

## **Recommendation of the Consumer Advisory Committee of the Federal Communications Commission**

The Consumer Advisory Committee (“CAC”) submits these Comments in response to the Further Notice of Proposed Rulemaking (“*Further Notice*”)<sup>1</sup> released in the above-captioned proceeding, in which the Federal Communications Commission (“Commission” or “FCC”) sought comment on a range of issues concerning the reimbursement rate for telecommunications relay services (“TRS”), including traditional TRS, speech-to-speech (“STS”), Internet protocol relay (“IPR”), and video relay service (“VRS”).

### **I. INTRODUCTION AND DISCUSSION**

Fundamentally, the rate methodology or methodologies selected by the Commission must support access to TRS, so that deaf, hard-of-hearing and speech-impaired persons have access to the relay services they need. Title IV of the Americans with Disabilities Act of 1990 (“ADA”) requires the FCC, as part of its universal service mandate, to ensure that relay services are available, “to the extent possible and in the most efficient manner,” to deaf, hard-of-hearing and speech-impaired individuals nationwide.<sup>2</sup> In enacting the ADA, Congress recognized that the lack of telephone access for deaf, hard-of-hearing, and speech-disabled persons relegated them to “second-class

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<sup>1</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8379 (2006) (FCC 06-106) (“*Further Notice*”).

<sup>2</sup> 47 U.S.C. § 225(b)(1). As the FCC has recognized, “the problem at which Title IV is directed [is that] millions of Americans cannot use the nation’s telephone system because it does not accommodate their hearing, speech, or other disability.” *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, ¶ 3 n.17 (2004) (“*2004 Order & FNPRM*”).

citizenship.”<sup>3</sup> Congress thus sought to dismantle those barriers to access by requiring the FCC to ensure that relay services are made available to *all* deaf, hard-of-hearing and speech-disabled persons in the United States and that those services be “functionally equivalent” to voice communication services provided to hearing users.<sup>4</sup>

Although there have been major advances in access to TRS in the past few years, including adoption of a national 711 access code and the introduction of new relay services, much still needs to be done. In particular, despite the statutory mandate that relay services be made available to the greatest “extent possible,”<sup>5</sup> many people who are deaf, hard-of-hearing or speech-disabled continue to lack the required access to relay services. First, as discussed below, deaf, hard-of-hearing, and speech-disabled individuals, as well as hearing people, need to be educated about TRS. Second, the rate methodology should support the achievement of functional equivalency. Third, the rate methodology should preserve and enhance competition for interstate services, such as VRS and IPR. Fourth, the rate system must be sufficiently stable and predictable so that providers invest in the necessary services, networks, and interpreters/communications assistants (“CAs”).

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<sup>3</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration, ¶ 24 (2005) (“*2005 Order on Reconsideration*”); see also H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. at 129-130 (1990) (House Report) (Section 225 “imposes on all common carriers providing interstate or intrastate telephone service[] an obligation to provide to hearing and speech-disabled individuals telecommunications services that enable them to communicate with hearing individuals. These services must be functionally equivalent to telephone service provided to hearing individuals.”).

<sup>4</sup> 47 U.S.C. § 225(a)(3). Indeed, Chairman Martin has recognized the ADA’s “statutory goal of ensuring that *every person* has equal access to this nation’s communications services.” *2005 Order on Reconsideration*, Statement of Chairman Kevin J. Martin, 20 FCC Rcd at 13158 (emphasis added).

<sup>5</sup> 47 U.S.C. § 225(b)(1).

**A. The FCC must ensure that Education and Outreach is Funded**

Many potential users of relay services are unaware of the existence of such services or how to obtain them.<sup>6</sup> As the Commission has recognized, this lack of awareness prevents it from fulfilling the mandate of the ADA:

It is crucial for everyone to be aware of the availability of TRS for it to offer the functional equivalence required by the statute. As Congress has stated, TRS was designed to help bridge the gap between people with hearing and speech disabilities and people without such disabilities with respect to telecommunications services. The lack of public awareness prevents TRS from achieving this Congressionally mandated objective.<sup>7</sup>

It is thus critical that *all* Americans – not only the deaf, hard-of-hearing or speech-disabled, but also hearing Americans – be made aware of the availability of relay services.<sup>8</sup> Current state- or provider-specific outreach efforts, while laudable, are insufficient to raise the national consciousness regarding the availability and utilization of relay services.

