

**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
	)	
Telecommunications Relay Services and Speech- to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	

**COMMENTS OF CONSUMER GROUPS IN RESPONSE TO  
PUBLIC NOTICE SEEKING ADDITIONAL COMMENTS ON  
STRUCTURE AND PRACTICES OF THE VIDEO RELAY SERVICE (VRS)  
PROGRAM AND ON PROPOSED VRS COMPENSATION RATES**

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## **SUMMARY**

The guiding principle for all Telecommunications Relay Services programs is that deaf, hard of hearing, late deafened, deaf-blind, deaf-mobile-disabled and speech disabled individuals have functionally equivalent, nationwide access to the telephone system and network. VRS has made great strides towards achieving functional equivalency in the face of the economic pressures that our country has experienced; however, we have not achieved full functional equivalency. In order to meet the functional equivalence mandate of the Americans with Disabilities Act, the FCC needs to design a rate structure and condition the right to receive reimbursement from the TRS fund upon meeting functional equivalence performance metrics. These metrics should include items raised in the Public Notice, including video relay equipment, interoperability of equipment and software, research and development, and outreach.

The Consumer Groups see great potential to continue the progress achieved to date if the Commission applies the ten core functional equivalency principles defined in the TRS Policy Statement to the VRS program. A critical principle of functional equivalency is the interoperability and portability of VRS services and equipment with no loss of core functionality so that consumers can easily and seamlessly communicate with each other. The Consumer Groups are pleased that the Commission shares the goal of interoperability and portability of VRS services and equipment, but oppose mandating use of a single VRS application. A single application will not achieve the goal of interoperability or be consistent with other, equally important goals that the VRS program should be designed to meet.

Another core functional equivalency principle is that consumers should have the ability to choose from multiple, qualified VRS providers and their various products/applications. Competition drives innovation, improves service quality, and is key to functional equivalency.

Because hearing consumers are not restricted to one choice of communications service provider, the Commission should not adopt rules that effectively limit VRS users to one option. In short, rather than moving VRS toward functional equivalency, mandating a single application is likely a step backwards.

The Consumer Groups recommend Commission adoption of a VRS “reference platform” that will serve as a basis for interoperability testing among multiple VRS applications and for third-party tests to ensure that VRS services are compatible with the reference platform and are interoperable. The Consumer Groups envision the “reference platform” as a basic structure that each VRS provider can adopt, build and expand on for that provider’s service. Alternatively, a provider would use it as a baseline for testing to ensure that its own in-house applications are interoperable. Innovation is much more likely to come from a VRS program that has multiple private providers competing with each other in the provision of applications than from a single governmental entity or contractor that develops a single VRS application. By requiring a “reference platform” against which all compensable applications are tested, together with a third-party interoperability test, the Commission will move toward interoperability while maintaining the conditions necessary to encourage innovation.

The Consumer Groups do not support rate-of-return type regulation for VRS providers. Setting rates via price caps would be consistent with the principle that the Commission adopt rules to encourage innovation and efficiency and the rate methodology the Commission applies to traditional voice telecommunications providers. While the Consumer Groups do not comment on the specific rate levels for each tier, or RLSA’s presentation of historical or projected costs, the goal of functional equivalency must be the basis for any rate structure. The Consumer Groups are not in a position to evaluate VRS providers’ claims that the proposed rates do not

cover costs. If the reimbursement rate is set below-cost, however, the Consumer Groups are concerned that service quality will diminish, service improvements that bring consumers closer to functional equivalency will not be made, and the VRS program will fail to meet the ADA mandate that all consumers have access to functionally equivalent communications services.

The Consumer Groups look forward to working with the Commission to design VRS program changes that move consumers toward the goal of functional equivalency while at the same time balancing sometimes competing goals and principles. Above all, Consumer Groups urge the FCC to develop a complete record on any significant structural VRS reforms, including the potential impact of rate changes. Part of developing that record requires that the Commission provide timely ASL interpretations of its proposals and gather data (including videos from consumers who use ASL) about the potential impacts its proposals may have on consumers and the provision of VRS services as a whole. Lastly, the Commission must clearly and concisely explain how such data has been evaluated before suggesting or adopting reforms.

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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”), National Black Deaf Advocates, Inc. (“NBDA”), Cerebral Palsy and Deaf Organization (“CPADO”), Alexander Graham Bell Association for the Deaf and Hard of Hearing (“AGBA”) and American Society for Deaf Children (“ASDC”) (collectively, the “Consumer Groups”), respectfully submit these comments in response to the Federal Communications Commission’s (“Commission”) Public Notice seeking additional comments in the above-referenced proceedings.<sup>1</sup> In these Comments the Consumer Groups provide certain

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<sup>1</sup> *Structure and Practices of the Vide Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Public Notice, CG Docket Nos. 10-51 and 03-123, DA 12-1644 (rel. Oct. 15, 2012) (the “*Public Notice*”).

general principles that must be applied to the VRS Program and then respond to the Commission's specific questions in the *Public Notice*.<sup>2</sup>

## **I. GENERAL PRINCIPLES FOR THE VRS STRUCTURE AND PROGRAM**

As the Commission is well aware, the guiding principle for all Telecommunications Relay Services programs, including the VRS Program, is the mandate of the Americans with Disabilities Act (“ADA”)<sup>3</sup> that deaf, hard of hearing, late deafened, deaf-blind, deaf-mobile-disabled, and speech disabled individuals have nationwide access to the telephone system and network “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> In recent years, VRS has made great strides towards achieving functional equivalency in the face of the economic pressures that our country has experienced; however, we have not achieved full functional equivalency. In order to meet the functional equivalence mandate of the ADA, the FCC needs to design a rate structure and condition the right to receive reimbursement from the TRS fund upon on meeting functional equivalence performance metrics. The Commission has established such performance measurements for VRS and other programs and they are standard components of the regulation of traditional local exchange services and service agreements for other telecommunications services. These performance metrics, established by the FCC, should include items raised in the Public Notice including video relay equipment, interoperability of equipment and software, research &

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<sup>2</sup> The Consumer Groups are not providing comments in responses to all the questions in the *Public Notice*, but may provide reply comments to those that are not addressed in these Comments.

