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January 31, 2007

R. David Paulison
Director
Federal Emergency Management Agency
U.S. Department of Homeland Security
500 C Street, S.W.
Washington, D.C. 20472

Dear Mr. Paulison:

We are writing to bring to your attention the serious barriers faced by many deaf and hard of hearing individuals when they attempt to access information and services from the Federal Emergency Management Agency (FEMA). Many of these concerns were highlighted by the large deaf and hearing-impaired population in need of FEMA assistance after Hurricane Katrina.

Many deaf and hard of hearing individuals displaced by Hurricane Katrina have been unable to communicate with FEMA by telephone as a result of FEMA's policies and practices. As a result, many of these individuals have been unable to: obtain information on their pending applications for housing and property assistance, rental assistance recertification and appeals; obtain explanations of program requirements and notices; get questions answered; and provide FEMA with information necessary to obtain or retain FEMA assistance. Some individuals are homeless as a result. In failing to accommodate these individuals, FEMA is violating Section 504 of the Rehabilitation Act. FEMA must take immediate steps to address this problem. A list of steps FEMA should take is included at the end of this letter.

The undersigned organizations include legal organizations representing individuals displaced by Hurricane Katrina who are residing in Texas. They have observed firsthand the problems experienced by deaf and hard of hearing individuals attempting to communicate with FEMA. The undersigned organizations also include counsel for the plaintiff class in *Brou v.*

FEMA, the class action lawsuit filed against FEMA for failure to provide accessible trailers to individuals with disabilities displaced by Hurricanes Katrina and Rita, and counsel for plaintiffs in *McWaters v. FEMA*, and *Watson v. FEMA*, class action lawsuits challenging numerous aspects of FEMA's administration of its temporary housing programs for individuals displaced by Hurricane Katrina. Given the *Brou v. FEMA* litigation, we hope that FEMA now has a better awareness of its legal obligation to comply with disability rights laws in the operations of its programs, and will therefore give this issue immediate attention, so the problems can be promptly addressed without the need for litigation.

Some of the problems experienced by deaf and hard of hearing individuals are discussed below.

1) Deaf and hard of hearing individuals who have attempted to contact FEMA using video relay services have been informed that FEMA will not communicate them if they are using video relay because it requires the use of a third party intermediary, or that they will only do so if the caller has submitted a consent form to FEMA.

Video relay is one means by which deaf and hard of hearing individuals can communicate with others by telephone. Using special equipment attached to a television, a deaf or hard of hearing individual can call a phone number and be connected with an operator who uses sign language to interpret between the deaf or hard of hearing caller and the call recipient. Because video relay operators communicate with the deaf or hard of hearing caller through sign language but speak to the call recipient through a voice telephone, the recipient of a video relay call need not possess special equipment to receive calls from video relay services users. For deaf and hard of hearing individuals with limited reading and writing abilities, video relay service is often the only effective means of communicating by telephone with call recipients who do not sign.

Many deaf and hard of hearing individuals with limited reading and writing ability have called the FEMA Disaster Assistance Hotline (1-800-621-FEMA) using video relay services only to be told that FEMA will not speak to those who call using this technology. In some instances, FEMA representatives have informed the callers (through the video relay operator) that they should hang up and call FEMA back using a text telephone (TTY).¹ Not all individuals using video relay services have TTYS. Moreover, as discussed below, deaf and hard of hearing individuals who have tried to call FEMA using a TTY have also experienced difficulties

¹ A TTY is equipment that is attached to a telephone line that enables deaf and hard of hearing callers to use make telephone calls and communicate by typing text (and reading a typed response). If the recipient does not have a TTY, the caller can call a "Relay" operator who will read the callers text and read it to the call recipient, and convert a spoken response into text for the TTY user. The Relay operator also make it possible for callers without TTY's to call individuals with TTY's.

communicating with FEMA. In other instances, FEMA representatives have said that they will not speak to the deaf or hard of hearing caller through video relay services unless the caller has a consent form on file granting permission to FEMA to speak to the third party. In contrast to FEMA's stated policy for deaf and hard of hearing video relay services users, FEMA often accepts calls made by third parties on behalf of individuals displaced by Katrina, and does not require these individuals to sign consent forms before speaking with their relatives, neighbors or friends.

Both of these responses prevent deaf and hard of hearing individuals who rely on video relay services for telephone communication from communicating with the FEMA by telephone. The complete refusal to talk to deaf and hard of hearing callers through third parties obviously serves as such a bar if that this the individual's only effective means of communicating by telephone or if the individual does not have a TTY. Requiring individuals to have a signed consent form on file before FEMA will accept a video relay services call also operates as a bar to telephone communication because many deaf and hard of hearing individuals are not proficient in reading and writing English. Requiring these individuals to submit a form or letter before they can communicate with FEMA by video relay is tantamount to a denial of access to FEMA by telephone. Further, even if such a policy were permissible, FEMA has not taken adequate steps to inform the public about it. FEMA does not routinely inform deaf and hard of hearing callers how and where to submit this consent, what information to include, whether the agency has its own consent form it wants individuals to use, and if so, how to get a copy of the form. Nor does FEMA's web site contain this information.