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<sup>6</sup> See, e.g., *Further Notice*, Statement of Commissioner Michael J. Copps, 21 FCC Rcd at 8408 (“Dr. I. King Jordan, the President of Gallaudet University, told me recently that while VRS by all accounts has revolutionized how the hearing disabled communicate, he was astonished to find that there are still people who just don’t know about the service.”).

<sup>7</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, ¶ 105 (2000) (“*2000 Improved TRS Order*”); see also *Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996*, Notice of Inquiry, 12 FCC Rcd 1152, ¶ 45 (1997) (“consumer education, training and outreach are essential to the success of TRS”); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Statement of Commissioner Michael J. Copps, 20 FCC Rcd 13195, 13207 (2005) (“There is the need always for more outreach and education” regarding TRS).

<sup>8</sup> *2004 Order & FNPRM* ¶ 2 n.15 (“TRS is intended to benefit not just persons with particular disabilities, but all persons as the availability of TRS eliminates telecommunications barriers that also prevent, for example, hearing individuals from initiating telephone calls to persons with hearing disabilities.”).

The CAC therefore recommends that the Commission establish a national outreach program. As previously proposed by the CAC, such a program would be paid for by the Interstate TRS Fund, and would entail the creation of an Interstate TRS Fund Advisory Board for Outreach, which would work with the Commission, relay service users and providers, and other interested parties to plan, develop, and implement a national outreach program aimed at increasing awareness of relay services, and their benefit for all Americans.<sup>9</sup> Among other things, the national consumer education and outreach program would recognize and be appropriately responsive to the various segments of the deaf, hard-of-hearing, and speech-disabled population, depending on their individual needs. This differentiation is generally lacking in today's marketing efforts.

Although the FCC previously has declined to fund such a program, the CAC continues to believe that the Commission has not only the authority but the obligation to establish a nationwide outreach program. Specifically, the FCC's general authority under Section 225, which requires the Commission to ensure that TRS is provided to the greatest "extent possible and in the most efficient manner," authorizes the Commission to direct the Interstate TRS Fund to pay for a national outreach program.<sup>10</sup> Just as this authority permits the FCC to approve the disbursement of Interstate TRS Fund monies to the TRS fund administrator for the reimbursement of administrative costs,<sup>11</sup> the same

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<sup>9</sup> For a more detailed explanation of CAC's nationwide outreach proposal, see CAC Comments, CG Docket No. 03-123, at 4-5 (Dec. 23, 2003).

<sup>10</sup> 47 U.S.C. § 225(b)(1).

<sup>11</sup> For example, the FCC implicitly relies upon this authority when it approves reimbursement of the costs of a TRS fund administrator on the basis that doing so would ensure that TRS was being provided "in the most efficient manner." *See, e.g.,*

authority similarly permits the FCC to use TRS funds to pay for a national outreach program. The universal service mandates set forth in sections 1 and 225 of the Act further authorize the FCC to fund such a program.<sup>12</sup> Indeed, prior to the enactment of section 254, which sets forth the current universal service regime, the FCC concluded that it had authority pursuant to section 1 of the Act to institute and provide funding for a federal universal service program.<sup>13</sup> Accordingly, the FCC has ample authority to establish a national outreach program, supported by the Interstate TRS Fund.<sup>14</sup>

A distant second choice, but still preferable to no outreach at all, is reliance on outreach by providers. Therefore, the FCC must continue to reimburse relay providers for their costs of providing outreach, especially in more rural areas. As Commissioner Copps recently observed: “Imagine living your life with a disability for years and then learning that there was a technology readily available that could have eased many of the challenges you faced, if only you had known about it. That’s just not acceptable . . .”<sup>15</sup> Congress entrusted the Commission with ensuring the availability of relay services. Any rate methodology adopted by the Commission must support the reasonable costs of outreach, particularly in the absence of a national outreach program.

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*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 18 FCC Rcd 12823, ¶ 22 n.59 (2003).

<sup>12</sup> 47 U.S.C. §§ 151, 225(b)(1).

<sup>13</sup> *See Rural Tel. Coalition v. FCC*, 838 F.2d 1307, 1315 (D.C. Cir. 1988).

<sup>14</sup> The fact that some states fund intrastate outreach programs does not relieve the FCC of its duties in this regard. While it may be true that some states engage in such programs, many state relay programs operate under extremely tight budgets, and have limited if any funds for outreach. Regardless, even if robust outreach programs existed in every state (and they do not), the FCC would have a duty to ensure outreach for interstate relay services.