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

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

development, and outreach. The Consumer Groups see great potential to continue the progress achieved to date if the Commission applies to the VRS program the ten core functional equivalency principles defined in the TRS Policy Statement<sup>5</sup> submitted to the Commission on April 21, 2011. The TRS Policy Statement defines functional equivalence as follows:

For the Commission and the TRS industry to fulfill the original Congressional intent of functional equivalency, the Consumer Groups submit a list of ten core functional equivalency principles that represent our expectations for high quality, empowering telecommunications relay services as follows:

- TRS must provide full benefit to all parties on a call, regardless of the complexity and/or cost.
- The TRS experience for an individual who is deaf, hard of hearing, deaf-blind, deaf-mobile-disabled or speech-disabled must, at the minimum, be equivalent to that of a call between two hearing persons on the telephone network or over the Internet.
- TRS users must be offered the ability to enjoy high quality relay services using mainstream products and services.
- TRS equipment and services must be accessible and address the diverse needs of individuals who are deaf, hard of hearing, deaf-blind, deaf-mobile-disabled or speech-disabled.
- Interoperable communication must be readily available and achieved with anyone, anytime, anywhere.
- Vendors must be motivated to bring products to market that keep pace with mainstream technological advancements, and are continually improving the relay experience.
- TRS users must have a wide selection of choices regarding equipment and software interfaces as well as hardware options, TRS program services and methods of making or receiving relay calls.

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<sup>5</sup> *Structure and Practices of the Vide Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Notice of *Ex Parte* Meeting at 7 (Apr. 12, 2011) (the “Policy Statement”).

- Emergency calls made through TRS must fully satisfy the safety and security needs of TRS users.
- TRS users must receive prompt, comprehensive customer care service from their relay providers in their preferred communication modality.
- The commitment to uphold the integrity of the TRS Fund must be fully maintained.

Consumer Groups urge the FCC to take on the challenge of exploring the definition of functional equivalency beyond the ten core concepts described above through formal proceedings and activities such as workshops and forums. Functional equivalency is an evolving concept that changes with new technology, developments, and trends in telecommunications and the provision of interpreting services.

From a consumer's perspective and as expressed in the Consumer Groups' TRS Policy Statement, a critical principle of functional equivalency is the interoperability and portability of VRS services and equipment with no loss of core functionality. Interoperability and portability, which are integral to the telephone system, allow consumers to easily and seamlessly communicate with each other. Hearing consumers do not ask one another if they are using a cell phone, a land line, a VoIP connection, etc. It is irrelevant because they are able to connect to one another's devices without making adjustments. To date, consumers of VRS have not achieved full interoperability and portability in VRS services and equipment. Therefore, a consumer often has more difficulty communicating, or is unable to communicate, with another consumer that uses the services and/or equipment from a different VRS provider. The Consumer Groups understand that current interoperability problems are the result of a combination of issues with applications/equipment and VRS provider gateways/proxies. While the Consumer Groups are pleased that the Commission shares the goal of interoperability and portability of VRS services and equipment, we do not believe a single application will achieve this goal or be consistent with

other, equally important goals that the VRS program should be designed to meet. Specifically, the Consumer Groups encourage the Commission to structure the VRS program to achieve interoperability and portability, while at the same time maintaining market incentives for the VRS industry to continue to innovate.

The Commission suggested in the Public Notice that a single VRS application be considered. The Consumer Groups oppose a single VRS application. Another core TRS Policy Statement principle is that consumers should have the ability to choose from multiple, qualified VRS providers and their various products and applications.<sup>6</sup> Competition drives innovation, improves service quality, and is key to functional equivalency. For example, the Consumer Groups understand that a major wireless merger did not take place recently, in large part due to government concerns about a potential duopoly in the wireless market. Because hearing consumers are not restricted to one choice when choosing their communications provider, the Commission should not adopt rules for the VRS program that effectively limit VRS users to one option. VRS consumers are no different than other telecommunications consumers in their desire to have several options for equipment and service provision available to them. VRS consumers desire to be in a similar sort of market environment, not a single provider or government run program. Moreover, there is no evidence to suggest or support that a single application would address interoperability issues that arise from gateway/proxy problems. Furthermore, interoperability is only one of many considerations related to consumer needs in the VRS program. In short, rather than moving VRS toward functional equivalency, mandating a single application is likely a step backwards.

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<sup>6</sup> Policy Statement at 9.

The Consumer Groups recommend Commission adoption of a VRS “reference platform” that will serve as a basis for interoperability testing among multiple VRS applications and for third-party tests to ensure that VRS services are compatible with the reference platform and are interoperable. As explained further in response to question 2 below, The Consumer Groups envision the “reference platform” as a basic structure that each VRS provider can adopt, build and expand on for that provider’s service. Alternatively, if the feature set of the reference platform does not meet the provider’s specific needs, a provider may simply use it as a baseline for testing to ensure that their in-house applications are interoperable. Consumer Groups believe the following, among other, benefits would result from adoption of a “reference platform”:

- Provide a baseline for interoperability, both among VRS industry participants and with mass market solutions;
- Allow customization of services to meet needs of population or particular segments of the population; and
- Encourage more innovation because VRS providers will continue to compete on the features of their particular application(s), without being limited to a common feature set that would result from forcing a single application on every provider (and every consumer).

