

**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)	

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

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October 15, 2019

EXECUTIVE SUMMARY

On August 19, 2019, Convo Communications, LLC (“Convo”) filed a Request for Expeditious Clarification of 47 C.F.R. § 64.604(c)(8)(v), the rule governing non-service related inducements. Convo asked the Commission to “clarify” the difference between *non-service-related* and *service-related equipment* for purposes of Section 64.604(c)(8)(v), and the circumstances under which Section 64.604(c)(8)(v) prohibits the distribution of free *service-related equipment* as an inducement for users to switch providers.

Convo’s request follows the *2019 VRS Improvements Order*, in which the Commission adopted a proposal “to prohibit VRS providers from offering or providing *non-service related inducements* that are intended to entice consumers to sign up for or use a VRS provider’s service,” such as video game systems. The Commission explicitly noted in that proceeding that it was not modifying Section 64.604(c)(13) and the rules governing the distribution of *service-related equipment*. As Convo knows, Sorenson Communications, LLC (“Sorenson”) has been providing free service-related equipment to the deaf and hard of hearing community (the “Community”) for more than a decade.

Unfortunately, the docket is now littered with suggestions that have little to do with Convo’s request for clarification of the *non-service related inducements* rule. Instead, Convo and others are seeking modification of Section 64.604(c)(13), the Commission’s rule governing *service-related equipment*, which is not properly before the Commission at this time. Moreover, the suggestions of Convo, Sorenson, and ASL Services Holdings, LLC dba GlobalVRS (“GlobalVRS”) related to permissible service-related equipment appear to be thinly-veiled attempts to have the Commission endorse each of their particular practices governing service-related equipment and impose non-progressive outcomes that will benefit their business models

at the expense of the Community’s need for modern equipment, functional equivalence and choice.

Convo requests that the Commission institute a complete ban on provider-subsidized VRS equipment, a proposal that has never been made to the Commission before. Convo would like the Commission to impose an application-only business model, which would support Convo’s business model. Sorenson Communications, LLC (“Sorenson”) asks the Commission to clarify the non-service-related inducements rule in a manner that modifies Section 64.604(c)(13) to permit only distribution of bespoke VRS service-related equipment to the Community, equipment that Sorenson alone can afford.

The availability of the right equipment for VRS and for the Community are important issues for the Community and all stakeholders, which cannot be entertained lightly or out of compliance with the Administrative Procedures Act (“APA”). As ZVRS and Purple stated in their initial comments, Convo’s requested “clarification” of the rule related to non-service-related sign-up inducements is actually a request to prohibit all VRS providers from providing *any* service-related equipment to the Community. As the Commission knows, and Sorenson’s comments confirm, to make such a drastic change to the VRS ecosystem – a 180-degree shift in course from the *2019 VRS Reform Order* – without notice and the opportunity to comment, would violate the APA.

Convo and GlobalVRS seek to deprive the Community of off-the-shelf VRS equipment because they choose to have a software-only service and cannot compete on that basis. Sorenson wants to deprive the Community of off-the-shelf technology because Sorenson wants to be the “only game in town,” with bespoke equipment that only they can afford. Neither outcome puts the Community first. Sorenson asks the Commission to explicitly rule that the non-service-

related inducements rule applies to off-the-shelf equipment such as iPads, laptops and similar devices. Off-the-shelf devices that offer superior video capabilities, with their associated economies of scale, enable VRS providers to focus on VRS-specific improvements that positively impact service quality for the Community rather than inefficiently replicating existing technology. Without devices able to support high-quality video, VRS service quality will suffer and will not keep pace with communications options that are available to the hearing community. Prohibiting VRS providers from offering off-the-shelf devices as service-related equipment – devices that improve VRS service quality – runs counter to the purpose of the non-service-related inducements rule, which seeks to prohibit “give-aways that contribute nothing to the provider’s quality of service.”

To the extent that Sorenson seeks a “VRS-only” interpretation of the non-service-related inducements rule that would prohibit the distribution of off-the-shelf equipment due to ancillary capabilities, such an interpretation would take modern, off-the-shelf equipment out of the hands of those who need it most. Furthermore, the “VRS-only” interpretation sought by Sorenson would severely distort competition by effectively leaving Sorenson, the sole VRS provider with sufficient scale to develop and distribute entirely custom VRS-only equipment, as the only provider permitted to distribute service-related equipment to its users.

