

² *In the Matter of Structure and Practices of the Video Relay Service Program*, Notice of Inquiry, FCC 10-111 (rel. June 8, 2010) (“*Notice*”).

significant delays or required turn-taking, and with the speed, fluidity, intonation, and emotiveness experienced by people who communicate in spoken English (or other spoken languages).

Underlying all efforts related to TRS is the mandate for functional equivalency, which the Consumer Groups address first in these comments.

I. FUNCTIONAL EQUIVALENCY REQUIREMENT

The Americans with Disabilities Act (“ADA”)³ fundamentally changed the communications landscape by requiring the Commission to ensure that deaf, hard of hearing, deaf-blind and speech-disabled individuals have nationwide access to the telephone system and network through the provision of “functionally equivalent” services. The ADA defines TRS as “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 communications services by wire or radio.”⁴

The ADA specifically requires that the Commission ensure its regulations encourage “the use of existing technology and *do not discourage or impair the development of improved technology.*”⁵ Accordingly, the ADA clearly contemplates that what is defined as functionally equivalent service will not remain static, but rather will evolve just as mainstream equipment and services evolve as technology advances in the provision of telecommunications. Moreover, the

³ PL 101-336, July 26, 1990, codified at 47 U.S.C. § 225 of the Communications Act of 1934, as amended (“Act”).

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

⁵ 47 U.S.C. § 225(d)(2) (emphasis added).

legislative history of the ADA demonstrates that Congress intended to encourage use of “state-of-the-art” technology and prevent “freezing technology or thwarting the introduction of a superior or more efficient technology.”⁶ Given Congress’s directives, the Commission has held that “functional equivalence” requires “periodic reassessment” in light of the “ever-increasing availability of new services and the development of new technologies.”⁷

Such directives are not exclusive to Section 225, but rather are codified in other provisions of the Act. Section 7(a) of the Act, which is designed to benefit all citizens of the United States, unequivocally states: “It shall be the policy of the United States to encourage the provision of new technologies and services to the public.”⁸ Section 255(c) of the Act requires that “[a] provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.”⁹ Taken together, these provisions reflect Congress’ express desire to make available to individuals who are deaf, hard of hearing, deaf-blind and speech-disabled, the very best technologies and services that are otherwise available to people without such disabilities, in a manner that is as functionally equivalent as possible.

For the Consumer Groups, functional equivalency is the standard by which every action proposed or taken by the Commission and VRS providers should be assessed. Assessments should be routinely, periodically, and proactively made to determine the impact of an action on functional equivalency, whether an action will move us towards or improve functional

⁶ House Rept. 101-485 Pt. 2 at 131, 133-134.

⁷ *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).

⁸ 47 U.S.C. § 157(a).

⁹ 47 U.S.C. § 255(c).

equivalency, and what technology, equipment, or service needs to be developed or can be provided to achieve greater functional equivalency.

All forms of TRS must ultimately become a seamless part of the telecommunications infrastructure. Each consumer who needs TRS should have a choice of provider and equipment at any time. There should be a requirement that transition to a new TRS provider or new equipment be accomplished as quickly and seamlessly as that for an individual without a hearing or speech disability in changing a wired or wireless provider or selecting another make or model of phone. The goal should be that accessible technology used for VRS and other forms of TRS, both hardware and software, is available in any mainstream product.

Disability can strike anyone at any time. It can be temporary or permanent. It can have a mild or severe impact. It can be stable, become progressively worse, or fluctuate. These and other factors mean that there is no “one size fits all” solution for functionally equivalent TRS. It also can mean that what is needed for functional equivalency can vary from call to call. The reality of TRS in its current state is that far too many calls are a roll of the dice. For example, with VRS, consumers do not know if they will be connected to an interpreter who can correctly relay their signs or the response of the person on the other end of the line.

We hope the FCC will strongly encourage innovation to mesh the tools from all the current TRS options and introduce new features that will allow users to select specific services that will make each call the most functionally equivalent possible. This could include:

1. The ability to select the type of individual relay features for each particular call, through confidential consumer databases similar to the “profiles” used by traditional TRS, but with more powerful options such as automatically matching available interpreters with whom the consumer has confidence in communicating as well as an appropriate level of skill for the call’s subject matter.
2. The ability to select other features at the start of the call such as enabling conference calling.

3. The ability to select new features during a call if needed such as requesting immediate connection to captioned telephone service if the speech of a hearing person cannot be understood.

Consumer Groups intend to pursue these and other goals with the Commission to achieve functional equivalency. We appreciate the opportunity provided by this *Notice* to begin this discussion. As part of this discussion, going forward, we expect to provide the Commission with further input on the Consumer Groups' "roadmap" to functional equivalency, which Consumer Groups intend to act as a guide for the Commission's policy making and the services of TRS providers.

At this time, Consumer Groups offer the following comments in response to this *Notice*. For convenience, the Consumer Groups present these comments, generally, in the order in which the issues or topics were presented in the *Notice*; not necessarily in the order of their importance to the Consumer Groups.

II. ADJUSTMENTS AND MODIFICATIONS TO IMPROVE THE CURRENT VIDEO RELAY SERVICE COMPENSATION METHODOLOGY

A. The FCC Must Revise the VRS Rate Tiers and Institute Modified Price Caps on VRS Compensation

The Commission should not establish a company-specific compensation scheme as such a system would incentivize inefficiency and waste. Specifically, a company-specific approach would encourage companies to inflate their costs in order to receive greater compensation. Instead, the Consumer Groups urge the Commission to maintain its tiered approach to compensation with some minor revisions to improve and encourage efficiency.

