

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Structure and Practices of the Video Relay Service Program)	CG Docket No. 10-51
)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	
Consumer and Governmental Affairs Bureau Seeks Comment on the Request by Convo Communications LLC for Clarification of Section 64.604(c)(8)(v) of the Commission's Rules)	

**REPLY COMMENTS OF
CONVO COMMUNICATIONS, LLC**

Convo Communications, LLC (“Convo”) submits these Reply Comments in the proceeding initiated by the Consumer and Governmental Affairs Bureau (“CGB”) of the Federal Communications Commission (“Commission”) to seek public comment on Convo’s Request for Clarification (“Request”). The Request sought guidance regarding the intended scope of the Commission’s rule governing equipment give-aways by video relay service (“VRS”) providers.¹

I. INTRODUCTION

The record confirms that VRS providers require Commission clarification regarding the scope of the FCC’s new policy prohibiting providers from giving away non-service-related equipment to current or prospective customers.² All but one of the commenters agree that the give-away of certain types of equipment constitutes an unlawful incentive when intended to

¹ *Consumer and Government Affairs Bureau Seeks Comment on the Request by Convo Communications, LLC for Clarification of Section 64.605(c)(8)(v) of the Commission’s Rules*, Public Notice, CG Docket Nos. 10-51 and 03-123, DA 19-847 (CGB rel. Aug. 29, 2019).

² *See* 47 C.F.R. § 64.604(c)(8)(v) (“A VRS provider shall not offer or provide to any person or entity any form of direct or indirect incentives, financial or otherwise, for the purpose of encouraging individuals to register for or use the VRS provider’s service.”).

cause users to port to the gifting providers. They also agree that such improper incentives are a source of Telecommunications Relay Service (“TRS”) fraud, waste and abuse. Accordingly, the Commission should clarify that general consumer electronic equipment does not qualify as service-related equipment under the Commission’s incentive prohibition policy merely because free VRS software applications can be downloaded onto such equipment. The Commission has ample authority to issue this clarification, and it is necessary to do so to curtail the excessive consumer equipment give-aways by CSDVRS, LLC d/b/a ZVRS and Purple Communications (“ZVRS/Purple”).

Further, Commenters agree, consistent with Convo’s past filings in connection with this issue, that restrictive terms and conditions imposed by providers on their give-away of equipment represent an anticompetitive marketing practice. These improper practices enable providers to capture users, thereby constraining consumer choice and undermining service-quality competition. The integrity of the VRS program is put at risk when providers purposefully foster user misconceptions about the circumstances under which providers can demand the return of such equipment or when providers expressly demand for equipment to be returned in situations that violate the Commission’s rules.

Convo is highly motivated to ensure that VRS is both sustainable over the long term and progressively effective for users in the short term because Convo is owned, operated, and staffed by consumers of VRS. As an entity composed of VRS users, Convo knows firsthand how consumers benefit when VRS providers compete on quality, rather than extravagant equipment give-aways. At the most fundamental statutory level, the Commission’s directive is to ensure that functionally equivalent TRS is delivered in an efficient manner. The equipment give-aways practiced by ZVRS/Purple are antithetical to this mandate.

II. THE COMMISSION SHOULD CLARIFY AND ENFORCE ITS PROHIBITION ON INCENTIVES

All but a single commenter agree that the Commission should clarify and enforce its prohibition on non-service-related incentives consistent with Convo's request. Only ZVRS/Purple³ objected to the other commenters' demonstration of the need for the Commission to take prompt action to clarify the scope of this incentive prohibition. For instance, GlobalVRS "acknowledges and concurs with Convo's assessment that an unfair incentives issue remains [post-May 2019 promulgation], despite explicit Commission rules and pronouncements to the contrary."⁴ Calls from commenters for additional guidance, both before and since the Commission's *May 2019 Order*,⁵ further demonstrate the need for Commission action with respect to equipment distribution—both to create clarity for providers and to stop ZVRS/Purple from continuing to undermine service-quality competition, through excessive equipment giveaways.⁶

A. ZVRS/PURPLE ARE ABUSING THE COMMISSION'S CURRENT POLICY

While the other VRS providers are carefully working to ensure compliance with the Commission's incentive prohibition such as Convo's request pursuant to the Commission's invitation to VRS providers to ask any questions about the application of the policy, ZVRS/Purple continues to flaunt the policy without restraint to effectively buy VRS market share. Indeed, Convo filed its Request because of the market manipulation caused by the

³ See generally Comments of CSDVRS, LLC d/b/a ZVRS and Purple Communications, Inc., CG Docket Nos. 10-51, 03-123 (filed Sept. 30, 2019) ("ZVRS/Purple Comments").

