

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

PETITION FOR FURTHER CLARIFICATION

ASL Services Holdings, LLC dba GlobalVRS

Angela Roth
President and Chief Executive Officer
3700 Commerce Boulevard, Suite 216
Kissimmee, Florida 34741
Telephone: 407.518.7900

October 26, 2020

SUMMARY

Section 64.604(c)(8)(v) of the Commission's Rules, 47 C.F.R. § 64.604(c)(8)(v), clearly and explicitly establishes that,

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* [emphasis supplied].

Stated Commission policy clearly establishes this prohibition on incentives. Yet the continuing history of the Commission's efforts to prohibit registration-related incentives reflects that what should be a plain language acknowledgement that *no* incentives may be offered to encourage individuals to register for the use of a provider's video relay service, has been convoluted to the point where dominant providers remain able to *interpret* restrictive giveaway incentives programs as compliant when in GlobalVRS's estimation they are not.

When Convo Communications, LLC's (Convo") *Request for Expeditions Clarification of 47 C.F.R. § 64.604(c)(8)(v)*¹ was submitted, Convo and ASL Services Holdings, LLC dba GlobalVRS anticipated that the Commission would provide explicit compliance criteria in accordance with Convo's request. The Commission established *what* could be provided under equipment giveaway programs, but did not clarify *how* service-related equipment, as now defined, could be offered in a way that would constitute an unlawful incentive. This is the clarification GlobalVRS now seeks.

Unless the Commission now acts to establish *how* such programs are deemed unlawful – compliance criteria - certain providers will continue to defy the commission's clear intent of the rule through self-serving interpretation. Without such criteria, the onus will remain on competitors to demonstrate what is seemingly unprovable - that a provider's compliance *interpretation* is wrong and their programs are unlawful. Providers who rely on incentives programs will be able to continue their self-serving interpretative approach to otherwise unlawful registration-related incentives programs while decimating specialized provider subscriber bases. Ultimately the Commission itself will find it challenging to meaningfully enforce its own rule.

By not addressing Convo's question of how an incentive may be deemed unlawful, GlobalVRS has experienced significant financial consequences at the hand of "lawful" competitor giveaway programs. The Commission must now too consider the subsequent implications for specialized provider cost reimbursement, as the Commission's four-year rate stabilization period is coming to a close, and the risk that specialized providers will be compelled to exit the program altogether.

GlobalVRS urges the Commission to now establish how provider incentives programs may be deemed compliant, based on the extensive record of abuses now before the Commission.

¹ *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 and 03-123, Convo Communications, LLC *Request for Expeditions Clarification of 47 C.F.R. § 64.604(c)(8)(v)* (August 19, 2019) [*Convo Clarification Request*].

TABLE OF CONTENTS

I. INTRODUCTION..... 2

II. SECTION 64.604(c)(8)(v) AND COMMISSION POLICIES STRICTLY AND EXPLICITLY PROHIBIT UNFAIR SERVICE REGISTRATION INCENTIVES... 4

III. THE *DECLARATORY RULING* ADDRESSED *WHAT* DEVICES MAY BE OFFERED AS INCENTIVES, WHILE LEAVING OPEN THE EQUALLY CRITICAL ISSUE OF *HOW* SUCH INCENTIVES COULD BE DEEMED UNLAWFUL 6

IV. GLOBALVRS’S RECENT EXPERIENCES UNDERSCORE HOW EQUIPMENT GIVEAWAY PROGRAMS ARE BEING USED TO ATTRACT AND RETAIN REGISTERED USERS IN VIOLATION OF THE EXPRESSED LANGUAGE AND INTENT OF THE INCENTIVES VIOLATION RULE..... 9

V. THE INCENTIVES PROHIBITION RULE CANNOT REALISTICALLY BE ENFORCED WITHOUT COMPLIANCE CRITERIA TO END SELF-SERVING INTERPRETATION..... 13

VI. THE COMMISSION HAS SUFFICIENT INFORMATION IN THE RECORD TO IDENTIFY WHAT CONSTITUTES AN UNLAWFUL INCENTIVE..... 14

VII. ESTABLISHING GIVEAWAY PROGRAM INCENTIVES RULE VIOLATION CRITERIA HAS SIGNIFICANT IMPLICATIONS FOR THE 2021 VRS REIMBURSEMENT RATE SETTING PROCESS AND FUTURE OF THE TRS PROGRAM..... 14

VIII. CONCLUSION..... 17

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

PETITION FOR EXPEDITED FURTHER CLARIFICATION

ASL Services Holdings, LLC dba GlobalVRS (“GlobalVRS”) petitions the Commission for expedited further clarification of *how* video relay service (“VRS”) provider *actions* constitute an unlawful violation of the Commission’s registration incentives prohibition rule, Section 64.604(8)(c)(v), 47 C.F.R. § 64.604(8)(c)(v) (“Incentives Prohibition Rule”) and stated Commission policy. Specifically, GlobalVRS requests that the Commission’s further clarification be in the form of compliance criteria - a bright line test – for determining how a VRS provider’s equipment giveaway program may be deemed to violate the Incentives Prohibition Rule and attendant policies, as GlobalVRS’s own first-hand experience has found necessary. The Commission already has an ample record before it to make the further clarification GlobalVRS requests.