Innovation is much more likely to come from a VRS program that has multiple private providers competing with each other in the provision of applications than from a single governmental entity or contractor that develops a single VRS application. By requiring a “reference platform” against which all compensable applications are tested, together with a third-party interoperability test, the Commission will move toward interoperability while maintaining the conditions necessary to encourage innovation.

“Goal 1” of the Consumer Groups’ Policy Statement stresses the importance of having “quality standards ... with respect to equipment (hardware, software, and/or firmware),

telecommunications network infrastructures, platform and service.<sup>7</sup> The Consumer Groups continue to encourage the Commission to utilize performance measurements and metrics, designed to meet both consumer and Commission expectations, in tandem with a reference platform. The Commission should continue to utilize these performance measurements and metrics and adjust them as technology changes, with functional equivalency always being the goal.

As explained in Section III, the Consumer Groups do not support rate-of-return type regulation for VRS providers when the Commission has abandoned rate-of-return for all other communications providers. Setting rates via price caps is consistent with the principle that the Commission should adopt rules that encourage innovation and efficiency. While the Consumer Groups do not comment on the specific rate levels for each tier, or RLSA's presentation of historical or projected costs, the goal of functional equivalency must be the basis for any rate structure. The Consumer Groups are not in a position to evaluate VRS providers' claims that the proposed rates do not cover costs. If the reimbursement rate is set below-cost, however, the Consumer Groups can apply common sense to what will happen ... service quality will diminish, service improvements that bring consumers closer to functional equivalency will not be made, consumer choice will be reduced to one or two providers, and the VRS program will fail to meet the ADA mandate that all consumers have access to functionally equivalent communications services. Deaf and hard of hearing consumers do not have the option of buying a \$10 phone at retail and signing up for low-cost or prepaid telecommunications services. Consumers are already paying for expensive broadband service needed to access VRS services, imposing new or

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<sup>7</sup> Policy Statement at 7.

additional hardware or software costs on consumers could result in loss of access to the vital lifeline of telecommunications access for deaf and hard of hearing consumers.

Consumer Groups look forward to working with the Commission to design VRS program changes that move consumers toward the goal of functional equivalency while at the same time balancing sometimes competing goals and principles.

Finally, Consumer Groups urge the FCC to develop a complete record on any significant structural VRS reforms, including the potential impact of rate changes. It is imperative to develop a record that is accessible. The Commission has an obligation to provide full ASL interpretations of its proposals, at the time the proposals are issued in order to include the very public the VRS program is designed to serve. It is not sufficient to provide signed synopsis or interviews about notices done by third parties. Further, the public record must provide for responses in ASL. Currently, the very people who depend upon the VRS program every day are disenfranchised from providing feedback on it in their native language. Additionally, the Commission must gather data about the potential impacts its proposals may have on consumers and the provision of VRS services as a whole. Lastly, the Commission must clearly and concisely explain how such data has been evaluated before suggesting or adopting significant reforms.

## **II. COMMENTS ON STRUCTURAL REFORM OPTIONS**

### **A. VRS Access Technology**

- 1. The Commission proposed to establish standards for iTRS Access Technology, including VRS Access Technology, in the 2011 VRS Reform FNPRM. Would the process for establishing and maintaining standards discussed in the 2011 VRS Reform FNPRM be appropriate for developing an application or establishing standards for an application? Should the application or key components thereof be open source?**

The Consumer Groups believe that the Interstate TRS Fund Advisory Council (“iTRS Council”), as reconstituted, should be involved in the process of establishing and maintaining standards which include performance measurements and metrics. The iTRS Council should include Commission staff, the TRS Fund Administrator, VRS and general industry representatives, independent technology experts and engineers, academics, and organizations representing deaf and hard-of-hearing individuals. (RLSA only has experience and expertise as a Fund Administrator and is not in a position to assist the Commission with technical issues or service quality concerns.) In reconstituting the iTRS Council, the Consumer Groups ask the FCC to broaden the scope of its responsibilities to reach beyond rate issues to include technical issues such as interoperability and portability, and to identify, monitor and upgrade the service quality performance standards for TRS providers. This iTRS Council should not only address VRS issues, but issues related to all forms of TRS and should work under the auspices of the Disability Rights Office of the FCC’s Consumer and Governmental Affairs Bureau. The reconstituted iTRS Council should work with the Commission and in coordination with the various third party administrators that are involved in aspects of the TRS program.

The Consumer Groups reiterate that they do not support the idea of moving to a single VRS application. Rather, we support a VRS industry with multiple providers offering multiple applications that are all interoperable and portable. The Commission should require third-party interoperability testing and certification utilizing a “reference platform” and establish minimum standards for provider-developed or third-party applications. The “reference platform” must evolve with VRS and mass-market technologies as well as ensure interoperability with mass-market video conferencing technology.

- 2. Should the Commission mandate use of a single application or allow development of multiple, interoperable applications? Who should be**

**responsible for application development? For example, should the Commission develop, by contract, such an application? How should the developer of the application be compensated?**

Consumer Groups strongly oppose any Commission mandate of a single application for the following reasons:

- a single application cannot meet the needs of diverse populations (e.g., deaf-blind and deaf-mobile-disabled);
- a single provider responsible for development of an application will not provide the benefits of innovation consumers have enjoyed in a competitive market with multiple providers;
- a single application developed by contract will not be able to keep pace with or any incentive to keep up with technological changes;
- a single application will unduly restrict consumers' ability to use the application on new technologies (e.g., new smartphone) because the developer will control the pace of updates necessary to accommodate new hardware; and
- use of a common application will preclude consumers from using third-party equipment or software required by their employer, offered by their community-based organization, etc.