After careful vetting with Commission staff, ZVRS and Purple have been the first to offer the Community off-the-shelf technology that is functionally equivalent to what the hearing world enjoys – equipment with the right video capabilities that support high quality VRS service. As the Commission knows, all modern technology has ancillary capabilities and the equipment offered by ZVRS and Purple to the Community is no exception. The NVIDIA Shield, for example has potential, ancillary gaming capabilities that can only be activated if a user

downloads new software and purchases peripheral hardware. Those capabilities are not provided by ZVRS or Purple. The NVIDIA Shield was chosen by ZVRS for its OneVP because of the superior video capabilities that are necessary for VRS. The presence of potential ancillary capabilities on any modern service-related device is not the same as a non-service-related inducement, and should not disqualify its use by the Community. The Commission must support moving the Community forward, with consumer choice and functional equivalence, not backward.

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**REPLY COMMENTS OF
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I. INTRODUCTION.

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

As an initial matter, it should be clear to all that Convo’s requested clarification regarding non-service-related inducements under Section 64.604(c)(8)(v) has now morphed into a request for a complete ban on provider-subsidized service-related equipment, currently governed by Section 64.604(c)(13). Convo seeks Commission approval to transform the Video Relay Service (“VRS”) into an application-only service. Sorenson Communications, LLC (“Sorenson”) and ASL Services Holdings, LLC dba GlobalVRS (“GlobalVRS”) also have joined in, asking the Commission to clarify the non-service-related inducements rule by modifying Section

¹ Request for Expeditious 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”).

64.604(c)(13) in such a manner that only would permit distribution of bespoke VRS equipment, equipment that Sorenson alone can afford to develop and distribute – a suggestion that would aggravate an already distorted VRS market. Prohibiting VRS providers from offering off-the-shelf devices as service-related equipment – devices that improve VRS service quality – runs counter to the purpose of the non-service-related inducements rule, which seeks to prohibit “give-aways that contribute nothing to the provider’s quality of service.”²

The availability of modern, functionally-equivalent service-related equipment for the deaf and hard of hearing community (the “Community”) – equipment that VRS providers are permitted to provide under Section 64.604(c)(13) – is a serious issue that the Commission cannot consider changing through the back door. Convo’s requested “clarification” has crept far beyond the scope of the rule on non-service-related inducements, which ZVRS and Purple supported.³

In this reply, ZVRS and Purple respond to three key issues: (1) Convo’s commercially-motivated and procedurally improper attempt to impose its business model on the VRS market and deprive the Community of service-related equipment, (2) Sorenson’s apparent effort to interpret the non-service-related inducements rule to stifle innovation and distort competition by prohibiting the distribution of all service-related equipment other than its own bespoke VRS-only devices (which would impermissibly modify Section 64.604(c)(13)), and (3) Convo and

² *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 19-39, para. 35 (May 15, 2019) (emphasis added) (“2019 VRS Improvements Order”).

³ Comments of CSDVRS, LLC d/b/a ZVRS and Purple Communications, Inc., CG Docket Nos. 03-123, 10-51, 2-3, filed May 30, 2017 (“ZVRS and Purple urge the Commission to establish prohibitions against non-service related inducements and gifts from VRS providers to VRS users, with de minimis exceptions. A non-service related inducement would involve a VRS provider offering devices or equipment that are not used to access VRS service in order to curry favor with VRS users. These inducements or gifts could be given either in exchange for, and as a condition of, a user choosing to switch to or remain with that VRS provider, or otherwise.”)

GlobalVRS's misguided reimagination of the Commission's rules governing financial incentives and service-related equipment.