Over the past year the Commission has been presented with numerous *actual* examples of dominant incumbent VRS provider efforts to attract and bind Registered Users through equipment-based registration incentives deemed “giveaways.”² Far from providers giving away service-related equipment, these incentives impose severe legal restrictions that bind new users, contrary

² “Incentive” indubitably suggests there are good incentives and bad incentives. Yet in the context of the Incentives Prohibition Rule it is clear that there should be no incentives. An “incentive,” by definition, is “something that incites or has a tendency to incite to determination or action (Webster).” Unless equipment “giveaways” have no strings attached, *i.e.* no contractual obligations, they are not giveaways, but rather non-compliant incentives. The absence of established Commission compliance criteria effectively enable these unlawful incentives.

to the intent of the Incentives Prohibition Rule and Commission policy, while these programs are interpreted by providers as being compliant. Although the Commission has now clarified the type of service-related equipment that may be lawfully offered as an “incentive,” *i.e. what* may be offered, the Commission has yet to address the equally important question of *how* such giveaway incentives are to be offered in a manner that does not violate the Incentives Prohibition Rule.

This further clarification is imperative if the Commission is to ensure that: its Incentives Prohibition Rule is not abused, if not outright violated through liberal interpretation; the Commission can effectively enforce its rules; and that the Deaf Community retains access to meaningful alternative providers as the Commission and Deaf community desire. This further clarification also has direct implications for the Commission’s 2021VRS rate setting for specialized providers and their future, as discussed below.

I. INTRODUCTION.

GlobalVRS respectfully requests that the Commission now further clarify *how* provider equipment giveaway program offerings constitute a violation of its Incentives Prohibition Rule, including what actions and methodology constitute unlawful “incentives,” through criteria that may be used as a bright line compliance test.

Convo Communications, LLC’s (Convo”) *Request for Expeditions Clarification of 47 C.F.R. § 64.604(c)(8)(v)*³ sought “guidance regarding what test should be used to distinguish between service-related and non-service-related equipment for purposes of the application of the new rule and in which category laptop computers and tablets are properly placed” *and* “guidance from the Commission regarding under what circumstances, if any, the giveaway of service-related equipment to induce users to port their video relay service (“VRS”) provider-assigned ten-digit telephone number (“TDN”) is prohibited by the rule.” In its July 15, 2020 *Declaratory Ruling*,⁴ the Commission clarified the first part Convo’s Clarification Request, but not the second.

³ *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 and 03-123, Convo Communications, LLC *Request for Expeditions Clarification of 47 C.F.R. § 64.604(c)(8)(v)* (August 19, 2019) [*Convo Clarification Request*].

⁴*Id.*, *Declaratory Ruling* (July 15, 2020).

GlobalVRS's request now follows as a direct result of the Commission's and the resulting outcome it has experienced, accordingly.

In its *Declaratory Ruling*, the Commission declined to address the second part of Convo's request, effectively relegating the "how" an incentive is offered unlawfully to a hypothetical.⁵ Far from a hypothetical, GlobalVRS's very real current loss of Registered Users to increasingly aggressive and protracted dominant incumbent carrier registration "incentives" programs that are directly tied to device giveaways and has caused significant and *unsustainable* financial impacts on the Company, as discussed below. Former Registered Users have reported directly to GlobalVRS customer care agents how they were attracted to register, port, and then not use GlobalVRS as their provider (even dial around) without potential consequences, including loss of so-called equipment "giveaways" they might not otherwise have been able to afford themselves.

From GlobalVRS's experience, since Convo's Clarification Request was submitted more than a year ago, it has become evident that investor-driven dominant incumbent carriers are taking exceptionally liberal interpretations of the Incentives Prohibition Rule. The Commission clarified "what equipment" could be offered but passed on the issue of how providers are implementing those incentives in a manner that violates the Incentives Prohibition Rule. The Commission's pass on the issue has been a competitive win for the dominant incumbent providers in GlobalVRS's experience, as nothing in the *Declaratory Ruling* has changed – if not emboldened – the incumbent's current aggressive giveaway practices. To be sure, the incumbents have increased their aggressiveness, seeing no impediments to their practices, or further threat of enforcement action. In effect, the incumbents have bribed Registered Users into subscribing to their service exclusively through giving away service-related devices, albeit under increasingly restrictive and anti-competitive tactics.⁶ These tactics, when viewed in context, are clear registration incentives, designed to scare new Registered Users into remaining exclusively with the provider, or risk loss of desirable purportedly "free" equipment and payment of significant equipment return fees. The

⁵ "We decline at this time to wade into Convo's broader hypothetical questions about the scope of our rules that are untethered to the offer of a particular device." *Declaratory Ruling* at para. 3.