Instead of a single application, there should be multiple, interoperable applications available to consumers.<sup>8</sup> The best way to achieve that goal is to use a “reference platform” as the underlying basis for providers and other third parties to develop customized VRS applications. In the past, VRS applications were tested against Microsoft Netmeeting. In other words, Netmeeting served as a *de facto* reference platform for VRS. During that time, point to point interoperability was generally better than it is today, with consumers able to call each other by IP address. Having a reference platform is also akin to TTY vendors testing their TTYs with Ultratec's TTYs to make sure theirs work correctly. But no one has forced relay services or customers to use only Ultratec's offerings, rather than Ameritech and other competitors. Nor would anyone suggest that this is a good idea. The Consumer Groups are not suggesting that the dominant VRS provider's platform should serve as the *de facto* reference platform either; rather

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<sup>8</sup> See Goal 4 of the Policy Statement at page 9.

we are illustrating the concept that testing against a known high-quality implementation ensures better interoperability.

Another example of a reference platform can be found in the next generation 9-1-1 context. The RERC-TA developed a platform called Tipcon1, which provided one of the first implementations of the standard for real-time-text. (It is available at <http://sourceforge.net/projects/tipcon1/>.) The Consumer Groups understand that other developers used Tipcon1 either as a basis for their own work, or for testing to make sure that their implementation was compliant with the standards for real-time text. In effect, one could say that Tipcon1 has become a reference platform for real-time text. Similarly, there is a program called AllanEC, which is part of the REACH112 project in Europe, which is close to becoming a reference platform for the NG-9-1-1 video, audio, and real-time-text standards. Vendors are testing their own implementations and are ensuring that it is interoperable with AllanEC, to gain confidence that they are implementing the standards correctly.

The reference platform should be enforced through a contract with an independent third party to certify that each VRS provider service is interoperable (including the VRS provider's, network, equipment and applications) and the Commission should precondition VRS reimbursement upon certification of interoperability (or add this to current certification requirements). As stated above, the use of a "reference platform" will help ensure interoperability while maintaining the market conditions necessary for future innovation.

An independent third party should develop, administer, maintain and update the reference platform. The selection of the independent third party(ies) by the Commission should involve both consumer groups and industry players to ensure that all parties feel confident with the system and selection. The Consumer Groups suggest that either the iTRS Council or a separate

blue ribbon selection committee recommend a bidding process for the contracts, on which recommendation the Chairman's Office would then act.

- 3. Should providers be able to continue to offer their own internally developed applications? If so, under what conditions? For example, should there be an interoperability testing process? How would such an interoperability testing process be structured?**

For the reasons described in our general principles, VRS providers must be able to offer their own internally developed applications. To ensure interoperability, the Commission should require interoperability testing and certification of such applications by an independent third party.

- 5. What off-the-shelf hardware and operating system platforms should be supported? Should users be responsible for procuring their own off-the-shelf equipment, or should providers be involved in the acquisition and distribution of end user equipment to VRS users?**

Consumer Groups believe that equipment and software developed and distributed by providers lead to functionally equivalent access to telecommunications services. Such equipment includes unique properties such as flashing lights and high-quality video technology that is focused on capturing "flying hands." In addition to equipment and software distributed by providers, it is critical for consumers to have access to both off-the-shelf and proprietary equipment at their choosing in order to maintain robust options for VRS services. Even if a variety of equipment options are available, many low income deaf, hard of hearing, late deafened, deaf-blind, deaf-mobile-disabled and speech disabled individuals may not have the financial resources to obtain such equipment. To the extent that the Commission does not permit the costs of equipment to be included in the rate calculations, the Commission must provide another mechanism to support the distribution of VRS equipment to such low income consumers. Without such equipment, these consumers may not have access to the VRS program. One

alternative to including the cost of equipment in the rates is to have a voucher system that will subsidize the equipment for qualified consumers.

VRS providers should not be prohibited from distributing equipment (proprietary and off-the-shelf) in addition to consumers being able to acquire off-the-shelf equipment. Many deaf, hard of hearing, late deafened, deaf-blind, deaf-mobile-disabled, and speech disabled individuals may have difficulty purchasing off-the-shelf equipment themselves. Allowing VRS providers to distribute such equipment would help provide access to VRS services to such consumers. Further, VRS providers often provide equipment (proprietary and off-the-shelf) that is customized for VRS services or include features that are not always available with off-the-shelf equipment, such as flashing lights that indicate when a call is being received.

Further, all multi-function equipment should be supported by the VRS program. In particular, video conference equipment, televisions, set top boxes, and game consoles should be supported. Having VRS capabilities incorporated into, or available through, equipment that consumers may already have or acquire for other purposes could reduce the overall cost to the consumer to obtain access to VRS services.

**6. How should consumers be involved in the development, selection, certification and on-going enhancement of either the core or the application?**

The Consumer Groups oppose mandated use of a single application and instead believe that multiple, interoperable applications based on a reference platform should be allowed. This multi-faceted approach will provide for greater consumer choice and allow development of different interfaces and applications that can be customized for different user's needs. While these different applications must remain interoperable, the Commission should not limit or restrict innovation and choices by picking a single application that all providers and consumers are then forced to use.

Consumer involvement needs to start earlier, during the notice and comment phase of the FCC's rulemaking. ASL interpretations of FCC rulemakings and notices must be posted simultaneously with English text versions and consumers must have the ability to submit comments in ASL.

Consumers must also be involved in the development, selection, certification and other processes related to the reference platform and interoperability certification. The inclusion of the reconstituted iTRS Council or a subcommittee organized to address VRS issues as part of the process will provide the most efficient method to ensure that consumer input is provided and incorporated into the development of the new system. This group's input should be incorporated into all phases of the process including the selection of third parties to certify interoperability, development of the reference platform, development of the interoperability tests and procedures, and designing and updating the minimum standards for the reference platform. In addition, the participation of the reconstituted iTRS Council or subcommittee will help to ensure that any certified applications fully meet functional equivalency requirements.

