

## VII. Multivendoring

As the FCC acknowledges, Congress placed considerable emphasis on the need to promote competition in telecommunications markets when it enacted the Telecommunications Act of 1996. NPRM ¶65 n. 152. Increased competition among relay service providers is critical to bring about consumer satisfaction with relay services. The reason for this is simple. Unlike users of most other telecommunications services,<sup>27</sup> relay users do not have the opportunity to choose their own local relay providers. The model now employed in the overwhelming majority of the states allows the states themselves to choose their relay providers - sometimes without any consumer input whatsoever. There is no other telecommunications service that mirrors this model. At a minimum, then, we urge the creation of a federal rule that would require consumer input into the selection of state relay providers. Such input could be achieved through feedback from organizations representing deaf and hard of hearing relay users, as well as through consultation with state advisory councils which consist of deaf and hard of hearing consumers. The involvement of deaf and hard of hearing persons in the state's decisionmaking process for its relay provider is critical to ensure that relay vendors are selected on the basis of their quality assurances and their service features, rather than solely on the basis of their costs.

The FCC asks about its jurisdiction to implement multivendoring at the state level. NPRM ¶66. In fact, we do believe that the FCC has sufficient authority to mandate such multivendoring. Title IV of the ADA states that each common carrier must provide TRS "individually, through

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<sup>27</sup> At present, consumers may choose their own long distance telephone providers. In the near future it is expected they will be able to choose their local providers as well.

designees, through a competitively selected vendor, or in concert with other carriers.”<sup>28</sup> The FCC questions whether the phrase “through a competitively selected vendor” restricts its authority to require multivendoring at the state level. Although Title IV allows a competitively selected vendor to provide relay services, it does not specify *who* will do the choosing of this “competitively selected vendor.” Thus, arguably, the FCC could require multivendoring, and each common carrier in a given state could still fulfill its TRS obligations on its own or through other vendors in that state that have been *competitively selected* on a call-by-call basis *by the consumers* of that state.

As we noted in our comments to the NOI, multivendoring would offer consumers a choice in relay features, would discourage monopolistic arrangements, and would encourage improvements in relay services by having providers vie for consumer usage. The present single relay provider model has proven ineffective in providing quality relay services. We urge the FCC to take whatever steps are necessary to implement a multivendoring model within the next several years.

#### VIII. TRS Caller Profiles

The Commission seeks information on the extent to which Section 222 of the Telecommunications Act applies to the transfer of TRS caller profiles. NPRM ¶72. The primary purpose of Section 222 was to protect consumers from having their proprietary information widely distributed by the telephone companies from whom they obtain telephone services. This is not the case with caller profiles.

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<sup>28</sup> 47 USC. §225(c).

Caller profiles can consist of information about the caller's long distance carrier, preferred type of call (VCO/HCO), call-block requests, CA gender preference, mode of introduction, language type (English, ASL, or foreign language), and other service- or bill-related features. As the FCC notes, Title IV of the ADA mandates the provision of TRS in "the most efficient manner." It is not efficient for consumers to have to set up new caller profiles each time a new relay vendor is selected for a state.

Thus, given its purposes, it is not clear that Section 222 even applies to the relay context. However, assuming that it does apply, the FCC can nevertheless direct the transfer of caller profiles because, as the FCC notes, Section 222 permits a telecommunications carrier to disclose or permit access to customer proprietary information for the purpose of initiating, rendering, billing and collecting for telecommunications services.\* There is little question that the information obtained in caller profiles is used for each of these purposes, all "required by law." To facilitate the seamless flow of relay services, the FCC should therefore direct, rather than simply permit, the transfer of caller profiles to state-selected vendors. Because caller profiles may contain information that might have uses in other contexts, however, the FCC should devise a rule that limits access to this information for the provision of relay services only and prohibits the transfer of this information for other telecommunications or business purposes.

We offer one additional suggestion for caller profiles. Often, several individuals use the same phone from the same location, but each of these individuals may have different relay calling preferences. We strongly recommend a means of identifying the specific individual making the

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<sup>29</sup> NPRM ¶72, citing 47 U.S.C. §222(d)(1).

call through, e.g., a personal identification number (PIN), so that more than one person from each phone line could maintain a caller profile. A rule to this effect would facilitate the set up of relay calls, making these calls more functionally equivalent.

#### IX. Enforcement and Certification Issues

We applaud the Commission's tentative decision to amend its certification rules, to require states to **notify** the Commission about substantive changes in their TRS programs. NPRM ¶75. We also strongly support the FCC's proposal to require TRS programs to make available to TRS users 'informational materials on state and Commission complaint procedures sufficient for users to know the proper procedures for filing complaints.' Id. In addition to these measures, we believe that the following measures will be necessary to ensure the prompt and effective enforcement of the FCC's minimum standards.

