THE REGISTRY OF INTERPRETERS FOR THE DEAF, INC.
COMMENTS IN RESPONSE TO THE NOTICE OF INQUIRY AND
FURTHER NOTICE OF PROPOSED RULEMAKING
ON STRUCTURE AND PRACTICES OF THE VIDEO RELAY SERVICE PROGRAM
AND
TELECOMMUNICATIONS RELAY SERVICES AND SPEECH-TO-SPEECH SERVICES
FOR INDIVIDUALS WITH HEARING AND SPEECH DISABILITIES

The Registry of Interpreters for the Deaf, Inc. (RID) respectfully submit these comments in response to the Federal Communications Commission’s (“Commission”) Notice of Inquiry (NOI) and Further Notice of Proposed Rulemaking (“FNPRM”) in the above-referenced proceedings. ¹

In these Comments, RID identifies certain gaps that must be addressed by the VRS Program and then responds to the Commission’s specific questions in the ROI and FNPRM. ²

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² Id
Notice of Inquiry on service quality metrics for VRS

I. Performance goals should be based on Consumer Groups’ definition of functional equivalency.

RID, a national membership organization, plays a leading role in advocating for excellence in the delivery of interpretation and transliteration services among diverse users of signed and spoken languages. In collaboration with the deaf community, RID supports our members and encourages the growth of the profession. Our Video Interpreter Member Section (VIMS) actively involves its over 1,200 members working in video interpreting to provide support and expertise related to the video interpreting field. In response to the NOI and FNPRM, the Chair of VIMS has developed a survey to collect data from VRS interpreters. The data collected will be synthesized and presented to the Commission. RID strongly believes that our mission, excellence in interpreting, makes a functionally equivalent VRS achievable by increasing the pool of qualified interpreters available to work in the field through the establishment of a national standard for qualified sign language interpreters and transliterators, ongoing professional development, and adherence to the NAD-RID Code of Professional Conduct (CPC).

In their policy statement on functional equivalence, Consumer Groups aptly stated, “Persons receiving or making relay calls are able to participate equally in the entire conversation with the other party or parties and they experience the same activity, emotional context, purpose, operation, work, service, or role (function) within the call as if the call is between individuals who are not using relay services on any end of the call.” We could not agree more. In fact, it is RID’s vision that interpreted interactions between and among individuals who use signed and spoken languages are as rich as direct communication. It is our goal to support a functionally equivalent VRS by ensuring that interpreters can support the equal participation of both parties in VRS calls.

Accordingly, we support and endorse Consumer Groups’ definition of a functionally equivalent TRS and believe that their definition should serve as the basis for any performance goals or quality metrics established by the Commission. We believe establishing performance goals is not only appropriate, but essential to ensuring a functionally equivalent VRS. RID encourages the Commission to use the wealth of knowledge and expertise in the Disability Advisory Committee’s (DAC) VRS Metrics Workgroup to guide its decisions on appropriate performance goals and measures around VRS Quality.

II. Performance measures that take into account the quality and accuracy of interpretation are integral to achieving a functionally equivalent VRS.

While we believe that all the metrics proposed by the Commission in this NOI are important to measuring the functional equivalence of VRS, RID’s area of expertise is interpreting, and thus is the only metric on which we will comment. We strongly support the Commission using the quality and accuracy of interpretation as a performance metric for VRS. Again, RID encourages the Commission to leverage the expertise available to it through the DAC’s VRS Metrics Work Group to further define this performance measure. Further, RID supports the use of an independent third party to oversee VRS service quality and believes that it is appropriate to make the results of these measurements available to the public. To date, the key performance indicators used by VRS companies, such as the number of minutes per hour a video interpreter is required to produce billable minutes, are often treated as proprietary information by most providers. This means that video interpreters are not allowed to discuss, outside of their workplace, performance indicators that are impeding their ability to deliver excellence in interpreting. Further, we have received anecdotal evidence that failing to meet key performance indicators often leads to punishment in the form of reduced hours or undesirable schedules. Accordingly, RID strongly supports the establishment of a system by which users can rate the quality and performance of VRS calls and believes that this information should be used to support interpreter development, not as a basis for punitive action against video interpreters.
We believe that greater transparency will allow consumers greater information to make an informed choice about a VRS provider, it will provide video interpreters information about the company or companies for which they are working or are considering joining and will allow for greater analysis to establish best practices in video interpreting to support a functionally equivalent VRS.