**7. How would users obtain support for issues relating to the application or its use on their equipment (e.g., network firewall issues, troubleshooting problems)?**

Consumers must have the ability and option to alert providers and manufacturers about problems with services or equipment especially when they face problems with interoperability. The Consumer Groups are particularly concerned with the current revolving "blame game" as it relates to interoperability requirements. Specifically, when faced with user complaints, a VRS provider sometimes claims that problems with interoperability are caused by another provider or by the user's broadband connection or service, while providers of broadband connections often assert that the problems arise with the VRS provider. This type of finger pointing puts the consumer in a nearly impossible position while providers (broadband and/or VRS) blame each

other without cooperation and often without any resolution to the problem. In order to resolve these issues and to keep consumers out of the endless loop of finger-pointing, the Commission must adopt a third-party resolution process. It does not require a 15 minute problem solving session for a voice telephone user to call another voice cell phone user. The system supports them both, ubiquitously and invisibly. VRS users require the same. Using the suggested approach, once an application has been tested and certified as interoperable, if a consumer encounters a problem, they may then request validation of interoperability by an independent third party who can identify the specific problem and work with the involved providers to resolve the issues. Such a process would take the consumer out of the middle and allow a neutral third-party to work with providers to ensure better service and resolution of the technical problems. The alternative is still not functionally equivalent to the general populations' experience, but it would be an improvement.

- 8. What other approaches might be considered to select an application or applications for use in the VRS system? For example, should the Commission host a competition among existing VRS access applications and/or commercial standards-based off-the-shelf video conferencing applications? What would be the benefits and drawbacks of these or other alternate approaches?**

The Consumer Groups reiterate their opposition to a Commission mandate of a single application for use in the VRS system. The Commission must allow and encourage the development, testing and certification of third-party applications which, if they pass interoperability testing and minimum standards, should be supported.

- 9. How would a transition to a VRS system that relies exclusively on a common application be accomplished, and over what period of time?**

The VRS system should not rely solely on a single application. Instead, when the VRS system transitions to a common reference platform that supports multiple applications, the primary goal of the transition must be to maintain functional equivalency and ensure that no

users are disenfranchised through the transition process. Specifically, there should be a sufficient transition period, including robust consumer outreach and education, to make sure that no user loses services as the Commission implements interoperability certification and use of a common reference platform.

**10. What changes in the Commission’s rules would be necessary to adopt this proposal or one of the alternatives described above?**

The Commission’s rules should clearly set forth the procedures and requirements for the selection of third party administrators to oversee the interoperability certification process and reference platform. The administrators should be required to consult with the iTRS Council in the development of the reference platform, interoperability certification and testing requirements. In addition, the reference platform should be upgraded on a regular basis to ensure it remains current with the latest technological advances and features.

**B. Enhanced iTRS Database Operations**

**1. What functions and services should the enhanced iTRS database provide?  
Some possibilities include:**

- **Development and distribution of VRS access technology, such as a common application**
- **User registration and validation (account and credential creation)**
- **Per-call user verification (authentication)**
- **TRS numbering directory functions**
- **Usage accounting**
- **Call routing**
  - o **To the user-chosen default or the per-call ASL relay CA service provider**
  - o **To/from other end users (i.e., point-to-point calls)**
  - o **To/from the PSTN**
  - o **911 call processing**
- **Vertical features such as video mail and address book**

Subject to the development and adoption of robust privacy and user protection guidelines and requirements discussed herein and in the previously filed Comments and Reply Comments, the Consumer Groups agree that the enhanced iTRS database should include registration and

validation functions. The registration process should not be burdensome and should be easy for the user to complete. The validation process must also be seamless and transparent to the user and the Consumer Groups urge the Commission to adopt a self-identification process for user validation to ensure that all deaf and hard of hearing people can access the services they need.

As part of the registration process, users should also be able to register multiple devices within the iTRS database. Allowing multiple device registration will help to streamline use of the service by circumventing the requirement to manually log into the service each and every time the user attempts to make a VRS call from a different device. The registration process should also allow users to register third-party addresses (employer, library, community-based organization) in the iTRS database. This will allow users the greatest flexibility in their choice of equipment, since some companies require registration under their own domain, such as 1234@abccompany.com. Restricting or denying the registration of these third-party addresses would deny users the right to access VRS where a third party requires use of their domain name for their equipment.

As the Commission is aware, the Consumer Groups support rules that would permit hearing individuals to obtain ten-digit numbers that would allow them to make point-to-point calls with VRS users. The Consumer Groups understand that there previously has been concern that permitted hearing users to get ten-digit numbers could result in fraudulent calls. One key advantage of the database could be to alleviate these concerns. If all registration is done through a central database, it presumably would be easier to flag a hearing person's ten-digit number in the system so that it is not eligible for VRS reimbursement while still allowing them to use the system to make direct calls to their deaf or hard of hearing contacts. Ideally, the registration system would be designed to allow a deaf or hard of hearing individual to use their own login

and ten-digit number to access and use a hearing person's registered equipment to make a VRS call.

Any enhanced database must ensure that the personal information of the users remains private and confidential. Just as the customer proprietary network information ("CPNI") of hearing users' telephone calls are protected under the Commission's regulations, so too must the information used to register and validate use by the deaf and hard of hearing remain protected. As the Commission is aware, the Consumer Groups support the adoption of rules that would protect relay users from improper use of their CPNI by service providers and these rules should mirror the protections for users of voice and VoIP services. Since a national database will conceivably contain information on every deaf and hard of hearing person in the country, protection of that personal information is paramount. All consumers should be entitled to the same amount of privacy protection and, for TRS services, functional equivalency requires these types of confidentiality protections be put in place. Furthermore, there is no disadvantage nor should there be any difficulty in applying CPNI-like protections to the information contained in the national database.<sup>9</sup> The success of a centralized database system depends on maintaining the security and privacy of users' information and ensuring it is accessible only by those providers who need information in order to provide service.