The Comments received in response to Convo's request for clarification further underscore that each of these proposals are thinly veiled requests for the Commission to impose a self-interested outcome on the VRS market that would benefit Convo, GlobalVRS and Sorenson at the expense of the Community. As a stark illustration of the regulatory pretense of these commercially motivated requests, Convo is promising to provide users who "port" back to Convo the very same equipment Convo is purportedly concerned violates the Commission's rules.⁴ At this juncture, as ever, the Commission must support moving the Community forward, with choice and functional equivalence, not backward, in response to the self-interested requests of Convo, GlobalVRS and Sorenson.

II. CONVO'S REQUEST FOR "CLARIFICATION" IS IN FACT A REQUEST FOR THE COMMISSION TO IMPOSE CONVO'S BUSINESS MODEL ON ALL VRS PROVIDERS AT THE EXPENSE OF INNOVATION, COMPETITION AND OPTIONS FOR THE COMMUNITY.

As Convo's comments in this proceeding and its dialogue with the Community confirm, its Request is not a genuine effort to determine the bounds of a new rule but rather an attempt to prohibit VRS providers from distributing *all* equipment. Not only would such action in this context be prohibited by the Administrative Procedures Act ("APA"), it is bad policy, directly contrary to the Commission's longstanding commitment to technological neutrality and supporting innovation. In addition, such action would harm the Community and deprive vulnerable populations of access to essential communications tools, in stark contrast to the recommendations of deaf advocates and community groups that overwhelmingly support the

⁴ Convo, We Want you Back, available at: <https://youtu.be/9jDTteCRdco>.

ability of VRS providers to offer the Community service-related equipment under Section 64.604(c)(13).

A. Convo’s Public Statements Demonstrate that Convo is Actually Proposing a Rule Change That Would Prohibit VRS Providers from Offering Any Equipment to the Community.

The Commission should be clear as it reviews the record in this proceeding that Convo is not seeking clarification of the non-service-related-inducements rule.⁵ Convo is seeking limitations on offering service-related equipment, which is permitted under Section 64.604(c)(13) and is not properly before the Commission. Convo is trying to use a Commission process to impose its software-only business model on all VRS providers by preventing the offer of service-related equipment to the Community.⁶

ZVRS and Purple’s initial comments highlighted the clear commercial motivation of Convo’s requested “clarification” of the rule prohibiting non-service-related sign-up inducements.⁷ Convo’s actions since then, before the Commission and in direct statements from Convo’s CEO to the VRS Community, have made such motivations abundantly clear – Convo is asking the Commission to take *all* VRS equipment away from the Community.⁸ Removing any doubt of these motivations, Convo’s CEO is engaging with the Community through his public Facebook profile, publishing a video titled “How Free Laptops Could Hurt Your VRS.”⁹ ZVRS

⁵ See 47 C.F.R. § 64.604(c)(8)(v); 2019 VRS Improvements Order at para. 33 (“We adopt the Commission’s proposal to prohibit VRS providers from offering or providing non-service related inducements that are intended to entice consumers to sign up for or use a VRS provider’s service.”).

⁶ See Comments of Convo Communications, LLC, CG Docket Nos. 10-51, 03-123, 3-7, filed Sep. 30, 2019 (“Convo Comments”).

⁷ *Id.* at 7 (“As part of its efforts to enforce its new Section 64.604(c)(8)(v), the Commission should transition providers away from providing any equipment, over a three-year period, regardless of whether providers characterize the equipment as service-related.”).

⁸ Convo Comments at 3 (“The provision of equipment by VRS providers should be fully phased out.”).

⁹ Facebook Profile of Jarrod Musano, CEO of Convo Communications LLC, posted Sep. 24, 2019, available at <https://www.facebook.com/jmusano>.

and Purple also note that these posts are riddled with misleading statements to the Community. For example, Convo states that “when it comes to giving away technology, such as free laptops, free iPads, free Rings, and other products that have nothing to do with the actual service, that's what the FCC doesn't approve of,” and “the FCC has stated that these free giveaways of products that have nothing to do with VRS are unacceptable.”¹⁰ These statements are inaccurate and misleading for the Community and must stop. Convo is trying to convince the Community that receiving equipment from Sorenson, ZVRS and Purple is prohibited by the Commission’s rules – which is patently false.

B. Convo’s Request is Procedurally Defective; Adopting Convo’s Recommendations as a “Clarification” Would Violate the APA.

