

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities)	CG Docket No. 03-123
)	
Structure and Practices of the Video Relay Service Program)	CG Docket No. 10-51
)	

COMPTEL’S COMMENTS ON THE PROPOSED CONTRIBUTION FACTOR

COMPTEL, through undersigned counsel, hereby submits its comments in response to the Commission’s Public Notice requesting comments, *inter alia*, on the carrier contribution factor proposed by TRS Fund Administrator Rolka Loube Associates LLC (“Rolka”) for the 2015-16 fund year.¹ The TRS contribution factor proposed for funding year July 1, 2015 through June 30, 2016 is 0.01635,² which represents a 34 percent increase over the contribution factor of 0.01219 adopted by the Commission for the 2014-2015 fund year.³ COMPTEL urges the Commission to closely examine the basis for this sharp increase, which places a substantial

¹ Public Notice, Rolka Loube Associates LLC Submits Payment Formulas and Funding Requirement For The Interstate Telecommunications Relay Services Fund For The 2015-16 Fund Year, DA 15-612 (rel. May 20, 2015) (“Public Notice”); see also Rolka, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, filed April 24, 2015 in CG Docket No. 03-123 (“Rolka Submission”); Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, Supplemental Filing, filed May 1, 2015 in CG Docket No. 03-123 (“Supplemental Filing”).

² Public Notice.

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, Order, DA 14-946, at ¶¶ 4, 24 (rel. June 30, 2014) (“2014 TRS Order”).

burden on carriers, and closely consider whether such a large increase is necessary. Moreover, as COMPTTEL has previously argued, the Commission should revisit its apparent (though uncodified) prohibition against carriers identifying TRS contributions as line items on customer bills and/or declare that carriers are not prohibited from recovering TRS contributions in line items on customer bills.

I. The Commission Should Scrutinize the Basis For the Proposed Massive Increase

Factors contributing to the proposed 34 percent jump this year include a proposed 32 percent increase in the size of the fund from \$793 million⁴ to \$1.048 billion,⁵ increases in the proposed per minute rates for certain TRS services⁶ and a \$1.123 billion decrease in the interstate and international revenues that are assessed to pay for TRS services.⁷ The significant hike in the contribution factor, if approved by the Commission, will mean higher bills for end users served by telecommunications providers that have the ability to implement rate increases.⁸ Not all providers, however, will be able to pass the increase in the contribution factor through to their end users. Where their contracts or other billing arrangements with end users constrain their ability to implement rate increases, telecommunications providers will have to absorb the significant increase in the contribution factor.

⁴ 2014 TRS Order at ¶4.

⁵ Rolka Submission at 6.

⁶ Rolka Submission, Exhibit 2.

⁷ Supplemental Filing.

⁸ The Americans with Disabilities Act (“ADA”) directs the Commission to adopt regulations that “generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service. . . .,” 47 U.S.C. §225.

The timing of the factor increase is also problematic. Carriers are likely to receive the Order announcing the contribution factor increase on or about July 1, which is also the effective date of the increase. In setting prices for the current year, providers have no way of anticipating the magnitude of any increases in the contribution factor, which puts them in an extremely difficult position. They either have to impose what may appear to their customers to be arbitrary service rate hikes to reflect the increase in the contribution factor or eat the cost of the increase where their contracts or other billing arrangements preclude raising interstate service rates.⁹ For providers, especially competitive providers, unable to raise rates to cover the increase in the contribution factor, their already narrow margins are further reduced and they have less revenue to reinvest in their networks and innovative services for their customers. For these reasons, the Commission should carefully scrutinize the justifications for the proposed 34 percent increase and ensure that such a burdensome increase is absolutely necessary.

II. The Commission Should Clarify That Carriers Are Not Prohibited From Recovering TRS Contributions Through Line Items on Customer Bills

The Commission has acknowledged that the current TRS rate setting mechanism has negatively affected the telecommunications carriers that must contribute to the TRS fund.¹⁰ The Commission could (and should) substantially relieve the negative impact on telecommunications contributors by revisiting its apparent (though uncodified) prohibition against carriers identifying TRS contributions as line items on customer bills and/or declaring that carriers are not prohibited from recovering TRS contributions in line items on customer bills.

⁹ Many providers use multi-year contracts with fixed rates to serve subscribers (both business and residential). As a result, the inability to itemize TRS contributions on their customer bills means such providers must absorb any contribution increases.

¹⁰ *In the Matter of Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Further Notice of Proposed Rulemaking, FCC 11-184 at ¶ 22 (rel. Dec. 15, 2011).

The ADA of 1990 amended the Communications Act to establish a federal requirement that interstate and intrastate telecommunications relay services be made available to consumers with speech and hearing disabilities so that such consumers can “engage in communications 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 communications services by wire or radio.”¹¹ The availability of TRS services benefits all consumers by enabling and facilitating communications on the nation’s networks among all members of society. COMPTEL and its members support the TRS program and the Commission’s efforts to ensure that functionally equivalent communications services are available to all.

Although the ADA explicitly mandates that the Commission shall adopt regulations providing that costs caused by interstate TRS services shall be recovered from all subscribers for interstate services,¹² it does not provide specific instructions with respect to the means by which TRS costs are to be recovered from subscribers. By regulation, the Commission requires every carrier providing interstate telecommunications services, including VoIP services, to “contribute to the TRS Fund on the basis of interstate end user revenues.”¹³ Despite the statutory mandate that providers recover TRS costs from their subscribers and the Commission’s mandate that the costs of TRS service be paid by telecommunications providers and recovered from their subscribers, the Commission has stated on several occasions that providers are not permitted to

¹¹ 47 U.S.C. §225(a)(3), (b).