⁴ Comments of ASL Service Holdings, LLC dba GlobalVRS, CG Docket Nos. 10-51 and 03-123, at 1 (filed Sept. 30, 2019) ("GlobalVRS Comments").

⁵ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 3396 (2019) ("*May 2019 Order*").

⁶ Comments of Sorenson Communications LLC re Convo's Request for Clarification, CG Docket Nos. 10-51 and 03-123, at 3 (filed Sept. 30, 2019) ("Sorenson Comments").

inordinate equipment give-aways by ZVRS/Purple. As Sorenson has observed, some providers gain “a competitive advantage [by being] willing to engage in borderline conduct that has not been clearly prohibited.”⁷ Convo would go further and state that a reasonable reading of the Commission’s policy proscribes the ZVRS/Purple give-aways conditioned on people porting to them. Convo previously explained how the types of give-aways currently practiced by ZVRS/Purple divert scarce TRS resources away from VRS quality improvements and technological innovation.⁸ Each dollar that providers unnecessarily spend on equipment give-aways is one less dollar available for them to spend on innovating and improving their service quality for VRS consumers.

Under ZVRS/Purple’s apparent interpretation of the Commission’s non-service-related equipment policy, nearly all mass market consumer electronic devices can be transformed into service-related equipment merely by installing a VRS app.⁹ The Commission should formally and expressly reject ZVRS/Purple’s implausible interpretation of the Commission’s policy by providing additional guidance to the VRS industry regarding the appropriate interpretation of the rule. This loophole that ZVRS/Purple conveniently perceives in the incentive prohibition undermines the rule’s purpose and efficacy and provides ZVRS/Purple an unfair competitive advantage over VRS providers that follow the letter and spirit of the Commission’s rules.

B. THE COMMISSION SHOULD CLARIFY THAT CONSUMER ELECTRONICS DO NOT QUALIFY AS SERVICE-RELATED EQUIPMENT

The FCC should issue formal guidance expressly excluding from the definition of the term “service-related equipment” all devices that were not specifically designed for VRS use,

⁷ *Id.* at 5.

⁸ Comments of Convo Communications, LLC, CG Docket Nos. 10-51, 03-123, at ii (filed Sept. 30, 2019) (“Convo Comments”).

⁹ *See, e.g.*, Sorenson Comments at 1 (noting ZVRS/Purple’s give away of the iPhone X). Convo reiterates its long-term call that the Commission should phase out all equipment give-aways. Convo Comments at 7.

even if they are capable of running VRS software and therefore relaying a VRS call. This includes all multi-purposes consumer electronics, such as gaming systems, desktop computers, laptops, tablets, and mobile phones, unless such devices have been “locked down” to prevent usage other than for VRS. The Commission also should take enforcement action against any provider that violates the agency’s prohibition on giving away “non-service-related” equipment as a porting incentive.”¹⁰ At a minimum, the Commission should issue enforcement guidance.¹¹

As Convo observed in its initial comments, VRS providers now predominantly use an app- and software-based approach to the provision of VRS. As a result, most VRS calls currently are placed using off-the-shelf consumer electronic products such as laptops, tablets, and mobile phones, rather than using VRS-dedicated videophones.¹² Because of this transition to software-based VRS, the line between service-related equipment and non-service-related equipment is not clear. The confusion that this creates when attempting to apply the Commission’s incentive prohibition is reflected in the contrasting views of VRS providers with respect to the boundaries of what constitutes “service-related equipment” under the Commission’s rules¹³—or even whether distributing service-related equipment is permissible at all.¹⁴ To mitigate this confusion, the Commission should clarify that general consumer electronics do not qualify as “service-