As stated above, Convo’s comments confirm that its initial request for “clarification” is not a request for clarification at all, but rather a request for the Commission to “go further” and adopt new rules regarding service-related items. As discussed in ZVRS and Purple’s Comments,¹¹ and confirmed by Sorenson,¹² rules governing *service-related* equipment must be promulgated through notice-and-comment rulemaking, not through a “clarification” to rules governing non-service-related equipment. “Going further” with such a radical change to the VRS market as a “clarification,” as Convo asks, would be a clear violation of the APA.¹³

¹⁰ *Id.*

¹¹ ZVRS and Purple Comments at 3-4.

¹² See Comments of Sorenson Communications LLC, CG Docket Nos. 10-51, 03-123, 9, filed Sep 30, 2019 (“Sorenson Comments”).

¹³ See 5 U.S.C. § 553.

C. Convo's Request Would Disregard the Commission's Commitment to Technological Neutrality and Functional Equivalence, Deprive the Community of Essential Tools and Directly Contravene the Recommendations of Deaf Advocate Groups.

Not only is Convo's request procedurally defective, it also would result in bad policy that would (1) contravene a key tenet of Commission policy, technological neutrality, (2) deprive vulnerable populations of access to essential communications tools, and (3) directly contradict the recommendations of advocacy groups for the Community.

1. Convo's request is at odds with the Commission's longstanding commitment to technological neutrality.

As Convo discusses in its comments, "Convo has never developed a purpose-built VRS hardware option, choosing instead to invest in the development of its videophone ("VP") apps on commercial off-the-shelf equipment such as iPhones, Android devices, laptops and tablets."¹⁴ Convo believes "[t]his approach is far more resource-efficient and cost-effective than the stationary, proprietary hardware approach."¹⁵

ZVRS and Purple applaud a competitive market where Convo is able to make these business decisions and pursue an app-based business model for the Community and its VRS services. ZVRS and Purple have focused their businesses in two directions: providing and improving both hardware and software solutions for VRS, and providing equipment that enables the Community to use VRS in an integrated fashion with their daily technology choices and the highest video quality. Convo, of course, has the right to pursue its software-only business strategy, but it does not have the right to attempt to impose this strategy on other VRS providers simply because it does not like the results of competition in the marketplace.

¹⁴ Convo Comments at 5.

¹⁵ *Id.*

As the Commission’s long-standing policy of technological neutrality demands, the Commission should not dictate the equipment used to provide VRS, or endorse one VRS business model over another, as Convo desires. Just as the hearing-community has choice, the Community deserves choice in how, and through what technology, it accesses its essential telecommunications service – whether through Sorenson’s bespoke service-related equipment, modern, off-the-shelf service-related equipment or an app. The Commission’s longstanding policy of technological neutrality supports this outcome and the Commission should not take Convo’s invitation to reverse course.

2. *Convo’s request would deprive the Community of mainstream communications tools for accessing VRS, undermining functional equivalence and quality of service.*

ZVRS and Purple are committed to serving the needs of the Community, particularly elderly and low-income individuals, by providing best-in-class equipment to access the best-in-class interpreting services of ZVRS and Purple. As the National Association of the Deaf has noted, “Telecommunications equipment and services are inextricably intertwined, and do not function independently.”¹⁶ Convo’s proposal to prohibit VRS providers from offering service-related equipment would harm particularly vulnerable populations of VRS users, such as the elderly and low-income individuals who have come to rely on equipment provided by VRS providers out of necessity. Under Convo’s proposed “clarification,” these users would be effectively denied access to essential VRS tools or, best case, be relegated to an inferior call quality due to lower quality hardware that they must afford on their own. The Commission

¹⁶ National Association of the Deaf, Position Statement on Functionally Equivalent Telecommunications for Deaf and Hard of Hearing People, available at: <https://www.nad.org/about-us/position-statements/position-statement-on-functionally-equivalent-telecommunications-for-deaf-and-hard-of-hearing-people/> (“NAD Position Statement”).

cannot blindly hope, as Convo suggests, that state programs will pick up the slack and serve the equipment needs of VRS users if the Commission prohibits VRS providers from providing service-related VRS equipment. The burden is on Convo to demonstrate that such programs would provide at least equivalent access to VRS equipment as currently provided by VRS providers.

