

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

June 27, 2013

The Honorable Mignon Clyburn
Acting Chairwoman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Acting Chairwoman Clyburn:

Pursuant to Rules X and XI of the United States House of Representatives, the Committee on Energy and Commerce is examining the Federal Communications Commission's (FCC) oversight and management of the Interstate Telecommunications Relay Service Fund (TRS Fund). Specifically, the Committee is seeking information about the FCC's efforts to ensure that the Video Relay Service (VRS) program is free from waste, fraud and abuse and providing the maximum intended benefit to the deaf and hard-of-hearing communities.

As you know, Section 225 of the Communications Act of 1934, as amended by Title IV of the Americans with Disabilities Act of 1990, requires your agency to ensure that telecommunication relay services (TRS) are available to individuals in the United States with hearing or speech disabilities.¹ VRS is a form of TRS which allows users to communicate using American Sign Language (ASL) through a communications assistant (CA) over a video-to-video link on a broadband internet connection. Individuals wishing to use VRS are required by FCC rules to register with a VRS provider² who assigns a unique identifying number to each user³ and ensures that calls are properly routed from each user's videophone equipment.⁴

The FCC established the Interstate TRS Fund on July 26, 1993 to ensure that TRS users "pay rates no greater than the rates paid for functionally equivalent voice communications services. . . ."⁵ Since then, the FCC has required that all interstate telecommunication service providers make contributions to the Fund, generally measured as a percentage of their gross

¹ See 47 U.S.C. § 225(a)-(c). The term "telecommunications relay services" is defined in Section 225 of the Communications Act as "transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio." *Id.* at § 225(a)(3).

² See 47 C.F.R. § 64.611(b).

³ See 47 C.F.R. § 64.611(a)(1).

⁴ See 47 C.F.R. § 64.611(a)(2).

⁵ 47 U.S.C. § 225(d)(1)(D).

revenues and a “contribution factor” determined annually by the FCC. The TRS Fund Administrator subsequently compensates providers for their “reasonable” costs of providing TRS.⁶ For VRS services, compensation is made on a per-minute basis.⁷ VRS providers seeking compensation from the TRS Fund must submit the number of user minutes on a monthly basis to the Fund Administrator who reviews the data to determine whether the calls are both legitimate and compensable.

The Committee acknowledges and supports the important role that VRS services have in enhancing the personal and professional lives of deaf and hard-of-hearing Americans. The purpose of our inquiry is not to question the merits of the VRS program, but rather, to find out whether the program, in its current form, is efficient, sustainable and sufficiently safeguarded against the possibility of fraud. In light of concerns voiced by your agency in a June 28, 2010 *Notice of Inquiry*, that “the [VRS] program is fraught with inefficiencies (at best) and opportunities for fraud and abuse (at worst)[,]”⁸ we believe such oversight is warranted.

For example, from 2005 to 2011, the total number of VRS user minutes increased by approximately 261 percent to an estimated 98.2 million user minutes for the 2010-2011 Fund year.⁹ While some of that growth can be attributed to increased access to VRS services, multiple sources have reported on allegations of the manufacturing of fraudulent minutes by certain VRS providers to increase their compensation levels. In fact, in November 2009, twenty-six individuals were indicted by the Department of Justice (DOJ) for submitting false and fraudulent reimbursement claims to the TRS Fund Administrator.¹⁰ In 2012, one former VRS provider agreed to pay nearly \$1.4 million to settle an FCC investigation into allegations that it billed the TRS Fund for VRS calls made by its own employees.¹¹

Convinced that the VRS program had been “beset by waste, fraud, and abuse” and that “compensation rates . . . had become inflated well above actual cost[,]” your agency began a comprehensive review of the rates, structures, and practices of the VRS program in June 2010.¹² On June 28, 2010, the FCC issued an *Order* reducing the per-minute compensation rates to VRS providers.¹³ On April 6, 2011, the FCC adopted “anti-fraud” rules which your agency claimed

⁶ On April 6, 2011, the FCC announced that it had awarded the Harrisburg, PA firm Rolka Loubé Saltzer Associates, LLC (RLSA) a contract to administer the TRS Fund. See Press Release, FCC, FCC Names New Administrator of Interstate TRS Fund (Apr. 6, 2011), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305589A1.pdf. Previously, the TRS Fund was administered by the National Exchange Carrier Association (NECA).

⁷ In FY 2011-2012, the Interstate TRS fund compensated VRS providers at the rate of \$6.2390 per minute for the first 50,000 monthly minutes, \$6.2335 per minute for monthly minutes between 50,001 and 500,000, and \$5.0668 for monthly minutes above 500,000. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, ¶ 2 (2011).

⁸ *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Notice of Inquiry, 25 FCC Rcd 8597, ¶ 30 (2010).

⁹ See *id.*

¹⁰ See Press Release, U.S. Dep’t of Justice, Twenty-Six Charged in Nationwide Scheme to Defraud the FCC’s Video Relay Service Program (Nov. 19, 2009), available at <http://www.justice.gov/opa/pr/2009/November/09-crm-1258.html>.

¹¹ See Press Release, FCC, Video Relay Service Provider CSDVRS to Pay Nearly \$1.4 Million to Settle Investigations Into Alleged Improper Use of FCC’s TRS Fund (Nov. 20, 2012), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-317513A1.pdf.

¹² *Additional Comment Sought on Structure and Practices of the Video Relay Service (VRS) Program and on Proposed VRS Compensation Rates*, Public Notice, DA 12-1644 (rel. Oct. 15, 2012).

