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Public Service Commission

August 18, 2010

VIA ELECTRONIC FILING

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

**Re: Comments of the Florida Public Service Commission in CC Docket No. 10-51,
Structure and Practices of the Video Relay Service Program**

Dear Ms. Dortch:

Forwarded herewith are comments of the Florida Public Service Commission in the above docket regarding the video relay service program.

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

Sincerely,

/ s /

Cindy B. Miller
Senior Attorney

CBM:tf

Cc: Mark Stone, FCC
Nicholas Alexander, FCC
Diane Mason, FCC
Nicholas A. Degani, FCC
James Bradford Ramsay, NARUC

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	CC Docket No. 10-51
Structure and Practices of the Video Relay)	
Service Program)	

**COMMENTS OF
THE FLORIDA PUBLIC SERVICE COMMISSION**

FLORIDA PUBLIC SERVICE COMMISSION

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INTRODUCTION AND SUMMARY

The Florida Public Service Commission (FPSC) submits these comments in response to the Notice of Inquiry¹ (NOI) released on June 28, 2010. In this NOI, the Federal Communications Commission (FCC) seeks comment on thoughts and proposals for making the Video Relay Service (VRS) program work better for those who could benefit from it and those who pay into it. As delineated in paragraph 70 of the NOI, the FCC has thus far treated all VRS calls as interstate calls paid for by the Interstate Telecommunications Relay Services (TRS) Fund. Among other issues, the FCC seeks comment on whether states should now be required to compensate the intrastate portion of VRS funding. These comments, which supplement the FPSC's October 27, 2006 comments,² address VRS issues brought forth in the NOI.

Estimated Impact

The financial impact of Florida assuming VRS intrastate costs is substantial. The shifting of costs to the states would cause Florida to be responsible for intrastate VRS costs estimated at \$32 million annually, causing Florida's present \$0.11 per month TRS surcharge to increase by an estimated \$0.25 per month to \$0.36 per month per access line. Current Florida statutes cap the TRS surcharge at \$0.25 per access line.

VRS Relay Fraud

The FCC acknowledges problems with the present VRS program in its NOI, stating that it is "concerned that the program is fraught with inefficiencies (at best) and opportunities for fraud and abuse (at worst)." (§30) The FCC notes that the VRS program, as currently structured, presents easy opportunities for fraud and abuse and provides an example of the Department of

¹ CG Docket No. 10-51, In the Matter of Structure and Practices of the Video Relay Service Program, FCC 10-111.

² CG Docket No. 03-123, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities.

Justice's indictments of 26 individuals for tens of millions of dollars of VRS fraud in 2009.

(¶31)

The FPSC is concerned about VRS fraud because if states assume responsibility for funding intrastate VRS, they would also be assuming unnecessary expenses due to fraud. Allegations of abusive practices by VRS providers, such as using VRS to avoid paying for video remote interpreting services,³ hosting or promoting teleseminars for the express purpose of generating VRS minutes, and paying individuals or organizations to place VRS calls using a particular provider's service is unacceptable. The FPSC agrees that neither the FCC nor the American public can further allow the fraudulent abuse of a program designed to deliver essential telecommunications services to persons with speech or hearing disabilities.

Using the current VRS compensation rate structure,⁴ staff has estimated that the Florida responsibility of VRS costs may be \$32 million annually, which could include fraudulent costs. State funding of intrastate VRS calls must not be mandated until the FCC resolves the fraudulent and abusive use of VRS.

VRS Jurisdictional Separation of Costs

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 calls. Since VRS calls are Internet-based services, the FCC must first decide whether IP-Enabled Services are "telecommunications services" or "information services" before any

³ Video Remote Interpreting is a service that is used when an interpreter cannot be physically present to interpret for two or more persons who are together at the same location. This service uses a video connection to provide access to an interpreter who is at a remote location. As with "in-person" interpreters, VRI services are generally contracted and paid for on a fee-for-service basis.

⁴ \$6.2390 for the first 50,000 monthly minutes (Tier I), \$6.2335 for monthly minutes between 50,001 and 500,000 (Tier II), and \$5.0668 for minutes above 500,000 (Tier III) per completed conversation minute for the July 1, 2010 through June 30, 2011 Fund year.

allocation of intrastate and interstate responsibilities are attempted. Until such time, the FPSC believes VRS should continue to be compensated from the Interstate TRS Fund.

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 the Commission determines in its IP Enabled Services docket that IP calls are interstate subject to the exclusive jurisdiction of the FCC, then VRS calls should be recovered solely as interstate calls. However, if the Commission finds that IP calls are subject to mixed jurisdiction, then the FPSC contends that the same jurisdictional ruling decided in the IP-Enabled Services docket should be applied to VRS.

The FCC has previously interpreted federal authority over jurisdictionally mixed communications to extend to communications involving more than a *de minimis* interstate component.⁵ ADSL service qualifies as "interstate" for purposes of Section 201 because more than a trivial amount of ADSL communication is interstate. In practice, the *de minimis* threshold has required only that the interstate component constitute at least 10 percent of the overall call volume. It is reasonable to assume that the VRS interstate component also constitutes at least 10 percent of the overall VRS call volume. The FPSC believes that the FCC must resolve the issues in its IP-Enabled Services proceeding prior to determining the jurisdiction and funding of VRS calls.

⁵ FCC, *MTS and WATS Market Structure, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72 and 80-286, Decision and Order, FCC 89-224, 4 FCC Rcd 5660 (1989).

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. 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.

The current TRS surcharge in Florida is \$0.11 per access line which is used to fund the traditional TRS and equipment distribution system. VRS is an expensive service to provide. Should the FCC mandate that states pay for the intrastate portion of VRS, under its current statute, Florida would possibly experience a financial shortfall in relay surcharge revenue which would require a legislative change to the statute. Such a legislative change cannot happen overnight. If a decision is made to require states to assume intrastate VRS costs, the FCC must allow time for states to make legislative changes on TRS surcharges.

Based on current usage of VRS in Florida, transferring VRS intrastate costs to Florida's TRS program could require an additional \$32 million per year, causing Florida's TRS surcharge to increase by an estimated \$0.25 per month to approximately \$0.36 per month, per access line.

The Potential Impact on Competition in Florida

Competition in Florida between providers of VRS may be diminished if the FCC mandates that VRS becomes a required service 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 in Florida. Should the FCC mandate that VRS become part of TRS, Florida would have only one contracted provider pursuant to its current statute. In Order FCC 00-56⁶, 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

⁶ 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.

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 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 as mandatory services of TRS.

Alternatively, should the FCC include VRS as a mandatory service of TRS or order that the states shall fund the intrastate portion of VRS, 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. If VRS becomes a mandated service of TRS, it should continue to be funded through the Interstate TRS Fund;
2. If state funding of intrastate VRS is mandated, it should not occur until the FCC resolves the fraudulent use of VRS;
3. 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;
4. If a decision is made to require states to assume intrastate VRS costs, the FCC must allow time for states to make legislative changes; and,
5. Mandating VRS 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.

The FPSC appreciates the opportunity to provide comments in this NOI.

Florida Public Service Commission
CC Docket No. 10-51
August 18, 2010

Respectfully submitted,

/ s /

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