BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION

USTelecom[1] submits these comments in response to the further notice of proposed rulemaking (Notice) issued by the Federal Communications Commission (Commission) regarding a proposed four-year plan for Video Relay Service (VRS) compensation. The Notice also addresses proposed reforms to administrative components of the VRS program.[2]

USTelecom and its members have a long history of supporting communications access for people with disabilities that reaches back to the very foundations of our industry, and they readily acknowledge the importance of the VRS program to members of the deaf and hard of hearing community. In addition to participating in the establishment and deployment of Telecommunications Relay Services (TRS), of which VRS is a part, many of our members provide specialized offerings to members of the disabilities community, including free directory assistance, operator assistance or text- and data-only plans, so that people who are deaf or have

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[1] USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

[2] Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, and Order, *Structure and Practices of the Video Relay Service Program*, 32 FCC Rcd 2436, 82 FR 17754, 82 FR 17613, ¶¶ 81 – 106 (released March 23, 2017) (*Notice*).

hearing loss will not pay for voice communications services they are unable to use.[3] Given the importance of the VRS program to the broader issue of communications accessibility, the Commission must strive to act responsibly to ensure that greater efficiencies are achieved throughout the program for the betterment of the deaf and hard of hearing community, and the overall sustainability of the broader TRS fund.

I. The FCC Should be a Responsible Steward Regarding Costs Associated With the VRS Program.

Section 225 defines TRS as services that enable individuals with hearing and speech disabilities to engage in communication in a manner that is functionally equivalent to voice communications service, and directs the Commission to ensure that such services are made available in "the most efficient manner" possible.[4] The VRS program has been an integral part of these broader TRS efforts, and the Commission's initial efforts to introduce efficiencies and innovation into the VRS program are laudable.

Unfortunately, the Commission acknowledges in its Notice that despite the structural reforms to the program introduced in 2013, the VRS market structure has "seen little change," in part because the structural reforms it envisioned "have been slow to arrive."[5] Despite the fact that its laudable goals have not been attained, it is imperative for the Commission to continue to ensure such efficiencies are realized as quickly as possible. Doing so will not only improve the

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[3] *See*, Testimony of Walter B. McCormick, Jr., President and CEO, United States Telecom Association before the House Committee on Energy and Commerce Subcommittee on Communications, Technology and the Internet, *The Twenty-First Century Communications and Video Accessibility Act of 2009*, June 10, 2010.

[4] 47 U.S.C. § 225(b)(1).

[5] *Notice*, ¶¶ 86 – 87.

VRS marketplace for consumers, but will also ensure that the Commission acts as a responsible steward of public funds.[6]

Even with the reduced funding for VRS through the Commission's 'glide-path' approach to the program, it must remain cognizant of the fact that overall TRS related costs continue to increase, even as the overall costs of the TRS fund continue to be shouldered by a shrinking group of rate-payers. USTelecom has previously raised concerns with the Commission regarding this issue.[7]

Indeed, in its filing last week, Rolka Loube Associates LLC (RLA), notes that "the contribution base [for TRS funding] has become smaller each year."[8] As per their Table 1, the TRS contribution base declined from $72.8 B in 2010 to $60.2 B in 2017 – an average annual

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[6] In order to implement the statutory requirement that TRS users "pay rates no greater than the rates paid for functionally equivalent voice communication services," the Commission established the TRS Fund, which is intended to allow TRS providers, including VRS providers, to recover the reasonable costs of providing TRS. As a result, the costs associated with providing TRS are not charged to the consumers using these services; rather, interstate TRS and iTRS, including VRS, are funded through mandatory contributions made to the TRS Fund. Under the current rules, providers submit to the TRS Fund administrator on a monthly basis the number of minutes of service provided, and the TRS Fund administrator compensates them based on per-minute compensation rates, which are set annually by the Commission.