Recently, the Commission adopted interim rates for reimbursement to VRS providers from the Interstate TRS Fund. The reimbursement tiers are based upon the number of minutes

handled by a VRS provider each month.¹⁰ Tier I includes providers that handle less than 50,000 minutes per month, Tier II includes those handling between 50,001 and 500,000 minutes and Tier III includes those providers handling over 500,000 minutes per month. Under the interim rates adopted for July 1, 2010 through June 30, 2011, the Tier I rate is \$6.2390, Tier II rate is \$6.2335 and Tier III rate is \$5.0668.¹¹ The Consumer Groups believe that the tier levels currently utilized by the Commission create an artificial “cliff” since there is a very significant jump between Tier II and Tier III. This structure rewards inefficiency and discourages growth, because a provider would not want to grow into a tier where the rate drops precipitously. While the FCC should maintain the tiered structure, it should reduce the large jump in per minute compensation between the tiers, which can be accomplished by adding more tiers to the rate structure and adjusting the threshold number of minutes for each tier. This revised structure would better account for economies of scale and encourage greater efficiencies. Moreover, the FCC should require that the minutes of use for any affiliated or subsidiary companies that are 10% or more commonly owned should be consolidated and counted together for the purposes of reporting and reimbursement from the Interstate TRS Fund. This new reporting requirement would result in greater transparency and reduce gaming of the system.

Furthermore, the Consumer Groups recommend the adoption of modified price caps for VRS providers. Historically, the Commission has instituted price caps to spur innovation and efficiency in telecommunications services. The Commission has found that price caps and incentive regulations better reflect “the dynamic, consumer-oriented process that characterizes a competitive market. In general, such regulations operate by placing limits on the rates carriers

¹⁰ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, FCC 10-115 (June 28, 2010).

¹¹ *Id.* at ¶¶ 5-6.

may charge for services. In the face of such constraints, a carrier's primary means of increasing earnings are to enhance its efficiency and innovate in the provision of the service."¹² Price cap regulations can have the same effect upon VRS providers and will drive providers to improve services to generate a larger customer base and to strive to create efficiencies, which would reduce costs.

In setting the base rates for industry-wide price cap tiers, the Consumer Groups recommend the use of a forward looking cost model which can benefit the TRS Fund by excluding unwarranted legacy costs and take into consideration improved efficiency and functional equivalency. Similarly, forward looking costs are fair to providers, because they can take into consideration projected increases in costs such as interpreter costs, which have been increasing at rates higher than normal inflation.

Furthermore, an industry-wide tiered price cap approach would provide the FCC with a simplified, predictable, and fair way to establish the reimbursement rate for all providers of VRS. Specifically, the rates for VRS would be capped for a minimum of three to five years, during which time the rates would be adjusted annually for inflation (taking into specific account inflation of interpreter salaries) and expected improved efficiency and functional equivalency. In the event of changes in costs beyond the control of the providers, adjustments for those exogenous costs could also be made upon approval by the Commission. Implementing industry-wide tiered price caps for VRS would have at least three benefits: (1) the price cap approach creates incentives for all VRS providers to lower costs, whereas any cost-of-service approach creates incentives to allow reimbursable costs to go up; (2) a price cap for a minimum of three to five years provides firms enough predictability about revenue to allocate money to programs that

¹² *Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order, 4 FCC Rcd 2873, ¶ 36 (1989).

will improve functional equivalency and reduce costs in the future (such as hiring and training more interpreters, so as to keep labor costs low); and (3) a price cap simplifies the process and reduces the expenditure of time and money by the providers, NECA, and the FCC on what has been a perennially complex and troublesome process of rate setting. Although the three-year tiered rates proved to be problematic during the last rate cycle, the Consumer Groups believe that with the maturation of the VRS industry as well as the experience gained by NECA and the Commission since the three-year rates were last set in 2007, the Commission will have sufficient data to determine the number of tiers, the number of minutes in each tier, and the price cap rates for each tier.

The Consumer Groups oppose any type of “true-up” mechanism as proposed by the Commission. True-ups defeat the purpose of price caps, and would end up increasing the burden on the Interstate TRS Fund because true-ups would encourage providers to inflate their costs so as to be able to benefit from the true-up. In addition to motivating providers to increase their costs, true-ups will place administrative burdens on the Commission, NECA and the providers. In particular, the additional administrative burdens placed on the Commission would distract the Commission from combating fraud and abuse and from the primary directive of Section 225 of the Act, which is to enhance functional equivalency.

B. Compensation Rates Should Take into Account Research and Development and Marketing

The FCC is mandated by Congress to encourage innovation, including research and development, of communications devices and services for people with disabilities. The ADA specifically requires that the Commission ensure that its regulations encourage “the use of

existing technology and do not discourage or impair the development of improved technology.”¹³ Accordingly, Congress clearly intended that the ability to provide a functionally equivalent service is tied to innovation and development, which is essential as new telecommunications technologies are developed. Since the development of improved technology is dependent upon research and development, Section 225(d)(2) of the Act in fact mandates research and development. Therefore, when setting VRS rates, the Commission must take into account research and development needs to encourage VRS providers to innovate and provide ever-improving functional equivalency. Among the possible improvements that could emerge as results of research and development are mobile VRS applications and split-screen technologies which show both the interpreter and the other party on the screen, and total conversation set-up in which the screen shows both video and text and includes the ability to hear the audio.

In this regard, brand-name marketing encourages research and development. With brand-name marketing providers can compete and distinguish themselves with their innovations by informing users about their new technology and services. On the other hand, without brand-name marketing, the development of improved technology may be discouraged or impaired in violation of the mandates of Section 225(d)(2) of the Act.

In other words, brand-name marketing is a critical component of providing service since it allows VRS providers to more effectively reach their markets and allows them to educate potential customers by providing them with information that distinguishes their services from those provided by other companies. The ability to market their brands gives VRS providers an incentive to develop better services and achieve greater functional equivalency. However, without brand-name marketing, these providers have no method of letting potential users know

¹³ 47 U.S.C. § 225(d)(2).

how they are different or provide better services. Therefore, when setting VRS rates, the Commission must take into account brand-name marketing needs to encourage the additional innovations and improvements to the service needed to bring about functional equivalency.

C. Education and Outreach Activities Should be Provided by a Neutral Third Party Contractor

In the *Notice*, the Commission sought comment on how it should define “outreach” for the purpose of providing funding of legitimate activities to be compensated from the Interstate TRS Fund.¹⁴ The Consumer Groups recommend that the FCC separate and distinguish outreach efforts from marketing and suggest that outreach should focus on education. Legitimate outreach efforts should include education of deaf, hard of hearing, deaf-blind and speech-disabled individuals as well as the individuals in other sectors of the general community, and businesses so that they can effectively communicate via VRS services.¹⁵ Despite the growth of these services and the growth in the number of users, many people who are deaf, hard of hearing, deaf-blind and speech-disabled remain unaware of the services offered and how to access them or how to use them to most effectively meet their individual communication needs. Funding for outreach must focus on educating deaf, hard of hearing, deaf-blind and speech-disabled individuals about the various services that are available for their use, the equipment necessary to use such services and the full range of providers available to offer service.