- 2. How would ASL relay CA service providers interface with the enhanced iTRS database? Would each ASL relay CA service provider be required to establish its own internal routing system for distributing calls among its call centers, or should the enhanced iTRS database allow providers to specify provider-internal call routing rules?**

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<sup>9</sup> See also Comments of Deaf and Hard of Hearing Consumer Advocacy Network to Further Notice of Proposed Rulemaking, Structure and Practice of the Video Relay Service, Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities, CG Docket No. 10-51, 03-123 at 22-24 (filed March 9, 2012).

As a preliminary matter, the Consumer Groups first ask the Commission to define and clarify the meaning of “internal routing system,” including how it will function, who will control the system and how the routing systems of separate service providers might interact and connect. Such clarification is essential to ensure that operation and control of any internal routing system will not result in a bottleneck for incoming calls. The design of the new database administration and system should work to *alleviate* delays and call failures and not include processes that would *increase* the rate and occurrence of such problems.

Although it is not clear whether the Commission intends to incorporate this concept in “internal routing systems,” the Consumer Groups support the option of a user profile for consumers and believe a user profile may be achievable with a centralized database. While such profiles should not be required for use of the VRS system, if voluntarily completed the profile could be very helpful to both users and providers by allowing users to specify self-assessed communication needs which then allows the provider to match the user with the appropriate communications assistant when possible. For example, the ideal VRS experience would include a choice of interpreters based on expertise such as an interpreter with legal experience if the user is calling an attorney or an interpreter with medical knowledge if the call is to a doctor or health care provider.

Another advantage of a centralized database would be that the database administrator, rather than the VRS provider, can be the entity that maintains the user profile and thereby can ensure that it is consistent with NG911 requirements. By making the administrator responsible for maintaining the user profile, it would eliminate the need for a consumer to establish multiple profiles with both their primary and dial-around VRS providers. Of course the Commission

must also ensure that the administrator adopts sufficient confidentiality and privacy safeguards so that user's personal information is not made public.

3. **CSDVRS' proposal appears to contemplate the existence of multiple video communication service providers. Is this necessary? How would the user or application choose among these providers? If the choice of the communication service provider is independent of the ASL relay CA service, based on what criteria or metrics would users or applications make that choice? Given that VRS providers currently compete primarily on quality of CA service, should the Commission contract for a single provider of the enhanced iTRS database functions, including video communication service, that allows users to access the ASL relay CA service of their choice? If the Commission does choose to contract for these functions, should there be a single contract or multiple contracts?**

The Consumer Groups support policies and regulations that allow for multiple VRS providers. Diversity, choice and competition in the VRS industry are absolutely necessary to ensure quality and availability for deaf and hard of hearing users. While the quality of interpreting service is an important differentiation between VRS providers, VRS providers also compete on the basis of making applications available for new and third-party hardware and software, customer services and their variety of features (such as answering machines and split screens and conference calls), as well as convenience.

As the Consumer Groups have previously articulated, competition and choices among a number of qualified vendors gives users a range of choices in features and services. The Commission's objectives and goals should include the development and maintenance of a healthy, evolving and competitive TRS industry that utilizes a thoughtfully developed, well-designed and credible national certification process. The necessary regulations should support and not hinder the development of an array of services and features that meet diverse communication needs and provide an "equivalent conversation experience" by all forms of TRS so that all users receive prompt, comprehensive service and customer care.

**4. What changes in the Commission's rules would be necessary to implement such a structure?**

In addition to adopting CPNI-type protections to limit access to consumers' information maintained in the iTRS database, the Commission must adopt rules that ensure there is an easy, fluid and seamless registration system. The Consumer Groups support the adoption of a third party registration system that is not burdensome or intrusive for deaf and hard of hearing people and which fulfills two necessary goals. This system will need to verify the identity of the registrant and must also ensure that the system is being used to provide telecommunications services to deaf and hard of hearing people. With regard to the first requirement, registrants should not be required to provide their Social Security numbers in order to receive service. Instead the system could employ a number of options for identification, such as part or all of the Social Security number, driver's license number or other unique identification in order to make sure the registration process remains flexible and is not onerous. For example, as detailed in filings with the Commission, systems like the Precise ID developed by Experian provide a method by which identity can be authenticated using variety of information such as name, address and date of birth.<sup>10</sup>

In addition, the Consumer Groups strongly object to any requirement that registrants provide documentation or proof that they are deaf or hard of hearing. Instead, any registration program should operate using self-identification, which will ensure that no one will be inadvertently denied necessary telecommunications access. The Consumer Groups remain skeptical that any process other than self-identification will provide a reasonable method for authentication. Requiring documentation or other test results, such as an audiogram, is a slippery

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<sup>10</sup> See e.g., Comments on FNPRM on Structure and Practices of the Video Relay Services Program and Misuse of Internet Protocol Relay Services, Experian, CG Docket Nos. 12-38, 10-51, and 03-123 (filed May 30, 2012).

slope where individuals that need these services may be classified as not deaf or sufficiently hard of hearing to qualify. In addition, this raises issues of what level of need is sufficient and who should set such standards. Any need to verify disability will raise additional privacy concerns and could be preserved negatively by the deaf and hard of hearing community.

While the Consumer Groups believe that self-identification is sufficient for verification purposes, if the FCC nevertheless decides to require additional requirement, such methods should not be burdensome, intrusive or impose a cost on the consumer. Multiple methods for verification should be allowed including possibly allowing disinterested third parties, such as teachers, school counselors or other such advisors to provide verification.