[7] *See e.g.*, Comments of the United States Telecom Association, CG Docket No. 10-51, CG Docket No. 03-123, pp. 3 – 9 (filed May 31, 2013) (*USTelecom 2013 Comments*); Reply Comments of the United States Telecom Association, CG Docket No. 10-51, CG Docket No. 03-123, pp. 2 – 3 (filed June 11, 2015) (*USTelecom 2015 Reply Comments*); Comments of the United States Telecom Association, CG Docket No. 10-51, CG Docket No. 03-123, pp. 3 – 5 (filed May 24, 2016) (*USTelecom 2016 Comments*).

[8] Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund, Payment Formula and Fund Size Estimate, CG Docket No. 03-123, CG Docket No. 10-51, p. 8 (April 28, 2017) (*RLA Annual Report*) (stating that "the annual reductions have resulted in reported 2014 revenues used for the program year beginning in 2015 that were $64.129 billion; approximately $1.1 billion below the level reported at the beginning of the prior Fund year. The most recent information from the DCA regarding 2015 reported revenue used for the program year beginning in 2016 is a further $2.7 billion reduction to $61,425 million.").

reduction of 2.7%.[9] Despite this continuous decrease in the funding base, RLA's projected fund requirement for fiscal year 2017 – 2018 shows a 10% increase over the previous year to a record level of $1.3 B.[10]

The Combined effect of declining revenue and increasing funding requirement results in a proposal to increase TRS contribution factor by 12% that would be difficult to sustain in the competitive telecommunications market. The unrealized efficiencies resident in the VRS program, coupled with the continued rapid growth in the broader TRS fund, continue to raise questions about the long-term programmatic, legal, and financial integrity of the TRS fund, including VRS.

At this point in time there is a reasonable expectation of better cost efficiency amongst VRS providers. Several such providers have been providing VRS offerings to the disability community since as early as 2006 – a time during which innovative technologies have been rapidly deployed and widely adopted.[11] During this same time period, there have been transformative changes within the VRS marketplace, with multiple providers merging (and presumably gaining economies of scale), and innovative companies emerging as new entrants. According to the Commission's own data, there are currently at least ten companies that provide

[9] RLA Filing, p. 8 and 9 (stating that "the annual reductions have resulted in reported 2014 revenues used for the program year beginning in 2015 that were $64.129 billion; approximately $1.1 billion below the level reported at the beginning of the prior Fund year. The most recent information from the DCA regarding 2015 reported revenue used for the program year beginning in 2016 is a further $2.7 billion reduction to $61,425 million.").

[10] Public Notice, *Rolka Loube Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2016-17 Fund Year*, DA 16-518, p. 4 (released May 9, 2016).

[11] *See supra*, notes 22 – 24.

VRS to the disability community,[12] and at least two of these companies have described the VRS marketplace as "highly competitive" throughout the United States.[13]

Given the robust competition occurring in the VRS marketplace, coupled with continuing advances in technology, the environment for innovation and efficiencies is ideal. Yet despite the Commission's concerted effort to introduce such efficiencies into VRS offerings, these widely available and much-needed efficiencies are not being realized in the VRS program.[14] In light of these technological and competitive realities, the Commission should therefore continue to insist that VRS providers focus greater efforts on becoming more cost efficient. This continued emphasis by the Commission will be beneficial to the overall health of the VRS program, while also ensuring that available efficiencies and technological advances are passed on to consumers.

In this regard, the Commission should seriously question the claims of an inability to compete by new companies seeking to enter the VRS space without extremely high "emergent" compensation rates. This is especially true given the Commission's longstanding policy goal of increased efficiencies for VRS, coupled with the available technologies and new innovations that make such cost efficiencies entirely attainable. As noted by the Commission in its Notice, although it "seek[s] to preserve a diversity of suppliers in the market, the Commission is not required to ensure the viability of every VRS competitor, no matter how inefficient."[15] This is

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[12] Federal Communications Commission website, *Internet-Based TRS Providers* (available at: https://www.fcc.gov/general/internet-based-trs-providers) (visited May 1, 2017).

