

- The audio/video transmission is secure and the individual's privacy is protected.

We will follow the same procedures for making audio recordings of hearings using VTC that we do for hearings where all the participants appear in person. We have no plans to videotape hearings in which a party or a witness appears by VTC. If there is a problem with the VTC equipment, before or during a hearing, we will reschedule the hearing as we do now when unforeseen circumstances require us to reschedule a hearing: At the earliest time possible based on the request for hearing filing date.

We reserve the right not to schedule an appearance by VTC for someone who asks to appear by VTC. In many locations, especially in the near term, we may not have the capability to accommodate the request, and the ALJ may determine that an appearance must be conducted in person even where VTC capability exists. As access to VTC expands, we will generally accommodate requests to appear by VTC as space and time permit.

Although use of VTC to conduct hearings has the potential to improve service, we will not require any individual to appear at his or her hearing by VTC if the individual objects to that procedure at the earliest possible opportunity before the time scheduled for the hearing. Under these final rules, if a party timely objects to making his or her appearance by VTC, we will reschedule the hearing as one at which the individual may appear in person.

When we reschedule a hearing because a party objects to making his or her appearance by VTC, we will reschedule the hearing at the earliest time possible based on the date the request for hearing was filed. Where necessary, to expedite the rescheduling, we will give the party the opportunity to appear in person at the hearing office or any other hearing site within the service area of the hearing office at which we are first able to schedule a hearing. The party's travel expenses to the remote site or to the hearing office, and the travel expenses of his or her appointed representative, if any, and the travel expenses of any unsubpoenaed witnesses we determine to be reasonably necessary, will be reimbursed in accordance with the provisions of §§ 404.999a–404.999d and 416.1495–416.1499.

To ensure that a party fully understands the right to decline to appear by VTC, a notice scheduling an individual to appear at his or her hearing by VTC will clearly state:

- What it means to appear by VTC;
- That we have scheduled the individual's appearance to be by VTC;
- That we will schedule a hearing at which the individual may appear in person if the individual tells us that he or she does not want to appear by VTC; and
- How to tell us that.

We will evaluate hearings using VTC procedures to ensure that there is no significant difference in the outcome of hearings conducted using VTC and those conducted in person and that we maintain a high degree of accuracy in decisions made based on hearings using VTC. We will also ensure that individuals:

- Understand that they are not required to appear at their hearings by VTC;
- Understand that a witness is appearing by VTC, when appropriate;
- Know how to tell us if they do not want to appear by VTC;
- Receive a full and fair hearing; and
- Are satisfied with the VTC process in relation to their appearance and the appearances of any witnesses, including the appearances of witnesses who may appear by VTC notwithstanding an objection by the claimant to use of VTC for the appearance.

#### Public Comments

The final rules with request for comment that were published on February 3, 2003, provided the public with a 60-day comment period. We received a total of ten comments.

Because some of the comments were detailed, we have condensed, summarized, or paraphrased them below. However, we have tried to summarize the commenters' views accurately and to respond to all of the significant issues raised by the commenters that were within the scope of this rulemaking action.

We have not limited ourselves to responding only to those comments that addressed the specific issue on which we solicited comment (*i.e.*, whether claimants should have veto authority over VTC appearances by witnesses as well as veto authority over their own appearances by VTC). Many of the other comments received addressed issues previously addressed or touched on in the comments received in response to the NPRM. However, since the additional comments generally offered some different perspective on the issues, we are responding to those comments as well.

None of the comments we received opposed the change to deny claimants the right to veto use of VTC to conduct the appearance of a witness. However,

a number of the comments suggested that we expand our rules to provide more specific guidance regarding the consideration of objections to the use of VTC for taking expert testimony and the factors that could interfere with use of VTC to conduct the appearance of a witness.

*Comment:* The Railroad Retirement Board (RRB), which had noted in commenting on the proposed rules that it would be interested in making use of SSA's VTC facilities on a fee basis, wrote to again state its interest in exploring the possibility of the RRB using our VTC facilities.

*Response:* We are exploring the possibilities of sharing VTC facilities with the RRB and other agencies.

*Comment:* The Association of Administrative Law Judges (AALJ) wrote to restate its strong support for our decision to have the ALJ decide whether to have expert witnesses appear by VTC and to deny claimants the right to veto use of VTC for that purpose.

*Response:* We considered the AALJ's comments in deciding to change the proposed rules in this respect. The AALJ's restatement of its prior comments supports adoption of the rules published February 3, 2003, without change.

*Comment:* Noting that we cited the difficulty of finding MEs in remote sites in sparsely populated areas as one justification for using VTC, one commenter suggested that another possible solution would be to increase ME compensation.

*Response:* We believe that we can increase our ability to secure ME (and VE) services in remote areas by using VTC, and that it will be productive to use VTC for this purpose even if we also identify other ways to ameliorate the problems we have experienced in securing expert testimony in remote areas. VTC use can increase the incentives for an expert witness to appear in remote-site hearings by reducing or eliminating the adverse effect on the expert's professional schedule that can occur if the expert is required to travel to a remote site. Use of VTC can also increase the incentive of experts to appear in Social Security hearings by facilitating the scheduling of multiple appearances for the expert within a limited period.

*Comment:* In the mistaken belief that we plan to videotape hearings in which appearances are made by VTC, a commenter asked a number of questions about access to and the costs of the videotapes that would result under such a procedure, and about whether the Appeals Council might use these videotapes and the visual clues they