¹³ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 25 FCC Rcd 8689, 8694, ¶ 8 (2010).

would “prevent fraud and abuse” in the VRS program.¹⁴ In addition, on December 15, 2011, the FCC tightened the eligibility requirements for VRS service providers.¹⁵

While your agency has claimed that its reforms have saved the VRS program approximately \$300 million over the past two years, a question remains as to whether its actions have been completely effective at eliminating waste, fraud and abuse in the VRS program. This month’s announcement that the FCC has adopted “comprehensive reforms” constituting a “fundamental restructuring”¹⁶ of the VRS program is welcome news to the Committee. We look forward to your agency’s timely and effective implementation of these reforms.

While the providers of interstate telecommunications services are responsible for funding TRS/VRS services, ultimately *all* users of telecommunications share in these costs by paying surcharges imposed on their telephone bills. To ensure that American consumers are not being overcharged to finance the TRS Fund, that VRS providers are not being overcompensated for their services, and that the deaf and hard-of-hearing communities’ communications needs are being fully met, we respectfully request that the FCC provide written answers to the following questions no later than July 10, 2013:

1. How does the FCC, in coordination with the Interstate TRS Fund Administrator, determine what constitutes the “reasonable” costs of providing VRS services? Does the FCC conduct its own independent evaluation of VRS costs or does it rely solely on the representations of VRS providers seeking compensation from the Fund? If the latter, how does the FCC verify this information?
2. Why did the FCC initially reject the TRS Fund Administrator’s proposal for a sharper reduction in VRS compensation rates beyond those established in June 2010?
3. Why did the FCC allow VRS compensation rates for the 2011-2012 and 2012-2013 Fund Years to remain unchanged despite its own recognition that these rates were “set significantly higher than actual VRS costs”¹⁷?
4. How did the Interstate TRS Fund Administrator calculate the carrier contribution factor for the 2013-2014 Fund Year? What accounts for the more than 100 percent increase in the carrier contribution factor between the 2012-2013 and 2013-2014 Fund Years?
5. Please state when the “structural reforms” proposed in the FCC’s June 10, 2013 *Report and Order and Further Notice of Proposed Rulemaking* will be fully implemented. Why is the FCC, according to its June 10, 2013 *Order*, waiting to set final VRS compensation rates until after these reforms are fully implemented? Why is the FCC recommending that

¹⁴ *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5546, ¶ 1 (2011).

¹⁵ See *Structure and Practices of the Video Relay Service Program*, Second Report and Order and Order, 26 FCC Rcd 10898 (2011).

¹⁶ Press Release, FCC, FCC Launches Fundamental Restructuring of Video Relay Service Program Serving Americans With Hearing and Speech Disabilities (June 10, 2013), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0610/DOC-321504A1.pdf.

¹⁷ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, FCC 13-82, Report and Order and Further Notice of Proposed Rulemaking, ¶ 185 (rel. June 10, 2013).

2013-2014 Fund Year VRS compensation rates be brought "closer" to provider costs as opposed to being set at "actual" provider costs?

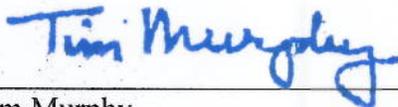
6. Is the FCC currently investigating any allegations of waste, fraud or abuse in the VRS program or any particular VRS provider? If so, what are the reasons for and current status of those investigations?

As the Committee with jurisdiction over Federal communications policy, we also request that you submit to the Committee the following documents related to your agency's oversight of the Interstate TRS Fund and the VRS program.

1. All internal reviews and assessments of VRS compensation levels conducted by or at the request of the FCC since January 2010.
2. All written and electronic communications from January 2010 to the present between (1) any employee, agent or representative of the FCC and (2) any employee, agent or representative of any VRS provider related to or discussing (a) the adequacy or reasonableness of the VRS compensation rates and/or (2) the accuracy or legitimacy of information, such as the number of VRS user minutes, submitted by any VRS provider to the TRS Fund Administrator.

Please contact Committee staff to arrange delivery of the materials. An attachment to this letter provides additional information on how to respond to the Committee's request. If you have any questions, please do not hesitate to contact Daniel Tyrrell with Committee staff at (202) 225-2927.

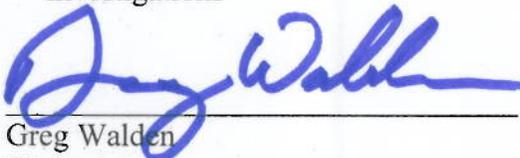
Sincerely,



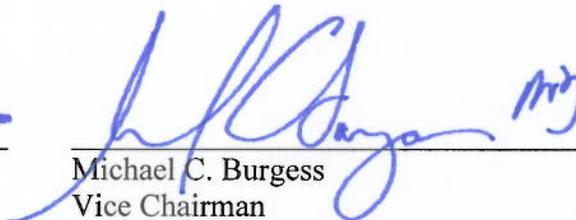
Tim Murphy
Chairman
Subcommittee on Oversight and
Investigations



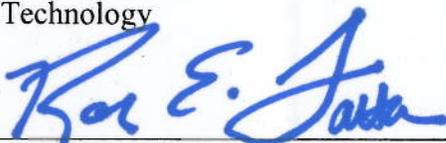
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Vice Chairman
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Robert E. Latta
Vice Chairman
Subcommittee on Communications and
Technology

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Cc: The Honorable Fred Upton, Chairman

The Honorable Henry Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology