

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**COMMENTS OF
CSDVRS, LLC D/B/A ZVRS AND PURPLE COMMUNICATIONS, INC.**

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Executive Summary

The quality and functional equivalence of Video Relay Service (“VRS”) for the deaf and hard of hearing community (the “Community”) have progressed significantly in recent years due to three factors: (a) VRS provider innovation; (b) technological advancements that benefit both hearing and non-hearing communities; and (c) the Commission’s efforts to adopt rules that continually foster improvements to VRS. Convo’s requested “clarification” of the *non-service related inducements* rule, a rule that seeks to prohibit giveaways that are not “service-related,” is actually a request for a new rule that would put unreasonable limits on “service-related equipment.” Convo’s request would hamper innovation by VRS providers, restrict use of new off-the-shelf technologies for the Community, such as tablets, laptops, smart phones, and the OneVP, and regress options for VRS improvement. Convo’s request should be dismissed as a major step backward for the Community.

Unfortunately, it appears Convo is trying to improperly use Commission process to roll back technology choices for the Community, choices that are available to the hearing public, all because Convo is facing new competition in the VRS marketplace. The Commission should dismiss Convo’s Request and continue to move the VRS market forward, not backward, by supporting innovation, functional and technology equivalence, and competition for the Community.

More specifically, as demonstrated below, Convo’s request should be dismissed because: (1) it seeks a rule change, not a “clarification,” to the Commission’s long-established “service-related equipment” rules, which were not under consideration in the *2019 VRS Improvements Order* and therefore cannot be “clarified” as Convo suggests; (2) Convo fundamentally misunderstands the non-service-related inducements rule and its application to the OneVP device offered by ZVRS and Purple, which the Commission has already determined is service-related;

(3) the Request is motivated by commercial concerns and seeks to improperly use Commission process to harm Convo's competitors and choice for the Community; (4) granting the Request would risk hampering providers' ability to leverage off-the-shelf technology that is available to the hearing to improve service quality for the Community, a step backwards and away from the functional equivalence of VRS; and (5) the existing rule provides sufficient clarity while remaining flexible enough to permit providers to deploy new, innovative and functionally equivalent technology as it becomes available.

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**COMMENTS OF
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I. INTRODUCTION AND SUMMARY.

CSDVRS, LLC d/b/a ZVRS (“ZVRS”) and Purple Communications, Inc. (“Purple”) (collectively, the “Companies”, and each, individually, a “Company”) hereby submit comments to the Federal Communications Commission (“Commission”) in response to the Request for Clarification (the “Request”) made by Convo Communications, LLC (“Convo”) in the above-captioned proceedings.¹

Before addressing Convo’s Request, it is important to set the stage. The quality and functional equivalence of Video Relay Service (“VRS”) for the deaf and hard of hearing community (the “Community”) have progressed significantly in recent years due to three factors: (a) VRS provider innovation; (b) technological advancements that benefit both hearing and non-hearing communities; and (c) the Commission’s efforts to adopt rules that continually foster improvements to VRS. Convo’s Request would take a major step backward for the Community in all three respects, hampering innovation by VRS providers, restricting use of new off-the-shelf

¹ Request for Expedious Clarification of 47 C.F.R. § 64.604(c)(8)(v) of Convo Communications, LLC, CG Docket Nos. 10-51, 03-123 (filed Aug. 19, 2019) (“Request”).

technologies, and regressing options for VRS improvement. Moreover, it appears Convo is trying to improperly use Commission process to roll back technology choices for the Community, choices that are available to the hearing public, all because Convo is facing new competition in the VRS marketplace. The Commission should dismiss Convo's Request and continue to move the VRS market forward, not backward, by supporting innovation, functional and technology equivalence, and competition for the Community.

More specifically, as demonstrated below, Convo's request should be dismissed because: (1) it seeks a rule change, not a "clarification," to the Commission's long-established "service-related equipment" rules, which were not under consideration in the *2019 VRS Improvements Order* and therefore cannot be "clarified" as Convo suggests; (2) Convo fundamentally misunderstands the non-service-related inducements rule and its application to the OneVP device offered by ZVRS and Purple, which the Commission has already determined is service-related; (3) the Request is motivated by commercial concerns and seeks to improperly use Commission process to harm Convo's competitors and choice for the Community; (4) granting the Request would risk hampering providers' ability to leverage off-the-shelf technology that is available to the hearing to improve service quality for the Community, a step backwards and away from the functional equivalence of VRS; and (5) the existing rule provides sufficient clarity while remaining flexible enough to permit providers to deploy new, innovative and functionally equivalent technology as it becomes available.

II. CONVO IS SEEKING A RULE CHANGE (NOT A "CLARIFICATION") THAT WOULD SET THRESHOLDS FOR "SERVICE-RELATED" EQUIPMENT, A TOPIC THAT WAS NOT UNDER CONSIDERATION IN THE PRIOR RULEMAKING.

Convo asks the Commission to place a "reasonable bound on the provision of *service-related equipment* as an inducement, [and] requests the Commission to clarify under what

circumstances, if any, a provider’s incentive program involving the provision of free *service-related equipment* violates Section 64.604(c)(8)(v).”² This request to impose an arbitrary restriction on the provision of *service-related equipment*, by adopting a threshold value above which the provision of such equipment would be prohibited, as a “clarification” to the rule related to *non-service related equipment*, is procedurally in error and must be dismissed.³

The Commission’s rules governing the provision of service-related equipment to VRS users are longstanding and well established. VRS providers may not condition the receipt of service-related equipment on the user making any volume of VRS calls, such that the user would be incented to make more or longer VRS calls than the user otherwise would.⁴ In 2017, the Commission initiated a proceeding seeking comment on how it could best address the offering of *non-service-related* inducements in the VRS program, but took no such step with respect to the provision of *service-related* equipment.⁵ The Commission expressly confirmed in the *2019 VRS Improvements Order* that it had no intent to disturb the longstanding rules governing the provision of *service-related equipment* to eligible VRS users, holding that “we will not, at this time, prohibit the distribution of *service-related* equipment.”⁶ Indeed, the Commission reiterated

² Request at 15-16 (emphasis added).

³ See Request at 13-17; 5 U.S.C. § 553.

⁴ See, e.g., *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Report and Order, and Further Notice of Proposed Rulemaking, FCC 13-82, para. 127 (rel. June 10, 2013); *In the Matter of Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking*, CG Docket No. 10-51, FCC 11-54, para 6 (rel. Apr. 6, 2011); *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, FCC 07-186, para. 94 (rel. Nov. 19, 2007).

⁵ *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, and Order, FCC 17-26, para. 131 (rel. Mar. 23, 2017).

⁶ *Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123,

this finding, stating that “the focus of our proposal in this proceeding is on *non-service-related* incentives. We do not believe it is appropriate in these circumstances to codify standards for *service-related* equipment in this proceeding.”⁷ In light of this procedural history and the conclusion in the *2019 VRS Improvements Order*, any Commission action to adopt a threshold restriction related to *service-related* equipment that can be permissibly offered must be done through a rulemaking proceeding that affords interested parties appropriate notice and an opportunity to comment, as required by the Administrative Procedure Act (“APA”).⁸

III. THE COMMISSION SHOULD DISMISS CONVO’S REQUEST BECAUSE IT MISCHARACTERIZES BOTH THE NON-SERVICE-RELATED INDUCEMENT RULE AND THE PRODUCT OFFERINGS OF ZVRS AND PURPLE; THE EXISTING RULE PROVIDES THE NECESSARY CLARITY AND FLEXIBILITY.

In its Request, Convo repeatedly mischaracterizes the intent and text of the non-service-related inducements rule and the *2019 VRS Improvements Order*,⁹ as well as the product offerings of ZVRS and Purple, in an effort to support a claim that clarification is needed. The Request makes clear that Convo’s underlying motivation is concern over its inability to compete with the competition now offered by ZVRS and Purple to the Community. Convo improperly seeks to use Commission process to inhibit its competitors. Convo’s Request must be dismissed because it would move the VRS market backwards, away from competition, away from offering new technology that the Community deserves and is available to hearing users, and away from the functional equivalence that the Commission and all stakeholders have worked so hard and so long to achieve.

Report and Order and Further Notice of Proposed Rulemaking, FCC 19-39, para. 36, n.127 (May 15, 2019) (emphasis added) (“*2019 VRS Improvements Order*”).

⁷ *Id.* at para. 37, n. 130 (emphasis added).