2) The FEMA Disaster Assistance Hotline TTY number is not answered by a live person so deaf and hard of hearing callers cannot reach a FEMA representative when they call.

FEMA has a TTY number that deaf and hard of hearing individuals can use to call the agency. Many deaf and hard of hearing individuals have called this number, but to our knowledge, none have ever reached a live person. Instead, a recorded message instructs the caller to leave a message, and states that calls will be returned within three business days. Thus, no matter how serious the situation or how dire the emergency, deaf and hard of hearing TTY users are unable to have direct contact with FEMA when they call the agency, and must always wait to hear back from the agency. In contrast, individuals calling FEMA's "voice" hotline can sometimes reach a FEMA representative without having to wait to be called back.

Over the past several months, deaf and hard of hearing individuals displaced by Hurricane Katrina have called FEMA's TTY number during emergencies. Many were calling because they received eviction notices from their landlords. Because they never reached a live person, they did not receive immediate assistance. Had they been able to communicate with a FEMA representative, they would have asked whether there was additional documentation they needed to provide to get rental assistance, find out whether the failure to pay rent was due to an

administrative error, or whether they had been denied rental assistance and needed to appeal the decision. Some of these individuals were subsequently evicted from their apartments, and others continue to face the threat of eviction because they are unable to communicate with FEMA to get answers to their questions.

3) FEMA representatives do not know how to use TTYs and/or the Relay service and thus fail to communicate effectively with deaf and hard of hearing individuals when FEMA attempts to return TTY calls.

When FEMA staff attempt to return messages left by individuals who have called FEMA's TTY number, only FEMA's telephone number appears on evacuees' TTY screens, without any additional text. The two likely reasons for the failure of any text to appear on the recipient's TTY screen are: 1) the FEMA representative is placing the call by TTY but does not know how to use it; or 2) the FEMA representative is calling the evacuee's TTY number using a voice telephone, but no Relay operator, because the representative is unaware that s/he is calling a TTY number, and is unaware that if the caller does not have a TTY, the only way to communicate with a TTY user by phone is to make the call through a Relay operator. In either case, it appears that FEMA representatives have not been adequately trained on how to make calls to TTY users, and the result is that deaf and hard of hearing TTY users are unable to communicate with FEMA by telephone.

4) FEMA representatives fail to give deaf and hard of hearing individuals sufficient information on the right to effective communication and FEMA's procedures for obtaining effective communication.

FEMA has failed to provide deaf and hard of hearing individuals displaced by Hurricane Katrina with sufficient information about their right to effective communication with FEMA and the procedures used by FEMA to provide such communication. While some FEMA notices contain FEMA's toll-free number for speech and hearing impaired individuals, and this phone number has been posted on FEMA's website, FEMA does not provide deaf and hard of hearing individuals displaced by Katrina with copies of any policies: 1) informing them that FEMA has a legal obligation under Section 504 of the Rehabilitation Act to ensure effective communication with deaf and hard of hearing individuals; 2) describing FEMA's procedures for providing sign language interpreters to deaf and hard of hearing applicants and recipients of FEMA assistance; or 3) describing the means by which FEMA will communicate by telephone with deaf and hard of hearing individuals. Nor are such policies posted on FEMA's web site.

The "FAQ's for Disaster Assistance," posted on FEMA's web site, and referred to in some FEMA notices as a source of additional information, contains neither questions nor answers on this topic. FEMA's Policy on "Equal Opportunity for Persons with Disabilities"

(Director's Policy No. 4-05), posted on the FEMA website,² states that "FEMA is required to take all reasonable steps in making accommodations for employees and other persons with disabilities," but contains no examples of modifications, and does not discuss the obligation to provide effective communication. The policy states that specific types of accommodations will be outlined in FEMA's "Reasonable Accommodations' Manual for the Federal Emergency Manual Agency," but this manual is not distributed to applicants and recipients of assistance or made readily available to them.

FEMA's practices violate Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act prohibits Federal Executive agencies such as FEMA from discrimination on the basis of disability. 29 U.S.C. § 794(a). FEMA regulations implementing Section 504 prohibit FEMA from: denying individuals with disabilities with an opportunity to participate in and benefit from FEMA aids, benefits and services, 44 C.F.R. § 16.130(b)(1); providing an opportunity to participate in and benefit from aids, benefits and services that are not equal to that afforded to others, 44 C.F.R. § 16.130(b)(2); and otherwise limiting individuals with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service. 44 C.F.R. § 16.130(b)(1)(vi).

The regulations specifically require FEMA to "take appropriate steps to ensure effective communication with applicants, participants, personnel of other federal entities, and members of the public." 44 C.F.R. § 16.160(a). FEMA "shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps with an opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency." 44 C.F.R. § 16.160(a)(1). "Auxiliary aids" is defined as:

[S]ervices and devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of, programs and activities conducted by the agency. . . . []
Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar devices and services.