Similarly, Convo's assertion that "[a]s VRS rates dropped, Sorenson accordingly decreased its provision of free purpose-built equipment," and that "Sorenson's shift to the use of a VRS app indicates that modern VRS no longer requires the expensive equipment previously given to customers," is misguided.¹⁷ Due to Sorenson's dominant market share, it has less incentive to vigorously compete, and even less incentive to innovate new products and features.¹⁸ Sorenson's practices are not a good barometer of what the Community needs, or the choice the Community deserves.

3. *Prohibiting the distribution of service-related VRS equipment would directly oppose the recommendations of many deaf advocate and community groups.*

Advocacy groups for the Community oppose the recommendations of Convo. The Consumer Group's¹⁹ Policy Statement states that, "TRS users must have a wide selection of choices regarding equipment and software interfaces as well as hardware options, TRS program

¹⁷ See Convo Comments at 5.

¹⁸ Neither are Sorenson's competitive practices a model for the VRS market. Sorenson has been aggressively pursuing a "win back" campaign that includes assigning a new ten-digit-number to their customer's "phone tree" system with Sorenson immediately following that customer porting a number to another provider. This practice has the effect of the customer's calls being routed to Sorenson's videophone equipment, rather than the new default provider. The Commission should investigate whether this practice violates the Commission's rules regarding default provider changes.

¹⁹ The Consumer Groups include: Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Association of Late-Deafened Adults (ALDA), Hearing Loss Association of America (HLAA), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), American Association of the Deaf-Blind (AADB), Speech Communication Assistance by Telephone (SCT), Communication Service for the Deaf (CSD), and Deaf Seniors of America (DSA).

services and methods of making or receiving relay calls.”²⁰ The Consumer Groups urge the Commission to establish a system to “to provide equipment or software for those unable to afford access to TRS.”²¹ The National Association of the Deaf concurs, noting in its position statement that “[t]elecommunications equipment must be accessible or must be made accessible with the use of third-party applications, peripheral devices, software, hardware, or customer premises equipment at nominal cost to the consumer.”²²

The experience and recommendations of these groups on this issue should be given weight, particularly when compared to the commercial motivations underlying Convo’s Request, which are not what’s best for the Community, but what’s best for Convo. The Commission should not forego technological neutrality, functional equivalence and the recommendations of advocacy groups for the Community in favor of Convo’s suggested command-and-control model, which would dictate the business models of VRS providers and deprive the Community of high performance, mainstream, service-related equipment that is necessary for high quality video – an essential feature of a functionally equivalent VRS.

²⁰ Letter from r, Telecommunications for the Deaf and Hard of Hearing, Inc., et. al. to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51, 03-123, filed Apr. 12, 2011. (“Consumer Groups Policy Statements”), available at: <https://ecfsapi.fcc.gov/file/7021237820.pdf>.

²¹ *Id.*

²² NAD Position Statement.

III. ALLOWING VRS PROVIDERS TO OFFER THE COMMUNITY OFF-THE-SHELF DEVICES IS INTEGRAL TO CONTINUOUSLY IMPROVING SERVICE QUALITY, INNOVATION AND COMPETITION FOR THE COMMUNITY; ANCILLARY CAPABILITIES OF MODERN TECHNOLOGY DO NOT TRANSFORM SERVICE-RELATED DEVICES INTO IMPERMISSIBLE NON-SERVICE-RELATED INDUCEMENTS.

Sorenson asks the Commission to explain how the non-service-related inducements rule applies to specific VRS equipment, such as iPads, laptops, iPhones and the NVIDIA Shield.²³ As described in ZVRS and Purple’s comments, each of these devices, as provided by Sorenson, ZVRS and Purple, are service-related.²⁴

Sorenson also points to prior advocacy by ZVRS on the issue of multifunction devices to suggest that ZVRS is today of the view that the Commission should restrict VRS providers’ ability to offer the Community multi-function devices. As Sorenson knows, the device market is constantly and rapidly evolving. Comments submitted nearly seven years ago cannot be trotted out today as persuasive or binding. Today, nearly all off-the-shelf devices that can support the type of video service required for VRS are multi-function. The benefits provided to VRS users by employing off-the-shelf technology are significant.