¹⁰ ZVRS/Purple’s interpretation of the *May 2019 Order* to argue that their OneVP device has already been held by the agency to be service related is unavailing. *See* ZVRS/Purple Comments at 5-6. Their arguments in support of their give away of the NVIDIA Shield (*i.e.*, the “OneVP” device) do not pass muster. The Commission characterized the device as a video game console “that can be used for multiple purposes in addition to VRS.” *See May 2019 Order*, 34 FCC Rcd at 3415 ¶ 36 n.124 (“[W]e conclude that give-aways of video gaming systems *cannot be justified as service related*. We believe that this clarification sufficiently addresses the issues raised in the *ex partes* regarding ZVRS’ ‘OneVP’ device, which reportedly can be used for multiple purposes in addition to VRS, including but not limited to video gaming.”) (emphasis added); *see also* Convo Request at 8-10.

¹¹ GlobalVRS Comments at 7.

¹² *Id.* at 5.

¹³ *Compare* Sorenson Comments at 1 *with* ZVRS/Purple Comments at 5, 7-10 (asserting starkly different interpretations of what is currently permissible under 47 C.F.R. § 64.604(c)(8)(v)).

¹⁴ *See, e.g.*, GlobalVRS Comments at 3 (“A plain language reading of Section 64.604(c)(8)(v) should make it sufficient clear that no incentives of any kind are acceptable.”).

related equipment” merely because they contain a camera, speaker, microphone, and the ability to run apps.

Contrary to ZVRS/Purple’s assertion, giving away off-the-shelf equipment that has not been significantly customized for VRS use does not represent innovation or technological advancements. Merely preloading an app, especially an app that is publicly available in app stores and could easily be downloaded by a user,¹⁵ does not qualify as “adapting” a device for VRS.¹⁶ Moreover, functional equivalence does not—and should not—require VRS providers to buy for deaf users the same laptops, tablets, phones, and other off-the-shelf consumer electronic devices that hearing individuals purchase for themselves.¹⁷ Rather, functional equivalence requires that deaf users are not required to *pay more* than hearing users to access communications *services*.¹⁸ Consequently, prohibiting providers from giving away consumer

¹⁵ See, e.g., “Video Relay Service” Search, GOOGLE PLAY, https://play.google.com/store/search?q=Video%20Relay%20Service&c=apps&hl=en_US (last visited Oct. 10, 2019) (revealing true VRS apps from entities including Sorenson, ZVRS/Purple, and Convo as some of the earliest hits in Google’s app store). See, e.g., *ntouch for Mac and ntouch for PC*, SORENSON VIDEO RELAY SERVICE, <https://www.sorensonvrs.com/ntouchdesktop> (last visited Oct. 10, 2019) (offering desktop downloads enabling Sorenson’s VRS service for PC and Mac); *Download Videophone Software*, GLOBAL VRS, <https://globalvrs.com/download-videophone-software/> (last visited Oct. 10, 2019) (offering desktop downloads enabling Global VRS’s service for PC, while also noting iPad and iPhone availability through the Apple App Store); *VRS Designed from Cultural Experiences*, CONVO, <https://www.convorelay.com/vrs> (last visited Oct. 10, 2019) (offering download triggers for iOS and Android devices, as well as desktop downloads for macOS and Windows).

¹⁶ GlobalVRS Comments at 7.

¹⁷ The Commission recognized this when it determined that the cost of equipment give-aways are not allowable costs when establishing cost-based VRS rates and therefore such costs must be excluded from providers’ cost reporting. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, 5447, 5457-58 ¶¶ 15, 38 (2006); *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order, 32 FCC Rcd 5891, 5897 ¶ 12 (affirming the FCC’s 2006 holding that costs attributable to customer premises equipment are not allowable costs for purposes of setting VRS compensation rates). Similarly, the most recent directive from Congress regarding TRS-related equipment distribution, empowered the Commission to distribute equipment only in very limited circumstances, namely through the National Deaf Blind Equipment Distribution Program. Twenty-First Century Communications and Video Accessibility Act, Pub. L. No. 111-260, § 105, 124 Stat. 2751, 2762 (2010); Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA), codified at 47 U.S.C. § 620(a).