⁶ See, e.g. most recently, Convo Communications, LLC September 17, 2020 Notice of *ex parte* communications with examples of restrictive service agreements tied to "free" service-related equipment incentives to change service providers [Convo *ex parte*]

damage to GlobalVRS has already been done and will continue unabated unless the Commission makes it clear that the plain language of the Incentives Prohibition Rule means what it says.

GlobalVRS's now seeks that the Commission squarely address the second issue originally raised in Convo's Clarification Request in the form of explicit criteria - a bright line test - for Incentives Prohibition Rule violation on an expedited basis. In the absence of this further clarification, the dominant incumbents will be left to expand increasingly aggressive incentives tactics they deem compliant, undermine the ability of competitors to demonstrate non-compliance, create a porting war, and ultimately undermine the ability of the Commission to enforce its own Incentives Prohibition Rule. This will result the exit of specialized providers who will no longer be able to sustain their operations and cease in the provision of VRS, to the detriment of the Registered Users they serve.

II. SECTION 64.604(c)(8)(v) AND COMMISSION POLICIES STRICTLY AND EXPLICITLY PROHIBIT UNFAIR SERVICE REGISTRATION INCENTIVES.

Section 64.604(c)(8)(v) of the Commission's Rules, 47 C.F.R. § 64.604(c)(8)(v), clearly and explicitly establishes that,

- (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

The history of the Commission's Incentives Prohibition Rule enforcement⁷ reflects what should be a plain language acknowledgement that no incentives may be offered to encourage individuals to register for the use of a provider's VRS service, has been convoluted to the point where current incumbent provider registration, porting, and exclusive use of incentives *practices* continue unabated, because they can.

⁷ "The Commission has, unfortunately, a long history of attempting to combat waste, fraud, and abuse within TRS programs—especially connected with schemes for inducing VRS users to increase their usage of a provider's service." *Declaratory Ruling* at para. 5.

The record in this proceeding is replete with Commission references to what actions could constitute a violation of this rule, most recently those referenced in Convo’s Clarification Request⁸ and September 17, 2020, October 8, 2020, and October 14, 2020 *ex parte* communications.⁹ GlobalVRS has also provided extensive references from the Commission’s own *Report and Order* that underscore the Commission’s interpretive intent,¹⁰ notably,

Indeed, TRS becomes no longer simply a means for the consumer to obtain functionally equivalent telephone service, but rather an opportunity for financial gain because the consumer may choose a provider just to take advantage of its offer of a free item. To prevent these harms, we conclude that it would be insufficient to simply reaffirm that such giveaways cannot be supported by the TRS Fund as an allowable cost. Despite their non-allowability, *such giveaways continue to be offered in the competition to attract additional users and minutes.*¹¹

In light of the Commission’s extensive pronouncements regarding unlawful incentives, GlobalVRS concluded, “[h]ow Section 64.604(c)(8)(v) or the Commission’s *Report and Order* - and other previous orders cited therein - could be read in any way to justify the use of incentives in a lawful manner requires extensive futile contortions in logic.”¹²

Nevertheless, incumbent incentive programs continue unabated, with the single intent of attracting new and existing subscribers through the offer of “free items.” Even if those items are now declared appropriate service-related devices under the additional criteria set forth in the *Declaratory Ruling*, apparently neither the Incentives Prohibition Rule nor the Commission’s

⁸ See, e.g. in particular, *Convo Clarification Request* citation to *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)[*Report and Order*] at page 3, quoting from the Order, that the Commission adopted this rule to address “sign-up incentives aimed primarily at inducing current VRS users to switch (or refrain from switching) providers, rather than recruiting entirely new users.” According to the Commission, this “undermine[s] the achievement of statutory objectives” by “increas[ing] VRS costs without improving the quality of service, impairing providers’ ability and incentive to compete on service quality.”

⁹ Convo notice of *ex parte* communications (September 17, 2020) and Convo and GlobalVRS notices of *ex parte* communications (October 8, 2020 and October 14, 2020).

¹⁰ *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 and 03-123, *Comments of ASL Services Holdings, LLC dba GlobalVRS* (September 30, 2019) [GlobalVRS Comments] at 3, citing to the Commission’s 2019 *Report and Order*, 34 FCC Rcd 3396.

¹¹ *Id.* at page 3 [emphasis supplied].

¹² GlobalVRS Comments at page 4.

stated intent established throughout the record in this proceeding are sufficient to end these anti-competitive practices.

What remains clearly lacking is definitive enforcement of the Commission’s Incentives Prohibition Rule, based on clear criteria governing how incentive programs and practices¹³ that rely on severely restrictive and binding provisions will be deemed by the Commission to constitute a violation of the Incentives Prohibition Rule. The Commission’s narrow *Declaratory Ruling* did not address this issue and leaves the matter open to continuing self-serving provider interpretation that only exacerbates the damage that has been done to specialized providers.

