



To Whom It May Concern:

The National Association of the Deaf (“NAD”) seeks to ensure that all banks and lending institutions understand their legal obligations with respect to accepting calls from deaf and hard of hearing individuals. The Americans with Disabilities Act (“ADA”) has clear mandates requiring places of public accommodation such as banks and lending institutions to respond to calls placed through Telecommunications Relay Services (“TRS”), such as Video Relay Service (“VRS”) calls, Internet Protocol Relay Service (“IP Relay”) calls, and Teletypewriter (“TTY/TTD”) calls, in the same manner that they respond to calls from hearing individuals.

Banks and lending institutions that violate such provisions are subject to legal action and have been the focus of litigation by the United States Department of Justice (“DOJ”). Examples of our work include partnering with the DOJ to obtain a sixteen million-dollar (\$16,000,000) settlement against Wells Fargo & Company for violating this provision. *See* Settlement Agreement, United States v. Wells Fargo & Co. (2011), No. 202-11-239.

This letter contains information necessary for banks and lending institutions to understand the requirements for ADA compliance with respect to deaf and hard of hearing individuals. The relevant provisions are contained in Title III of the ADA and its implementing regulations as well as Title IV of the ADA and the regulations regarding TRS. *See* Americans with Disabilities Act, tit. 3, 42 U.S.C. § 12181-12189 (2020); Americans with Disabilities Act, tit. 4, 47 U.S.C. § 225 (2020); 28 C.F.R. § 36.101-36.607 (2016); 47 C.F.R. § 64.601-64.636 (2020).

- 1) Public accommodations, such as banks and lending institutions, must accept calls from any telecommunications relay services, including VRS.
  - a. The DOJ has promulgated regulations mandating that a public accommodation must “respond to telephone calls from a telecommunications relay service established under title IV of the ADA in the same manner it responds to other calls.” 28 C.F.R. § 36.303(d)(4).
  - b. The ADA defines “public accommodation” to include a “bank . . . or other service establishment.” 42 U.S.C. § 12181(7)(F).
  - c. Public accommodations may not require a deaf or hard of hearing customer to sign a third-party representative form, authorization form, waiver, or other similar forms before accepting their calls placed through relay services.



- d. The DOJ has further mandated that “[a] public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.” 28 C.F.R. § 36.303(c)(1).
- 2) Title IV of the ADA established nationwide TRS to afford deaf and hard of hearing individuals with equal access to telephone communication.
  - 3) TRS are “telephone 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.” 47 U.S.C. § 225(a)(3).
    - a. One form of TRS is VRS. As described by the Federal Communications Commission (“FCC”), “[t]he VRS caller, using a television or a computer with a video camera device and a broadband (high speed) Internet connection, contacts a VRS [communications assistant (“CA”)], who is a qualified sign language interpreter. They communicate with each other in sign language through a video link. The VRS CA then places a telephone call to the party the VRS user wishes to call. The VRS CA relays the conversation back and forth between the parties - in sign language with the VRS user, and by voice with the called party. No typing or text is involved.” *Video Relay Services*, <http://www.fcc.gov/guides/video-relay-services>.
    - b. IP Relay is a form of text-based Internet Telecommunications Relay Service (“iTRS”) that uses the Internet to allow individuals with hearing and/or speech disabilities or who are deaf-blind to communicate with other individuals. In an IP Relay call, the communication between the person with a disability and the provider’s CA is conveyed in text via an Internet connection, and communication between the CA and the receiving party is conveyed over the public switched telephone network.
  - 4) The FCC has established safeguards to ensure secure and effective communication between the qualified interpreter and the parties to a VRS telephone call.
    - a. The FCC has promulgated regulations prohibiting CAs “from disclosing the content of any relayed conversation regardless of content, and . . . from keeping



records of the content of any conversation beyond the duration of a call.” See 47 U.S.C. § 225(d)(F); 47 C.F.R. § 64.604(a)(2)(i).

- b. FCC regulations require VRS providers to ensure that “VRS CAs are qualified interpreters . . . able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.” 47 C.F.R. § 64.604(a)(1)(iv).
- c. The FCC regulations also prohibit CAs from intentionally altering the relayed conversation and require that TRS providers take measures to ensure that the confidentiality of TRS users is maintained. See 47 U.S.C. § 225(d)(G); 47 C.F.R. §§ 64.604(a)(2)(ii).

Please note that banks and lending institutions may have additional obligations under state and federal law not included in this letter.

Further, banks and lending institutions have additional obligations toward deaf and hard of hearing customers who meet in-person with representatives of the bank or lending institution.

Thank you for your attention to this important matter.

Sincerely,

The National Association of the Deaf  
Law and Advocacy Center

## Relevant Sections of Title III of the Americans with Disabilities Act

### § 12181. DEFINITIONS.

As used in this title:

(7) Public accommodation. The following private entities are considered public accommodations for purposes of this subchapter [42 U.S.C. §§ 12181-12189.], if the operations of such entities affect commerce-- . . .

