Before the
Federal Communications Commission
Washington, D.C. 20554

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

CONSUMER GROUPS’ JOINT PETITION FOR WAIVER AND RULEMAKING OF THE ELIGIBILITY RULE REGARDING SOCIAL SECURITY NUMBER

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SUMMARY

On behalf of deaf and hard of hearing Video Relay Service (VRS) users nationwide, the Consumer Groups—consisting of California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”); Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”); National Association of the Deaf (“NAD”); Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), Cerebral Palsy and Deaf Organization (“CPADO’), and American Association of the Deaf-Blind (“AADB”) — (together, “Consumer Groups”) request that the Commission temporarily waive its new requirement that VRS providers collect the last four digits of their users’ Social Security Numbers (SSNs) or Tribal Identification Numbers (TINs) and provide such SSNs/TINs to the newly-established TRS User Registration Database (“TRS-URD), pending the adoption of alternative verification methods.1 As explained below, the collection of SSNs from VRS users is not necessary to pursue the Commission’s stated goal of preventing VRS waste, fraud, or abuse. It will, instead, put at significant risk the personal information of thousands of VRS users. In addition, it will encounter significant consumer backlash; unfairly burden deaf and hard of hearing consumers, and violate the Americans with Disabilities Act’s functional equivalency mandate.

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WAIVER REQUEST

The Commission’s rules may be waived for good cause shown.² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁴ Waiver of the Commission’s rules is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.⁵ As discussed below, the Petitioners submit that these conditions are satisfied and a waiver is justified.

A. The collection of user SSNs is not necessary to achieve the Commission’s stated goals of reducing VRS waste, fraud, and abuse.

The Commission and commenters alike are in agreement that reducing and/or preventing VRS waste, fraud, and abuse is a goal the Commission rightfully should fully pursue. The collection of SSNs, however, is not necessary to achieve this regulatory goal. This is because (1) there is no evidence indicating that the misrepresentation of one’s identity—either as an individual, or, more generally, as an eligible user of VRS—has contributed to VRS abuses in the past; and (2) even if the misrepresentation of identity were found to have contributed to VRS abuses, the provision of other, less “invasive” personal information—such as full name and date of birth—is sufficient to establish identity for purposes of VRS eligibility. In sharp contrast to other forms of TRS, particularly IP Relay, VRS users do not place VRS calls in anonymity since

² 47 C.F.R. §1.3.
³ Northeast Cellular Telephone Co. v. COMMISSION, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“Northeast Cellular”).
⁵ Id.
they will be personally viewable to the VRS communication assistant (CA). VRS CAs, moreover, will in almost all cases be amply trained to recognize potential fraudulent situations.

Furthermore, the Commission has recently made it known that the information provided by consumers to VRS companies for verification purposes will NOT be passed on to the Commission. Only the fact that a consumer has been verified is to be provided to the Commission. Moreover, the VRS companies are not required to retain any verification information. Consequently, the manner of verification is no longer relevant only the verification itself. Pursuant to the May 14, 2015 Commission order, other forms of identification is permitted as verification for those who do not have Social Security numbers or Tribal identification numbers.6 Since those forms of identification are acceptable for verification and because the Commission does not receive or retain the exact nature of identification, the various forms of identification listed in the May 14, 2015 Commission order should be allowed for all consumers, not just those who do not have Social Security numbers or Tribal identification numbers.

B. The SSN collection requirement will place the personal information of thousands of VRS users at risk.

Instead of furthering the Commission’s goal of preventing VRS waste, fraud, and abuse, what the SSN collection requirement will do is place at risk the personal identifying information of thousands of VRS users. As has been amply pointed out by other commenters, those risks are real, not theoretical, and they may in fact be more pronounced in this instance if, as is required, such SSNs will be fed into one single, centralized, database, thereby creating the potential for a

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single failure point.\textsuperscript{7} Compounding this problem is that there appears to be no requirement regarding what VRS providers \textit{themselves} must do with such personal identifying information—including SSNs, which have been termed “the most valuable commodity for an identity thief”\textsuperscript{8}—once they feed such information to the centralized database. For example, there appears to be no current requirement that VRS providers destroy such information promptly after feeding them into the central database in order to prevent a breach of privacy for their registered users.