⁸ *See* 5 U.S.C. § 553.

⁹ *2019 VRS Improvements Order* at para 36, n. 124.

A. The Commission Has Already Determined that ZVRS’s OneVP Videophone is Service-Related.

Convo’s contention that “the Commission determined in the Order that the OneVP qualifies as non-service related equipment that cannot be provided to users for free” is exactly wrong.¹⁰ Convo misunderstands the meaning of the rule and the text of the *2019 VRS Improvements Order*, which was edited from the draft circulation version to the final version after filings and conversations with Sorenson, ZVRS, Purple, and others, all of which were on the record. The final *2019 VRS Improvements Order* adopted by the Commission clarified that OneVP equipment—which can be “used for multiple purposes in addition to VRS, including but not limited to video gaming”—is distinct from video game “systems,” whose primary purpose is gaming, and would be prohibited under the rule.¹¹ OneVP equipment is designed, marketed, and used primarily as a videophone, despite ancillary capabilities that can be activated through additional software and hardware. One VP is squarely service-related and is properly made available by ZVRS and Purple. Indeed, informal discussions with Commission staff revealed that OneVP equipment has the type of robust video capabilities that make it ideal and useful for VRS service.

Questions about OneVP already were asked by Sorenson during the rulemaking,¹² and answered by the Commission in the *2019 VRS Improvements Order*. Convo’s attempts to relitigate the issue now are untimely and unavailing. As ZVRS and Purple explained in *ex parte* filings, which resulted in the Commission’s clarifications to the *2019 VRS Improvements Order*,

¹⁰ See Request at ii.

¹¹ Compare *Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Report and Order and Further Notice of Proposed Rulemaking, FCC-CIRC1905-07, at para. 34, n.119 (Apr. 18, 2019) (“Circulation Draft”) with *2019 VRS Improvements Order*, at para. 36, n.124.

¹² See Letter from John T. Nakahata, Julie A. Veach, Counsel to Sorenson Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51, 03-123, at 7-10 (filed Apr. 30, 2019).

the OneVP is marketed and used primarily as a videophone.¹³ Because the off-the-shelf hardware used in the OneVP offering, the NVIDIA Shield, runs on the Android operating system, it has additional, ancillary capabilities, including the potential to support streaming content and gaming if certain software is downloaded and additional equipment is acquired by the user to turn it into a gaming “system.” As provided by ZVRS and Purple, however, the NVIDIA Shield equipment does not function as a gaming system. A customer would need to purchase and install additional software and peripherals, including a game controller, to use the NVIDIA Shield as a gaming system. Convo’s focus on potential ancillary capabilities ignores the primary function of the OneVP as a videophone that is integrated with a television as part of a VRS user’s common, everyday experience. The OneVP is no different from other service-related technology used in the provision of VRS, such as routers, laptops and VRS-capable TV monitors, which, while clearly used for VRS, could be used for other potential ancillary purposes, and become gaming systems, if the right software and peripheral equipment are installed and added. Convo’s Request is so overly broad, it would make many varieties of VRS equipment “non-service related” under the Commission’s rules.¹⁴

B. Convo’s Request Is Plainly Commercially Motivated and an Improper Attempt to Use Commission Process to Inhibit Competition.

In addition to the fact that the Convo Request misunderstands the non-service-related inducements rule and seeks a clarification that has already been addressed by the Commission, it is clear that Convo’s Request is commercially motivated, and seeks to use Commission process to achieve what it cannot on its own—retain customers in the face of hard-fought competition

¹³ See Letter from Gregory Hlibok, Chief Legal Officer, ZVRS Holding Company, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 and 03-123 (filed May 2, 2019).

¹⁴ See *2019 VRS Improvements Order* at para. 36, n.127.

from ZVRS and Purple. Convo's Request plainly states that its concern is motivated by a loss of customers to ZVRS and Purple, and it needs the Commission to step in to stem that tide and provide Convo a newfound ability to "respond commercially."¹⁵

Convo's initial "commercial response," however, reveals all the Commission needs to know about Convo's true concerns. Convo is contacting its former customers offering to give them precisely the equipment offered by ZVRS and Purple, equipment Convo purports to have compliance concerns about, if only those customers would come back. Convo's request clearly is not motivated by concern over non-service-related inducements, but rather concern about its ability to compete. Convo is asking the Commission to intervene in the market because Convo does not like what the market is saying about its competitiveness.¹⁶

C. Classifying Off-The-Shelf Devices Adapted for VRS, Such as the OneVP, Smart Phones, Laptops, or Tablets, as Non-Service-Related Would Represent a Step Back for the Community.