**Quality and Accuracy of Interpretation**

We believe that quality and accuracy of interpretation is an essential metric for VRS performance. We also believe that these metrics must be based on what consumers need tempered with what video interpreters are able to achieve. The Commission’s mandatory minimum standards, which prohibit CAs from intentionally altering a relayed conversation and further require that they “relay all conversation verbatim unless the relay user specifically requests summarization,”\(^4\) is an example of why it is inappropriate to classify video interpreters as Communication Assistants. As stated in our standard practice paper on professional interpreting, “interpreting is a complex process that requires a high degree of linguistic, cognitive and technical skills in both English and American Sign Language (ASL). Sign language interpreting, like spoken language interpreting, involves more than simply replacing a word of spoken English with a signed representation of that English word.”\(^5\) Thus, a video interpreter will not “relay the conversation verbatim” and it is unreasonable, if not impossible, to apply this standard to VRS interpreting. Commission rules also require that VRS CAs be qualified to “interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.”\(^6\) This borrowing of the ADA definition of a qualified interpreter better captures the unique nature of video interpreting but has not been enough to ensure quality in VRS interpreting, as the

\(^4\) 47 CFR § 64.604(a)(2).
\(^6\) *Id.* § 64.604(a)(iv).
Commission recognized in this ROI that “consumer organizations have continued to show concern about the quality of VRS interpretation.”

The Commission now seeks comment on how interpretation quality can effectively be measured. We believe that the foundation of measuring interpreter quality is setting a minimum standard for interpreters to be qualified to work in VRS. We believe that dialogue as to what this standard should be is appropriate within the DAC’s VRS Metrics Work Group, which is comprised of consumers, providers, and an RID representative.

We also believe evaluations of interpretation quality that foster professional development for video interpreters are important to the continued success of the VRS program and growth of the interpreting profession. Often, video interpreters work in isolation and rarely have a team from whom they can receive feedback or support. Furthermore, we have received anecdotal information that some companies discourage the use of teams altogether. Thus, the Commission must determine a way to evaluate interpretation quality and provide opportunities for interpreter development in a more deliberate manner. There are several methods of evaluation that could be used to achieve this. One is the mean opinion score mentioned in the NOI. Currently, when a consumer is displeased with a VRS interpreter, they disconnect and reconnect to a new one. Having the ability to provide feedback as in the Likert scale suggested in the NOI would provide more data about overall interpretation quality, both for providers and for individual interpreters. Another method is random monitoring of VRS calls for quality assurance. Again, we believe it is appropriate for a full dialogue about the benefits and shortcomings of various methods of evaluation to happen within the DAC’s VRS Metrics Workgroup. We emphasize that regardless of the method that is ultimately adopted, the information collected about quality of interpretation should be used to foster development and support the overall quality of VRS, not as a basis for punitive measures against individual interpreters.

FURTHER NOTICE OF PROPOSED RULEMAKING

7 ROI at 12
I. SETTING RATES WITHOUT ESTABLISHING QUALITY STANDARDS IS ANTITHETICAL TO ACHIEVING FUNCTIONAL EQUIVALENCE

The Commission seeks comment on its tiered rate structure.\(^8\) While we can appreciate the Commission’s efforts to eliminate waste, fraud, and abuse and its desire to make a decision about the rate structure, we are concerned that the Commission is continuing to make decisions about compensation rates without a definition of functional equivalence and with no established quality standards for VRS calls, particularly metrics to ensure interpreting quality. We believe that making any decision about the tiered rate system prior to resolving some of the questions posed in this NOI and FNPRM would be premature and ultimately contravene the Commission’s work in providing a functionally equivalent VRS. And while RID is not in a position to say whether any given rate is too high or too low, we strongly believe that the reimbursement rate should be guided by what Consumer Groups recommend and what video interpreters are able to reasonably support. We believe that setting or cutting a rate without addressing issues such as interpreting quality and considering the DAC’s VRS Metrics Workgroup is antithetical to the Commission’s work to improve VRS.

II. A PORTION OF THE RESEARCH AND DEVELOPMENT FUND SHOULD BE EARMARKED SPECIFICALLY FOR RESEARCH RELATED VRS INTERPRETERS

RID applauds the Commission for their commitment to supporting research related to VRS. We recognize the importance of research and development around the technical aspects of VRS, however, we urge the Commission to earmark a portion of the research funds to support research directly related to interpreters in VRS. Since the inception of VRS just over a decade ago, there has been a dearth of research about the work interpreters perform. Furthermore, there has been limited research on the mental, physical, and emotional impact working in a VRS call.