Furthermore, the Privacy Act of 1974 requires that government agencies at the local, state, and federal level disclose to each person whether submitting SSNs are required, details on the use of this information, and what law or authority requires its use.\textsuperscript{9} The Commission has yet to provide such disclosure; to the contrary, even the Commission acknowledges it is not safe to share SSNs nor personal information: “To protect your privacy, you should not include personal information, such as your social security number, credit card numbers, pre-paid calling card numbers, bank or checking account numbers, etc. with your complaint.”\textsuperscript{10}

C. There is significant consumer resistance to providing SSNs and other personal identifying information.

The Consumer Groups have repeatedly stated on the record that VRS users are not comfortable giving VRS providers personal information such as their SSNs, even if it is the last four digits. The Consumer Groups have long opposed the collection of SSNs for any form of

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relay service and have made this clear in multiple Commission ex parte letters and joint filings relating back to May 2012.\textsuperscript{11} Deaf and hard of hearing consumers fear that sharing such private information puts them in a very vulnerable position as it renders them easy targets for hackers. At the time, the SSN Rule has been met with a great deal of resistance and concern. Circumstances, however, have changed. Consumers, including deaf and hard-of-hearing consumers, have grown increasingly wary of sharing sensitive information. This is especially valid given that since the publication of the 2013 VRS Order there have been a series of recent high-level hacks, such as what happened with the federal Office of Personnel Management (OPM),\textsuperscript{12} Internal Revenue Service (IRS),\textsuperscript{13} along with many several security data breaches of major retailers’ systems. In these technologically sensitive times, deaf and hard of hearing consumers are not comfortable placing such sensitive personally identifiable information in a central database, which unnecessarily creates a heightened risk of identity theft.

The Consumer Groups consist of a wide range of local, state, and national organizations and have received firsthand numerous complaints and objections to the SSN Rule and of their refusal to comply. The six VRS Providers filed a joint petition requesting a temporary waiver, stating it is extremely difficult to collect this personal information and find that deaf and hard of hearing consumers refuse to comply with the SSN Rule. This is verified by Rolka Loube, the

TRS Fund Administrator, which sent a letter dated July 27, 2015 stating they cannot move forward with the URD open registration period originally scheduled for September 1, 2015 and requested postponement to December 2016 to resolve this issue. The Consumer Groups support the request for postponement but caution the FCC that the SSN Rule will still be as problematic then as it is now, if it continues to insist collecting such information for eligibility requirements.

Given such reluctance from VRS users in providing the last four digits of their SSNs in this pursuit to prevent waste, fraud, and abuse, limiting the use of VRS to only those users who provide such information would deny access to this form of TRS to a significant segment of those in the United States that are the intended beneficiaries of TRS. The risk of requiring the SSN Rule outweighs any benefit to collecting such information, especially since such collection is not necessary and the FCC has not offered any justification for the SSN Rule.

D. The SSN collection requirement unfairly burdens deaf and hard of hearing VRS users only.

In addition to being unnecessary to preventing waste, fraud, abuse, all the while presenting significant risks to the personal identifying information of VRS users, the SSN requirement unfairly burdens deaf and hard of hearing VRS users in myriad ways.

First, on each VRS call, there is one hearing person and one deaf or hard of hearing person. The SSN requirement, however, applies only to the deaf or hard of hearing person. This constitutes unequal treatment that flies in the face of the ADA’s mandate for equal access to the telecommunications system.

Second, Section 504 of the Rehabilitation Act prohibits covered entities from, among other things, “[e]xclud[ing] a person with a disability from a program or activity” or “apply[ing]

13 See Lisa Rein, IRS says breach of taxpayer data far more widespread than it first thought: 610,000 taxpayers at risk.
eligibility criteria that tend to screen out persons with disabilities unless necessary for the provision of the service, program or activity.” The Commission’s SSN requirement potentially excludes deaf and hard of hearing people from using VRS if they do not have the required SSNs, and it tends to screen out those people, in violation of Section 504.

Third, without any method of alternative identification, the SSN rule exposes undocumented individuals by forcing them to disclose their lack of an SSN. This violates privacy rights as a consumer and is not addressed in any of the Commission’s privacy impact assessments. This risk of exposure must be remedied before the TRS-URD becomes operational. The Commission’s adoption of the Waiver Order demonstrates that it is willing to accept alternative verification of individuals without SSNs. Accordingly, the Commission should allow all eligible VRS users to provide unique identification other than SSNs if they desire.

E. The SSN collection requirement violates the ADA’s functional equivalency mandate by restricting user access to relay services.

Section 225(b)(1) of the Communications Act requires the Commission to “make available to all individuals in the United States a rapid, efficient nationwide communications service” including VRS, and to insure that such services are available “to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.” No statutory provision restricts the availability of relay services to deaf and hard of hearing persons that have SSNs. The Commission’s current SSN Rule—which prohibits a


VRS call from being placed in the absence of an SSN or TIN, if such absence prevents user validation—runs afoul of federal law.