Separately, but equally important, there is a need to educate those people and businesses who may potentially place communications to or receive communications from deaf, hard of hearing, deaf-blind and speech-disabled individuals. The vast majority of hearing persons do not

¹⁴ See *Notice* at ¶¶ 17-19.

¹⁵ While these comments focus on VRS, Consumer Groups note the need for outreach and education to deaf, hard of hearing, late-deafened, deaf-blind and speech-disabled consumers, as well as the general public, about all forms of available TRS.

realize these services even exist, how to use them to place calls or how to react should they receive a call. Since a call requires someone at each end, in order to achieve functional equivalency, educational outreach efforts targeting these potential users are necessary. For example, just as any hearing person might pick up the telephone to call a local business to inquire about their services, prices and hours of operation, deaf, hard of hearing, deaf-blind and speech-disabled individuals have the same need to contact businesses. However, recipients of calls handled by VRS providers may not accept the call, or if they do accept the call, may not fully understand how the service works and how to effectively communicate with a deaf, hard of hearing, deaf-blind or speech-disabled individual through a Communications Assistant (“CA”). Furthermore, outreach efforts may help minimize hang-ups by business people who are skeptical of fraud and other abuses.

Additional outreach efforts to recipients of VRS calls are necessary in order for these services to be functionally equivalent to voice telephone services. The Consumer Groups therefore recommend that the Commission contract a third-party unaffiliated with any VRS provider to engage in education and outreach activities and to fund the activities from the Interstate TRS Fund.

D. The Interstate TRS Fund Should Supply Vouchers to Individuals to Purchase Interoperable VRS Equipment

VRS requires the use of specialized equipment which is considerably more expensive than a standard telephone. Because many people who are deaf, hard of hearing, deaf-blind and speech-disabled are unemployed or underemployed, they cannot afford expensive VRS equipment. As a result, lack of affordable equipment substantially limits the ability of people to utilize VRS. To address this problem, VRS providers have offered equipment to users at no charge, and prior to Commission prohibitions, often tied the provision of equipment to exclusive

use of that provider's VRS service or to minimum usage requirements.

Moreover, much of the equipment in the hands of users today as a practical matter does not work well or does not work at all with services offered by VRS providers other than the VRS provider who gave out the equipment in the first instance. For example, many functionalities of the equipment, such as address books and number recall, will not work when a user switches providers. It is also impossible to port a number from one provider to another unless the user switches to the equipment or software provided by the new provider. The result is that even if the consumer is unsatisfied with the service, but happy with the equipment from the original provider, the consumer is "locked in" to using the original provider if the consumer wishes to continue using the equipment. As a result of these equipment issues, the market for VRS is not as competitive as the mainstream telecommunications market, which will ultimately result in less innovation and lower quality service that is not functionally equivalent.

VRS equipment that is expensive and not interoperable is not functionally equivalent to telephone equipment, where users can obtain low cost equipment and use the equipment with any carrier without losing any functionality. The Consumer Groups submit that three actions are required to remedy this problem. First, equipment vouchers paid for by the Interstate TRS Fund should be distributed to all VRS users every two or three years. Second, the Commission should require that all new equipment be interoperable with all service providers with no loss of functionality. Third, to facilitate equipment interoperability without loss of functionality, the routing of calls needs to be accomplished via server-based routing rather than equipment based routing, as it is now done. We discuss equipment vouchers in this section and will discuss equipment interoperability and server based routing in Section III.A.

The Consumer Groups support the use of individual vouchers that would allow VRS

users to obtain equipment from any source they choose, whether they are VRS providers, common carriers, or retail outlets that are unaffiliated with VRS providers.¹⁶ This would allow users greater flexibility in equipment choice and increase competition among VRS providers. Specifically, vouchers for equipment should be distributed directly to deaf, hard of hearing, deaf-blind and speech-disabled individuals, and should provide sufficient funding to purchase equipment and software that provides common features, such as call forwarding, caller ID, call history, and number directories. For individuals who are deaf-blind, the vouchers should include an amount sufficient to cover the larger monitors and other specialized technologies and features required for accessibility.

These vouchers would assist individuals who are deaf, hard of hearing, deaf-blind and speech-disabled, who are often unemployed or under employed, in gaining access to communications services. These vouchers should be reissued every few years so that users may purchase up to date and improved communications equipment. The use of an equipment voucher system will go a long way towards separating the service from the equipment and will encourage competition in the delivery of VRS services.

¹⁶ Some telecommunications and other service providers are providing access to video communications. These systems, with few exceptions, provide limited access; generally to the group of individuals who all use the same equipment and services. In other words, video communications systems generally exist in silos. The efforts made within the VRS industry to provide connections between users of different VRS systems needs to be replicated in “mainstream” video communications systems. Consumers envision the day when mainstream video communications, like VRS today, will be integrated fully with the North American Numbering Plan 10-digit numbering system, such that calling any number will connect the user to the voice, text, or video options available to the called party and that either party will be able to activate the TRS of his or her choice to facilitate the call. Consumers also envision a day when mainstream communications will commonly provide all three forms of communication (voice, text, and video) and when users will be able to activate the TRS of his or her choice to facilitate the call (i.e., video with user-generated text messages, captions, VRS, etc.).

E. All VRS Providers Must be Certified and the Annual Reports From Providers Should be Made Available to the Public

1. Certification

The Consumer Groups strongly support mandatory certification by the Commission for all VRS providers. Under this proposal, all VRS providers would be required to apply for and obtain certification prior to providing service and receipt of any reimbursement for services from the Interstate TRS Fund.¹⁷ By requiring certification prior to offering service, the FCC will increase accountability and its ability to track and monitor VRS providers, which will create a disincentive for fraud and abuse. Certification will also assist consumers by making it possible for them to more readily identify their provider, whom to go to in the event of a service complaint, and about whom to file a complaint with the Commission in the event that the provider does not adequately address the consumer's service complaint to the provider.

