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STEPHEN A. GREGORY
515 Lakeview Avenue Pitman, New Jersey 08071-1874
TTY/V: 609-589-5010 fax: 609-582-9798
email: greg515@iname.com

September 14, 1998

Office of hte Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: Telecommunications Relay Services - Reply Comments
CC Docket No. 98-67

Dear Sir or Ma'am:

Pursuant to the Public Notice issues in the above captioned matter, pleas accept these Reply Comments. Pursuant to the General Requirements noted on Page 40 of the original NPRM, please find herein an original and 11 copies to be distributed to each Commissioner. A copy of these comments has also been filed with the Commission's copy contractor, International Transcription Services, Inc.

Regrettably, I do not have the financial resources to provide a copy of these comments to each of the persons or entities that filed initial comments to the NPRM.

If there are any questions, please contact me at your earliest opportunity.

Sincerely,

Stephen A. Gregory

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transmission) for their interstate calls when the Alaska user desires to utilize the modern/faster transmission and interrupt features built into her TTY? Since the faster transmission and interrupt are such desirable features, offering great improvements in efficiency, no doubt the Commission will eventually designate them as "improved service available for cost recovery". The question before the Commission today is, "why not do so now"?

Respectfully submitted,

Stephen A. Gregory
Member, Interstate Relay Advisory Board

515 Lakeview Avenue
Pitman, NJ 08071-1874

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of :
Telecommunications Relay Services : CC Docket No. 98-67

REPLY COMMENTS

Stephen A. Gregory, former Chairman and current member of the State of New Jersey Board of Public Utilities Telephone Relay Advisory Board, current member of the FCC Interstate Relay Advisory Council, and SHHH-NJ,. Inn Advocacy Representative respectfully submits the following Reply comments to the NPRM in the above captioned proceeding.

I have noted the apparent concern many recognize over the putative definitions of "enhanced" and "improved" Relay services. It is of extreme importance to properly identify services which fall into either category. For example, at page 21, the NPRM announces a tentative conclusion that in the absence of further direction from Congress, the Commission's jurisdiction

under Title IV of the ADA does not permit the Commission to "mandate access to enhanced services". On the other hand, at page 8, the NPRM also announces a tentative conclusion that the Commission must reimburse the costs of providing "improved" relay services through the interstate TRS fund, provided that the Commission has first issued a determination, through a rulemaking or declaratory ruling, that a certain service ***is*** an "improved" TRS service. Clearly, the distinction between "improved" and "enhanced" TRS services is a distinction that is of the utmost importance to the community of users who rely upon Relay. "Enhanced" services are totally unavailable to the TRS user without an act of Congress. On the other hand, "improved" services are obtainable, by law must be recognized, and are funded through the interstate TRS fund.

Why must the Commission make official provision for "improved" TRS services? As the NPRM states:

> "In enacting Title IV, Congress directed the Commission to ensure that persons with hearing and speech disabilities benefit from technological advances. [See 47 U.S.C., 225 (d)(2); H.R. Rep. No. 101-485(II), 101 Cong., 2d Sess. 130 (1990) (House Report II)]"

Title IV clearly states that "the Commission shall ensure that regulations prescribed to implement this section ... do not discourage or impair the development of ***improved technology***.

With regard to ***"audio text services"*** the NPRM states, at 19:

> "In enacting Title IV, however, Congress stated that 'there are some services, such as audiotext services, that connect callers to recorded information services. It is not the function of this legislation to facilitate access to these kind (sic) of services." See H.R. Rep. No. 101-485 (IV), 101st Cong., 2d Sess. At 66 (1990).

From this statement, the Commission tentatively concludes at page 21 (paragraph 45), that it's jurisdiction under Title IV of the ADA does not permit the Commission to mandate access to "computer-driven voice-menu systems." Expressing some doubt over it's tentative conclusion, the Commission asks commenters to discuss the Commission's legal authority to require access to such services through TRS.

