

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
The Consumer and Governmental Affairs) CG Docket No. 10-162
Bureau Seeks Comment on the)
Commission’s Policies and Practices to)
Ensure Compliance with Section 504 of the)
Rehabilitation Act of 1973)

COMMENTS OF CONSUMER GROUPS AND TELCOM-RERC
IN RESPONSE TO PUBLIC NOTICE

National Association of the Deaf
Telecommunications for the Deaf and Hard of Hearing, Inc.
Deaf and Hard of Hearing Consumer Advocacy Network
Association of Late-Deafened Adults, Inc.
American Association of the Deaf-Blind
Hearing Loss Association of America
California Coalition of Agencies Serving the Deaf and Hard of Hearing
Cerebral Palsy and Deaf Organization
Telecommunication-RERC

The National Association of the Deaf (NAD), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), Association of Late-Deafened Adults, Inc. (ALDA), American Association of the Deaf-Blind (AADB), Hearing Loss Association of America (HLAA), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), Cerebral Palsy and Deaf Organization (CPADO) and Telecommunication-RERC (Gallaudet University and University of Wisconsin) (collectively, the “Consumer Groups and Telecom-RERC”), respectfully submit these comments

in response to the Federal Communications Commission's ("FCC" or "Commission") November 14, 2013 Public Notice in the above-referenced proceedings.¹

The Consumer Groups and Telecom-RERC, on behalf of 48 million² Americans who are deaf or hard of hearing, late-deafened, or deaf-blind urge the Commission to update its 504 Handbook³ and rules to accept and transcribe video comments in ASL, make it easier to file complaints in ASL, and provide equal access to Commission information in ASL, so that people who use ASL can equally participate in FCC programs and activities.

The Rehabilitation Act of 1973 sets forth basic principles and legal requirements to ensure equality for people with disabilities including those who are deaf or hard of hearing. The preamble of the law explicitly states that:

It is the policy of the United States that all programs, projects, and activities receiving assistance under this chapter shall be carried out in a manner consistent with the principles of –

- (1) respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, ***based on informed choice***, of individuals with disabilities;
- (2) respect for the privacy, rights, and ***equal access (including the use of accessible formats)***, of the individuals;
- (3) inclusion, integration, and ***full participation*** of the individuals;
- (4) support for the involvement of an individual's representative if an individual with a disability requests, desires, or needs such support; and

¹ *In the Matter of The Consumer and Governmental Affairs Bureau Seeks Comment on the Commission's Policies and Practices to Ensure Compliance with Section 504 of the Rehabilitation Act of 1973*, Public Notice, CG Dkt. No. 10-162 (rel. Nov. 14, 2013) ("PN").

² A recently released study by Johns Hopkins School of Medicine found that more than forty-eight million Americans over the age of twelve—almost one in every five people in this country—are deaf or hard of hearing. See Amanda Chan, 1 In 5 Americans Has Hearing Loss: Study, THE HUFFINGTON POST (Nov. 15, 2011, 4:38 PM EST), http://www.huffingtonpost.com/2011/11/15/hearing-loss-americans-one-infive_n_1095586.html.

³ Section 504 Programs & Activities Accessibility Handbook, 3rd Ed., Federal Communications Commission, 2011 ("Handbook").

*(5) support for individual and systemic advocacy and community involvement.*⁴

The Rehabilitation Act’s preamble makes it clear that Congress intended for individuals who are deaf or hard of hearing to have equal access through accessible formats so that they can provide informed consent and fully participate in covered programs and activities. Moreover, it encourages community involvement for the purpose of individual and systemic advocacy. This policy sets the bar for what the Commission must do to provide access to people with disabilities, such as in its regulatory work related to the rights and needs of consumers with disabilities. Specifically, the Commission must make itself accessible to people who are deaf or hard of hearing on any issue that significantly affects this population, such as but not limited to: Video Relay Services, other forms of Telecommunication Relay Services, and captioning.

Section 504 of the Rehabilitation Act powerfully opens stating that: “No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.”⁵ Consequently, agencies such as the FCC are obligated to ensure that all people with disabilities are able to fully participate in its programs and activities without discrimination.

