

**Before the  
Federal Communications Commission  
Washington, D.C. 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 )

**Telecommunications for the Deaf and Hard of Hearing, Inc.;**  
**Association of Late-Deafened Adults, Inc.;**  
**National Association of the Deaf;**  
**Deaf and Hard of Hearing Consumer Advocacy Network;**  
**California Coalition of Agencies Serving the Deaf and Hard of Hearing;**  
**American Association of the Deaf-Blind; and**  
**Hearing Loss Association of America**  
**Comments on 2010 VRS Rate Public Notice**

Telecommunications for the Deaf and Hard of Hearing, Inc. (“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”), California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”), American Association of the Deaf-Blind (“AADB”), and Hearing Loss Association of America (“HLAA”) (collectively, the “Consumer Groups”) hereby submit their Comments on the proposed payment formula and fund size estimates for the Interstate Telecommunications Relay Services (TRS) Fund submitted by the National Exchange Carrier Association (“NECA”) for the period of July 1, 2010, through June 30, 2011.<sup>1</sup> Specifically, the Consumer and Governmental Affairs Bureau (“CGB”) “seeks comment on NECA’s proposed

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<sup>1</sup> *National Exchange Carrier Association Submits the Payment Formula and Fund Size Estimate for the Interstate Telecommunications Relay Services Fund for the July 2010 through*

compensation rates for Interstate TRS, Speech-to-Speech Services (STS), Captioned Telephone Services (CTS), Internet Protocol (IP) CTS, IP Relay, and Video Relay Services (VRS), for the 2010-2011 Fund year, as well as on NECA's proposals for the carrier contribution factor and funding requirement. With respect to VRS, the CGB is particularly seeking comment on whether the Commission should adopt NECA's proposed rates for the 2010-2011 Fund year based on the 2009 average actual historical cost data submitted to NECA by VRS providers."<sup>2</sup>

## I. FUNCTIONAL EQUIVALENCY – THE STANDARD FOR TRS

The Americans with Disabilities Act (“ADA”)<sup>3</sup> fundamentally changed the communications landscape by requiring the Federal Communications Commission (“FCC” or “Commission”) to ensure that deaf, hard of hearing, deaf-blind and speech impaired 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.”<sup>4</sup>

“Functionally equivalent” service must evolve to keep pace with modern technology. The ADA specifically requires the Commission to ensure that its regulations encourage “the use of existing technology and *do not discourage or impair the development of improved*

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*June 2011 Fund Year*, CG Docket No. 03-123, Public Notice DA 10-761 (rel. Apr. 30, 2010) (“*2010 TRS Fund PN*”).

<sup>2</sup> *2010 TRS Fund PN* at 1.

<sup>3</sup> PL 101-336, July 26, 1990, codified at 47 U.S.C. § 225.

<sup>4</sup> 47 U.S.C. § 225(a)(3) (emphasis added).

*technology.*”<sup>5</sup> Thus, the ADA clearly contemplates that what is defined as functionally equivalent service will not remain static, but rather will evolve as technology evolves. Indeed, the 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.”<sup>6</sup>

In recognition of these fundamental principles established by Congress, 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.”<sup>7</sup> In other words, functional equivalency is a dynamic concept that is not frozen by the services and technology available at any particular point in time.

The dynamic nature of functional equivalency is consistent with other provisions of the Communications Act as well. Section 7(a) of the Act unequivocally states: “It shall be the policy of the United States to encourage the provision of new technologies and services to the public.”<sup>8</sup> Taken together, these various provisions show a very clear directive on the part of Congress to make available to people with disabilities, using the very best technologies that are available, all of the same types of services that are available to people without disabilities, in a manner that is as functionally equivalent as possible.

For Consumer Groups, functional equivalency is the standard by which every action proposed or taken by the Commission and TRS providers should be assessed.

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<sup>5</sup> 47 U.S.C. § 225(d)(2) (emphasis added).

<sup>6</sup> House Rept. 101-485 Pt. 2 at 131, 133-134.

<sup>7</sup> *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, at ¶ 4 (2000).

<sup>8</sup> 47 U.S.C. § 157(a).

