March 10, 2010

VIA ELECTRONIC MAIL and ECFS

Joel Gurin, Chief – Consumer Governmental Affairs Bureau
Federal Communications Commission
445 12st Street SW
Washington, D.C. 20554

RE: February 25, 2010 Declaratory Ruling

Dear Mr. Gurin,

I am writing on behalf of CSDVRS, LLC to offer our comments on the Declaratory Ruling issued by the Commission on February 25, 2010 concerning compensability of certain types of calls made through video relay service (VRS).1

As a preliminary matter, CSDVRS lauds the Commission’s efforts to eliminate fraud in the VRS industry, and we believe that this latest ruling is an exemplary step forward in protecting the integrity of the Interstate TRS Fund from those that would abuse it. CSDVRS also commends the Commission’s ruling that minutes generated for customer service are not reimbursable from the fund inasmuch as we believe this will encourage the hiring of more deaf and hard of hearing people for providers’ customer service departments in the spirit of the Americans with Disabilities Act (ADA). Furthermore, CSDVRS is pleased that the Commission has clearly delineated the types of compensable calls through this recent and prior rulings. However, we would like to address some issues in the recent ruling wherein we believe the Commission has made a mistake and overstepped its interpretation, or where further clarification is required.

The Commission stated in its order that VRS costs for employees of providers making calls across the provider’s platform are built into the business expense cost model of each

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provider and are not, therefore, compensable on a per minute basis. This is correct. However, CSDVRS would remind the Commission that the minutes of internal usage were also built into the revenue model when the Commission and the National Exchange Carriers Association (NECA) set the rate for VRS. Indeed, the inclusion of these minutes in the model has been part of the VRS rate since the inception of the industry, and the Commission is certainly aware that these minutes were made a part of each provider’s monthly submissions and have been used in the calculation of projected minutes and revenue. To deny this fact would not only be disingenuous, but would also represent a significant financial impact to all VRS providers.

By way of example, assume a hypothetical situation as illustrated in the attached spreadsheet to illustrate the rate setting and impact of internal calls. In the example, a VRS provider (“Company A”) projects 1,000,000 minutes per month, 5% of which were employee calls. Under the February Ruling, this would equate to 950,000 in reimbursable minutes. The total annual expense of Company A is $6,250,000 including all fixed and variable expenses with processing its projected minutes. The total capital, as allowed in the Annual NECA filing is $2,000,000 with an allowed return on invested capital (“ROIC”) of $225,000 based on 11.25%. The average cost per minute processed then is $6.25 with an allowed ROIC per minute of $0.23 giving the current NECA rate of $6.48 per minute. Based on the reimbursable minutes, revenue would equate to $6,151,250, but expenses based on the projected 1,000,000 minutes would be $6,250,000 for an overall loss on earnings of $98,750 or a -4.9% ROIC. Prior to the February Ruling, the ROIC per minute, based on the allowable 11.25% was $0.23 per minute. In the wake of the Ruling, the ROIC has fallen to -$0.10 per minute, a full $0.32 difference. Thus, in light of the February Ruling which imposes a negative ROIC, CSDVRS believes that the Commission must either shift the new rate upward, or allow for a separate compensation format for legitimate employee calls (similar to numbering outreach and education).

CSDVRS would stress that given the longstanding industry billing practices as mandated by the FCC and NECA, the Commission must ensure that the February Ruling is prospective and does not operate retroactively to legitimate calls. CSDVRS would thus caution the Commission not to cache this matter as a “clarification” or “emphasis” of existing rules when no such rules exist. While CSDVRS would agree that minutes generated simply for “minute pumping” are rightfully non-compensable (and should be subject to retroactive scrutiny), attempting to effectuate the recent order as a clarification, perhaps with retroactive effect, implicates several significant legal concerns including the constitutional rights of VRS providers and VRS users. As it is, the Order in its current format will compel VRS providers to modify their business practices to the detriment of their deaf employees. CSDVRS is no exception.

Over 60% of the non-interpreting staff at CSDVRS is deaf. Non-reimbursement for the calls they may choose to make while at work, whether personal or professional, places a burden on the company and ultimately results in unintended prejudicial treatment of deaf employees.

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2 Id. at ¶3.
3 The 11.25% ROIC rate was calculated by NECA in its 2008 Relay Services Date Request Instructions. NECA calculated this percentage to be included in the development of the 2008-2009 VRS compensation rate (FCC 04-137, ¶¶177-182).
and/or potential deaf employees. If a provider is prohibited from allowing its employees to utilize its own services, the pure economic impact of the February Ruling will drive companies to employ fewer and fewer deaf and hard of hearing individuals. The only alternative would be to compel employees to utilize a competing VRS provider which, of course, is counterintuitive to any free market operation.