Moreover, the FCC should require that all providers apply for re-certification every five years and certify that they have complied with the minimum operations and technical standards for service as part of the certification process. Just as broadcast stations must certify they have served the public interest every eight years, so too should VRS providers certify that they have provided service to consumers that have met the minimum requirements.

In order to fully realize all of the benefits of this certification process, the Consumer Groups urge the Commission to make an effort to consider and grant or deny certification applications in a timely fashion. Specifically, certification applications for VRS providers should be processed and acted upon within a few months of filing, instead of remaining pending

¹⁷ Those operational providers who are currently certified by states or are otherwise not certified by the Commission should be afforded a reasonable period of time to submit certification applications to the Commission and be allowed to continue to operate on an interim basis until the Commission rules on their applications.

for years as is currently the situation with many such applications. Swift action on certification applications will speed competition and new services to consumers. Just as the FCC currently processes applications for Section 214 authority to provide interstate telecommunications services within a few weeks or months, the FCC should endeavor to act upon VRS provider certification applications within an appropriate time period.

To maximize the efficiency of the certification process, the Consumer Groups also recommend allowing subcontractors and agents of certified VRS providers operating under the same name as the certified provider to be covered by the certification. As long as they are operating under the same name and provide the same service offerings as the certified entity, there will be accountability.

2. White Label Providers

The Consumer Groups urge the Commission not to permit uncertified “white label providers” to offer VRS. “White labeling” is the process whereby entities that are not certified relay providers utilize the platform of a certified Internet-based relay provider, usually VRS, and then resell the service to consumers in their own name without identifying the underlying provider to the consumer. Then, the certified provider obtains compensation from the Interstate TRS Fund and pays a percentage of it to the white label provider. Since these white label providers are currently uncertified, there is little oversight or accountability to either the Commission or consumers for the services that they provide. The existence of white label providers creates a market for unregulated services and present substantial risks regarding the quality of service, including emergency services which are provided to the deaf, hard of hearing, deaf-blind and speech-disabled communities.

The Consumer Groups also recommend that providers must provide some minimum amount of service, for example, 50,000 minutes of service a month, to receive certification. However, to permit and encourage start-up companies, which in many instances have brought new innovations to the marketplace, the Consumer Groups recommend the adoption of a five-year provisional certification. Provisional certification would allow start-ups to provide service, but would make them known and accountable to the Commission and consumers. These companies would then become eligible for regular certification once they are providing the minimum amount of service for some period of time, such as six consecutive months. If a company does not provide the minimum amount of service per month within the five-year provisional period, it would lose its authorization to provide service. This minimum service requirement will help to reduce the burden on the Interstate TRS Fund by excluding smaller providers that are not sufficiently competitive within a reasonable period of time.

3. Annual Reports

In addition to the centralized certification process, the Consumer Groups recommend that the FCC strengthen its reporting requirements for VRS providers. At this time, Section 64.606(g) requires that VRS and IP Relay providers submit an annual report to the Commission.¹⁸ If these reports are buried in the ECFS, they cannot be found, and if they are submitted with confidentiality protections, this process and practice must be changed to ensure accountability. In other words, the Consumer Groups urge the Commission to require that the reports be made public and easily found through a web page specifically designed for submission and viewing, similar to the way it is done for hearing aid compatibility reports. This would make

¹⁸ 47 C.F.R. § 64.606(g) (“VRS and IP Relay providers certified under this section shall file with the Commission, on an annual basis, a report providing evidence that they are in compliance with § 64.604.”).

the information contained in the reports searchable, and permit the Commission and consumers to track and compare compliance with the minimum standards required in Section 64.604, including both operational and technical standards such as speed of answer and availability of facilities. Annual reports should also do more than provide a means to certify that minimum requirements are being met. Annual reports should provide sufficient appropriate and specific information about certain criteria that can be used by consumers to compare the services being provided among VRS providers.

To encourage quality interpreting, the Consumer Groups urge that the annual reports request information on (1) the percentage of interpreters used or employed by the provider that are nationally certified by a certifying body and their certification types and levels, (2) the utilization rate of interpreters, which is the percentage of time each interpreter is actively interpreting while on the job, and (3) the number of worker's compensation claims filed by the interpreters.¹⁹

III. BROADER AND ECONOMIC ISSUES CONCERNING VRS

As the FCC has consistently noted in its rulings on VRS and call handling practices, for a TRS user, accessing TRS or VRS is the equivalent of picking up the telephone and obtaining a dial tone. Consistent with the requirements of Section 225 of the Act, longstanding Commission policy has been to require relay service that is functionally equivalent to voice telephone services. Just as a dial tone is readily available to a telephone user, the Consumer Groups believe that the Commission should take action to ensure that communications access is robust and readily available for people who are deaf, hard of hearing, deaf-blind or speech-disabled.

¹⁹ The number of workers compensation claims filed by interpreters serves as a measure of over-utilization of interpreters. Overutilization results in lower quality interpreting and occupational safety problems. See Section III.B.

A. The Commission Must Ensure Interoperability of VRS Equipment and Replace CPE Based Routing with Server Based Routing

As explained earlier, VRS providers have offered equipment to users at no charge, and prior to Commission prohibitions, often tied the provision of equipment to exclusive use of that provider's VRS service or to minimum usage requirements. Moreover, much of the equipment in the hands of users today as a practical matter does not work well or does not work at all with services offered by VRS providers other than the VRS provider who gave out the equipment in the first instance. For example, many functionalities of the equipment, such as address books and number recall, will not work when a user switches providers. As a result of these equipment issues, the market for VRS is not as competitive as it ought to be, which will ultimately result in less innovation and lower quality service.

VRS equipment that is expensive and not interoperable is not functionally equivalent to telephone equipment, where users can obtain low cost equipment and use the equipment with any carrier without the equipment losing any of its functionality. The Consumer Groups previously explained that three actions are required to remedy this problem. First, equipment vouchers paid for by the Interstate TRS Fund should be distributed to all VRS users on a periodic basis. Second, the Commission should require that all new equipment be interoperable with all service providers with no loss of functionality. Third, to facilitate equipment interoperability without loss of functionality, the routing of calls needs to be accomplished via server based routing rather than equipment based routing, as it is now done. We previously discussed equipment vouchers in Section II.D and now discuss equipment interoperability and server based routing in this section.