Furthermore, requiring the collection of SSNs from those users who do have SSNs still falls short of functional equivalency. Those who are not deaf or hard of hearing can purchase telephone plans without having to provide such private, sensitive information. While many wireless carriers ask for SSNs when consumers sign up for plans, most will waive it with a deposit along with other identifying information, such as copies of utility bills. The Consumer Groups ask the Commission to waive the SSN requirement as to ensure that the VRS program comports with functional equivalence.

A WAIVER IS JUSTIFIED

For all these reasons, the Consumer Groups urge the Commission to waive the requirement to collect the last four digits of an eligible user’s SSN or Tribal Identification number by granting an immediate temporary waiver of the SSN Rule pending the establishment of less problematic and effective verification methods. Since the Commission’s 2013 Order, circumstances and public concerns about data security have justifiably increased. Furthermore there is plentiful evidence that individuals are refusing to provide this information and, as noted above, the collection of this information is not necessary to achieve the Commission’s valid objectives. Further, the Commission’s rule is in violation of the Privacy Act of 1974 and of the federal mandate for functional equivalence in telecommunications for deaf and hard of hearing consumers. A waiver would not jeopardize the public interest objective of avoiding waste, fraud and abuse. To the contrary, a waiver would advance the public interest of providing access to VRS services by eliminating the hardships and inequities outlined above.
PETITION FOR RULEMAKING

In addition to seeking the waiver outlined above, to the extent it is required to repeal the portion of rule 64.611(a)(4) that requires collection of certain SSN or Tribal Identification Number information, the Consumer Groups formally request a rulemaking so that the Commission may consider implementing a verification system which allows users a number of choices in the type of unique identification they provide.17 Specifically, Consumer groups request that the following language be stricken from the rule:

TRS User Registration Database information. Each VRS provider shall collect and transmit to the TRS User Registration Database, in a format prescribed by the administrator of the TRS User Registration Database, the following information for each of its new and existing registered Internet-based TRS users: full name; full residential address; ten-digit telephone number assigned in the TRS numbering directory; last four digits of the social security number or Tribal Identification number, if the registered Internet-based TRS user is a member of a Tribal nation and does not have a social security number; date of birth; Registered Location; VRS provider name and dates of service initiation and termination; a digital copy of the user's self-certification of eligibility for VRS and the date obtained by the provider; the date on which the user's identification was verified; and (for existing users only) the date on which the registered Internet-based TRS user last placed a point-to-point or relay call.

If the Commission believes additional verification information is necessary, the new system should employ a number of options for identification to ensure that the registration process is flexible and not onerous. For instance, a user could be given the option to submit his/her SSN for the purpose of identification if s/he feels comfortable with it, or instead could submit his/her driver’s license number or a different form of unique identifying information. Another solution

17 47 C.F.R. §1.401.
could be to request documentation from the deaf or hard of hearing consumer’s internet service provider which would be on file because it was a service that was purchased.

Given the large number of users who will need to register and the consequences of not being allowed to register, it is very important to provide flexibility for unique identification. Having said that, the Consumer Groups strongly believe that self-identification is sufficient for verification purposes and that any additional verification is an added layer of burden that is solely imposed on deaf and hard of hearing consumers. Consumer Groups recognize that the Commission adopted the SSN verification rule in 2013. As courts have recognized,

there is no requirement that the agency’s change in policy clear any “heightened standard.” FCC v. Fox Television Stations, Inc., 556 U.S. 502, 514 (2009). Instead, we ask whether actions that are a departure from prior agency practice, like other agency actions, rest on a “reasoned explanation.” Id. at 515. A “reasoned explanation,” in the event of an alteration in approach, “would ordinarily demand that [the agency] display awareness that it is changing position,” and “of course the agency must show that there are good reasons for the new policy.” Id. But beyond that, the APA imposes no special burden when an agency elects to change course.

Home Care Association of America v. David Weil, Case No. 15-5018, at 19, (D.C. Cir. Aug. 21, 2015). As explained above, there is good reason to change course and repeal SSN verification requirements for VRS users. Consumer Groups respectfully request that the Commission do so, and initiate and fast-track a rulemaking if necessary.

CONCLUSION

As illustrated in this filing, good cause exists for the Commission to waive the SSN Rule as applied to all VRS users. In addition to the requested waiver, the Consumer Groups hereby request that the Commission initiate a rulemaking proceeding to establish alternative requirements for unique identification for VRS.
Respectively submitted:

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