CSDVRS prides itself on being deaf friendly and a deaf-majority employer, and we would urge the Commission to consider alternatives to a blanket prohibition on internal calls as it will obviate the ability of deaf employees to make legitimate calls under the guise of preventing illegal “minute-pumping.” In a prior application before the Commission, CSDVRS suggested monthly caps on employee generated minutes in order to reduce fraud and preserve the integrity of the Fund. Another option might be to allow providers to recover for one half of their internal employee minutes. A third option might be to allow providers to recover their direct costs for providing internal interpreters similar to reimbursement for numbering. All of these represent possible alternatives which would be more in the spirit of the ADA and the functional equivalency mandate.

CSDVRS recognizes and appreciates the need to stamp out industry fraud, and to protect the rights of deaf and hard of hearing people in their legitimate uses of VRS. CSDVRS has been extremely proactive in allowing its deaf employees communications access while still meeting the letter and spirit of the law. For example, at a significant cost to the company, we recently acquired a multi-point control unit (MCU) to allow for deaf to deaf conference calling in order to ensure that our deaf employees can converse with one another in a functionally equivalent manner without the need to bill the Fund. CSDVRS also maintains several in-house interpreters who support company meetings as well as hearing to deaf point-to-point calls between company headquarters and remote employees. Providers that employ predominantly hearing people do not have to meet these expenses, yet the rate setting process results in a rate structure for all providers irrespective of their number of deaf versus hearing employees. The provider comprised primarily of hearing people has the luxury of expenses associated with employing deaf employee expenses factored into the final rate, but once the rate is set, it has the distinct advantage of a lower cost structure moving forward. Ultimately the provider with more hearing employees will benefit as the costs of hearing calls will be minimal while the provider that hires more deaf employees will incur the costs of VRS, in house interpreting, MCU functionality, etc. The end result of this methodology will be to the detriment of deaf and hard of hearing people in the workplace, completely in contradiction to the spirit of the ADA, as employers will be compelled to seek to minimize their costs by precluding the employment of deaf people. Ultimately, CSDVRS believes that the legitimate use of VRS by people employed in VRS companies should be reimbursed, even if at a capped or reduced rate. Anything less would be prejudicial.
Lastly, the February Ruling states that providers may not receive compensation for VRS calls to which an employee of a provider’s subcontractor is a party. The Commission must clarify this point as to the extent of the subcontractor’s relationship and limit it solely to the marketing and/or provision of VRS. By way of example, if a provider subcontracts with a company to provide IT support, but nothing else, the employees of that subcontractor should not be prohibited from using the provider’s service as their subcontracted work is wholly unrelated to the provision or marketing of VRS.

In conclusion, CSDVRS believes that clarification of the February Ruling is necessary for the protection of the rights of deaf and hard of hearing people. While we agree entirely with the ostensible intent of the Ruling, we believe clarification and a stepping down is necessary to protect the interest of all parties involved, including the FCC.

Thank you for your time and attention to this matter.

Sincerely,

[Signature]

William Banks
General Counsel

CC: Mark Stone
   Thomas Chandler
   Gregory Hlibok

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4 Id. at ¶5.
Company A

(A) Demand Data 1,000,000
(B) % Employee Based Minutes 5%
(C) Reimbursable Minutes 950,000 = A * (1 - B)
(D) Total Annual Expense $6,250,000 - Includes all fixed and variable expense associated with processing (A)
(E) Total Capital $2,000,000 - As allowed in Annual NECA Filing
(F) Allowed ROIC $225,000 - Based on 11.25%
(G) Total Annual Expense

(H) Avg. cost per minute $6.25 = D / A
(I) Allowed ROIC per minute $0.23 = F / A (Based on 11.25% ROIC)
(J) NECA Rate $6.48

P&L
Revenue based on (C) $6,151,250 = C * J
Expenses based on (A) $6,250,000
EBITDA $(-98,750)
True ROIC % -4.9%

True ROIC per Minute $(-0.10)
Vs. Original ROIC per Minute $0.23
Delta $(-0.32)

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<tr>
<th>ROIC Sensitivity</th>
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<tr>
<td>% Employee Minute</td>
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<tr>
<td>1%</td>
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<td>6%</td>
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* If Employee minutes are more than 3% of the total minutes, Company A has a negative ROIC