44 C.F.R. § 16.103. The regulations provide that "[w]here the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing." 44 C.F.R. § 16.160(a)(2). The regulations also require FEMA to make

² This policy can be found at <http://www.fema.gov/oer/erp.shtm>.

available to applicants, recipients, beneficiaries, and other interested persons information about Section 504 and its applicability to FEMA programs in a manner that “apprise(s) such persons of the protections against discrimination,” 44 C.F.R. § 16.111, and requires FEMA to “ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.” 44 C.F.R. § 16.160(b).

There is no question that FEMA’s practices violate Section 504.

The refusal to communicate with deaf and hard of hearing individuals by video relay violates Section 504 because it denies deaf and hard of hearing individuals the benefits of FEMA’s services on the basis of disability, in violation of 44 C.F.R. § 16.130(a). It also denies these individuals effective communication in violation of 44 C.F.R. § 16.160(a), denies equal access to FEMA information and services in violation of 44 C.F.R. § 16.130(b)(2), and limits deaf and hard of hearing individuals in the enjoyment of rights, privileges, and opportunities enjoyed by others, in violation of 44 C.F.R. § 16.130(b).

The rationale offered by FEMA in some instances, which is that the agency cannot communicate with deaf and hard of hearing individuals through a third party, is patently unlawful. The same rationale would also prohibit FEMA from communicating with deaf and hard of hearing individuals through in-person sign language interpreters, yet FEMA’s Section 504 regulations clearly require FEMA to provide auxiliary aids to those with hearing impairments, 44 C.F.R. § 16.160(a)(1), and the definition of “auxiliary aid” specifically identifies sign language interpreters as one such aid. 44 C.F.R. § 16.103. It is also discriminatory because it imposes a burden on deaf and hard of hearing callers that is not imposed on other callers who have a third party call FEMA on their behalf.

The refusal to communicate with deaf and hard of hearing individuals through a third party unless the individual submits a signed consent form is also unlawful, because it creates a barrier to effective communication between deaf and hard of hearing individuals and the agency in violation of 44 C.F.R. § 16.160(a). Given the limited ability of many deaf and hard of hearing individuals to read and write English, requiring them to draft a letter or complete an additional form before the agency will communicate with them by video relay services, in effect, denies access to this to form of communication – and in some cases, all telephone communication – to many deaf and hard of hearing individuals. It also denies equal access to FEMA information and services in violation of 44 C.F.R. § 16.130(b)(2). Further, it limits the deaf and hard of hearing individuals in the enjoyment of rights, privileges, and opportunities enjoyed by others, in violation of 44 C.F.R. § 16.130(b)(1)(iv), because it delays the ability of deaf and hard of hearing individuals to communicate directly with the agency, since they will obviously not have consent forms on file the first time they contact the agency. The requirement is particularly inappropriate given that the purpose of many FEMA programs is to provide services to individuals and families during emergencies, when time is of the essence.

FEMA's failure to successfully place telephone calls to TTY users also violates Section 504. FEMA Section 504 regulations plainly require FEMA to use effective telecommunications systems such as TTY's when communicating by telephone with persons with impaired hearing. 44 C.F.R. § 16.160(a)(2). While the regulations permit FEMA to use either the Replay operator or a TTY, regardless of the method used, the communication must be effective. FEMA's apparent failure to train its representatives on how to use either TTYs or the Relay service has denied meaningful access to information and services to, and effective communication with, deaf individuals. FEMA's failure to return TTY messages effectively is all the more egregious, given that FEMA does not answer its TTY when it receives calls, so FEMA's return phone calls are the only opportunity for deaf and hard of hearing TTY users to communicate by telephone with FEMA.

FEMA's failure to provide individuals with information about the right to effective communication, and the means by which they can obtain it, violates FDMA's obligation under 44 C.F.R. § 16.111 to make information available to applicants, recipients, beneficiaries, and others about Section 504 and its applicability to FEMA programs. It also violates the obligation to ensure that persons with impaired hearing can obtain information about the existence of accessible services, 44 C.F.R. § 16.160(b).

Recommendations

We urge FEMA to take the following immediate steps to address these problems:

- 1) Develop and disseminate to all FEMA field offices, through posting on FEMA's web site, and through other channels, a comprehensive written policy on providing equal access to, and effective communication with, deaf and hard of hearing individuals, including in-person sign language interpreters and telephone communication by video relay services, TTY and Relay service, that contains detailed requirements for FEMA staff, timetables within which interpreters must be provided and TTY calls returned, and clear lines of responsibility for staff;
- 2) Train FEMA staff and contractors on the written policy, the use of the TTY, Relay service, arranging for interpreters, and serving deaf and hard of hearing individuals;
- 3) Provide information, both written and in other forms, to applicants, recipients, and other interested persons on the rights of deaf and hard of hearing individuals to equal access to FEMA programs and services and effective communication with FEMA, the process for obtaining auxiliary aids and accommodations from FEMA, the time frame in which they must be provided, and the right to grieve or file a complaint if they are not satisfied;

4) Monitor and oversee implementation of and compliance with the policy and the dissemination of information on this issue to FDMA applicants and beneficiaries, FEMA contractors, staff, and others.

We are available to discuss these proposals, and can provide more detail and assistance on what the policy should contain. We look forward to hearing from you.

Sincerely,

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