### **III. RATE PROPOSALS**

#### **A. RLSA's Rate Proposals**

**In the 2012 VRS Rate Filing, RLSA presents a proposal for determining how VRS providers are to be compensated by the Fund. Based on its analysis of the cost and demand data received from providers, the Fund administrator states that VRS providers' weighted average actual per-minute costs were \$3.5740 for 2010 and \$3.1900 for 2011, and that VRS providers' weighted average projected per-minute costs are \$3.4313 for 2012. RLSA proposes that rates be based on an average of these three numbers, with appropriate adjustments to reflect rate tiers. Using this proposed methodology, RLSA proposes that cost based rates be phased in over a multi-year time period, with the rates restructured in two tiers instead of the current three tiers. Based on a three-year phase-in, RLSA proposes that rates be set initially for Tiers I and II (up to 500,000 minutes each month) at \$5.2877 per minute, and for Tier III (over 500,000 minutes each month) at \$4.5099 per minute. RLSA also presents data that reflects several of the categories of compensable and non-compensable costs. We invite comment on RLSA's proposed rate structure, proposed rates, and cost calculations, including its weighting of individual providers' costs. Commenters who advocate alternative rates to those proposed by RLSA are urged to discuss any resulting changes that will be necessary in the TRS revenue requirement and contribution factor if the rate(s) they advocate are adopted.**

While the Consumer Groups do not comment on the specific rate levels for each tier, or RLSA's presentation of historical or projected costs, the goal of functional equivalency must be the basis for any rate structure. The rate must be sufficient to keep up with technological

advances that advance functional equivalency and not look at historical costs or functions, which can be misleading because they are merely a reflection of the individual provider's decision/priorities to allocating resources. The rates should adjust with the changing technology, which may reduce or increase rates, and the goal of meeting functional equivalency. Rates should reflect the FCC's expectations that VRS providers will provide service that evolves to meet the recommendations in recent years from national consumer groups.

Consumer Groups are concerned that the Commission appears to be proposing a rate methodology similar to rate-of-return, where carriers submit costs and rates are set at a level sufficient for the carrier to recover those costs.<sup>11</sup> The Commission is familiar with the inefficiencies of such a system of setting rates having already determined long ago that “that incentive regulation is superior to rate of return.”<sup>12</sup> In the 1990's the Commission moved the largest carriers to a system of price caps which seeks to reward carriers for making efficient investments in their network.<sup>13</sup> The Commission did so in large part because it recognized that “carriers ...attribute unnecessary costs to their operations in an effort to generate more

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<sup>11</sup> Price cap carriers are subject to a form of “incentive” regulation. *See Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786 (1990); *see also National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993). This form of regulation places limits - caps- on a carrier's rates in order to provide the carrier with the incentive to increase efficiency rather than raising rates as a means to increase profit. *See Dominant Carriers*, 5 FCC Rcd at 6790 ¶¶ 30-31.

Rate-of-Return regulation, in contrast, regulates prices by limiting the rate-of-return to which the carrier is entitled , taking into account the carrier's investments, cash expenses and non-cash expenses (such as depreciation) and seeking to ensure that the carrier's rates “cover these costs and produce a fair rate of return.” *Id.* at 2884, ¶ 18. If the rates result in a rate of return beyond that allowed by the Commission, the carrier would be obligated to refunds its excess profits.

<sup>12</sup> *Dominant Carriers*, 5 FCC Rcd at 6790 ¶¶ 29.

<sup>13</sup> *Id.* at 6787 ¶ 1

revenue.”<sup>14</sup> Similarly, in the *Connect America Fund Order*, the Commission adopted mechanisms to reform this weakness in its system of regulating the access rates charged by rate-of-return ILECs and the level of federal support needed to fund broadband deployment in areas that are more costly to serve. For example, the Commission’s USF reforms for rate-of-return carriers were designed to initiate a “transition towards a more incentive-based form of regulation with better incentives for efficient operations”<sup>15</sup> in part by “eliminat[ing] waste and inefficiency and improv[ing] incentives for rational investment and operation.”<sup>16</sup> In setting VRS rates, the Commission should likewise seek to provide carriers with an incentive to innovate and provide better service more efficiently. Imposing a rate-of-return methodology for the VRS industry alone, when the Commission has moved away from rate-of-return for communications services provided to the hearing population, would be a step backwards.

As explained in prior comments, the Consumer Groups urge the Commission to adopt price cap regulation for VRS providers. In the past the Commission replaced rate of return regulation with price caps in order to promote innovation and efficiency in the delivery of interstate telecommunications services. In doing so, the Commission determined 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 may charge for services. In the face of such constraints, a carrier’s primary means of increasing earnings is to enhance its efficiency and innovate in the provision of the service.”<sup>17</sup>

An incentive based approach can have the same effect upon the market for VRS by encouraging

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<sup>14</sup> *Dominant Carriers*, 5 FCC Rcd at 6790 ¶ 29.

<sup>15</sup> *Connect America Fund Order* ¶ 116.

<sup>16</sup> *Id.* ¶ 195.

<sup>17</sup> *Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order, 4 FCC Rcd 2873, ¶ 36 (1989).

VRS providers to improve services, increase their customer base and deliver service efficiently, thereby reducing costs and increasing profit.

## **B. Open Ratemaking Issues**

1. **Should the following cost categories, which RLSA has included in its calculation of the proposed rates, be allowable as part of the cost basis for rates:**
  - **marketing (calculated by RLSA as \$0.0504 (2010), \$0.0441 (2011), and 0.0466 (2012) per minute);**
  - **outreach (calculated by RLSA as \$0.2741 (2010), \$0.2606 (2011), and 0.2594 (2012) per minute); and**
  - **research and development (calculated by RLSA as \$0.0486 (2010), \$0.0542 (2011), and \$0.0523 (2012) per minute)?**

The Consumer Groups believe that VRS providers should be able to include costs for marketing, outreach, research and development. However, the fund should also support third party outreach as well as research and development for the third party developing the reference platform. An important aspect of outreach is increasing awareness of the general (hearing) population. It is long overdue for the Commission to establish metrics for outreach to both the general population and deaf and hard of hearing consumers.