First, because it is not always easy to disseminate information to consumers, we strongly urge the FCC to require providers to file the information which they compile on complaint procedures, with the FCC itself. Such information should then be posted by the FCC's Disabilities Issues Task Force on its web site. For years, the National Association of the Deaf and other consumer organizations have been frustrated by having to turn clients back to their states to file TRS complaints, knowing that those clients may never find the appropriate forum for filing those complaints. An easy Internet reference would resolve this problem.

Second, the FCC's proposed revisions of the enforcement process will not help to keep the FCC informed about the number of complaints against a given relay provider. TRS providers and state commissions should be required to keep a log of such consumer complaints and should be required to provide this log to the Commission (1) upon the Commission's request and (2) at

the time that it seeks recertification. All consumer complaints and their resolutions should be logged in this manner.

Third, per the FCC's suggestion, we do encourage the FCC to adopt specific guidelines that could be used to assess whether the state program has "adequate procedures and remedies for enforcing the requirements of the state program."<sup>30</sup> Among other things, such guidelines could set a specific time period by which complaints should be moved **from** the relay provider to the state level. We remain concerned, as we did in our comments to the **NOI**, that complaints may stop at the desks of supervisors and may remain there without ever being resolved. We urge the Commission to require (1) that consumers receive an acknowledgment that their complaint has been received within 15 days after it has been filed, and (2) that a complaint which remains unresolved after a period of 30 days (after being filed with the relay provider), be referred to the appropriate state forum assigned the responsibility for resolving TRS complaints.

#### X. New Technologies

The Commission states that through this NPRM, it "**seek[s]** to extend the benefits of advances in telecommunications to Americans who might otherwise be excluded because of their disability," NPRM ¶15, and cites legislative history explaining that Title IV of the ADA was not intended to "entrench current technology, but rather to allow for new, more efficient and more advanced technology."<sup>31</sup> The Commission indicates that both its **NOI** and its NPRM on relay services were "released in this spirit" and that the NPRM represents the Commission's effort to

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<sup>30</sup> NPRM ¶76, citing 47 C.F.R. §64.605(e).

<sup>31</sup> NPRM ¶8, citing to H. Rep. No. 101-485 (II), 101<sup>st</sup> Cong., 2d Sess. 130 (1990).

“ensure that our TRS regulations do not artificially suppress or impair the development of TRS in a changing, dynamic telecommunications landscape.” NPRM ¶8.

Notwithstanding these statements, the Commission has rejected outright - and without any explanation whatsoever - consideration of every single new relay technology proposed by consumers. NPRM ¶80. Nearly all of the technologies suggested by the NAD during the NOI stage of this proceeding are technically feasible right now, and in fact many have already been incorporated by some TRS centers. As we noted in our earlier comments on the NOI, although relay services have taken a significant step toward increasing independence and expanding opportunities for TTY users, Congress’ vision can only be achieved if these services are fully integrated into existing and future telecommunications networks. Toward this end, we again propose that the FCC require the following new technologies:“\*

A. Call Release Feature

As explained in our earlier comments, CAs are often requested to connect TTY users to individuals in offices, hotels, hospitals, or other sites that utilize switchboards to access private rooms. In this instance, calls are first connected to the voice operator at the switchboard, and then transferred to the TTY recipient. Unfortunately, when these calls are transferred, they are often erroneously disconnected. A ‘call release’ protocol, adopted by some state relays, eliminates this problem by releasing the relay service and the switchboard operator from the call as soon as the TTY caller hooks up to the TTY recipient. This technology already exists and

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<sup>32</sup> Should the FCC maintain that it has insufficient leeway to require these services in the Report and Order following submission of these comments, we urge the Commission to propose their adoption in a further notice of proposed rulemaking following this proceeding.

effectively resolves an otherwise significant problem; thus, we again urge the FCC to require it as a minimum technical standard for all TRS.

#### B. Two-Line VCO and VTT

Two-line voice carryover (VCO) enables consumers to use one line for voicing and the other for receiving TTY transmissions. With two-line VCO, the consumer can talk directly to the hearing party without having to wait for “GAs,” and without having to pick up and put down the handset. Two-line VCO can be conducted by consumers with conference calling capability or possibly by having the CA conduct the outbound call and complete the two-line bridge.

Two-line VCO technology permits a smoother and rapid completion of VCO calls. This technology is available and, to the best of our knowledge, costs no more than direct VCO. Indeed, because time is saved by having the callers converse more directly, two-line VCO most likely results in a reduction of the costs of a VCO call. There is little reason, then, why this should not be required as a standard feature offered by all relay providers.

Another form of VCO – VCO-to-text (VTT) – should also be offered as a standard feature, to be available upon request. With VTT, the VCO user speaks to the CA who types the text to the TTY user. The CA then types the response of the TTY user back to the VCO user, who can read the message on the LED of a VCO text telephone (which does not have a keyboard). VTT permit relay calls to take place between VCO users (often individuals who are hard of hearing) and TTY users.