1. Equipment Interoperability

The Consumer Groups support a VRS system that is open and fully accessible by anyone, irrespective of the equipment used by that individual. The Commission must therefore ensure that interoperability of equipment is promoted and that any Commission action in this regard does not tether service from any VRS provider to equipment supplied by that provider to a given user. Specifically, the Commission should amend Section 64.611(e) of the rules to require that (1) any VRS customer premises equipment (“CPE”), including all features and functions available with the equipment, that is sold or otherwise provided to end users manufactured after the effective date be designed so that it can be universally usable, without the need for changes by the VRS user, on any VRS network, and (2) that the CPE not contain any software or other design elements that disable any features or functions in the event that the equipment is used on a VRS network other than the network of the provider which first supplied the equipment. As stated earlier, just as wireline telephone equipment is interoperable on any telephone network, to achieve functional equivalency VRS equipment must similarly be interoperable.

Similarly, just as a telephone user can call any other telephone user without worrying whether the telephone user at the other end of the call has interoperable telephone equipment, to achieve full interoperability of VRS equipment, functional equivalency requires the same for VRS users making point-to-point video calls. In this regard, the Commission has expressly acknowledged that point-to-point video calling “furthers the purpose of Section 225 itself.”²⁰

The Commission stated:

²⁰ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123 CC Docket No. 98-67, WC Docket No. 05-196, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, ¶ 67 (2008) (“*Order on Reconsideration*”).

[w]hile that section refers to relay services, point-to-point services even more directly support the named purposes: they are more rapid in that they involve direct, rather than interpreted, communication; they are more efficient in that they do not trigger the costs involved with interpretation or unnecessary routing; and they increase the utility of the Nation's telephone system in that they provide direct communication – including all visual cues that are so important to persons with hearing and speech disabilities.²¹

The lack of VRS equipment interoperability can also endanger the safety and lives of deaf, hard of hearing, deaf-blind and speech-disabled persons, and risks loss or damage to their property if the equipment does not function properly when placing an emergency call in a situation where the default VRS provider is not available and the user attempts to utilize an alternative VRS provider. Because many people who are deaf, hard of hearing, deaf-blind and speech-disabled have given up their TTYs, the lack of interoperability of VRS equipment means that these persons must rely on one and only one provider in an emergency situation for automatic number information (“ANI”) and automatic location information (“ALI”) to be properly transmitted to the public safety answering point (“PSAP”).

Until full interoperability of VRS is achieved, consumers will never be assured that they will have equal access to the full, nationwide pool of VRS interpreters needed to effectively respond to their communication needs. In order to encourage innovation and competition, and to fully comply with the Communication Act's mandates for functionally equivalent relay service, the Commission should require full interoperability of VRS equipment as discussed herein. The Consumer Groups also recognize that healthy competition fosters innovation, advancement, and improvement in services and technology which is necessary to continue advancing towards functional equivalency.

²¹ *Id.*

2. Server Based Routing

A telephone user can go to a retail outlet, purchase a telephone, go home, plug the new telephone into a jack, and if the user has service connected to the jack, the telephone works immediately. On the other hand, a VRS user must have a technician from the VRS provider come to the user's home to install a videophone before it can be used with the VRS service. Therefore, to facilitate full interoperability of VRS equipment and better achieve functional equivalency, VRS users must also be able to have "plug and play" capability.

What prevents "plug and play" capability is the Commission's requirement that VRS networks use CPE based routing, because CPE based routing requires a specialized technician to install the VRS equipment. CPE based routing leads to other functional equivalency problems as well, including an inability to receive service behind government and business firewalls, an inability to have extension lines using the same phone number, and an inability to have call forwarding of point-to-point video calls utilizing two different VRS providers. Since telephone users can receive service behind government and business firewalls, have extension lines using the same phone number, and have full call forwarding capability, the FCC requirement for CPE based routing limits the ability of VRS users to achieve functional equivalency.

Indeed, server based routing would allow videophones to be wholly operational in secure environments and firewalls which are very common in modern American businesses such as banks and lending institutions and government agencies. For instance, server based routing, which is standard for wireline telephone, cellular and VoIP connections, would allow providers to develop and deploy an extensive range of services, features and protections not currently available with direct device routing.

It is also worth noting that server based routing will promote greater fluency and

functionality between the diverse CPE provided by the various VRS providers. Indeed, interoperability problems continue to plague the industry to the great frustration and consternation of consumers. A server based routing solution, however, would allow provider platforms to bridge the various CPE without engaging the direct-device routing mechanism that is now in use and which can be unreliable, inefficient, and difficult to use when communicating with other CPE.

On July 21, 2009, Purple Communications, Inc. (“Purple”) filed a “Request for Clarification of Requirements for Populating the iTRS Database” in Dockets 03-123 and 05-196. The petition fully explains the benefits of server based routing as opposed to CPE based routing. Needless to say, all voice services, including wireline telephone, cellular and VoIP use server based routing. Since CPE based routing denies VRS users the same benefits that telephone users enjoy as a result of server based telephone routing, the Commission’s requirement of CPE based routing for VRS rather than server based routing conflicts with the functional equivalency requirements of Section 225 of the Act. The Commission must resolve this conflict immediately, by issuing a notice of proposed rulemaking to change the VRS CPE based routing requirement to a VRS server based routing requirement, subject to a reasonable transition period.

B. Quality of Interpreting is an Aspect of Functional Equivalency

To achieve functional equivalency, VRS must provide high quality interpreters certified by a national body. In many ways, interpreting is the heart of VRS. The Consumer Groups address herein the need for the FCC to mandate minimum standards for highly trained and nationally certified interpreters, the assignment of interpreters and the occupational safety of interpreters.

