

**To
Consumer Advisory Committee
Recommendation Regarding VRS Blocking**

Title IV of the Americans with Disabilities Act (ADA) requires the provision of telecommunications relay services (TRS) to people who are deaf, hard of hearing or speech disabled that is functionally equivalent to voice telephone services. Video relay service (VRS) is one type of TRS, which enables deaf people who use sign language to communicate naturally and in real time in their first or preferred language. VRS is authorized by the FCC and its providers are reimbursed by the Interstate TRS Fund administered by the National Exchange Carriers Association (NECA).

On February 15, 2005, the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) filed a petition with the FCC charging that one VRS provider donates equipment to consumers that blocks consumer use of any other VRS provider. This petition further charged that the practice of not making all video equipment and service interoperable is a restrictive and unfair practice that denies functionally equivalent communication service to people who are deaf or hard of hearing. The CCASDHH petition asked the FCC to “impose a condition of interoperability on all VRS providers as a prerequisite to receiving compensation from the Interstate TRS Fund.”

The FCC’s Consumer Advisory Committee, TRS Working Group, is very concerned about the failure of the FCC to respond to the CCASDHH petition; indeed, convincing the FCC to grant the petition has now become one of our top objectives. This petition has received the support of all leading national organizations by and for people who are deaf or hard of hearing. In addition, hundreds of consumer comments, constituting 80-90% of all commenters to this proceeding, have been filed in support of the petition’s objectives. We are concerned that the lack of a response to the public’s overwhelming support for the California petition may be in conflict with the Administrative Procedure Act’s requirement for federal agencies to respond appropriately to comments received from the public. Although the FCC has established rules for average speed of answer, such rules do not address the issue raised by the petition, i.e., that of preventing VRS providers from blocking consumer access to relay services.

The FCC itself has stated that it has an obligation to ensure that each and every person who is deaf or hard of hearing has access to a dial tone. But this is not currently possible for all VRS users. Unlike the general population who can call anyone regardless of the provider of their telephone service and regardless of the manufacturer of the telephone itself, VRS consumers of one VRS provider must acquire multiple video devices in order to make and receive calls through other VRS providers.

All VRS users are already paying a premium for the privilege of using their preferred language/communication mode to make telephone calls. The cost of high speed Internet access is several times greater than the cost of basic telephone service. We believe it is unreasonable for the FCC to continue to limit the full benefit of this greater expense to the user. Simply put, the FCC is allowing a practice that blocks deaf people from hearing people who are attempting to communicate with them via relay.

As the CCASDHH petition notes, blocking access to and from VRS users violates various sections of the Communications Act. These include Section 1, requiring universal communications services for all Americans, Section 225, requiring functionally equivalent telephone service for all relay users, Section 201, prohibiting unjust or unreasonable practices, Section 202(a), prohibiting unreasonable discrimination, Section 251, requiring interconnection across telecommunications carriers, dialing parity, and the installation of network features and capabilities that are consistent with Section 255's mandates, and Section 256, allowing the FCC to develop standards for network interconnectivity so that communication services are fully accessible to people with disabilities.

All of the above sections of the Communications Act have contributed to a seamless and integrated network of communications services that all Americans can utilize with ease. The language of and goals established by these sections, however, are now being violated through the willful practice of one VRS provider, who technically and contractually blocks its customers from making calls through other VRS providers. If this provider's customers want service that is functionally equivalent to that available to hearing people, these individuals have no choice but to acquire multiple video devices. This is discriminatory and burdensome, and inconsistent with services available to wireline voice users, who can have a single telephone to reach their entire universe of contacts. Moreover, even when a person acquires multiple devices, that person runs the risk of missing incoming calls when those calls are either directed to the device that is not turned on or routed to the wrong device by an Internet router.

The Need for a Dial Tone – Anytime, Anywhere:

There are a number of reasons to prohibit blocking of access to multiple VRS providers. These can be grouped as follows:

Functional Equivalency – Title IV of the ADA requires the FCC to ensure that people who are deaf or hard of hearing are able to have the same level and quality of telecommunications access as is available to all other Americans. When a hearing person picks up a telephone to make a call, that individual can immediately access anyone, at anytime, regardless of the telephone carrier to which that person or the called party subscribes. This same capability is not being made available to those VRS users who are restricted to one service provider. These consumers are presently unable to switch to another provider to make their calls, even when their primary provider has no dial tone (i.e. no interpreter available to place the call). Although it might take several minutes for an interpreter to become free, these “captive” consumers have no choice but to wait – this is not functionally equivalent access. Allowing a provider to block deaf people from

communication with hearing people is also contrary to Title IV's goals to further the independence and productivity of TRS users.