A. Improvements and Innovation in Service-Related Equipment is a Key Element of Quality of Service and VRS Competition; Accessing Off-the-Shelf Equipment Enables Innovation for the Community.

The ability to offer the Community sophisticated, modern off-the-shelf devices so that they can access high quality VRS service is important to innovation, competition and functional equivalence. The Commission cannot “clarify” Section 64.604(c)(8)(v), the non-service-related inducements rule, by modifying the rule governing service-related equipment in Section 64.604(c)(13), which is not properly before the Commission in any event, in a manner that

²³ Sorenson Comments at 2.

²⁴ See ZVRS and Purple Comments at 8.

prohibits offering off-the-shelf service-related equipment to the Community. Off-the-shelf devices allow smaller VRS providers to take advantage of the economies of scale in the manufacture and distribution of consumer devices that are available to the hearing world. Economies of scale offered by off-the-shelf technology, which smaller providers cannot achieve with custom VRS-only devices, allows smaller VRS providers to compete with lower equipment costs. Similarly, because of these economies, smaller VRS providers are able to more widely provide equipment to all VRS users, ensuring that those who need equipment most are able to access the same sophisticated, modern equipment that others can access – both in the hearing world and in the Community.

If all VRS providers are forced to develop bespoke, VRS-only devices, innovation and choice for the Community will be stifled. All VRS providers would be required to duplicate the research, development, manufacturing and distribution costs already expended for off-the-shelf devices, and at a much higher cost per device for smaller VRS providers compared to Sorenson, given its scale. Even if such bespoke development were possible, which has only been possible to date for Sorenson, these expenditures would divert resources away from other service innovations. The Commission should continue to move VRS forward, embrace utilization of modern, mainstream technology for the Community and refrain from retreating backwards to the closed VRS ecosystem of the past, which would benefit only Sorenson, or impose a software-only environment, which would benefit only Convo. Neither of these approaches will benefit the Community, and all stakeholders know it.

B. The Benefits of Off-the-Shelf Devices and Ancillary Capabilities Go Hand in Hand; Prohibiting Equipment Because of These Capabilities Does Not Further the Commission’s Objectives.

As described above, the economies of scale associated with off-the-shelf devices allows VRS providers to utilize and more widely distribute modern, high-performance devices with the right video parameters that the Community needs for a high-quality VRS service. The Commission, VRS providers and the Community should all expect that the quality of VRS service, including the video capabilities of service-related equipment, will continually improve. High quality VRS requires equipment with powerful processing and graphics capabilities. Off-the-shelf devices with these capabilities, which run standard operating systems, will necessarily be able to perform multiple functions, but only if the user chooses to enable those functions. Certain of these functions, gaming for example, will require the user to download additional software and/or purchase additional hardware.

Prohibiting VRS providers from offering off-the-shelf devices as service-related equipment – devices that improve VRS service quality – would run counter to the purpose of the non-service-related inducements rule, which seeks to prohibit “give-aways that contribute nothing to the provider’s quality of service.”²⁵ The Commission should not broadly interpret the non-service-related inducements rule to apply to modern, service-related equipment simply because the device has the potential for offering additional functionality beyond VRS.

C. Similar to an Outright Ban on All VRS Equipment, Which Would Negatively Impact User Choice, Sorenson’s Comments Illustrate the Devastating Impact of Defining Devices as Non-Service-Related Simply Because of Potential Ancillary Capabilities – Only Sorenson’s Bespoke Devices Would Be Available to the Community, Which Would Negatively Impact User Choice.

²⁵ 2019 VRS Improvements Order at para. 35.