The random assignment of interpreters to conversations is not necessarily the best way to

serve the needs of VRS users. VRS is commonly known as a service for individuals who communicate through ASL, which is a language of its own. However, there are other English-based sign systems, which may be the preferred mode of communication for many VRS users. For example, they may use cued speech, which is lip reading augmented by the placement of specific hand shapes, Conceptually Accurate Signed English (“CASE”), or Signing Exact English (“SEE”). Equally important, VRS is vital for those who use speechreading, which is not associated with ASL nor any other sign system. It is the ability to read one’s lip movements, and to derive information based on selecting words by educated guesswork and experience.

It would be beneficial to the many and different deaf and hard of hearing persons using VRS to be able to access an interpreter whose skill sets most closely match their particular communication needs. Most of the experienced and certified interpreters who work in VRS settings understand the need to match needs and skills and most are adept at this practice. We are suggesting that a technological solution be developed to allow callers to identify their preferred communication needs and be matched to the specific skills of the VRS interpreters. With such a matching system, contextual choices – i.e., health care, legal, or technical communication - could also be offered.

The Consumer Groups emphasize that user preference profiles must be entirely voluntary. If a user wishes not to provide a profile, that is the user’s right.

The Commission should also develop rules regarding the safety of the interpreting workforce. This would look at the length of workdays, need and frequency of breaks, and the utilization rates²² of interpreters. The Consumer Groups understand that some VRS providers, to cut costs, have increased utilization rates for interpreters. The Consumer Groups’ concern is that

²² The utilization rate is the percentage of time each interpreter is actively interpreting while on the job.

if the utilization rate is too high, the interpreters will become fatigued, leading to interpreter injury in some cases and poor and inaccurate communication, thereby affecting the overall quality of the service. The Commission should therefore initiate a rulemaking proceeding to set maximum utilization rates for interpreters. In addition, as discussed in Section II.E.3, the Consumer Groups have suggested that the VRS provider annual reports also include (1) the percentage of interpreters who are nationally certified by a certifying body and their certification types and levels, (2) the utilization rate of interpreters, and (3) the number of worker compensation claims filed by interpreters.

C. Access to Broadband is a Significant Barrier to the Use of VRS

VRS, IP-Relay, and Internet-based captioned telephone service rely on broadband and are increasingly becoming the communications method of choice for people who are deaf, hard of hearing, and deaf-blind. The primary technological barrier to the use of VRS is access to broadband. Broadband services are essential for deaf, hard of hearing, deaf-blind and speech-disabled consumers as they enable such consumers to communicate with each other in point-to-point calls, and with hearing consumers through TRS using voice, text, and video communication. Thus, as the Commission works through the recommendations contained in Connecting America: The National Broadband Plan (“Broadband Plan”), it should ensure that its broadband requirements take into consideration the appropriate speed, latency and performance parameters, so as to enable access to all types of point-to-point communication and TRS.

1. Broadband Performance

VRS in particular depends upon high speed and high quality broadband access so that users can clearly see the hand shapes, movement and facial expressions without latency problems. Yet, the Broadband Plan notes:

[T]he actual download speed experienced on broadband connections in American

households is approximately 40-50% of the advertised “up to” speed to which they subscribe. The same data suggest that for upload speeds, actual performance is approximately 45% of the “up to” advertised speed....”²³

The Consumer Groups agree with this assessment. Especially during peak hours, VRS users have found that the speed and picture quality of the video deteriorates, making it impossible to engage in a video conversation. As a result, VRS users have at times been effectively denied access to VRS by broadband performance issues. Since the telephone network has been designed around peak usage, telephone users do not have accessibility issues during peak usage hours. So long as VRS users have broadband performance issues adversely affecting access to VRS, people who are deaf, hard of hearing, deaf-blind and speech-disabled are denied functional equivalency.

The Broadband Plan recommends the establishment of technical broadband measurement standards and a methodology and process for updating them. The characteristics to be measured would include actual speeds and performance over the broadband provider’s network, actual speeds and performance during peak use hours, actual speeds and performance achieved with a given probability over a set period that includes peak use times, and actual speeds and performance tested against a given set of standard protocols and applications.²⁴ The Consumer Groups recommend that the Commission include VRS as one of the applications to be tested for actual speeds and performance.

In addition, the Broadband Plan recommends that the Commission (1) continue its efforts to measure and publish data on actual broadband performance of fixed broadband services;²⁵ (2) initiate a rulemaking proceeding to determine performance disclosure requirements for

²³ Broadband Plan, Chapter 3 at 21.

²⁴ *Id.*, Chapter 4, Recommendation 4.3 at 44-45.

²⁵ *Id.* Recommendation 4.4 at 45.

broadband;²⁶ and (3) develop broadband performance standards for mobile services.²⁷ The Consumer Groups urge the Commission to follow through on these recommendations and recommend that the performance standards for mobile services be sufficient for the delivery of high quality mobile VRS.

2. Broadband Affordability

Individuals who are deaf, hard of hearing, deaf-blind and speech-disabled, especially those with low incomes, face significant communications barriers. Providing broadband Internet access to deaf, hard of hearing deaf-blind and speech-disabled Americans will enrich their lives by affording tangible opportunities for jobs, education, and training and will enable these individuals to be part of the economic and social fabric of American life. As presented in the record of the Commission's broadband proceeding, broadband adoption among adults with disabilities significantly lags behind the adoption of those without disabilities.²⁸ Indeed, as recognized by the Commission, some 42 percent of Americans with disabilities have broadband at home.²⁹ In a Commission survey that asked adults a series of six questions to determine whether a respondent should be classified as having a disability, nearly one-quarter (24 percent) responded "yes" to at least one of the questions, indicating they have a disability; their broadband adoption rate is two-thirds the national average. Looking at the data differently, 39

²⁶ *Id.* Recommendation 4.5 at 46.

²⁷ *Id.* Recommendation 4.6 at 47.

²⁸ *See e.g.*, Comments of Connected Nation, Inc. in response to NBP Public Notice #4, GN Docket No. 09-47, 09-51, and 09-137 (October 5, 2009).

²⁹ *See e.g.*, John Horrigan, Broadband Adoption and Use in America 26 (OBI Working Paper No. 1, 2010) ("The largest group of nonbroadband adopters—non-Internet users—has a high likelihood of having some sort of disability. Overall, 39 percent of non-adopters have some sort of disability."), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf.

percent of all Americans without broadband have some type of disability.³⁰ The Commission must remedy this disparity and implement policy changes that allow deaf, hard of hearing and deaf-blind individuals to experience the benefits of broadband Internet access. This lack of broadband penetration further establishes an artificial limit on VRS demand.