#### C. Caller ID Recognition

It is quite common for homes or offices with both hearing and deaf residents to use Caller ID for the purpose of identifying the existence of TTY or voice callers. Many relay systems,

however, do not pass through information on the caller's identification, and the word "unavailable" appears on the Caller ID screen when a relay call comes in. Other times, relay systems simply pass through the originating voice number, with which the TTY user is unfamiliar. The Caller ID feature is of little use to the deaf consumer when either of these messages appear on the Caller ID screen. Rather, in order for Caller ID to be of any use to the deaf or hard of hearing consumer, some identification that a relay service is sending the incoming call is critical. Identification of the relay service is technically feasible, and available in all of the states of at least one national relay provider. Thus, it should be mandated in the Commission's rules.

#### XI. National Advisory Committee

We are extremely disappointed in the FCC's ongoing refusal to establish a national relay service advisory committee, especially given the limited nature of the proposals in the Commission's NPRM. Without such a committee, relay services will continue to be inferior, and new technologies, such as V. 18, speech-to-text, and improved TTY protocols will take much longer to gain widespread acceptance. Without a committee, inconsistency among relay service quality and relay protocols will persist across the nation. Without a committee, states will continue to operate in isolation, and a coordinated approach to resolving common complaints will never take place. Without a committee, ideas for new forms of outreach will go unnoticed, and the public at large will continue to be unaware of the availability and existence of relay services.<sup>33</sup>

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<sup>33</sup> We noted in our NOI Comments that "the vast majority of individuals who can hear are unaware of the availability and functions of relay systems. Many such individuals hang up on relay calls because they believe that they are being solicited, and are not aware that a call is coming through from a deaf, hard of hearing, or speech disabled person. Moreover, the number of individuals using relay services, while dramatically increasing in the first years of these services, appears to be leveling off. One reason for this may be that there are deaf, hard of hearing or

Footnote cont'd on next page

In its report on Title IV, the Senate directed the FCC to establish an advisory council:

[G]iven the unique and specialized needs of the population that will be utilizing telecommunications relay services, the FCC should pay particular attention to input from representatives of the hearing and speech impaired community. It is recommended that this input be obtained in a formal manner such as through an advisory committee that would represent not only telecommunications relay service consumers but also carriers and other interested parties.<sup>34</sup>

The comments in this proceeding reveal the vast array of TRS issues which still need resolution. Indeed, the FCC, in this segment of the proceeding, has itself indicated that the future may bring new technologies and new types of relay services that should be reimbursable. Yet, to date, there is no mechanism to explore these new services, or one to determine which should be given "relay" status. For all of these reasons, we implore the FCC to establish a committee that can address relay issues on a national basis.<sup>35</sup>

### XIII. Conclusion

The NAD applauds the FCC's efforts to improve relay services throughout the country. We remain concerned, however, that the Commission's current proposals fall short of the Commission's overarching goal to make relay services **functionally** equivalent to conventional telephone services. We urge the Commission to adopt the suggestions provided herein and to issue a Further Notice of Proposed Rulemaking for issues that fall beyond the reach of the current

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speech disabled individuals who remain unacquainted with the availability and use of TRS." NOI Comments of NAD at 11.

<sup>34</sup> S. Rep. No. 116, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. 79 at 81 (1989).

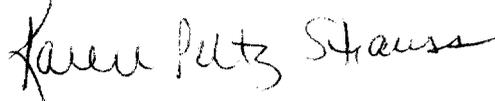
<sup>35</sup> While our preference would be that such a committee would be ongoing, we can understand a reluctance on the Commission's part to establish a national committee with an indefinite **future**. Thus, for the time being, we propose that a committee be established for a three year period, subject to renewal by the FCC. The meetings for such committee could take place on a semi-annual basis, comparable to **frequency** of meetings held by the NECA Interstate Relay Council.

NPRM. We thank the Commission for the opportunity to submit these comments.

Respectfully submitted,

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## ATTACHMENT A

### Consumer Action Network

#### Members

American Association of the Deaf-Blind  
American Athletic Association of the Deaf  
American Society for Deaf Children  
Association of Late Deafened Adults  
Deaf Women United, Inc.  
Gallaudet University Alumni Association  
Jewish Deaf Congress  
National Association of the Deaf  
National Black Deaf Advocates  
National Fraternal Society of the Deaf  
National Hispanic Council of Deaf and Hard of Hearing People  
Telecommunications for the Deaf Inc.

#### Affiliate Members

Association of College Educators: Deaf and Hard of Hearing  
American Deafness and Rehabilitation Association  
Convention of American Instructors of the Deaf  
The Caption Center  
Conference of Educational Administrators Serving the Deaf Inc.  
National Captioning Institute  
Registry of Interpreters for the Deaf Inc.