III. THE *DECLARATORY RULING* ADDRESSED *WHAT* DEVICES MAY BE OFFERED AS INCENTIVES, WHILE LEAVING OPEN THE EQUALLY CRITICAL ISSUE OF *HOW* GIVEAWAY PROGRAMS COULD BE DEEMED UNLAWFUL.

Despite Convo’s request for “guidance from the Commission regarding under what circumstances, if any, the giveaway of service-related equipment to induce users to port their video relay service ... provider-assigned ten-digit telephone number ... is prohibited by the rule,”¹⁴ and numerous examples of how incentives are *currently* being used to unlawfully “encouraging individuals to register for or use the VRS provider’s service” submitted by GlobalVRS and Convo,¹⁵ the Commission narrowly ruled on *what devices* may be offered to users. The Commission declined to provide further guidance, characterizing Convo’s request as “hypothetical” questions” about the scope of the Commission’s rules.¹⁶

As a result, the Commission left open a gaping interpretive hole that is enabling incumbent carriers to continue with their incentives programs aimed specifically at drawing away Registered Users from other providers, unfettered and with a sense of the Commission’s tacit approval. This was not the Commission’s explicitly stated intent regarding such programs.

¹³ The offering of incentives must be viewed as a comprehensive set of practices that extend beyond restrictive contracts with exculpatory clauses. As discussed further below, contract provisions may meet the letter of the rule, but be presented in a manner that is decidedly in violation of the Incentives Prohibition Rule.

¹⁴ *Convo Clarification Request* at 2.

¹⁵ See, e.g. GlobalVRS Comments at page 4 and *ex parte* communications on January 28, 2020, and joint *ex parte* communications with Convo on March 12, 2020, April 9, 2020, October 8, 2020 and October 14, 2020).

¹⁶ To be sure, GlobalVRS’s request is not about the “scope” of the Commission’s rules, but rather on the specific criteria to be relied upon by all providers – and the Commission - in determining whether an incentives program is offered in an unlawful manner. This is not a hypothetical question, but rather based on GlobalVRS’s real life loss of Registered Users.

Indeed, the Commission establishes that,

To facilitate compliance, the Commission expressly “invite[d] providers that are uncertain about the permissibility of giving away a particular device [to] . . . seek guidance from the Commission prior to engaging in such activity.”¹⁷

Asking incumbent providers to seek guidance from the Commission if “uncertain” about their compliance is akin to having the fox guard the hen house; leaving it to providers to determine whether Commission guidance is needed in the first place.

Moreover, allowing providers to seek Commission guidance, does not account for instances in which a program may outwardly comply, but the manner in which a provider’s “free giveaway” program is presented to prospects in an anti-competitive manner in direct violation of the rule, as GlobalVRS has experienced. The burden to demonstrate non-compliance then falls on competitors to argue why a provider’s incentives program or representations to prospective and current Registered Users violates the rule. And ultimately, it is unclear how the Commission itself can enforce the Incentives Prohibition Rule, without defined criteria; “we’ll know it when we see it,” is hardly a sufficient litmus test, and one that conceptually no provider can meet if seeking to demonstrate anti-competitive incentives programs under the current lack of compliance criteria.¹⁸

GlobalVRS does not dispute the need for the Commission to have clarified what devices may be offered to the public. And the Commission’s clarification has now provided added clarity from that perspective. Nevertheless, the issue of what may be offered is only half of the equation in what constitutes an incentive under the Incentives Prohibition Rule. Both matters go hand-in-hand and cannot be bifurcated, if the providers are to comply, competitors are to demonstrate non-compliance, and the Commission is able to enforce its incentives prohibition rule and policies. Otherwise leaving the responsibility to providers to seek “guidance” in the absence of compliance

¹⁷ *Declaratory Ruling* at para 1 citing to *2019 VRS Program Management Order*, 34 FCC Rcd at 3415-17, paras. 36-37.

¹⁸ “That such practices continue is a reflection of a prevailing perception that it is still possible to engage in such practices with impunity. Believing that the Enforcement Bureau’s ability to enforce incentives rules may be limited, whether due to perceived regulatory ambiguity or resources, it remains possible to hold users captive and realize continued compensable usage, further cementing market dominance, contrary to the Commission’s expressed intent.” GlobalVRS Comments at 5. “GlobalVRS maintains that Section 64.604(c)(8)(v) and the Commission’s reasoning behind the prohibition on any incentives requires no further clarification.” And indeed, it is not the reasoning behind to prohibition – the scope of the rules – but rather *how* the rules may be violated that requires clarification needed for effective and meaningful Commission enforcement.

criteria is rife with the potential for abuse through self-serving interpretation, misrepresentation to prospects, and/or the flexibility given to providers to defend their incentives programs.