More fundamentally, Convo's belated attempts to define the OneVP, or other service-related equipment, such as smart phones, laptops, or tablets, as non-service-related would not further the objectives of the new rule on non-service-related inducements, which seek to prohibit giveaways that contribute nothing to service quality. With regard to the OneVP specifically, the OneVP is not an extravagant, unrelated give-away – the OneVP is the right technology for a VRS

¹⁵ See Request at 2-3.

¹⁶ See *2019 VRS Improvements Order* at para. 36, n.124. In addition, Convo's insinuations about ZVRS and Purple's separate submission of minutes to the Telecommunications Relay Service ("TRS") Fund, a right granted by the Commission in the Consent Decree and affirmed by the D.C. Circuit as reasonable, is irrelevant to the application of the non-service-related inducements rule, and it is irresponsible, and baseless speculation. See *Sorenson Communications, LLC v. FCC*, 897 F.3d 214, 231 (D.C. Cir. 2018); *Purple Communications, Inc. et al.*, File Nos. EB-TCD-12-00000376, EB-TCD-15-00020486, EB-TCD-15-00020485, Order and Consent Decree, FCC 17-10, para 16. (rel. Feb. 15 2017) ("Consent Decree"). This non sequitur is not only inapposite, but also further underscores the degree to which Convo's Request is intended to use Commission processes to undermine competitors that are working hard for the Community, rather than address a legitimately held concern about the meaning of the rule.

offering. More broadly, Convo's requested clarification would effectively prohibit VRS providers from offering the Community modern technology necessary for high-quality VRS and would deny the Community access to technological advances and functionally equivalent equipment that is available today.

The *2019 VRS Improvements Order* sought to prohibit “give-aways that contribute nothing to the provider’s quality of service [, which] not only divert provider resources from the provision of functionally equivalent service, but also encourage consumers to select a provider based on the value of such free offers rather than the service provided, thereby reducing providers’ incentives to improve service quality.”¹⁷ The OneVP is not the kind of extravagant non-service related offerings that have caused VRS users to switch providers in the past. The OneVP is not office furniture; it also is not a gaming system – both of which have been given away by other VRS providers. The OneVP, and other service-related VRS equipment, including smart phones, laptops and tablets, are basic consumer device, with technology and capabilities that have advanced in the same manner that all consumer devices have advanced.

As the Commission importantly clarified in the *2019 VRS Improvements Order*, the “new rule is not intended to discourage innovative VRS provider offerings or products that are intended to enhance the quality or accessibility of relay services.”¹⁸ The OneVP is a major advance in VRS technology that enables eligible VRS users to access and use high-quality video capabilities that are essential for VRS and are seamlessly integrated with the apps and activities that the Community engages with most at home. The OneVP is not a diversion of resources from the provision of functionally equivalent service; it is a perfect example of the innovation,

¹⁷ *2019 VRS Improvements Order* at para. 35.

¹⁸ *Id.* at para. 36, n.128.

competition, “technological development,” and service quality improvement that the Commission seeks to foster.¹⁹

The Commission must be careful in the application of the non-service related inducement rule so as not to prohibit use of modern off-the-shelf technology for the Community, which is, by definition, not purpose-built for VRS, simply because it may have the capability for potential ancillary functions. The same attributes that make an off-the-shelf device suitable for use in providing robust, high-quality video for VRS users, such as high processing power and video graphics capabilities, are often the same attributes that hardware manufacturers value for gaming or other video applications. Because off-the-shelf devices generally run a commercial operating system, they will have potential ancillary capabilities, much like any advanced computing device, that may include gaming capabilities should the user elect to purchase and install the peripheral equipment and software necessary to enable such gaming capabilities.