[13] *See* Ex Parte Notice, Ex Parte Notice, Letter from John T. Nakahata, Harris, Wiltshire & Grannis, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123, CG Docket No. 10-51, p. 2 (June 14, 2016) (available at: https://ecfsapi.fcc.gov/file/60002218195.pdf) (visited May 2, 2017) (*Sorenson 2016 Ex Parte Notice*); *see also*, Ex Parte notice, ASL Services Holdings, LLC dba, Global VRS, CG Docket No. 03-123, CG Docket No. 10-51, p. 2 (February 21, 2017) (available at: https://ecfsapi.fcc.gov/file/103011669809741/17030101-2.pdf) (visited May 2, 2017) (*ASL Ex Parte Notice*) (describing the VRS market as "highly competitive").

[14] *Notice*, ¶¶ 82 – 85.

[15] *Id.*, ¶ 99.

the appropriate approach for the Commission to adopt, since it reflects the necessary fiscal responsibility that can best ensure the sustainability of the VRS program.

II. VRS Should Not be a Mandatory Service for Common Carriers.

The Commission should also reject the proposal advanced by Sorenson Communications, LLC (Sorenson) that VRS become a "mandatory" service for common carriers.[16] Sorenson couches its proposal as a "deregulatory approach,"[17] despite the fact that it would create a regulatory mandate that common carriers provide VRS services. This regulatory mandate would be enforced in a VRS marketplace that Sorenson and ASL Services Holdings, LLC (ASL) have both recently described as "highly competitive" throughout the United States.[18]

When the Commission last considered mandating the VRS in 2000, it rightly determined that it should not be a mandatory service for common carriers.[19] The Commission reached this decision, in part, because VRS was "in its technological infancy,"[20] and it was "concerned" that mandating VRS on a "widespread basis at this early stage in its technological development could stymie experimentation with different technologies."[21] The Commission believed at the time that its approach would "permit market forces, not the Commission, to determine the technology

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[16] *Notice*, ¶ 106 (citing, Ex Parte Notice, Letter from John T. Nakahata, Harris, Wiltshire & Grannis, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123, CG Docket No. 10-51, p. 12 – 14 (filed Mar. 14, 2017) (*Sorenson Ex Parte*).

[17] *Sorenson Ex Parte*, p. 12.

[18] *Sorenson 2016 Ex Parte Notice*, p. 2; *see also*, *ASL Ex Parte Notice*, p. 2.

[19] See, Report and Order, and Further Notice of Proposed Rulemaking, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 15 FCC Rcd 5140, 65 FR 38432, FCC 00-56, ¶¶ 21 – 23 (released March 6, 2000).

[20] *Id.*, ¶ 22.

[21] *Id.*, ¶ 23.

and equipment best suited for the provision of VR[S], and allow for the development of new and improved technology."[22]

The Commission's balanced approach in its 2000 Order has fostered a VRS marketplace that is not only "highly competitive," but also exceptionally innovative. As Purple Communications, Inc. (Purple) noted in comments filed with the Commission in 2010, "videophone technology continues to evolve and the market for video technology remains highly competitive."[23] Purple's observation in 2010 has further evolved as a growing number of technologies and services are readily meeting some VRS needs. For example, a number of services such as FaceTime, Skype, and Periscope, are being leveraged by a variety of VRS providers in order to offer cost-efficient and robust services to deaf or hard of hearing consumers.[24]

In some instances, these same services are supplanting the need for members of the deaf community to rely on VRS services. As noted by one commentator who is an ASL interpreter and from three generations of a deaf family, "the ability to have a long-distance conversation in sign language has been monumental. Using video chat, deaf people can now converse freely using ASL; whether they are around the block or across the ocean. Apps such as Skype and FaceTime empower deaf people to stay in contact and share their experiences."[25]

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[22] *Id*.