The absence of specific compliance criteria renders the Commission's ability to enforce this rule open to *ad hoc* clarifications on a case-by-case basis, which will ultimately contribute to the incumbent providers' ultimate goal of killing off specialized competitors while their predatory tactics continue unabated. Without specific compliance criteria, those providers that do not – or cannot financially - engage in offering giveaways are left with raising violations on an *ad hoc* basis subject to protracted refutation by the incumbent providers who are effectively free to interpret the Commission's incentive rule to their advantage and the detriment of specialized providers in particular. This situation has led to an ongoing loophole that has already continued for far too long, as the Commission's record in this proceeding reflects and, in this context, is seemingly devolving into anti-competitive behavior.¹⁹

The Commission's *Declaratory Ruling* establishes specific criteria to be used in determining whether equipment is “service related” for purposes of compliance with the Incentives Prohibition Rule. The Commission should now follow suit in establishing specific criteria for determining how providers violate the rule, even when “service-related” equipment as now clarified is offered as an unlawful inducement, or recognize that its Incentives Prohibition Rule will in practice will be effectively unenforceable.

¹⁹ See, e.g. Federal Trade Commission Anticompetitive Practices, <https://www.ftc.gov/enforcement/anticompetitive-practices>, Single Firm Conduct, “It is unlawful for a company to ... attempt to monopolize trade... A company violates the law only if it tries to maintain or acquire a monopoly through unreasonable methods.” GlobalVRS is by no means suggesting here that dominant incumbent provider incentives programs are, in and of themselves, anti-competitive behavior under the Federal Trade Commission's anti-competitive practices characterization. Nevertheless, without specific compliance criteria to determine just how far a dominant incumbent's incentives program may be offered without violation of the Commission's Incentives Prohibition Rule, and without compliance criteria having been established through a test case whose costs specialized providers could likely not be able to underwrite as noted, the potential for incentives programs to devolve into anti-competitive practices looms as a possibility in a “market” of four VRS providers, two of which are overwhelmingly dominant.

IV. GLOBALVRS'S RECENT EXPERIENCES UNDERSCORE HOW EQUIPMENT GIVEAWAY PROGRAMS ARE BEING USED TO ATTRACT AND RETAIN REGISTERED USERS IN VIOLATION OF THE EXPRESSED LANGUAGE AND INTENT OF THE INCENTIVES PROHIBITION RULE.

GlobalVRS's Comments highlighted four incumbent incentives practices that providers may argue are compliant, but whose true intent is one of "encouraging individuals to register for or use the VRS provider's service;" 1) Restrictive Service Agreements; 2) The Threat of Losing Premium Equipment; 3) Reliance on Untranslated Terms and Conditions; and 4) Inherently Stifling Competition by Fettering Consumer Choice.²⁰ GlobalVRS has first-hand experience of how what might outwardly be defended as a compliant incentives program hides how the program is used solely to encourage Registered Users to subscribe to the provider's service and then severely restrict the Registered User's ability to subsequently change providers. These exceptionally restrictive contractual obligations are not readily understood by the Registered Users or instill fear of lost service, "free" equipment they may not otherwise afford, and underscore the need for the Commission to establish compliance criteria.

Restrictive Incentives-Related Service Agreements. How the Agreements Bind New Users. Incumbent provider "free" equipment giveaways are by no means free to Registered Users, and come with multiple legal encumbrances that are understood by Registered Users to limit – if not outright preclude - their use of alternative provider services for increasingly protracted terms;²¹ Service-related equipment remains owned by the provider. This becomes immediately clear in one provider's giveaway program legal contract. If equipment is not being used to incentivize other

²⁰ GlobalVRS Comments at 4 and 5.

²¹ One provider agreement GlobalVRS obtained states that the decision to "order a [provider] product does not create any obligation to make any Video Relay Service calls. Customer is free to make and calls to and receive calls from any Video Relay service provider over the [provider] product..." This language is calculated to give the appearance of compliance with the Commission's Incentives Prohibition Rule, while otherwise creating severe restrictions on the use of the provider's equipment in the remainder of the agreement.

provider' Registered Users to change default provider, then no legal contracts should apply. In the absence of compliance criteria, providers are left to conclude that such contracts – however designed - are fully compliant and do not violate the Incentives Prohibition Rule.

For example, one dominant provider's contract states, "Customer acknowledges that the [provider] Product is being provided to Customer at no cost or a substantial discount due to the fact that the purchase price has been subsidized by [provider].... If the Customer ports to another provider the ten-digit number assigned to their [provider] product, within six (6) months, of receiving the [provider] Product, Customer will owe [provider] a handling fee in the amount of \$100. To cover our shipping and handling costs of providing the [provider] Product to Customer." This fee, termed an "Equipment License Fee," remains in effect for *two years*. The agreement further authorizes the provider to assess a \$250.00 "recovery fee" if the equipment is sold, leased or transferred, or otherwise used in violation of terms and agreements. And, "[provider] shall have the right to immediately terminate, suspend, restrict, or cancel Customer's use of the [provider's] Product without advance notice in the event that [provider] becomes aware that Customer is or may be breaching the prohibitions of this agreement." The Registered User has no legal recourse but to be bound by the terms of the contract or loose equipment and have to pay substantial fees for equipment returns.