Convo’s requested clarification would effectively prohibit VRS providers from offering the Community modern technology necessary for high-quality VRS due to ancillary capabilities and would deny the Community access to advances and functionally equivalent equipment that is available today. Convo well understands the importance of innovation and leveraging off-the-shelf technology to enhance the VRS experience for deaf and hard of hearing users. Indeed, Convo was formerly recognized by the Commission for making strides in this area.²⁰ Convo’s sudden reversal, from a provider that once prioritized innovation to one that seeks to have the

¹⁹ See *id.* at para. 35 (“While the Commission historically has sought to enable competition in the provision of VRS, its purpose has been to allow VRS users to choose among providers who compete on factors such as quality of service, customer service, and technological development rather than to promote competition as an end in itself.”) (internal quotations omitted).

²⁰ Innovators Honored at 2015 Chairman's Awards for Advancement in Accessibility, available at: <https://www.fcc.gov/general/innovators-honored-2015-chairmans-awards-advancement-accessibility> (Internet of Things Winner - Convo Lights. This VRS application leverages recent advancements in off-the-shelf lighting technology to enable users to customize visual incoming call notifications to trigger multiple colors, locations and types of lighting in users’ homes and workspaces.).

Commission prevent its competitors from delivering standard, modern technology to the Community, further underscores the commercial motivations underlying Convo's Request.

Without the ability to adapt high-quality off-the-shelf equipment, such as laptops, smart phones, and tablets, because of its potential ancillary capabilities, non-dominant providers will be hamstrung in their efforts to efficiently and effectively innovate in ways that enhance the competitiveness and functional equivalence of VRS. Convo's requested "clarification" is asking the Commission to take a step backwards, toward the closed VRS ecosystem of the past, with requirements for custom-built VRS technology that only one VRS provider can afford to source, rather than forward to take advantage of technological advances, modern equipment, functional equivalence and service quality improvement for the Community.

D. The Existing Service Related "Test" Is Sufficiently Flexible to Accommodate Future Innovations While Maintaining the Focus of Competition on Service Quality.

In the *2019 VRS Improvements Order*, the Commission stated that "[i]n determining whether a free give-away constitutes a non-service related inducement, the Commission will consider, among other things, the extent to which the equipment is designed, marketed, and used for relay communication" and whether the equipment is "ordinarily needed or used to place a VRS call."²¹ The Commission was correct to set a flexible standard capable of application to new VRS devices, rather than a narrow rule, tightly prescribing (and freezing in time) the Commission's view of what is or is not an acceptable "service-related" device for VRS.

The prohibition on non-service related inducements was never intended to prohibit the effective use of off-the-shelf technology, such as laptops, smart phones, and tablets, which allows providers to take advantage of the scale economies in the manufacture and distribution of these

²¹ *2019 VRS Improvements Order* at para. 36.

devices, lowering the cost of developing and bringing to market products that advance the quality and functional equivalence of VRS. As the Commission knows, communications technology is constantly evolving. An overly prescriptive rule that identifies each and every eligible device—or even categories thereof—that are *per se* “service-related” would have the unintended consequence of excluding new off-the-shelf devices and technologies that are developed and brought to market over time. Such a result would not serve the Commission’s goal of fostering a VRS program that is continually enhancing the functional equivalence of the VRS service and the products that directly support this goal for the Community.

IV. CONCLUSION.

The Companies support the Commission’s efforts to create a regulatory regime for the VRS program that both fosters competition and innovation and protects users and the TRS Fund from waste, fraud, and abuse. The existing non-service-related inducement rule strikes exactly the right balance on this measure.

The Commission should dismiss Convo’s Request because: (1) the Request seeks a rule change, not a “clarification,” to the Commission’s long-established “service-related equipment” rules, which were not under consideration in the *2019 VRS Improvements Order* and therefore cannot be “clarified” as Convo suggests; (2) Convo fundamentally misunderstands the non-service-related inducements rule and its application to the OneVP device offered by ZVRS and Purple, which the Commission has already determined is service-related; (3) the Request is motivated by commercial concerns and seeks to improperly use Commission process to harm Convo’s competitors and choice for the Community; (4) granting the Request would risk hampering providers’ ability to leverage off-the-shelf technology that is available to the hearing to improve service quality for the Community, a step backwards and away from the functional

equivalence of VRS; and (5) the existing rule provides sufficient clarity while remaining flexible enough to permit providers to deploy new, innovative and functionally equivalent technology as it becomes available.

Respectfully submitted,

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