Effective Emergency Access – Allowing a VRS provider to block outgoing calls through other providers is extremely dangerous in emergency or urgent situations. If the provider blocking access is operating at full capacity and its wait times are long, consumers have no way to make their emergency or urgent calls through a different provider. This could have disastrous consequences, especially during a national crisis or a weather disaster when one provider's network may be shut down or exceedingly busy.

The FCC has already spoken on the importance of providing individuals who use the Internet for communication purposes with an effective means of accessing police, fire, and medical assistance. Not only has the Commission directed the termination of the existing VRS waiver for 911 calls as of January 2006, but under the FCC's recent IP-enabled Order on E911, interconnected VoIP providers must also provide emergency access. The latter Order directs providers to make available a means for emergency personnel to return calls to customers. However, in addition to blocking outgoing calls, a VRS system that restricts access makes receiving return (incoming) calls in an emergency difficult, if not impossible. This is because when a person has multiple devices for outgoing calls (which is necessary if one provider's system remains blocked to all other providers), the routers for the two devices may direct incoming calls from emergency centers to the wrong device and then the call will not be answered. Alternatively, the wrong device may be turned on, which will also result in the call being blocked. Again, in an emergency situation, this could have dire consequences.

Denying full emergency access hurts our nation's homeland security policies, which are designed to facilitate, not restrict, access to emergency support. Among other things, permitting relay blocking conflicts with the FCC's recent efforts to help relay centers obtain Telecommunications Service Priority. This status allows a relay center to be given priority when it comes time to restore telecommunications services after a disaster occurs. Allowing VRS blocking runs counter to this objective, as it will virtually ensure that consumers using a restricted provider will be left without access in the event that that provider has an emergency that forces it to shut down its operations.

Madison River Decision – The FCC's overriding interest in keeping Internet communications open and seamless for consumers was recently demonstrated in the Commission's decision to fine Madison River Telephone Company for blocking its ports to calls made over the Internet. The decision, brought under the authority of Section 201(b) (requiring carriers to provide "just and reasonable" communication service practices), is consistent with FCC longstanding policy to ensure a communications network that is equally available to all Americans, and further emphasizes the obligation for all VRS providers to keep their ports open to all outgoing calls, regardless of the providers handling those calls.

A Provider-Neutral Federally Administered and Financed Program– At present, the single provider that is dominating the VRS market and blocking its consumers from making outgoing calls through other providers is receiving compensation for its

restrictive system. The federally administered NECA Interstate TRS Fund should not be used to support restrictive, anti-competitive, and discriminatory practices that block VRS calls and deny users functionally equivalent service.

It is worth noting here that if the Interstate TRS Fund was allowed to reimburse providers for research and development costs as they were in the past, providers would have less incentive to block their networks. Today, because research and development costs are not reimbursable, providers are forced to find ways to increase their revenues to cover these costs and one way to do that is to ensure that all relay minutes are processed on their system, i.e. block their networks.]

Impermissible Financial Incentive – The FCC should not permit the distribution of free equipment or free broadband lines that block users from accessing the services of competitors. The current policy, permitting this practice, is inconsistent with the FCC’s January 26, 2005, Order prohibiting the use of any type of financial incentive to encourage or reward a consumer for placing TRS calls. When a provider distributes equipment to consumers completely free of charge, and then blocks those users from making VRS calls through other providers, it is attempting to reward those consumers in exchange for having the consumers use its service for VRS. These consumers not only have a financial *incentive* to use the donated device for VRS, they are *forced* to do so because calls to other providers are blocked.

Efficient Use of Interpreters – The limited pool of sign language interpreters in the United States should be available to answer calls from all VRS customers. Limiting the use of any grouping of interpreters to the customers of only a single provider makes inefficient use of this limited supply of interpreters. It is in consumers’ best interest to be able to use the interpreters of an alternate provider when the restricted provider is operating at capacity.

The CAC strongly recommends that the FCC mandate the removal of these existing barriers to video relay services. More specifically, the CAC urges the Commission to require that the video equipment of providers who are reimbursed through the Interstate TRS Fund allow every VRS consumer that is deaf or hard of hearing the privilege of a dial tone – anytime, anywhere. By opening up the market to all consumers we fulfill the intent of the ADA to promote functionally equivalent services.

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Respectfully Submitted:
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FCC Consumer Advisory Committee