This reply urges the commission to note the difference between "audiotext" services which provide information only and no interaction from the party calling in (such as the daily horoscope), and "computer-driven voice-menu systems" which allow callers to interact and conduct telecommunications business. In 1990 when "computer-driven voice-menu systems" were hardly in use, can the Commission truly say that Congress did in fact intend to withhold such service from those with hearing loss? Or, in

the alternative, did Congress merely wish to defer to the then-projected slow typing speed anticipated for CA's, and thus withhold access to "audiotext services" with perhaps interminable and rapidly-voiced recorded messages? (Note that when the Commission first considered a CA typing speed standard, it footed it's proposal in 35 words per minute. As we all know today, typical CA's transliterate at an ***average*** typing speed of 60 words per minute.) To answer this most pertinent question, the Commission is urged to carefully study the House Report and other underlying authority to discern whether Congress was, in fact, thoughtfully and distinctively contemplating that functional equivalency should exclude "computer-driven voice-menu systems" when it wrote "audiotext services". If there is no clear authority specifically excluding "computer-driven voice-menu systems", the Commission should look for a firm definition of "audiotext services" in the authorities. Most definitely, the Commission must be very careful to NOT withhold from those with hearing loss any telecommunication service that is available to the general public, unless there is clear statutory authority granting the Commission jurisdiction to do so. The question is ***not*** whether Congressional mandate grants the Commission "jurisdiction to require access" (NPRM, at 21) to computer-drive voice-menu systems, as the NPRM

concludes. Rather, the true question is whether Congress intended to grant the Commission "jurisdiction to withhold access" from it's definition of "functional equivalency". An example provides guidance.

When the Commission considered the competing issues of "call privacy" versus "conversation content" and CA obligation to report illegal activity, it employed a rationale which, in effect, resolved to not repeal the limited law enforcement exceptions to privacy in Section 705(a) of the Communications Act by making implications about the ADA when there was no demonstration of Congressional intent in the ADA to vacate section 705(a). The instant issue poses the question: will the Commission repeal the "functional equivalency" intent of the ADA by making implications about computer-driven voice-menu systems not supported by Congressional record?

When the Commission considered the issue of call privacy, an ADA mandate, versus CA obligation to report illegal content, a mandate of Section 705 (a) of the Communications Act, the Commission ruled that the only exceptions to privacy were only those "associated with specific incidents of possible law violations." Pgh 14, CC Docket No. 90-571. In reaching it's conclusion, the Commission determined that the ADA "privacy" mandate did

not take precedence over the Communications Act provisions, which permit divulging call content under certain conditions. The Commission applied case law and was "guided by the principle that 'repeals (of federal statures) by implication are not favored and will not be found unless an intent to repeal is clear and manifest." Rodriguez v. U.S., 480 U.S. 522, 524 (1987). See also Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1018 (1984). Thus, the Commission found there was no clear congressional intent in the ADA to repeal Section 705(a) of the Communications Act.

Turning to the issue at hand, and arguing a similar rationale, the ADA mandates functional equivalency and demands that the Commission provide for new technology. Only if there is clear and convincing language divulging congressional intent, should the Commission act to withhold a service, no inferences allowed! "Repeal" of the functional-equivalency-ADA-standard by "implication" aborts the statutory mandate and must be avoided.

In conclusion, only a thorough search of the authorities would reveal Congressional intent as to computer-driven voice-menu systems, and the final Rule-making decision should clearly point out the authorities upon which the Commission relies. If the underlying authorities are not clear and specific to define computer-generated voice-menu systems as "enhanced", the

Commission is respectfully urged to reverse it's tentative conclusion, issue a determination that relaying "computer-driven voice-menu" systems constitutes an "improvement" to TRS, which providers must make available.

With regard to actually handling the "relaying" of either the "computer-driven voice-mail" system or "audio text" messages, I support the commission's conclusion to amend it's rules and permit the CA to summarize, upon receiving instructions from the TRS user.

## OTHER ISSUES ARISE WITH REGARD TO THE CATEGORIZATION OF TRS SERVICES AS ENHANCED OR IMPROVED

Beyond the important issue of the "relay" of computer-driven voice-menu systems, the Commission is urged to plan for the future. "Non-relay" telecommunications technology is expanding at an exponential rate. And, "relay" telecommunication has already morphed from slo-baudot transmission to rapid-transit at more than twice the former speed, with coversation-interrupt capability. Other technological developments are appearing in the Relay market-place on almost a monthly basis.