Further, the rate must include support for provider developed and distributed equipment which is an essential component of functional equivalence since the design and features of such equipment address the unique needs of consumers who use sign language.

2. **Should the Commission continue to limit the kinds and amount of capital costs that are allowed to be recovered? Thus, RLSA's proposed rate would allow an 11.25% return on invested capital, an element which has long been used as the basis for calculating TRS rates, as well as other common carrier rates, and which previously has been found to address adequately the recovery of interest and principal payments on debt, income taxes, and profits. RLSA calculates the weighted-average-per-minute return on investment, with allowance for taxes, to be \$0.0949 per minute in 2010, \$0.0778 per minute in 2011, and \$0.0594 per minute (projected) in 2012. We invite commenters to refresh the record on the appropriate treatment of capital costs, rate of return, and related issues. Parties that advocate a**

**particular alternative for treatment of capital costs should specify the type of investment on which they believe providers should be authorized to recover a return, the percentage return that they believe is appropriate in light of current market conditions, an estimate of the dollar amount that their proposed capital cost element would add to proposed VRS rates, and the specific reasons why investment and return should be so defined for purposes of Fund-compensated VRS.**

As explained above, Consumer Groups oppose rate-of-return regulation for VRS providers given that the Commission utilizes price cap regulation for functionally equivalent communications services for hearing consumers. To the extent the FCC nevertheless evaluates rate-of-return as an option, Consumer Groups support the concept that the Commission should reimburse VRS providers for the cost to finance their ongoing operational expenses. The Consumer Groups understand that VRS providers often need to finance ongoing operational expenses partly because of the lag time between providing and billing for VRS services and being reimbursed or in the event monies are held back for some investigatory purpose. The rate of return, however, should not be fixed at 11.25% or at any arbitrary number, but instead should be adjusted to reflect the current market realities. For example, in the *Connect America Fund Order and FNPRM*, the Commission acknowledged that there is “compelling evidence that [its] presently applied interstate rate-of-return, 11.25 percent, is no longer reflective of the cost of capital.”<sup>18</sup> The Commission further explained that “updating the rate of return is necessary ... to both attract capital on reasonable terms in today’s markets and encourage economically sound network investments.”<sup>19</sup>

**3. Should the Commission retain, modify, or eliminate the current tiered VRS rate structure?**

The Consumer Groups believe it is important to maintain competition between all VRS

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<sup>18</sup> *Id.* at ¶ 1047.

<sup>19</sup> *Id.*

providers and to have rates that are sufficient to attract new companies to enter the VRS market. The Consumer Groups believe that the tier levels — both those in effect and those proposed by RLSA — fail to address the concepts the Consumer Groups raised in their 2010 comments in response to the NOI. In those comments, the Consumer Groups explained that the significant gap between Tier II and Tier III in the rate structure “rewards inefficiency and discourages growth, because a provider would not want to grow into a tier where the rate drops precipitously.”<sup>20</sup> The Consumer Groups continue to believe that the remedy for this defect is reducing the gap in per minute compensation between each tier by adding additional rate tiers and revising the threshold number of minutes for each tier. This revised structure would better account for economies of scale, and promote a more efficient market for VRS.

- 4. Should there be a phase-in of the new VRS compensation rate or rates? How long should such a phase-in period last and how should rates be set during such an initial period? For example, should the Commission establish a three-year phase-in period, as RLSA suggests, with equal yearly adjustments to reach the new rate?**

The Consumer Groups feel that rates should not be reduced just to save money, but that the FCC should design a rate structure and transition to promote functional equivalency. The FCC must condition the right to receive reimbursement on meeting functional equivalence performance metrics established by the FCC that meet both FCC and consumer expectations. Basing a tiered rate on achievement of specific metrics could create incentives for VRS service to achieve functional equivalency. To be reimbursed, all VRS providers must meet certain minimum standards that are currently required, such as speed of answer. For those who meet additional performance metrics, such as offer split screen technology or answering machine that

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<sup>20</sup> See Comments of Telecommunications for the Deaf and Hard of Hearing, et al., in Response to Notice of Inquiry, Structure and Practices of the Video Relay Service, CG Docket No. 10-51, at 6 (filed Aug. 18, 2010).

accepts messages from videophones and hearing contacts, CAs who are nationally certified sign language interpreters, or allowing users to be matched to CAs based on the type of call or the consumer's communication needs, the rate would be higher. The Consumer Groups are concerned that cutting the rates without minimum quality standards will result in providers decreasing service quality.

5. **How long should the new rate remain in effect? In the 2007 TRS Rate Methodology Order the Commission determined that VRS and IP Relay compensation rates should be set for a three-year period, subject to certain adjustments. In the 2010 TRS Rate Order, the Commission again adopted a three-year rate for IP Relay, but it adopted a one-year interim rate for VRS. That interim VRS rate, however, was extended in 2011 and 2012. Should the new VRS rate likewise be instituted for a three-year period, or a different period?**

The Consumer Groups understand that VRS providers generally operate on a three-year to five-year business plan, which requires more certainty than annual rate periods provide. The Consumer Groups believe that a minimum of a three-year rate period would be fair to all involved, providing the FCC or administrator conducts annual audits (and possible adjustments).

#### IV. CONCLUSION

The Consumer Groups respectfully request that the Commission consider the points discussed herein and in their initial Comments when considering ways to improve the structure and efficiency of the VRS program.

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