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Public Service Commission

October 27, 2006

VIA ELECTRONIC FILING

The Honorable Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CG Docket No. 03-123, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities

Dear Ms. Dortch:

Forwarded herewith are comments of the Florida Public Service Commission in the above docket with regard to Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities.

Bob Casey at (850) 413-6974 is the primary staff contact on these comments.

Sincerely,

/ s /

Cindy B. Miller
Senior Attorney

CBM:tf
cc: Brad Ramsay, NARUC

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Telecommunications Relay Services and)
Speech-to-Speech Services for Individuals) CG Docket No. 03-123
With Hearing and Speech Disabilities)

**COMMENTS OF
THE FLORIDA PUBLIC SERVICE COMMISSION**

The Florida Public Service Commission (FPSC) submits these comments in response to the Federal Communications Commission (FCC) Further Notice of Proposed Rulemaking (FNPRM) regarding Telecommunications Relay Services (TRS) which the Federal Communications Commission (FCC) released on July 20, 2006¹. In this FNPRM, the FCC points out that “Section 225 provides that the costs caused by *interstate* Telecommunications Relay Services (TRS) “shall be recovered from all subscribers for every interstate service,” and the costs caused by the provision of *intrastate* TRS “shall be recovered from the intrastate jurisdiction.” Also noted in footnote 23 of the FNPRM is that the costs of providing *intrastate* video relay service (VRS) and IP Relay are presently paid on an interim basis only from the Interstate TRS Fund.

The FPSC believes the jurisdictional separation issues in Docket No. WC 04-36 (IP-Enabled Services) must be resolved before determining any jurisdiction and associated funding of VRS and IP Relay calls. Since VRS and IP Relay calls are Internet-based services, the FCC must first decide whether IP-Enabled Services are "telecommunications services" or "information services" before any allocation of intrastate and interstate responsibilities are

¹ CG Docket No. 03-123, In the Matter of Telecommunications Relay Services and Speech-to-Speech services for Individuals with Hearing and Speech Disabilities, FCC 06-106.

attempted. Until such time, the FPSC believes these two services should continue to be compensated from the Interstate TRS Fund.

Estimated Impact of Going Beyond the “Functional Equivalent” Requirement

The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual 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 communication services** by wire or radio.² Although VRS and IP Relay may be beneficial services to the deaf and hard-of-hearing community, they go well beyond the **functional equivalent** requirement of conventional voice telephone services required by Title IV of the Americans with Disabilities Act (ADA).

The financial impact of Florida assuming VRS and IP Relay intrastate costs is substantial. The shifting of costs to the states would cause Florida to be responsible for intrastate IP Relay and VRS costs estimated between \$14 and \$16 million annually, causing Florida's TRS surcharge to increase an estimated \$0.08-\$0.10 per month, per access line. Current Florida statutes cap the TRS surcharge at \$0.25 per access line.

IP Relay Fraud

By Order DA 04-1738, released June 18, 2004, the FCC reminded the public of requirements regarding Internet relay services and issued an alert regarding the fraudulent use of IP Relay service. In Order FCC 06-58, released May 8, 2006, the FCC stated it is concerned about the impact that such misuse may have on the fund. They noted that since IP Relay calls

² <http://www.fcc.gov/cgb/dro/title4.html>

began being compensated in 2002, the size of the fund has risen from approximately \$70 million to its present size of over \$440 million. (¶7)

The FPSC is also concerned about IP Relay fraud because if states assume responsibility for funding intrastate IP Relay, they would also be assuming unnecessary expenses due to fraud. IP Relay is sometimes being utilized by international users to purchase merchandise from businesses in the United States using fraudulent forms of payment. Because IP Relay calls are routed over the Internet and originate in a foreign country, it is difficult to determine the originating location and block the calls.

Sprint Relay, Florida's contracted TRS provider, indicated that it is able to block the domain address of an international fraudulent call once the source is determined, but the calls are then initiated again from a different domain address. The fraudulent calls last longer than legitimate calls and significantly increase the call volume, and consequently, the expense.

Florida's jurisdiction is limited to intrastate calls which makes it difficult for Florida to correct the occurrence of international IP Relay fraud. Using the current IP Relay compensation rate of \$1.293 per minute, staff has estimated that the Florida responsibility of IP Relay costs would be between \$4 million and \$5 million annually, which could include fraudulent costs. State funding of intrastate IP Relay calls must not be mandated until the FCC resolves the fraudulent use of IP Relay service.

IP Relay & VRS Jurisdictional Separation of Costs

In Docket No. WC 04-36 (IP-Enabled Services), the FCC is currently considering jurisdictional issues related to Internet-based services, including whether these services are "telecommunications services" or "information services" and how to determine whether calls are interstate or intrastate. If IP-Enabled Services are determined to be informational services, then

VRS and IP Relay should not be considered functionally equivalent to telecom communication services for relay purposes.

If the Commission determines in its IP Enabled Services docket that IP calls are interstate subject to the exclusive jurisdiction of the FCC, then IP Relay calls involving TRS or VRS should also be recovered solely as interstate calls. However, if the Commission finds that IP calls are subject to mixed jurisdiction, then the FPSC contends that that same ruling should be applied to the TRS or VRS subject to this FNPRM.