## II. PROPOSED COMPENSATION RATES

The Consumer Groups have greatly benefited from the many advances in the various forms of TRS, including VRS. The Consumer Groups recognize that improvements in technology and services, over time, have led to greater achievements in functional equivalency. At the same time, the Consumer Groups urge the Commission to ensure that sufficient funding is provided to continue that trend. Further, for many years, the Consumer Groups have advocated for funding for marketing and outreach, overhead, research and development, and other categories of funding that are not presently included in the costs considered in setting rates and are necessary to continue moving towards functional equivalency.<sup>9</sup>

NECA proposed per-minute compensation rates for the 2010-2011 Fund year for all forms of TRS, except VRS, based on the rate calculation methodologies established in 2007.<sup>10</sup> These calculations resulted in the following proposed rates: \$2.256 for interstate traditional TRS; \$3.1566 for STS; \$1.6951 for CTS and IP CTS; and \$1.2985 for IP Relay.<sup>11</sup>

The Consumer Groups note with approval that the proposed rate for STS includes an additional per-minute amount of \$1.131 to be used for STS outreach, outreach which is still very much needed.<sup>12</sup>

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<sup>9</sup> See, e.g., Consumer Group Comments, CG Docket No. 03-123, filed October 30, 2006, at 10. <http://fjallfoss.fcc.gov/ecfs/document/view?id=6518538882>

<sup>10</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140-9 (2007) (*2007 TRS Rate Methodology Order*).

<sup>11</sup> See *Telecommunications Services for Individuals with Hearing and Speech Disabilities*, and the Americans with Disabilities Act of 1990, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket No. 03-123, filed April 30, 2010 (*2010 TRS Rate Filing*).

<sup>12</sup> See *2010 TRS Fund PN*, at 2 n.11.

The Consumer Groups also note that CTS and IP CTS have provided greater functional equivalency to many of the Consumer Groups' constituents. CTS and IP CTS enable close to functionally equivalent telephone services for people who are deaf, hard of hearing, deaf-blind or late-deafened who communicate by speaking, who want to hear what the other person is saying as much as possible, but who may have difficulty understanding everything the other person says. However, improvements still need to be made to this service to make it functionally equivalent. For example, many consumers report 5-7 second delays in transmitting text when using these services. Therefore, the Consumer Groups want to see CTS and IP CTS compensation rates that will result in research and development to reduce the current delay in the delivery of CTS and IP CTS as well as other improvements in the technology and service to make it more functionally equivalent to the telephone service experience of people who can hear and speak. In addition, we note that, like STS, more outreach must be done to inform people about the availability of CTS and IP CTS so they, too, can benefit from these services. The Consumer Groups request that the Commission ensure that the rates proposed by NECA for CTS and IP CTS can achieve these goals, even perhaps through a supplemental rate similar to that provided for STS.

### **III. VIDEO RELAY SERVICE**

It is the understanding of the Consumer Groups that the Commission intends to issue a Notice of Inquiry soon for the purpose of reexamining the methodology for setting VRS rates. The Consumer Groups have on a number of occasions urged the Commission to do this, and we are pleased to learn that the requested proceeding will commence shortly. The Consumer Groups also note that there are many outstanding petitions, requests for clarifications, and other proposals regarding VRS, including interoperability of technology, and VRS reform which need

to be addressed.<sup>13</sup> Many of the issues raised in these filings may be addressed in the upcoming Notice of Inquiry. The Consumer Groups look forward to working with the Commission and are eager to outline our definition and principles that guide functionally equivalent telecommunications in response to the forthcoming Notice of Inquiry.

The Consumer Groups also understand that the Commission will set interim VRS rates for one year in order to have an opportunity for the rate methodology proceeding to come to a conclusion prior to setting long term rates effective July 1, 2011. These comments are therefore directed towards the consideration of whatever rates will be adopted for the interim time period beginning on July 1, 2010 and ending on June 30, 2011. The Consumer Groups urge the Commission to adopt VRS rates that will ensure the continued delivery of high quality VRS during this interim period and not put advancement towards functional equivalency on “hold” for a year. Consumers expect nothing less.