I. THE COMMISSION NEEDS TO FORMALLY ACCEPT VIDEO COMMENTS IN AMERICAN SIGN LANGUAGE AND ACCORD THEM EQUAL WEIGHT

Some people who are deaf or hard of hearing who primarily communicate in American Sign Language (ASL) sometimes, due to a lack of proficiency in written English, are unable to read materials that are in written English or file comments in written English. Recently at the

⁴ 29 U.S.C. § 701 (emphasis added).

⁵ 29 U.S.C. § 794(a)

TDI-ALDA 2013 conference, several individuals from our organizations helped some people who are deaf or hard of hearing file comments through the FCC Electronic Comment Filing System (ECFS). For some of them, the challenge was navigating the ECFS and figuring out how to file comments, but for others it was writing their own comments in English. Some individuals from our organizations helped translate people's comments into written English for their filings. If those individuals had not attended this conference, it's doubtful that they would have filed comments at all. This represents an unacceptable barrier experienced by those deaf or hard of hearing people whose primary mode of communication is ASL. This barrier must be removed. To comply with the accessibility mandate of Section 504, the Commission needs to accept comments in ASL, translate them into written English, and make both versions available through ECFS.

A. The FCC's 504 Handbook.

The Commission's Section 504 Handbook acknowledges that there are times when information is submitted to the Commission in alternative formats and needs to be clarified.⁶ The Handbook provides guidance for translating videos using ASL to written English such as for complaints about discrimination on the basis of disability.⁷ However, the Handbook specifically states that the Commission will not translate comments submitted with respect to Commission proceedings.⁸ Instead, comments submitted in alternate formats will be filed in such formats.

B. Refusing to Accept Comments in ASL Excludes Deaf and Hard of Hearing Who Primarily Use ASL for Communication on the Basis of Their Disability.

Section 504 prohibits excluding people who are deaf or hard of hearing from participation in any program or activities conducted by the Commission on the basis of their

⁶ Handbook at 38.

⁷ *Id.*

⁸ *Id.* at 39.

disability.⁹ The Commission defines program or activities as “any activity of the Commission permitted or required by its enabling statutes, including but not limited to any licensing or certification program, proceeding, investigation, hearing, meeting, board or committee.”¹⁰ It is without doubt that filing comments as part of Commission rulemakings is a program or activity covered by Section 504.

While people who are deaf or hard of hearing can submit video ASL comments, these comments will not be accessible to the majority of Commission staff working on the particular rulemaking, the Commissioners, and FCC staff writing the relevant rulemakings. Nor will these video ASL comments be understandable by most outside parties reviewing comments, and/or providing reply comments. We are not aware of video comments ever being posted in the FCC ECFS. By refusing to translate video ASL comments, the comments of ASL users are not being given the same impact as comments submitted in written English. In effect, ASL users are being denied the same opportunity to comment as is enjoyed by those who have the ability to submit comments in written English.¹¹ Without this translation, the Commission is not giving equal weight to a video comment in ASL as comments in written English since so many people will not be able to understand the video ASL comment.

The Commission needs to accept video comments in ASL, translate them to written English and then post them in the ECFS so that they are given the same accord and value of comments submitted in written English. The Commission cannot continue excluding thousands of people from the rulemaking process who are deaf or hard of hearing who are not proficient in English, and for whom ASL is the primary language solely because of their disability. They are being excluded from rulemakings that are very relevant to their accessibility needs such as on

⁹ 47 C.F.R. § 1.1830(a)

¹⁰ 47 C.F.R. § 1.1803

¹¹ 47 C.F.R. § 1.1830(b)(1)

Video Relay Service (VRS).

II. THE COMMISSION NEEDS TO MAKE IT CLEAR THAT COMPLAINTS ARE ACCEPTED IN ASL AND PROVIDE ACCESSIBLE INFORMATION ON THE PROCESS FOR SUBMITTING COMPLAINTS IN ASL

The Commission clearly accepts video complaints in ASL. The Handbook suggests they will be accepted and Commission's own definition of a "complete complaint" for its 504 regulations includes complaints in video formats.¹² While we are pleased that the Commission will accept video complaints in ASL, people need to be aware that video complaints are accepted in ASL. There is nothing on the 2000C Disability Access Complaint page that explains that the Commission accepts video complaints in ASL.¹³ By contrast, the Commission has information about its programs and services in Spanish on its website, including a complaint page.¹⁴ The provision of Spanish is logical and necessary, and provides support for the principle that alternative language access can and should be provided, particularly where the law already mandates it such as in Section 504.