¹² See Section 64.604(c)(5)(ii) of the Commission’s rules which provides that “[c]osts caused by interstate TRS shall be recovered from all subscribers for every interstate service utilizing a shared funding cost recovery mechanism. . . .”

¹³ 47 C.F.R. §64.604(c)(5)(iii)(A).

identify TRS contributions as separate line items on subscriber bills but instead are required to incorporate TRS contributions into the prices of their interstate telecommunications services.¹⁴ Significantly, the ADA does not prohibit providers from passing TRS contributions through to their subscribers as separately identified line items and the Commission itself has never provided a reasoned explanation for such a prohibition. It is time for the Commission to revisit the prohibition and permit separate line item recovery in a manner consistent with the Truth-in-Billing regulations.

The TRS contribution factor has risen steadily over the last 20 years. The proposed contribution factor of 1.635 percent of interstate and international revenues is more than 50 times greater than the contribution factor for funding year 1994-1995.¹⁵ There is no reason to believe that the TRS contribution factor will not continue to rise in the future. Huge hikes in the contribution factor, such as the 34 percent increase proposed for the coming year, translate into significant expenses that cannot help but cause economic challenges for the interstate telecommunications service providers required to contribute to the fund. In light of the ADA's

¹⁴ *In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802 at ¶22 (1993) (“carriers are required to recover interstate TRS costs as part of the cost of interstate services and not as a specifically identified charge on end user’s lines”); *In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Report and Request for Comments, 6 FCC Rcd 4657 at ¶34 (1991) (“Moreover, in order to provide universal telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone service and not as a specifically identified charge on subscribers’ lines”); *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, Further Notice of Proposed Rulemaking, FCC 12-46 at n. 617 (“We note that carriers are not permitted to recover interstate TRS costs as part of a specifically identified charge on end users’ lines.”).

¹⁵ The contribution factor for funding year 1994-1995 was 0.030 percent.

mandate that TRS costs be recovered from subscribers, the Commission should tear down the barrier it has created to such recovery by permitting providers to transparently identify TRS contribution costs in a separate line item.

III. A Separate Line Item Would Be Consistent With The Truth-in-Billing Rules

Prohibiting providers from disclosing the TRS contribution in a line item cannot be reconciled with the Commission’s Truth-in-Billing requirement that “[c]harges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered” such that customers can “accurately assess that the services for which they are billed correspond to those that they have requested and received and that the costs assessed for those services conform to their understanding of the price charged.”¹⁶ The Truth-in-Billing rules are “intended to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service.”¹⁷ This goal is met when consumers can distinguish between the costs imposed by regulatory requirements, such as TRS fees, and the prices charged for the services that they are purchasing. In furtherance of this goal, the Commission permits providers to separately identify assessments for universal service¹⁸ and the federal excise tax¹⁹ as line items on subscriber bills. Such is not the case, however, for TRS

¹⁶ 47 C.F.R. § 64.2401(b).

¹⁷ 47 C.F.R. § 64.2400(a).

¹⁸ 47 C.F.R. §54.712. Unlike the universal service fee which carriers may pass through to their customers, carriers must collect the TRS contribution fee from their end users under the ADA.

¹⁹ *In the Matter of Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Second Report and Order, Declaratory Ruling, And Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 at ¶¶26, 28, *vacated on other grounds sub nom. National Association of State*

contributions which the Commission prohibits providers from separately identifying in line items on customer bills.

The TRS line item prohibition precludes providers from truthfully informing their customers about the pricing of the services they are purchasing as compared to the costs imposed by the Commission to fund a laudable government program, thereby creating a conflict between the Commission's Truth-in-Billing requirements and the TRS line item prohibition. Perhaps in recognition of this conflict, the Commission long ago announced its "intent to revisit the prohibition on line items referring to interstate TRS in a future proceeding. . . ." ²⁰

Unfortunately, 10 years has passed since the Commission made that announcement and it has yet to revisit the line item prohibition.

Authorizing telecommunications providers to specifically identify the TRS contribution on their subscriber bills as a separate line item would provide the transparency necessary to allow those subscribers to clearly understand what they are being charged for funding the services and would increase accountability on behalf of both the Commission and the TRS Fund Administrator. Telecommunications customers have a right to know what they are paying for. A separate TRS line item would serve that purpose and would allow customers to distinguish between rate increases due to regulatory requirements and those due to service provider price increases. The ability to identify TRS contributions would also ease the burden on carriers by ensuring that they can pass through to their subscribers Commission-mandated increases in TRS

Utility Consumer Advocates v. FCC, 457 F. 3d 1238 (11th Cir. 2006) (*Truth-in-Billing Second Report and Order*).

²⁰ *Truth-in-Billing Second Report and Order* at nn. 64 and 86.

contributions as unambiguously delineated line items rather than having to absorb them or recover them in what may appear to their customers to be arbitrary rate increases.

Conclusion

For the foregoing reasons, COMPTEL respectfully requests that the Commission carefully scrutinize the Fund Administrator's justification for the proposed 34 percent increase in the TRS contribution factor and closely evaluate whether such a huge increase is necessary. In addition, the Commission should revisit without further delay its uncodified prohibition on line items referring to interstate TRS contributions and permit providers to identify assessments for interstate TRS contributions as line items on subscriber bills.

Respectfully submitted,

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