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

### § 12182. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) General rule. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction.

(1) General prohibition.

(A) Activities.

(i) Denial of participation. It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit. It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit. It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) Individual or class of individuals. For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.



**47 U.S.C. § 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS**

(a) Definitions

(3) Telecommunications relay services

The term “telecommunications relay services” means telephone 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.

(d) Regulations

(1) In general

The Commission shall, not later than 1 year after July 26, 1990, prescribe regulations to implement this section, including regulations that—

(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) establish minimum standards that shall be met in carrying out subsection (c) of this section;

(C) require that telecommunications relay services operate every day for 24 hours per day;

(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) prohibit relay operators from intentionally altering a relayed conversation.

**Relevant Sections of the Implementing Regulations of  
the Americans with Disabilities Act**

28 C.F.R. § 36.301. ELIGIBILITY CRITERIA.

(b) Safety. A public accommodation may impose legitimate safety requirements that are necessary for safe operation. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

(c) Charges. A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

28 C.F.R. § 36.303. AUXILIARY AIDS AND SERVICES.

(b) Examples. The term "auxiliary aids and services" includes—

(1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(c) Effective communication.

(1) A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. This includes an obligation to provide effective communication to companions who are individuals with disabilities.

(i) For purposes of this section, "companion" means a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate.

(ii) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. A public accommodation should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, but the ultimate decision as to what measures to take rests with the public accommodation, provided that the method chosen results in effective communication. In order to be effective, auxiliary aids and services must be provided in

accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

(2) A public accommodation shall not require an individual with a disability to bring another individual to interpret for him or her.

(3) A public accommodation shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication, except--

(i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or

(ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

(4) A public accommodation shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

(d) Telecommunications.

(3) A public accommodation may use relay services in place of direct telephone communication for receiving or making telephone calls incident to its operations.

(4) A public accommodation shall respond to telephone calls from a telecommunications relay service established under title IV of the ADA in the same manner that it responds to other telephone calls.

47 C.F.R. § 64.604. MANDATORY MINIMUM STANDARDS.

The standards in this section are applicable December 18, 2000, except as stated in paragraphs (c)(2) and (c)(7) of this section.

(a) Operational standards—

(1) Communications assistant (CA).

(i) TRS providers are responsible for requiring that all CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities.

(ii) CAs must have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette. CAs must possess clear and articulate voice communications.

(iii) CAs must provide a typing speed of a minimum of 60 words per minute. Technological aids may be used to reach the required typing speed. Providers must give oral-to-type tests of CA speed.

(iv) TRS providers are responsible for requiring that VRS CAs are qualified interpreters. A “qualified interpreter” is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(v) CAs answering and placing a TTY-based TRS or VRS call must stay with the call for a minimum of ten minutes. CAs answering and placing an STS call must stay with the call for a minimum of fifteen minutes.

(vi) TRS providers must make best efforts to accommodate a TRS user's requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA.

(vii) TRS shall transmit conversations between TTY and voice callers in real time.

## (2) Confidentiality and conversation content.

(i) Except as authorized by section 705 of the Communications Act, 47 U.S.C. 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. STS CAs may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user. The caller may request the STS CA to retain such information, or the CA may ask the caller if he wants the CA to repeat the same information during subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls.

(ii) CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay user specifically requests summarization, or if the user requests interpretation of an ASL call. An STS CA may facilitate the call of an STS user with a speech disability so long as the CA does not interfere with the independence of the user, the user maintains control of the conversation, and the user does not object. Appropriate measures must be taken by relay providers to ensure that confidentiality of VRS users is maintained.

## (3) Types of calls.

(i) Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services.

(ii) Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call.

(iii) Relay service providers are permitted to decline to complete a call because credit authorization is denied.

(iv) Relay services other than Internet-based TRS shall be capable of handling pay-per-call calls.



(v) TRS providers are required to provide the following types of TRS calls: (A) Text-to-voice and voice-to-text; (B) One-line VCO, two-line VCO, VCO-to-TTY, and VCO-to-VCO; and (C) One-line HCO, two-line HCO, HCO-to-TTY, HCO-to-HCO.

(vi) TRS providers are required to provide the following features: (A) Call release functionality (only with respect to the provision of TTY-based relay service); (B) Speed dialing functionality; and (C) Three-way calling functionality.

(vii) Voice mail and interactive menus. CAs must alert the TRS user to the presence of a recorded message and interactive menu through a hot key on the CA's terminal. The hot key will send text from the CA to the consumer's TTY indicating that a recording or interactive menu has been encountered. Relay providers shall electronically capture recorded messages and retain them for the length of the call. Relay providers may not impose any charges for additional calls, which must be made by the relay user in order to complete calls involving recorded or interactive messages.

(viii) TRS providers shall provide, as TRS features, answering machine and voice mail retrieval.