GlobalVRS has learned from former Registered Users that their use of the new provider's service is monitored and they have been contacted by the provider when placing dial around calls to GlobalVRS, creating fear over placing such calls. A GlobalVRS Customer Care interview with a former Registered User who had opted for a dominant incumbent's giveaway program, revealed that the incumbent's representative explicitly represented that upon receipt of an Apple iPad *and* Mac Pro, the prospect would be *prohibited* from placing calls through any provider other than the

incumbent under threat of loss of all received equipment, regardless of statements to the contrary in the contract. Had the individual not known that such a prohibition was unlawful, the individual would have accepted the representation at face value.²²

This individual's circumstances, however, are not universal. In GlobalVRS's experience, prospects are neither aware of the Commission's rules requiring use of any providers' services, cannot afford new commercial equipment, and/or have not read – or cannot read – the incumbent's service agreement. These individuals are lured by “free” equipment they could not otherwise afford, while fearing the loss of equipment if using another provider's service. The incumbent may argue that this instance is unique, that its representative was “misinformed,” that the prospect misunderstood the representation, and/or that the prospect was ultimately responsible for understanding the terms and conditions of the service agreement, which is binding where a representative's statements are not. But how can that be proven? And because the onus is on a competitor to bear the burden of proof, no competitor can easily produce evidence to the contrary without engaging in a costly and lengthy process of gathering information to the extent that former Registered Users are willing to share their experiences,²³ while the incumbent hides behind the “lawful” provisions of its service agreement.

How the Agreements Appear to Comply. Outwardly, provisions governing use of other providers' service suggest compliance with the Incentives Prohibition Rule. And the contractual provisions contained in multi-paged legal contracts states that Registered that Users may place dial around calls using other providers' services as noted, again giving the appearance of

²² In this individual's case, the potential loss of the “free” Apple iPad and Mac Pro for using other provider's services was not viewed as deterrent because the individual could afford to purchase his own commercial equipment for use in placing VRS calls.

²³ GlobalVRS found few former Registered Users who were willing to discuss their experiences in exit interviews for fear of retribution including loss of equipment and service.

compliance. Yet this semblance of compliance hides the manner in which those contracts are presented to prospects and how the contracts may be understood or interpreted. These factors effectively restrict Registered Users from using other providers' service in direct violation of the Incentives Prohibition Rule, despite contractual language.

How the Agreement Fails to Comply. When the Registered User learns that they will have to pay substantial handling fees or recovery fees, the Registered User recognizes that they are bound to the provider or may lose access to the equipment for a minimum of two years. One of GlobalVRS's former users informed GlobalVRS that they understood that they could no longer use GlobalVRS's services until their new equipment contract expired in two years on the *belief* that their agreement restricted return to GlobalVRS service due to the loss of "free" equipment and return and handling fees. This underscores how these restrictive contractual terms are being presented and understood.

The dominant providers may claim that the responsibility lies squarely with the Registered User to understand their obligations. In reality, Registered Users whose primary language is American Sign Language will not necessarily understand their contractual rights as written. This situation has been exacerbated by the manner in which purported free equipment giveaways are explained to prospects by aggressive provider representatives.²⁴ Dominant providers who "know and work for the Deaf community" intentionally use this knowledge in creating a giveaway program that designed to sow fear of losing desirable equipment and moreover, of losing service. Registered Users are lured by offers of premium commercially available service-related equipment including lap tops, lap top covers and in one instance GlobalVRS is aware of a Ring brand doorbell

²⁴ It is also unclear whether providers incentivize representatives to win over Registered Users. To the extent that such "win back" incentives to representatives are used, their use promotes aggressive sales practices that fly in the face of the Commission's Incentives Prohibition rule, however indirectly.

– likely no longer available as non-service-related equipment following the Commission’s *Declaratory Ruling* – for their exclusive use. In reality, once accepting the provider’s the Registered User realizes with the accompanying agreement(s) they are now effectively bound to the new provider’s service for a protracted period of time.

V. THE INCENTIVES PROHIBITION RULE CANNOT REALISTICALLY BE ENFORCED WITHOUT COMPLIANCE CRITERIA TO END SELF-SERVING INTERPRETATIONS.