Sorenson describes a number of devices it considers permissible “service-related,” devices that Sorenson has provided to customers, including “television-capable monitors,” “routers, cables, or other devices to assist with ensuring reliable in-home transmission of VRS, and flashers.”²⁶ Although each of these items can be used for VRS, they also have capabilities that lend themselves to use for other purposes beyond VRS – users can watch their favorite programs on the Sorenson-provided television and access wireless Internet for any number of purposes via their Sorenson-provided router. Sorenson, like Convo, asks the Commission to define only its competitor’s practices as prohibited. As these examples demonstrate, however, a broad interpretation of the non-service-related inducement rule would have devastating implications for smaller VRS providers and Community choice.

As discussed in ZVRS and Purple’s initial comments, defining “service-related” equipment exclusively as VRS-only equipment would severely distort competition in the VRS market, benefiting only Sorenson and limiting consumer choice.²⁷ Only Sorenson has had the ability over the past decade to develop its own bespoke VRS service-related equipment. Other VRS providers do not have the scale and do not reap the same revenues from the VRS program that would enable development of entirely custom service-related equipment.

The main point ZVRS and Purple are making in these reply comments, however, is that custom devices for VRS “only” are unnecessary, are harmful to functional equivalence, and will inhibit VRS service quality from keeping pace with the technology market. Modern, off-the-shelf equipment is available today with superior video capabilities that are ideal for supporting VRS. For example, the high processing power and HD video capabilities of the NVIDIA Shield,

²⁶ Sorenson Comments at 3.

²⁷ See ZVRS and Purple Comments at 10.

which powers ZVRS's OneVP, enables an improved VRS experience. The Commission has been a proponent of competition and innovation in the VRS market. Taking advantage of technological advances, modern equipment, functional equivalence and service quality improvement for the Community is the right conclusion here. The Commission should not interpret the non-service-related-inducements rule in a manner that moves VRS and the Community backwards toward the closed, single provider-controlled VRS ecosystem of the past, a scenario in which only custom-built VRS technology was available to the Community, technology that only Sorenson could afford to source.

IV. THE COMMISSION'S RULES GOVERNING THE PROVISION OF SERVICE-RELATED EQUIPMENT ARE LONGSTANDING, WELL ESTABLISHED AND WERE SPECIFICALLY NOT THE SUBJECT OF THE 2019 VRS IMPROVEMENTS ORDER.

The Commission's rules governing the provision of service-related equipment to VRS users are longstanding and well established – the distribution of service-related equipment may not incentivize users to make more or longer VRS calls.²⁸ As the Commission noted in the 2019 VRS Improvements Order, Section 64.604(c)(13) was specifically not under consideration for rule changes.²⁹ Any assertion by GlobalVRS or Convo that Sorenson, ZVRS or Purple are not in compliance with these well-established rules, is misguided.

²⁸ 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).

²⁹ 2019 VRS Improvements Order at para. 36, n. 127 (“we will not, at this time, prohibit the distribution of service-related equipment.”).

Convo calls into question product agreements that are common in the VRS industry, terms that are utilized by Sorenson, ZVRS and Purple. These agreements permit users who are provided no-cost or heavily discounted equipment to retain this equipment after porting their ten-digit number to another VRS provider, but requires the payment of an equipment license fee. Alternatively, users may elect to return the equipment. Similar agreements requiring reimbursement for provider-subsidized equipment (e.g., wireless company subsidized handsets) if the customer switches providers before a given amount of time are commonplace in the communications industry.³⁰ Accordingly, the experience of ZVRS and Purple users is equivalent to that of hearing users who receive free or discounted service equipment from their telecommunications providers.

Convo's reference to a 2008 Order, which states that a "provider cannot condition the ongoing use or possession of equipment, or the receipt of different or upgraded equipment, on the consumer continuing to use the provider as its default provider," is taken out of context.³¹ This cited language is part of a 2008 Order on eligibility and verification. The provision of VRS equipment to users is not the subject of that order. To understand the meaning of this statement, one must look back to the 2007 Declaratory Ruling establishing this rule.