The CGB recently issued a statement to the VRS community in regard to its commitment to VRS, which stated in part:

The FCC is committed to ensuring the provision of high quality VRS to all individuals who need this service. The Americans with Disabilities Act (ADA) requires telecommunications access that is functionally equivalent to voice telephone services for people who are deaf, hard of hearing, or have speech disabilities. The FCC continues to believe that VRS is the most functionally equivalent form of relay for people who communicate using American Sign Language (ASL). We stand ready to meet our obligation to preserve and protect the VRS program so that ASL users and hearing people can communicate with each other over distances. This was the goal of Congress in passing the ADA and it continues to be our goal.<sup>14</sup>

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<sup>13</sup> See, e.g., Consumer Groups’ Petition to Initiate a Notice and Comment Rulemaking Proceeding, CG Docket No. 03-123, filed January 27, 2010. <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020383912>

<sup>14</sup> Electronic mail communication of Joel Gurin, CGB Chief, and Karen Peltz Strauss, Deputy CGB Chief, May 10, 2010. The Consumer Groups also note that use of VRS is not

NECA calculated four alternative sets of compensation rates for VRS for the 2010-2011 Fund year, two sets based on historical cost data and two sets based on projected cost data.<sup>15</sup> The Public Notice issued by the Commission states:

As with the VRS rates established in the *2007 TRS Rate Methodology Order*, NECA proposes sets of tiered rates: Tier I includes monthly minutes up to 50,000; Tier II includes monthly minutes between 50,001 and 500,000; and Tier III includes monthly minutes above 500,000. In one of its proposals, on which the Bureau particularly seeks comment, NECA then calculates the rate within each tier using weighted averages of VRS providers' *actual* historical cost data for 2009, including allowances of 1.6% for cash working capital, 3.2% for growth to the Fund, and \$0.0083 per minute for ongoing 911 and ten-digit numbering costs. This calculation results in rates of \$5.7754 for Tier I, \$6.0318 for Tier II, and \$3.8963 for Tier III.<sup>16</sup>

The Consumer Groups note that, in the past, the Commission has relied on projected costs to determine the compensation rate for VRS.<sup>17</sup> The Consumer Groups also note that this appears to be the first time that NECA has calculated VRS rates based on the *actual* historical cost data submitted by providers *within each tier*. The Consumer Groups do not have access to the cost data that was submitted by the VRS providers to NECA and are unable to conduct any specific analysis of the individual rate levels specified in the proposal. We urge the Commission to gather the data needed from providers to set fair and reasonable rates that ensure quality service and advance functional equivalency.

The Consumer Groups also express in these comments their strong desire for high quality VRS technology, highly qualified and certified interpreters, improved speed of answer requirements, consumer marketing and outreach, customer service and training, technical

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limited to only those who communicate using ASL, but also includes those who use oral or signed transliteration, and/or speechreading.

<sup>15</sup> See *2010 TRS Rate Filing*.

<sup>16</sup> *2010 TRS Fund PN* at 2 (footnotes omitted).

<sup>17</sup> *2010 TRS Fund PN* at 1.

assistance, research and development, and other activities necessary to continue moving towards functional equivalency. To this end, the Consumer Groups urge the Commission to ensure that the rates established for the 2010-2011 Fund year reasonably compensate VRS providers for the pursuit of functionally equivalent telecommunications services.

In furtherance of the goal of functional equivalency, the Consumer Groups believe the Commission should examine how the costs of equipment (hardware and software) distributed to consumers are compensated. Although the Consumer Groups recognize that this issue is not likely to be resolved fully before the start of the one-year interim rate period, the Consumer Groups take this opportunity to remind the Commission that the ability to obtain customer equipment is essential to VRS users. Simply put, VRS users need equipment to use the service and the only source of VRS equipment today is VRS providers. Further, improvements in equipment technology and the services that the equipment can deliver are advancements towards functional equivalency.

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. Competition also provides consumer choices amongst VRS providers. Consistent with the statement of the CGB, the Consumer Groups strongly support the Commission's steadfast commitment to functional equivalency. It is critical that the Commission's actions fully promote this essential public interest goal and provide readily available communications that are essential for the health, safety, and welfare of all TRS users, including access to emergency services.