The current TRS surcharge in Florida is \$0.15 per access line which is used to fund the traditional TRS and equipment distribution system. VRS is an expensive service to provide. The compensation rate for VRS is currently set at \$6.644 per minute.³ Should the FCC mandate that states pay for the intrastate portion of VRS and IP Relay service, under its current statute, Florida would possibly experience a financial shortfall in relay surcharge revenue which would require a legislative change to the statute. Based on current usage of VRS and IP Relay in Florida, transferring VRS and IP Relay intrastate costs to Florida's TRS program would require an additional \$14-\$16 million per year, causing Florida's TRS surcharge to increase an estimated \$0.08 -\$0.10 per month, per access line. The FCC must resolve the issues in its IP-Enabled Services proceeding prior to determining the jurisdiction and funding of IP Relay calls.

Florida Statutes Regarding TRS

Florida's ability to provide TRS under its current state statutes could be adversely impacted if the FCC requires the states to fund the intrastate portion of VRS and IP Relay.

³ In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities. CG Docket No. 03-123, DA 06-1345 Released June 29, 2006.

Currently, the Florida law has a cap of \$0.25 per access line per month on the surcharge for TRS.

Section 427.704(4)(a)(1.), Florida Statutes, states:

[The commission shall] require all local exchange telecommunications companies to impose a monthly surcharge on all local exchange telecommunications company subscribers on an individual access line basis, except that such surcharges shall not be imposed upon more than 25 basic telecommunications access lines per account bill rendered.

Section 427.704(4)(b), Florida Statutes, further states:

[The commission shall] determine the amount of the surcharge based upon the amount of funding necessary to accomplish the purposes of this act and provide the services on an ongoing basis; however, in no case shall the amount exceed 25 cents per line per month.

As previously mentioned, should the FCC mandate that states pay for the intrastate portion of VRS and IP Relay service, Florida would possibly experience a financial shortfall in relay surcharge revenue which would require a legislative change to the current statute. Such a legislative change cannot happen overnight. If a decision is made to require states to assume intrastate VRS and IP Relay costs, the FCC must allow time for states to make legislative changes on TRS surcharges.

The Potential Impact on Competition in Florida

Competition in Florida between providers of VRS and IP Relay may be diminished if the FCC mandates that VRS and IP Relay become required services of TRS in order to meet the FCC state certification requirements. Section 427.704(1), Florida Statutes, in part states:

[The commission shall] establish, implement, promote, and oversee the administration of a statewide telecommunications access system to provide access to telecommunications relay services by persons who are hearing impaired or speech impaired, or others who communicate with them. The telecommunications access system shall provide for the purchase and distribution of specialized telecommunications devices and the establishment of statewide single provider telecommunications relay service system which operates continuously. . .
[emphasis added]

Consumers currently have a choice of several providers of VRS and IP Relay in Florida. Should the FCC mandate that VRS and IP Relay become part of TRS, Florida would have only one contracted provider pursuant to its current statute. In Order FCC 00-56⁴, the FCC affirmed its belief that competition among TRS providers is preferred, stating:

We agree with commenters that competitive forces are generally the preferred way to improve service quality and bring new services to customers. Although using a single vendor may not automatically lead to poor service quality, we believe that giving consumers a choice among different TRS providers might well improve the quality of TRS service in different states.

Inclusion of VRS and IP Relay in Florida's TRS contract could possibly eliminate competition for these services in Florida because there would not be a funding mechanism for the intrastate portion of the service for any provider other than the one under contract with the FPSC. To this end, the FPSC urges the FCC not to include VRS and IP Relay as mandatory services of TRS.

Alternatively, should the FCC include VRS and IP Relay as mandatory services of TRS or order that the states shall fund the intrastate portion of TRS and/or IP Relay, the FPSC requests that the FCC provide a waiver provision in the rule for states that have statutory conflicts with the proposed rule.

Conclusion

In conclusion, the FPSC urges the FCC to consider the following points:

1. VRS and IP Relay go well beyond the functional equivalent of telecommunication services required by Title IV of the Americans with Disabilities Act (ADA) and should not be mandated services of TRS;
2. If VRS and IP Relay are mandated services of TRS, they should continue to be funded through the Interstate TRS Fund;

⁴ CC Docket No. 98-67, In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, FCC 00-56, Released March 6, 2000.

3. If state funding of intrastate IP Relay calls is mandated, it should not occur until the FCC resolves the fraudulent use of IP Relay service;
4. The jurisdictional separation issues in Docket No. WC 04-36 (IP-Enabled Services) must be resolved before determining the jurisdiction and associated funding of VRS and IP Relay calls;
5. If a decision is made to require states to assume intrastate VRS and IP Relay costs, the FCC must allow time for states to make legislative changes on TRS surcharges; and,
6. Mandating VRS and IP Relay as part of the TRS program may eliminate competition for these services in Florida since, by statute, Florida can have only one relay service provider.

Respectfully submitted,

/ s /

Cindy B. Miller
Senior Attorney

DATED: October 27, 2006