<sup>15</sup> *Further Notice*, Statement of Commissioner Copps, 21 FCC Rcd at 8408.

**B. The Rate Methodology Must Support the Achievement of Functional Equivalency**

Section 225 requires the Commission to ensure that the deaf, hard-of-hearing and speech-disabled have access to “functionally equivalent” communications services.<sup>16</sup> As Chairman Martin has explained, “[f]unctional equivalency means individuals with disabilities having access to the same services as everyone else.”<sup>17</sup> Without functional equivalency, the deaf, hard-of-hearing and speech-disabled often cannot communicate with friends, family, employers, doctors, or emergency personnel – capabilities most hearing people take for granted. Any reimbursement methodology adopted by the Commission must ensure that providers are fully reimbursed for the costs of providing functionally equivalent communications services. And for those relay services that are not functionally equivalent today, for example, those services that lack access to E911 or other equivalent features that hearing people enjoy, the Commission must take steps to ensure that the rate methodology enables providers to recover the reasonable costs of developing and implementing technological fixes to correct these deficiencies on an expedited basis.

**C. The Rate Methodology Must Preserve Competition for Interstate Relay Services**

The ADA requires the FCC to “ensure,” “to the extent possible,” that high-quality relay services are available to all deaf, hard-of-hearing, and speech-impaired persons.<sup>18</sup> To fulfill this obligation, the FCC has adopted rules that encourage multiple providers to compete for potential users for IPR and VRS. The benefits of a competitive model are

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<sup>16</sup> 47 U.S.C. § 225(a)(3).

<sup>17</sup> *2005 Order on Reconsideration*, Statement of Chairman Martin, 20 FCC Rcd at 13158.

clear: better quality of service and faster adoption of new technologies that enable functional equivalence. In order to ensure that such benefits continue, the Commission must adopt a rate methodology that will preserve and enhance competition for interstate relay services. Because information is critical to the functioning of a competitive market model, such a methodology also should allow providers to recover their reasonable costs of marketing (including “branded” marketing),<sup>19</sup> so that relay service users will have the information they need in order to make informed decisions.

#### **D. The Rate Methodology Must Result in Stable, Predictable Rates**

To encourage the continued availability of relay services and to ensure that providers operate “in the most efficient manner possible,” the rate methodology should result in stable, predictable rates.<sup>20</sup> Business plans for relay services involve a number of variables, including, among other things, investment in network facilities and relay centers. Providers also must invest in the recruitment, hiring, and training of CAs and/or interpreters. Investment requires a rate methodology that allows providers to plan for the longer term and make the necessary investments.

In addition to adopting a methodology that results in stable, predictable rates, it is also essential to have a fair and predictable funding source for TRS, and the FCC should

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<sup>18</sup> 47 U.S.C. § 225(b)(1).

<sup>19</sup> Other FCC universal service programs permit providers to recover certain branded marketing expenses. For example, the calculation of High Cost Federal Universal Service support for carriers eligible to receive Local Switching Support includes an account for carrier-specific “product advertising,” which is defined as “costs incurred in developing and implementing promotional strategies to stimulate the purchase of products and services.” See *USAC High Cost Forms, Local Switching Support Instructions for 2006 Support Calculation*, available at: [http://www.universalservice.org/res/documents/hc/pdf/LSS\\_Instructions.pdf](http://www.universalservice.org/res/documents/hc/pdf/LSS_Instructions.pdf); 47 C.F.R. §§ 54.301(b), 32.6610 (defining “customer services marketing expenses” as including “product management and sales” and “product advertising”), 32.6613 (defining “product advertising”).

consider expanding the pool of contributors, as it has done for the Universal Service Fund.<sup>21</sup> We note that the issue of whether IP-enabled service providers, including VoIP providers, should contribute to the TRS Fund is raised in the *IP-Enabled Services* proceeding.<sup>22</sup>

## II. CONCLUSION

CAC respectfully urges the Commission to adopt a cost recovery methodology that is consistent with the principles discussed above, and ensures that all deaf, hard-of-hearing, and speech-disabled persons have access to functionally equivalent relay services, as mandated by the ADA.

Respectfully submitted,

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Consumer Advisory Committee

Adopted November 3, 2006

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<sup>20</sup> See *Further Notice* ¶¶ 23, 30-31.

<sup>21</sup> *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006).

<sup>22</sup> *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, ¶ 60 (2004).