¹⁸ See generally 47 U.S.C. § 225(d)(1)(D) (the Commission’s regulations must ensure “that users of [TRS] pay *rates* no greater than the rates paid for functionally equivalent voice communication services”) (emphasis added); see

electronic devices under the guise that they constitute VRS service-related equipment is not a step backward. Instead, it is sound supervision by the Commission of the VRS industry—an industry that is entirely funded by the TRS Fund that the Commission was charged by Congress with regulating.

C. RESPONDING TO CONVO’S REQUEST IS WELL WITHIN THE COMMISSION’S AUTHORITY

As Convo explained in its Request, Convo filed the Request in direct response to the Commission’s invitation to seek clarification regarding the appropriate interpretation of the Commission’s recently adopted incentives prohibition.¹⁹ Merely responding to an inquiry that the Commission expressly encouraged does not constitute the promulgation of a new rule or the reconsideration of a prior order. The Commission left open the question of what equipment qualifies as “non-service-related” and should now settle this matter by providing VRS providers a bright-line. Doing so will not disturb the Commission’s conclusion that “service-related equipment” is excluded from the give-away prohibition,²⁰ and it will not otherwise impermissibly change the Commission’s rules beyond what the agency is allowed outside of the rulemaking context.²¹ Consistent with its past practice, CGB could simply issue a public notice clarifying certain “marketing practices that are inconsistent with the TRS statute and regulations.”²² For example, Commission staff in 2005 instructed the TRS Fund Administrator to

also, e.g., Structure and Practices of the Video Relay Service Program et al., Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8620-21 ¶ 2 (2013).

¹⁹ Convo Request at 4 (quoting and citing *May 2019 Order*, 34 FCC Rcd at 3416 ¶ 36 & n.124).

²⁰ Sorenson Comments at 6.

²¹ *See, e.g.*, Global VRS Comments at 2-4 (detailing language already promulgated in the *May 2019 Order*, which support a “plain language” interpretation of Section 64.604(c)(8)(v) and “make it sufficient[ly] clear that no incentives of any kind are acceptable” (emphasis in original)).

²² *FCC Clarifies That Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices are Improper and Reminds That Video Relay Service (VRS) May Not Be Used as a Video Remote Interpreting Service*, Public Notice, 20 FCC Rcd 1471 (CGB 2005).

refrain from compensating calls relayed by any provider engaged in improper marketing and set forth examples of improper marketing.²³

III. EXCESSIVE INCENTIVES AND CONFUSING AGREEMENT TERMS CONSTRAIN CONSUMER CHOICE AND PROVIDER COMPETITION, RATHER THAN PROMOTING IT

The record also supports the description in Convo’s Request of how unlawful incentives, restrictive agreements related to those incentives, and misconceptions regarding users’ rights purposefully planted by a provider, constrain consumer choice.²⁴ Such practices create artificial and unlawful barriers to competition, which undermine the Commission’s mandate in Section 225 of the Communications Act of 1934, as amended, to ensure relay services are available “in the most efficient manner.”²⁵ ZVRS/Purple’s assertion that their practices enhance consumer choice is flatly wrong.

In fact, rather than constraining consumer choice, the Commission’s clarification and enforcement of its incentive give-away policies will *increase* real consumer choice. It will benefit the VRS user community through increased service-quality competition among providers. Tellingly, ZVRS/Purple have not provided any evidence to the contrary. As a result of the industry’s move to software-based VRS products, VRS users can now access each of the providers’ services using relatively inexpensive off-the-shelf consumer electronics. This undermines the ability of providers to lock in consumers through dedicated equipment and forces them to compete head-to-head on service quality. Providers best serve consumers and respect the contributors to the TRS Fund when they compete on quality and interact with users with integrity, rather than attempting to capture users with excessive gifts and restrictive contracts.

²³ *Id.*

²⁴ *See, e.g.,* Convo Request at 11-12 n.35; *id.* at 12 n.36.

²⁵ 47 U.S.C. § 225(b)(1).