The Broadband Plan recommends: “The FCC and states should require eligible telecommunications carriers (ETCs) to permit Lifeline customers to apply Lifeline discounts to any service or package that includes basic voice service.”³¹ Although the Consumer Groups are pleased to see a recommendation for Universal Service Fund (“USF”) low income support to include broadband access, the Consumer Groups are concerned that this recommendation does not take into account the needs of a household where all members of the household are people who have no need for voice telephone service, but would need broadband access for VRS or other Internet-based TRS services. In such circumstances the ETC should be required to provide Lifeline discounts to a broadband only service without voice service.

The Broadband Plan also recommends: “The FCC should consider free or very low-cost wireless broadband as a means to address the affordability barrier to adoption.”³² The Consumer Groups strongly support this recommendation with the caveat that the wireless broadband access service be sufficient to support high quality mobile VRS.

³⁰ *Id.*

³¹ Broadband Plan Chapter 9, Recommendation 9.1 at 172.

³² *Id.* Recommendation 9.2 at 173-174.

D. The Commission Should Implement a Modified Price Cap Methodology for VRS

1. Benefits of Price Caps

As discussed in more detail Section II.A above, the Consumer Groups endorse an industry wide tiered price cap methodology for VRS. The primary merit in that methodology is that it encourages providers to limit costs and to improve efficiency while avoiding excessive expenditure of public and private resources in making rate determinations. The Consumer Groups believe that, as a general matter, price cap regulation for VRS compensation should encourage efficiency and lower rates over time, thereby benefiting the public. With a three to five year industry-wide tiered price cap for VRS compensation,³³ for example, each provider has the incentive to be as efficient as possible, because lowering costs increases profits during that cycle. At the end of the cycle, new base rates would be calculated based on forward looking cost projections needed to achieve improved functional equivalency. The VRS provider again has an incentive to be efficient during that next cycle for the same reason. Over the long run, industry-wide tiered price caps will keep rates to a minimum, which benefits the public and improves functional equivalency, which benefits consumers and strengthens the Interstate TRS Fund.

2. Competitive Bidding

The Consumer Groups strongly oppose the use of a competitive bidding to choose one or several VRS providers. Competitive bidding might work once to lower rates. After that, with a reduced number of providers, there would be no one to compete against, so the benefits of competitive bidding to lower the rates would be lost. Moreover, a competitive bidding process

³³ Once industry-wide tiered base rates are set using forward looking costs, the rates for each tier would be adjusted annually for inflation (taking into account inflation of interpreter salaries) and expected improved efficiency. In the event of changes in costs beyond the control of the providers, adjustments for those exogenous costs would also be made upon approval by the Commission.

would not serve the public interest because it would largely deny VRS users the benefits of competition. Without competition there would be fewer innovations, service would deteriorate in terms of quality and efficiency, and costs would go up.

3. Rate-of-Return Regulation

The Consumer Groups oppose rate-of-return regulation because it encourages providers to inflate costs for the purpose of increasing revenues. This would create a burden on the Interstate TRS Fund because rates are always higher in a rate-of-return regime than in a price cap regime.

4. Forward-Looking Cost Model

The Consumer Groups support the use of forward looking costs rather than historical costs. When historical costs are used, there is a tendency for companies to inflate their costs in anticipation of the setting of the base rates. On the other hand, forward looking costs can benefit the Interstate TRS Fund by excluding unwarranted legacy costs and taking into consideration projections of improved efficiency and functional equivalency. Similarly, forward looking costs are fair to providers, because they can take into consideration projected increases in costs such as interpreter costs, which are increasing at rates higher than normal inflation.

5. Reverse Auctions

For the same reason the Consumer Groups oppose the use of a competitive bidding to choose one or several VRS providers, the Consumer Groups strongly oppose reverse auctions. Reverse auctions might work once to lower rates. After that, with a reduced number of providers, there would be no one to compete against, so the benefits of reverse auctions to lower the rates would be lost. Moreover, a reverse auction process would not serve the public interest because it would largely deny VRS users the benefits of competition. Without competition there would be fewer innovations, service would deteriorate in terms of quality and efficiency, and

costs would go up. In recent years, Consumer Groups have witnessed such a process with captioning service bidding for television programs in reverse auctions, and as a result have received lower quality captioning.

6. Structural Safeguards

In Section III.A, the Consumer Groups explained their support for interoperable VRS equipment, the need to separate the VRS equipment from the VRS service, the need for “plug and play” equipment, and the need for server-based routing to help achieve functional equivalency. In that section, the Consumer Groups also explained how the separation of the VRS equipment from the VRS service will promote VRS service competition.

However, the Consumer Groups strongly oppose separating the relay interpreter component from the video communications service. As explained in Section III.B, interpreting is the heart of VRS. Interpreting is one of the primary things VRS providers compete on, and competition keeps the quality of interpreting high. If there were one interpreting service providing interpreting to the various VRS providers, this lack of interpreting competition would result in a decline in service quality. Therefore, the Consumer Groups support the current structure where each provider has its own interpreters and competes with the other providers on interpreting quality as well as a number of other factors.

7. Jurisdictional Separations

The Consumer Groups strongly oppose federal and state dual administration of the VRS program. This would put the entire VRS program at risk, because there is no guarantee that all states will sufficiently fund VRS, and some states may not fund it at all. Moreover, dual administration could easily lead to conflicting policies between the various states and the Commission. Since VRS is an Internet-based service, it is interstate in nature, and therefore it is properly funded by the Interstate TRS Fund and administered under the supervision of the

Commission.

The Consumer Groups appreciate the concern expressed that the Interstate TRS Fund has been growing while the contribution base has remained flat. The Broadband Plan recommends that the FCC broaden the universal service contribution base.³⁴ The Consumer Groups recommend that instead of considering dual funding of VRS, that the Commission explore broadening the TRS contribution base at the same time that it looks into broadening the universal service contribution base.