GlobalVRS maintains, as it has, that Commission enforcement of the Incentives Prohibition Rule is the key.²⁵ Yet despite the Commission’s explicit prohibition against use of incentives to encourage “individuals to register for or use the VRS provider’s service,” Commission policy in support of the prohibition, and the Commission’s recent *Declaratory Ruling*, dominant provider giveaway programs and practices *continue* to be implemented in a manner that GlobalVRS and Convo have experienced to be contrary to the Incentives Prohibition Rule as a result of providers’ self-serving liberal interpretation.²⁶ Service contracts “allow” Registered Users to place calls using other providers’ service while imposing severe restrictions on the user’s ability to change providers are currently being interpreted as compliant. That providers can stretch their interpretation of compliance reflects the “how” certain providers’ programs can give the appearance of compliance, when in practice they are not. And, because the Commission did not address the “how” in its *Declaratory Ruling* as Convo and GlobalVRS had requested, neither service providers or the Commission itself have an established set of criteria – a test – of what constitutes unlawful incentivizing. This has perpetuated, if not exacerbated the *status quo*.

²⁵ See, GlobalVRS comments at 5.

²⁶ See, e.g. Convo *ex parte*.

VI. THE COMMISSION HAS SUFFICIENT INFORMATION IN THE RECORD TO IDENTIFY WHAT CONSTITUTES AN UNLAWFUL INCENTIVE.

As the Commission itself acknowledges,²⁷ the Commission has amassed a lengthy record of incentives going back nearly fifteen years. It should become clear what, from the Commission's perspective, constitutes unlawful incentivizing beyond the Incentives Prohibition Rule's specific prohibitions, that remain subject to provider interpretation.

Among the items that remain open to provider self-serving interpretation in the absence of Commission compliance criteria,

- Do giveaway programs that are subject to legal contracts constitute incentives in violation of the Incentives Prohibition Rule?
- Should providers engaging in giveaway or other incentive-type programs be required to translate their contracts into ASL to ensure that the Deaf fully understand the how those programs work in their native language?
- What provider representative statements would be deemed as violating the Incentives Prohibition Rule? - If a competitor can demonstrate that a representation made to a prospective Registered User by a competitor contained such violating statements, such as "you will lose your service unless you sign this agreement," what recourse does the competitor have to pursue Commission enforcement action?
- Are provider incentives to representatives for winning prospects lawful?
- Should competitor winback costs be reimbursable as virtually *the only* recourse to combat incentives-related programs?
- Who bears the burden of proof of non-compliance? As currently understood, a competitor bears the entire burden of proof in demonstrating non-compliance, albeit in the absence of the criteria GlobalVRS is requesting. Should the burden of proof fall to the provider to demonstrate compliance if a competitor raises a claim, as it is the provider that has interpreted its program as being compliant?

VII. ESTABLISHING GIVEAWAY PROGRAM INCENTIVES RULE VIOLATION CRITERIA HAS SIGNIFICANT IMPLICATIONS FOR THE 2021 VRS REIMBURSEMENT RATE SETTING PROCESS AND FUTURE OF THE TRS PROGRAM.

GlobalVRS's request has significant longer-term implications for 2021 VRS reimbursement rate setting, as the specialized provider's four-year provider compensation plan

²⁷ *Declaratory Ruling* at 5.

draws to a close on June 30, 2021.²⁸ The *2017 VRS Rate Order*, referring to the Commission’s 2013 structural reforms, predicated the specialized provider’s four year compensation plan in part on, “an expectation that, pending the completion of such structural reforms, the temporary continuation of a tiered rate structure would both encourage improvements in efficiency and ensure that smaller providers “*have a reasonable opportunity to compete effectively during the transition and to achieve or maintain the necessary scale to compete effectively after structural reforms are implemented.*”²⁹ As the TRS Fund Administrator and Commission begins reviewing provider rates in 2021, the impact of unfettered dominant incumbent provider registration giveaway programs under their current guise will have profound ongoing negative impact on specialized providers’ ability improve efficiency and compete effectively, and in turn on their underlying service costs as the Commission had anticipated, if not now addressed.

GlobalVRS has witnessed a precipitous decline in giveaway-related defections of otherwise loyal, long standing Registered Users over the past two years in particular. Since its inception, GlobalVRS has been able to compete with the dominant incumbent providers in part due to its specialized Spanish language and DeafBlind services, service quality, and advanced technology, over which GlobalVRS has direct control, as well as the public’s greater reliance on “off the shelf” commercially available equipment that removes the public’s historic reliance on proprietary incumbent provider equipment. With the advent of equipment programs that now increasingly rely on giveaways of “free” commercially-available equipment and increasingly

²⁸ *Structures 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 and 03-123, Report and Order and Order, 32 FCC Rcd 5891, 5916-24, paras. 49-63 (2017) (*2017 VRS Rate Order*) (setting a four-year, tiered rate structure for VRS compensation through the 2020-21 Fund Year).

²⁹ *Id.* citing to the *2013 VRS Reform Order*, 28 FCC Rcd at 8699, para. 204 [emphasis supplied].

extended service contract terms highlighted in Convo’s and GlobalVRS’s *ex parte* meetings,³⁰ the lure of “free” equipment under outwardly compliant incentives programs, becomes an irresistible attraction to change providers. The rapid deterioration of specialized providers’ base of Registered Users make the Commission’s hoped for specialized efficiency gains now virtually unachievable for reasons entirely outside of GlobalVRS’s control.