The anticompetitive effects of the extensive equipment give-aways by ZVRS/Purple are compounded by the confusing and misleading terms and conditions applicable to such give-aways. These are intended to capture consumers, not foster their choice of VRS offerings. GlobalVRS’s comments identify important factors that lure users into porting to other providers and then effectively trap them with those providers.²⁶ These means of “fettering consumer choice” include

- using restrictive service “agreements” as a tool to compel registered users “to remain with service providers for a minimum of two years;”
- leveraging the “threat of losing ‘premium’ equipment” (especially since “[m]any users, including those with no service agreements, have come to believe—or been led to believe—that the equipment they receive is a service necessity”); and
- making it difficult for registered users to find and understand the terms and conditions governing equipment give-aways.²⁷

Despite the Commission’s express prohibition of this type of anti-user conduct,²⁸ former Convo users reported to Convo that they experienced exactly these types of practices by ZVRS/Purple when the users were induced to port the provider through excessive give-aways of consumer electronics.

These practices indicate that ZVRS/Purple are unable to successfully compete based on service-quality, as is the Commissions’ intention. Instead, ZVRS/Purple working in tandem need

²⁶ GlobalVRS Comments at 4-5.

²⁷ *Id.* (internal quotations omitted).

²⁸ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 ¶ 94 (2007) (prohibiting providers that give consumers relay equipment from “condition[ing] 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”).

to shower users with gifts to incent the users to port, and then they impose restrictive terms on the gifted consumer electronic devices to prevent the users from returning to the VRS offerings of their preferred providers.²⁹ To protect users against these anti-competitive practices, the Commission should further clarify the scope of permissible contract terms related to equipment give-aways and require clear and conspicuous disclosures.

IV. THE VRS PROGRAM MUST EVENTUALLY TRANSITION AWAY FROM THE PROVISION OF ANY EQUIPMENT

The record clearly establishes that app- and software-based technology is predominately used now in the provision of VRS. The days of free equipment from VRS providers being a requisite for accessing VRS are long past. While there is an immediate need for the Commission to act in clarifying the non-service-related equipment restriction as discussed above, a subsequent action by the Commission addressing the extinguishing role of equipment in VRS is also needed to focus limited TRS resources on improving the quality of interpreting services and innovating app functions and features. Additional needed reform related to the provision of equipment in VRS would better support the integrity and long-term health of the VRS program and TRS Fund. Accordingly, Convo has commented in detail its proposed transition plan to phase out the provision of free equipment by VRS providers, regardless of whether they are characterized as service-related.³⁰

The ongoing willingness of providers to manipulate consumers through the distribution of free equipment makes it likely that equipment-related issues will nevertheless persist after the

²⁹ Convo did not contact former customers to offer free equipment if they ported back to Convo. Convo only offered to replace the equipment if needed by the user if ZVRS/Purple removed the equipment they provided when users decided to port back to Convo. In addition, Convo did not at any time condition the availability of its Hue light alert system on customers porting to Convo. After making the lights available to an initial group of customers as part of a market trial, Convo generally directed users who inquired about the technology to vendors from whom the users could purchase the equipment. In addition, Convo on occasion provides such technology to existing customers related to the deaf business ecosystem.

³⁰ Convo Comments at 7-12.

Commission provides its clarification in response to Convo's request. Convo is concerned, for example, that providers may utilize distributing an inexpensive basic hardware unit preloaded with its VRS app marketed as a dedicated "videophone" as an approach to continuing their conduct of locking in customers through the provision of equipment. The value of such a unit rests upon the functions and features of the VRS app, not the hardware that simply serves as an electronic platform for the app and which can be readily replaced by off-the-shelf devices to support the same app with similar operational results. Given the importance of sustaining quality VRS for consumers in a time of limited funding and increasing operational costs, Convo believes it timely and imperative that the Commission subsequently engage in rulemaking to further address the role of equipment in VRS, separately and after it clarifies now the non-service-related equipment restriction in response to Convo's request.

V. CONCLUSION

The Commission should move expeditiously to clarify the scope and requirements of newly adopted Section 64.604(c)(8)(v) of the Commission's rules to stop the unlawful marketing practices currently jeopardizing the TRS program. The Commission should enforce its rules, including those prohibiting unlawful incentives to port providers or use VRS. These actions by the Commission will foster, not constrain, consumer choice and will thereby promote service-quality competition by providers.

Respectfully submitted,

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