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\(^8\) FNPRM at 38.
center has on interpreters. Currently, the Trauma, Mental Health and Recovery Lab at Northern Illinois University, comprised of Dr. Michelle Lilly and a team of graduate and undergraduate students, are conducting research to examine the impact of handling emergency calls that involve live video as the field transitions to NG 9-1-1. The study is currently enrolling a sample of video interpreters who have handled an emergency call while working in video relay services. This research is a tremendous start to examining the work of VRS interpreters, but it is not enough. RID strongly believes that research is needed to address topics such as stress and burnout, vicarious trauma/compassion fatigue, repetitive motion injury, and minimum qualification standards. Until we more fully understand the work of the interpreter and the physical, mental, and emotional impact it has on the ability to provide interpreting services, interpreters will continue to face the risk of injury, burnout, and fatigue which leads to consumers receiving inadequate service. RID stands ready to partner with the Commission to help guide this important research.

III. NON-COMPETITION AGREEMENTS IN VRS INTERPRETER EMPLOYMENT CONTRACTS ARE UNREASONABLE AND UNDERMINE FUNCTIONAL EQUIVALENCE

RID opposes the use of non-competition agreements in VRS interpreter contracts. RID believes that such non-competes, which are typically used to protect trade secrets, are unreasonable and undermine functional equivalence by limiting the pool of qualified interpreters available to work in the VRS industry.

Interpreters working in VRS are privy to minimal, if any, trade secrets about their employer. The arguments for the non-competes in VRS interpreter employment contracts underscore this fact by contending “[Non-competes] encourage Sorenson to invest in training new VRS CAs, knowing that competitors will not hire away Sorenson’s newly-trained CAs.”

The desire to retain recently trained employees is insufficient to justify a restrictive and overly

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9 FNPRM at ¶78
broad non-compete clause. Applying this principle, any company that provides on the job training could bar their employee from working in a particular industry, thereby creating a workforce shortage.\(^{10}\) This is particularly dangerous in the VRS industry in light of the U.S. Department of Labor prediction that the “demand for American Sign Language interpreters is expected to grow rapidly, driven by the increasing use of video relay services, which allow people to conduct online video calls and use a sign language interpreter.”\(^{11}\) If the intent of the non-compete clauses is to protect legitimate trade secrets and not training investments, then that goal can be met by agreements less restrictive than overly broad non-competition clauses that act as a nationwide bar on interpreting in VRS and other settings for a year.

Non-competition agreements in VRS undermine functional equivalence by limiting the pool of qualified interpreters available to work in VRS. There are a finite number of interpreters qualified to work as VRS interpreters so any restriction on when and where these individuals work creates an artificial decrease in the supply of VRS interpreters. As a result, under qualified or unqualified interpreters may be hired by VRS providers.

A VRS interpreter who has decided to discontinue employment with a VRS provider based on adverse working conditions or relocation would be unreasonably barred from working in their field for up to a year, thus shrinking the pool of qualified interpreters available to work in VRS or other settings as restricted by the non-compete. Forcing an interpreter to stay in adverse working conditions because of an overly restrictive non-competition agreement undermines functional equivalence because unhappy workers are generally less productive.\(^{12}\) If interpreters are not able to perform at their best, the consumer experience is degraded and functional equivalence is not achieved.


RID opposes noncompetition agreements in VRS interpreter employment contracts and believes that they undermine functional equivalence. However, if the Commission decides to allow non-competition agreements, then these agreements should be limited based on:

- the geographic scope of the non-compete,
- the duration of the non-compete, and
- the type of activity the ex-employee is precluded from engaging in.

The scope of non-competition agreements must be limited to prevent a shortage in available interpreters and to protect the interests of the interpreters. The Commission should limit the geographic scope of the non-compete clause so that if an interpreter moves to an area where their current employer does not have a VRS call center, they are able to continue working without threat of reprisal. The Commission should also limit the duration of the non-compete clause so that the available supply of interpreters keeps pace with the increased demand for VRS interpreters. Finally, the Commission should limit the type of activity the ex-employee is precluded from engaging in, for example: does the non-compete address only VRS or are there clauses that would limit or restrict video remote interpreting (VRI) or community interpreting?

Recent research conducted by Kathryn Bower as a part of her Master's thesis project at Gallaudet University recommends a balance between VRS and community interpreting in order to lessen the stress and resulting burnout interpreters in video relay experience. The Commission should not force interpreters into a model in which the VRS provider maintains sole control over the settings within which interpreters are able to work. Instead, the Commission should reject non-competition agreements in VRS interpreter contracts so that functional equivalence is achieved.

I. Conclusion

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RID strongly urges the Commission to adopt Consumer Groups’ definition of functional equivalency so that the definition may serve as a foundation for establishing performance measures that take into account the quality and accuracy of interpretation. We also urge the Commission to allocate research and development funds for research about video interpreting. Additionally, we encourage the Commission to prohibit the use of non-competes in VRS. Finally, we believe the Commission must adopt quality standards for VRS before making any permanent decision about reimbursement rates. The Commission may look forward to receiving the results from our VIMS survey once the data has been analyzed and summarized.

Respectfully Submitted,

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