The incumbent dominant providers’ and Commission’s historic false narrative that specialized are inherently ineffective in their operations because they are unable to increase market share is clearly evident in the context of the incumbent providers’ offering of expensive investor-financed equipment giveaways that specialized providers cannot match. It is challenging to understand how those providers who engage in offering expensive equipment can do so with investor financing, while also claiming that they are not being sufficiently reimbursed by the TRS Fund for the cost of their services. A simple Internet search reveals that tablets cost an average of more than \$250.00.³¹ This suggests either an over recovery of dominant incumbent provider costs, as their operational costs are ironically are reduced as they raid other provider Registered User bases in porting wars, and/or the high level of investor subsidization to acquire and retain Registered Users – and kill off specialized providers. Meanwhile specialized provider service costs are rising due to deteriorating subscriber bases. Presumably investors believe they will

³⁰ If a service agreement can be now extended from two years to four years, as at least one provider has done, what prevents the provider from imposing automatic renewal provisions or otherwise extending the agreement term to six or eight years? Here too, the absence of specific criteria for what constitutes a lawful incentive program hands the dominant providers *carte blanche* to design highly restrictive programs that could be deemed outwardly lawful.

³¹ See, [Consumer tablets average price in the U.S. 2018-2023](#), H. Tankovska, Aug 27, 2020. The average price of a consumer tablet in the United States is expected to come to around 261.3 U.S. dollars in 2019. Forecasts suggest that consumer tablet prices will gradually decrease in the coming years, reaching an average price of around 255.4 dollars by 2023.”

ultimately recoup equipment costs from the additional revenue generated from rate payer funded TRS Program when their competitors are gone.

The need for the compliance criteria sought by GlobalVRS herein is not confined to the immediate issue of giveaway programs, but indeed on the much broader considerations of ability of its ability to compete efficiently. The impact of increasingly aggressive and restrictive giveaway programs, albeit interpreted as “compliant” programs, in the absence of compliance criteria, will have a direct impact on GlobalVRS’s cost structure under a declining Registered User base. Clearly, this has implications for reimbursement rates and ultimately on the ability of GlobalVRS to continue serving its specialized base of Registered Users. GlobalVRS’s request for such criteria must be viewed in the broader context of the impact on reimbursement rates, providing and maintaining consumer choice and options, specialized skills/ services be addressed by the Commission now, well before the rate setting process is initiated.

VIII. CONCLUSION.

The Commission’s TRS Fund is a highly structured program, not a fully competitive marketplace in a commercial sense. Providers are in effect representing the Commission and U.S. Government in providing access to Communications services to the Deaf community. The TRS Program cannot be approached in the same manner as a conventional communications marketplace where *individuals pay for their equipment*. Yet, that is exactly what is taking place by dominant incumbents who effectively seek to have rate-payer funded equipment initially underwritten by well-capitalized investment firms given to prospects to lure them into highly restrictive contracts geared to undermine competitors can retain captive users.

Despite an explicit rule that prohibits providers from providing “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” and a long history Commission efforts to preclude incentives, incumbent providers have been able to interpret the Commission’s rule in such a way that enables them to give the appearance of compliance, without complying.

When Convo’s Clarification Request was filed, Convo and GlobalVRS had anticipated that the Commission would provide explicit criteria for acceptable program practices. The Commission established what could be provided but did not address *how* service-related equipment as would be offered in a way that would constitute an unlawful incentive.

Since the Convo Clarification Petition was filed, GlobalVRS has witnessed increasingly aggressive incentives practices that have led to a loss of Registered Users to expensive, investor-funded giveaways that are self-servingly interpreted to be compliant. Unless the Commission now acts to further establish explicit compliance criteria the onus will remain on competitors to demonstrate non-compliance that they will likely be unable to do, providers with incentives programs will be able to continue their self-interpretative approach incentivizing programs, and ultimately the Commission will be unable to meaningfully enforce its rule. Commission action also has direct implications for specialized provider cost reimbursement, as the Commission’s four-year rate stabilization period is coming to a close, and on whether specialized providers will be compelled to exit the program altogether as a result of unchecked liberal interpretation of compliant incentives programs.

GlobalVRS now urges the Commission to establish on an expedited basis how provider incentives programs will be deemed unlawful, based on the extensive record of abuses now before the Commission.

Respectfully submitted this 26th day of October 2020,

ASL Services Holdings, LLC dba GlobalVRS

A handwritten signature in black ink, appearing to read "Angela Roth", is written over a horizontal line.

Angela Roth
Managing Member serving as
President and Chief Executive Officer

Andrew O. Isar
Miller Isar, Inc.
4304 92nd Avenue NW
Gig Harbor, WA 98335

Consultants to
ASL Services Holdings, LLC dba GlobalVRS