E. The Incentives and Needs of VRS Users

1. The Commission Should Provide Subsidy Programs for Broadband Access for Low Income VRS Users

In Section III.C.2, the Consumer Groups explained that many people who are deaf, hard of hearing, deaf-blind and speech-disabled are unemployed or under employed and that access to VRS and other Internet-based TRS services is limited by an inability to afford broadband access. The Consumer Groups addressed the Broadband Plan recommendation to require ETCs to permit Lifeline customers to apply Lifeline discounts to any service or package that includes basic voice service,³⁵ and explained that for households where a member of the household is a person who needs broadband access for VRS or other Internet-based TRS services, the ETC should be required to provide Lifeline discounts to a broadband service. The *Notice* has proposed other alternatives to Lifeline discounts for TRS users, such as subsidy programs or vouchers funded by the TRS program to fund broadband services.³⁶ The Consumer Groups encourage the Commission to explore all three alternatives to ensure access to broadband by people who are

³⁴ Broadband Plan Chapter 8, Recommendation 8.10 at 149.

³⁵ Broadband Plan Chapter 9, Recommendation 9.1 at 172.

³⁶ NOI at ¶¶ 74-75.

deaf, hard of hearing, deaf-blind, and speech-disabled.

In Section II.D, the Consumer Groups recommended an equipment voucher program to subsidize the expensive CPE needed for VRS. The *Notice* asked whether vouchers should be issued to consumers to subsidize either CPE or broadband access.³⁷ Due to the high unemployment and under employment of people who are deaf, hard of hearing, deaf-blind and speech-disabled, the Consumer Groups believe that both equipment and broadband access should be subsidized. Without subsidization of both, many individuals from these communities will not have access to VRS and other Internet-based TRS services. Therefore, the Consumer Groups recommend that if the Commission adopts the voucher approach for broadband access subsidization, the Commission issue vouchers for both CPE and broadband access to individuals with low incomes.

2. It Would be Contrary to Section 225 of the Act to Place VRS Usage Restrictions on Consumers

The Consumer Groups strongly oppose any VRS usage restrictions. As noted by the Commission, Section 225(d)(1)(D) of the Act requires that TRS users pay rates no greater than functionally equivalent voice services. If there were usage restrictions on VRS, and consumers were required to pay overage amounts, the rates paid would be far in excess of voice telephone service in violation of Section 225(d)(1)(D). Since there are many voice rate plans that include unlimited calling, it is entirely consistent with Section 225(d)(1)(D) of the Act to allow unrestricted access to VRS. To do otherwise would violate not only Section 225(d)(1)(D), but the functional equivalency requirements of Section 225(d)(1)(A).

³⁷ NOI at ¶ 75.

F. Other Regulations Affecting VRS Communications

1. The Commission Should Ensure Redundant Call Centers

The Consumer Groups suggest that the Commission initiate a proceeding to address provider redundancy to ensure that all providers other than start-up providers with provisional certification³⁸ have adequately dispersed call centers, or alternatively have agreements with other providers to receive, route, and handle calls on an automatic basis, whenever feasible, in the event of any call center outage for any reason. To make sure that VRS users have access to call centers at all times, common sense dictates that dispersion of calls centers is necessary in the event of a power outage or a natural disaster. Thus, for example, if a power outage were to affect a particular region, VRS users would still have access to another call center if that call center is located in an area outside of the first call center's area.

2. Emergency Calling Must be Made Available for Text and Video Services

The Consumer Groups urge the Commission, in collaboration with the Department of Justice and other federal, state and local agencies, to initiate a proceeding to determine how 9-1-1 services can become more efficient and effective for voice, text, and video communications, particularly for direct (non-relay) communication, as well as for TRS communication when necessary. As the Consumer Groups have commented in previous Commission proceedings, improvements to the E911 system are essential to the deaf, hard of hearing, deaf-blind and speech-disabled communities as people in those groups continue to cease using traditional wireline telephone systems-based TRS communications devices, such as TTY machines. As these communities adopt the use of mobile devices for their communications needs, the Consumer Groups would expect that the same technologies in use for commercial mobile radio

³⁸ See Section II.E above.

service to connect the caller to the appropriate PSAP and to transmit ALI to the PSAP be made available for mobile text and video devices.

The use of IP-based text and video communication services has led to a decrease in direct communication between the current emergency 9-1-1 system due to the inability of these new types of devices to interact with that system and vice versa. The replacement of TTYs with newer IP-based technologies that are more efficient, faster, flexible, smaller, wireless, and mobile means that these individuals are cut off from and unable to communicate directly, if at all, with the 9-1-1 system. For example, a PSAP operator would be able to better assess an emergency if the operator were able to see a video image of a VRS emergency caller at the same time as the CA is interpreting the call.

Of course, hearing individuals using text services such as SMS text messaging, e-mail, and instant messaging, particularly on mobile devices such as pagers and BlackBerrys, in an emergency situation without access to a voice telephone, have difficulty using or are unable to use the emergency 9-1-1 system as well. In its efforts to improve the vital and important emergency communications system for the nation, the FCC should ensure that the system is sufficiently technologically advanced as to allow deaf, hard of hearing, deaf-blind and speech-disabled individuals to communicate with emergency services via various methods of digital, wireless, and IP-based text messaging and IP-based video communications that are now available or will be developed in the future for consumer use.

3. 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, Should Have Access to iTRS Telephone Numbers

On January 29, 2009, the 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.³⁹ Not only would providing iTRS numbers to hearing people permit direct and more effective communication, but it would also reduce the number of VRS calls paid for by the Interstate TRS Fund. The Commission sought comment on this petition as well as a similar petition filed on the same date by GoAmerica, Inc.⁴⁰ Notwithstanding the fact that all commenters supported the petitions, the Commission has not yet acted on the petitions. Since these petitions have been ripe for action for well over a year, the Consumer Groups request that the Commission act on the petitions.

³⁹ The Commission has previously stated that point-to-point video calling “furthers the purpose of section 225 itself.” *Order on Reconsideration* at ¶ 67; *see also* Section III.A.1 above.

⁴⁰ Public Notice DA 09-870, April 20, 2009.

IV. CONCLUSION

The Consumer Groups respectfully request that the Commission proceed with rulemaking proceedings consistent with the recommendations discussed herein.

Respectfully submitted,

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