The Commission needs to create an easy-to-use mechanism for submitting video complaints in ASL and make it clear that complaints in ASL are accepted. We urge the Commission to add information in ASL to the 2000C – Disability Access Complaint page explaining that ASL complaints are accepted and tells consumers how to file video complaints in ASL. Anything less is effectively excluding people who are deaf or hard of hearing who are not fluent in written English but are fluent in ASL from the Commission's complaint process on the basis of their disability.

¹² 47 C.F.R. § 1.1803

¹³ 2000C – Disability Access Complaint Form.
https://esupport.fcc.gov/ccmsforms/form2000.action?form_type=2000C (visited Nov. 25, 2013).

¹⁴ See: <http://www.fcc.gov/espanol> (visited Nov. 29, 2013) and http://transition.fcc.gov/cgb/complaints_spanish.html (visited Nov. 29, 2013).

NAD, TDI and others have often been contacted by people who are deaf or hard of hearing wishing to file complaints in ASL but do not know how. These individuals have been referred to the FCC Disability Rights Office. We can only wonder how many people who are deaf or hard of hearing have chosen not to or been discouraged from filing complaints with the Commission and have thus been excluded from this program/activity due to the lack of ready access in filing video complaints in ASL.

III. THE COMMISSION NEEDS TO PROVIDE MORE INFORMATION IN ASL

The Commission conducts rulemakings on a wide range of accessibility issues related to the communication rights of deaf and hard of hearing people. These include but are not limited to rulemakings on Video Relay Service and other Telecommunication Relay Services, closed captioning, advanced communications services, the accessibility of user interfaces, the Emergency Alert System, text-to-911 services, hearing aid compatible cell phones, and more. No federal agency conducts more rulemakings related to communication access than the FCC. The impact of the Commissions' decisions are felt far and wide in the community of people who are deaf or hard of hearing including those who use ASL and may not be proficient in written English.

The Commission needs to provide equal access for ASL users who are deaf or hard of hearing to its rulemakings, public notices, reports, orders, and accessibility guides. We applaud the Commission for providing some access to information in ASL such as on text-to-911 and VRS reform. However, these videos do not provide anywhere near as much information in ASL as what is offered in written English or even Spanish. The Commission has a significant amount of information available online in Spanish such as numerous consumer guides and even a

Spanish-only FCC website.¹⁵ The Commission needs to make a similar commitment to providing access to people who are deaf or hard of hearing who use ASL and are not proficient in written English. Otherwise, the Commission will continue to effectively exclude certain people who are deaf or hard of hearing from its guides, rulemakings, and more.

IV. CONCLUSION

The Consumer Groups and Telecom-RERC urge the Commission to update its Handbook and rules to accept and transcribe video comments in ASL, make it easier to file complaints in ASL, and provide equal access to Commission information in ASL.

Additionally, while working on this comment, we came across many accessibility issues related to the FCC website and ECFS for people who are deaf-blind, and likely for people who are blind too. For instance, the FCC's "High Contrast" website does not seem to be working correctly and providing access in high contrast.¹⁶ Moreover, the ECFS is very difficult to navigate with screen readers and especially using Braille displays. The lack of clear structure on the site and poor layout add to this difficulty. There are also many PDF documents filed in the ECFS that are simply unreadable by screen readers / Braille displays. Many people who are deaf-blind as well as those who are blind often use mobile versions for websites since they tend to be stripped down to the essentials. The Commission should consider providing similar access. While these may not be Section 504 issues but rather Section 508, we cannot sit quietly as important disability groups continue to be excluded from accessing the FCC website and ECFS.

¹⁵ See <http://transition.fcc.gov/cgb/spanishlinks.html#non> (visited Nov. 29, 2013) and <http://www.fcc.gov/espanol> (visited Nov. 29, 2013).

¹⁶ See <http://www.fcc.gov/?contrast=highContrast> (visited Dec. 2, 2013).

Respectfully submitted,



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