³⁰See, e.g., Sorenson End User License Agreement, available at: https://www.sorenson.com/assets/pdf/Legal/Sorenson_Individual_EULA.pdf ("Upon termination, you agree to return the Hardware and Software and to destroy any Software copy not returned (e.g. any copy stored on Operating Device). You may relinquish your rights under this Agreement at any time by returning the Hardware and Software to Sorenson and by destroying all copies of the Software in your possession or control not so returned."); Verizon Wireless Return and Service Termination Policy, available at: <https://www.verizonwireless.com/support/return-policy/> ("You may terminate service for any reason within 14 days of activation. If you purchased a wireless device at a promotional price at the time of activation, you must return it within the device return period to avoid being assessed an Early Termination Fee of \$175, or \$350 if you purchased an Advanced Device. You will remain responsible for your Activation Fee unless you terminate service within three days of activation.").

³¹ See Convo Comments at 13; *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Second Report and Order and Order on Reconsideration, FCC 08-257, para. 38 (rel. Dec. 19, 2008) ("2008 Order").

The 2007 Declaratory Ruling outlines various applications of the Commission prohibition on providing financial incentives *to make more or longer VRS calls*. The declaratory ruling states that:

impermissible marketing and incentive practices include calling a consumer and requiring, requesting, or suggesting that the consumer make VRS calls. This rule also applies in the context of providers that choose to give VRS (or TRS) equipment to consumers. Providers that give consumers relay equipment cannot condition the ongoing use or possession of the equipment, or the receipt of different or upgraded equipment, *on the consumer making relay calls through its service or the service of any other provider*. In other words, providers cannot give consumers equipment as part of outreach efforts or for other purposes, and then require that the equipment be relinquished if the consumer fails to maintain a certain call volume . . . In these circumstances, the consumers' ongoing receipt of a financial benefit – free equipment – is conditioned *on the use of the equipment to make relay calls*, calls that the Fund, and not the consumer, pays for. Therefore, the consumer may be placed in the position of having to return the equipment, or foregoing receiving upgraded equipment, *because the consumer has not made a sufficient number of relay calls*.³²

The text of the declaratory ruling makes clear that VRS providers may distribute service-related equipment so long as the provider does not condition the receipt or possession of the equipment on the user satisfying certain call volumes. Sorenson, ZVRS, and Purple are in compliance with the policy and have discussed the policy with Commission staff at length. Users are free to continue to use service-related equipment they are provided after changing default providers, but must merely reimburse the provider for the cost of the equipment, or return it if they choose.³³ This practice does not undermine competition; users are free to obtain

³² *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) (emphasis added).

³³ Convo has been providing more bad advice to the Community in this area, advising VRS users who have elected to designate ZVRS and Purple as their default providers to ignore their product agreement and contractual obligations. Convo is directly telling ZVRS and Purple customers that the FCC's rules prohibit the companies' product agreements, even going so far as to provide scripted responses to facilitate breach of any product agreements. The Commission should prevent Convo from further misleading the Community.

additional numbers with other default providers; free to port out any number to another provider; and are free to make dial around calls as they so choose.³⁴

V. CONCLUSION.

It is clear that the significant issues at hand have expanded far beyond the scope of a clarification of the rule against non-service-related inducements found in Section 64.604(c)(8)(v). Convo and GlobalVRS seek to modify Section 64.604(c)(13) of the rules, depriving the Community of off-the-shelf VRS equipment simply because Convo and GlobalVRS choose to offer a software-only service and are having difficulty competing on that basis. Sorenson wants to deprive the Community of off-the-shelf technology because they want to be the “only game in town,” with bespoke equipment that only they can afford. Neither outcome puts the Community first.

ZVRS and Purple are putting the Community first by offering modern, off-the-shelf technology with the right video capabilities to support high quality VRS service – functionally equivalent technology for the Community that matches what the hearing world enjoys. All modern technology will have ancillary capabilities, many of which will require the user to download new software and/or purchase peripheral hardware in order to access them. Consistent with discussions with Commission staff earlier this year, the presence of those ancillary capabilities does not disqualify service-related equipment and prohibit its use by the Community. The Community deserves choice and functional equivalence, and the Commission should support the Community in accessing modern, service-related equipment that has the right capabilities for their VRS.

³⁴ Moreover, it is not uncommon for ZVRS or Purple customers to download and use the app of other VRS providers on the equipment provided by either company.

Respectfully submitted,

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October 15, 2019