[23] *See*, Purple Communications, Inc., *Comments on Notice of Inquiry*, CG Docket No. 10-51, p. 21 (filed August 18, 2010) (available at: https://ecfsapi.fcc.gov/file/7020708990.pdf) (visited May 1, 2017).

[24] *See e.g.*, Simon, Matt, Wired, June 27, 2016, *The Remarkable Tech Bringing the Deaf and Hearing Worlds Together* (available at: https://www.wired.com/2016/06/remarkable-tech-bringing-deaf-hearing-worlds-together/) (visited May 2, 2017).

[25] *See*, Callis, Lydia, *Hearing the Voice of the Deaf Community*, October 22, 2014 (http://www.huffingtonpost.com/lydia-l-callis/hearing-the-voice-of-the-_b_6022742.html) (visited May 2, 2017).

The FCC should not now mandate that any form of TRS be mandatory for common carriers when there are long term providers who are adept at providing this service. Sorenson's proposal would likely introduce additional administrative inefficiencies into the VRS program by introducing an additional (and unnecessary) layer of control and supervision by common carriers. There is simply no need at this point for the Commission to reverse course on its policy from 2000, especially given the remarkable innovation and competition occurring in the VRS marketplace.

III. General Administrative Comments Regarding Oversight of the VRS Program.

USTelecom also provides the following comments related to certain administrative proposals contained in the Notice. First, if the Commission adopts the suggested new VRS compensation rates and tiers, it should adjust the rates for each of these tiers on an annual basis, and not at six-month intervals as proposed in the rulemaking.[26] Adoption of a 6 month interval would be administratively burdensome for contributors to the TRS fund.

USTelecom has already commented at length about the ongoing and problematic issue in the TRS program resulting from the timing of annual changes to the contribution factor.[27] As previously noted by USTelecom, wireline carriers generally recover TRS contributions through their rates established in their annual price cap tariff filings which are filed every year in mid-June for a July 1 effective date. However, the Commission's Form 499A – which is the basis for the TRS contribution factor – is due on April 1 of each year, and TRS contribution requirements are usually not adopted until very close to July 1 each year.

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[26] *Notice*, ¶ 93.

[27] *See e.g.*, *USTelecom 2013 Comments*, pp. 11 – 12; *USTelecom 2015 Reply Comments*, p. 4; *USTelecom 2016 Comments*, pp. 2 – 3.

The institution of the proposed 6 month interval for VRS would exacerbate this timing issue, by introducing further confusion into an already chaotic process. The Commission also provides no justification in the Notice for its proposed six month interval. Despite the overall goal of the Notice to increase efficiencies in the VRS program, the Commission's proposed interval would increase administrative burdens on TRS contributors, and run counter to the statute.

Finally, the Commission should make sure its proposed "emergent rate" is permissible only for "new" entrants into the market as VRS providers. In particular, the Commission should ensure that the emergent rates are not distributed to organizations that reorganize in the VRS marketplace (*e.g.*, through a merger), or are distributed to existing VRS providers who have been in the market for years, yet continue to seek unwarranted levels of funding through the program. In other words, the proposed emergent rate should be applied only to smaller providers who are truly "new entrants in the market."[28] Such an approach will also ensure that cost efficient providers are not impaired by the Commission's proposed tier rate settings.

IV. Conclusion

USTelecom and its members fully support and readily acknowledge the importance of the VRS program to members of the deaf and hard of hearing community. However, given the importance of the VRS program, the Commission must strive to act responsibly to ensure that greater efficiencies are achieved throughout the program, as well as for the overall sustainability of the broader TRS fund. The Commission should also reject the proposal that VRS become a mandatory service for common carriers. The VRS marketplace is already highly competitive, and mandating carriage by common carriers would likely introduce additional administrative

[28] *Notice*, ¶ 92.

inefficiencies into the VRS program by introducing an additional (and unnecessary) layer of control and supervision by common carriers.

Respectfully submitted,
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