Looking ahead, will the Commission consider these future developments in Relay to be "enhancements" or "improvements"? Again, the distinction is critical: "Improvements" can be recognized by the

Commission and made available to the public, but not so with "enhancements", which can be made available only after Congressional action. Study provides guidance to the Commission.

The words " 'enhanced' services" first appears in a footnote (n20) to paragraph 19 of FCC 91-213, In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, July 26, 1991 Released; Adopted July 11, 1991. Paragraph 19 states:

> "19. In order to maintain the functional equivalency standard mandated by the ADA, we modify the proposed rules to require that CAs are prohibited from failing to fulfill the obligations of common carriers by refusing single or sequential calls or limiting the length of calls utilizing relay services. n19 For the same reason, we require TRS be capable of handling ***any type of call normally provided by the common carrier.*** The burden of proving in-feasibility of handling any type of call will be placed on the carriers. n20 Questions will be addressed on a case by case basis." Emphasis added. Op. Cit.

Note 20 quoted above is the first location where the word, "enhanced" is used. Therein is provided the clue to understanding the definition of what constitutes an "enhanced" service. Note 20 reads:

> "n20 The provision of "enhanced" services offered by common carriers is not required under this provision, but provision of such services is encouraged if technically feasible. ... Op. Cit. Quotations as in original, underlining added.

It does not take a careful reading of the footnote to discern the clear meaning that "enhanced" services are those services "offered by common carriers". Enhanced services would be such items as 3-way calling and other such bells and whistles. The footnote is clear, the words "enhanced services" are not related to Relay services at all! "Enhanced services" are those offered to the general hearing public by common carriers! It would seem to be an error for the Commission to now apply the words "enhanced services" to Relay services, since the original intent of the term was to identify "common carrier services"...not "relay services"! With this understanding, it is clear to see that the Commission must needs be very, very stingy in classifying any future Relay technology as an "enhancement"

to Relay. As the Commission stated in it's very first NPRM for Relay, "no regulation set forth in its rules is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications services to the disabled." CC Docket 90-571, at pgh 24. If the Commission sets forth an artificial lingo of "enhanced" and "improved" unsupported by the record, virtually any change in Relay could be arbitrarily considered either "enhanced" or "improved". Because of 1) the vital importance of advancing Relay with new technology, and 2) the ADA mandate that the Commission ensure the deployment of new technology, the term "enhanced" with it's restrictive connotation must be rejected by the Commission and outright banned. Quite simply, there is no statutory evidence that **any** change in Relay technology should be classifed as not mandated by the ADA, other than "audiotext services that connect callers to recorded information services" (NPRM, page 19, at pgh. 42). Moreover, there is no statutory authority to refer to ANY relay service as an "enhanced" service.

AN IMPROVEMENT TO RELAY THE COMMISSION SHOULD CLASSIFY AS IMPROVED BY DECLARATORY RULING

Clearly, we already have an improved technology which is generally out in the market place helping more people than either of the Commission's

proposed "improved" services. Increased transmission speeds and conversation interrupt-capability is today helping a greater number of people than the STS or VRI improvements that are proposed for recognition. Fully supporting the Commissions proposed improvements, I urge the Commission to formally recognize "today's" relay transmission technology, by declaratory ruling, in it's final rule making.

Again, looking ahead, it is totally obvious that double speed transmissions and conversation-interruption capability must eventually be declared a TRS improvement by the Commission. 85% of the TTY's sold in the last 6 years are set up for this technology. Eight states currently provide these improved capabilities, with more states to come online before the Commission adopts it's final rules. Moreover, with increasing frequency, relay-users that live outside these 8 states are using the faster states' relay services for interstate calls (rather than their own state's slow-relay service) because they prefer the faster solution and interrupt capability. By failure to act, the

Commission promotes the condition where Alaska relay users must call Georgia Relay (or D.C., or NJ, or one of the other jurisdictions with faster