Gregory Hlibok
Chief Legal Officer
ZVRS
p: 443.574.7042
w: www.zvrs.com e: ghlibok@zvrs.com

REDACTED, FOR PUBLIC INSPECTION

ORIGINAL

May 4, 2017

Accepted / Filed

MAY - 4 2017

Federal Communications Commission
Office of the Secretary

VIA ELECTRONIC FILING AND HAND-DELIVERY

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: ***Structures 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**

Dear Ms. Dortch,

In accordance with the *Second Protective Order* for the above-captioned proceedings, ZVRS Holding Company ("ZVRS Holding"), the parent of CSDVRS, LLC d/b/a ZVRS ("ZVRS") and Purple Communications, Inc. ("Purple"), herein submits a redacted version of the attached reply comments in the above-captioned proceedings.

ZVRS Holding has designated for highly confidential treatment the marked portions of the attached documents pursuant to the *Second Protective Order* in CG Docket Nos. 03-123 and 10-51.[1] ZVRS Holding's reply comments include granular data with respect to its costs for various categories of both allowed and additional costs. These materials fall under Item 3 in Appendix A of the *Second Protective Order*: "Information that provides granular information about a Submitting Party's past, current or future costs, revenues, marginal revenues, or market share, and future dividends."

Pursuant to the protective order and additional instructions from Commission staff, ZVRS Holding is filing a redacted version of the document electronically via ECFS, one copy of the Highly Confidential version with the Secretary, two copies of the redacted version with the Secretary, and sending copies of the highly confidential version to Eliot Greenwald, Robert Aldrich, and Michael Scott of the Consumer and Governmental Affairs Bureau and the TRS Reports mailbox.

[1] *Structures and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Protective Order, DA 12-858, 27 FCC Rcd. 5914 (Cons. & Gov't Affs. Bur. 2012).

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Please contact me if you have any questions or require any additional information.

Sincerely,

/s/_____

Gregory Hlibok
Chief Legal Officer
ZVRS Holding Company
Parent company of CSDVRS, LLC d/b/a
ZVRS and Purple Communications, Inc.
595 Menlo Drive
Rocklin, CA 95765

Attachment

cc: Eliot Greenwald
Robert Aldrich
Michael Scott
TRSReports@fcc.gov

REDACTED, FOR PUBLIC INSPECTION

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
	)	
	)	CG Docket No. 03-123
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	

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MAY - 4 2017
Federal Communications Commission
Office of the Secretary

REPLY COMMENTS OF ZVRS HOLDING COMPANY, ZVRS AND PURPLE COMMUNICATIONS ON THE FURTHER NOTICE OF PROPOSED RULEMAKING

Gregory Hlibok
Chief Legal Officer
ZVRS Holding Company
Parent company of CSDVRS, LLC d/b/a
ZVRS and Purple Communications, Inc.
595 Menlo Drive
Rocklin, CA 95765

May 4, 2017

EXECUTIVE SUMMARY

ZVRS Holding, the parent of ZVRS and Purple, hereby replies to the comments filed in the above-referenced proceeding and urges the Commission to adopt the Joint Rate Proposal before July 1, 2017, in its entirety.

The four smallest providers of VRS—ZVRS, Purple, Convo and GlobalVRS—developed the Joint Rate Proposal because current and scheduled VRS rates threaten to eliminate their participation in the VRS program and risk locking in a monopoly market in which consumers in the Deaf and Hard of Hearing community have no choice regarding their VRS provider. The Joint Rate Proposal will support a more functional VRS program by adjusting reimbursement rates to more reasonably reflect the costs of different-sized providers in the market, which will help the non-dominant providers remain in operation as planned competitive reforms are implemented and take effect, and will facilitate investment and innovation in VRS technology. The Joint Rate Proposal would also reduce overall demands on the TRS Fund, including an estimated $14 million in savings to the TRS Fund in the first four years of its implementation.

In these reply comments, ZVRS Holding, ZVRS and Purple express the following: (I) The Joint Rate Proposal has ample support and should be adopted by the Commission in its entirety; (II) The Commission is justified in maintaining rate tiers for four more years as a temporary, interim measure; (III) The Commission must ensure that there is a functioning market for VRS before it considers adopting a unitary rate or market-based approach to VRS compensation; and (IV) Sorenson's proposals would stifle innovation and competition and should be rejected by the Commission; and (V) Rolka Loube's proposed tiered rate structure is inappropriate, unreasonable, and indefensible as a matter of fact and policy.

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Before the
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Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	

REPLY COMMENTS OF ZVRS HOLDING COMPANY, ZVRS AND PURPLE COMMUNICATIONS ON THE FURTHER NOTICE OF PROPOSED RULEMAKING ("FNPRM")[1]

ZVRS Holding Company ("ZVRS Holding"), the parent of CSDVRS, LLC d/b/a ZVRS ("ZVRS") and Purple Communications, Inc. ("Purple"), hereby replies to the comments filed in the above-referenced proceeding, and urges the Commission to adopt the Joint Rate Proposal,[2] before July 1, 2017, in its entirety.

The four smallest providers of VRS—ZVRS, Purple, Convo Communications, LLC ("Convo") and ASL Services Holdings LLC, d/b/a GlobalVRS ("GlobalVRS") (collectively, the "Non-Dominant Providers")—developed the Joint Rate Proposal because current and scheduled VRS rates threaten to eliminate their participation in the VRS program and risk locking in a monopoly market in which consumers in the Deaf and Hard of Hearing community ("Community") have no choice regarding their VRS provider.[3] The Joint Rate Proposal will support a more functional VRS program, and the Commission's goals, by adjusting

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[1] *Structure and Practices of the VRS Program, et al.*, Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, and Order, FCC 17-26, CG Docket Nos. 10-51 & 03-123, para. 85 (Mar. 23, 2017) (individually, the "*Report and Order*," "*NOI*," "*FNPRM*," and "*Order*").

[2] ASL Services Holdings, LLC d/b/a GlobalVRS, Convo Communications, LLC, CSDVRS, LLC d/b/a ZVRS, Purple Communications, Inc., Video Relay Service (VRS) Rate Proposal, CG Docket Nos. 10-51 & 03-123 (filed Jan. 31, 2017) ("Joint Rate Proposal").

[3] *Id.* at 14.

reimbursement rates to more reasonably reflect the costs of different-sized providers in the market, "thereby helping the non-dominant providers remain in operation as planned competitive reforms are implemented and take effect and facilitating investment and innovation in VRS technology."[4] Adoption of the Joint Rate Proposal also would save the Telecommunications Relay Services Fund ("TRS Fund") an estimated $14 million in savings in the first four years of its implementation, minimizing the cost of service for ratepayers consistent with the Commission's goals.[5]

In these reply comments, ZVRS Holding, ZVRS and Purple express the following: (I) The Joint Rate Proposal has ample support and should be adopted by the Commission in its entirety; (II) The Commission is justified in maintaining rate tiers for four more years as a temporary, interim measure; (III) The Commission must ensure that there is a functioning market for VRS before it considers adopting a unitary rate or market-based approach to VRS compensation; (IV) Sorenson's proposals would stifle innovation and competition and should be rejected by the Commission; and (V) the Commission should reject Rolka Loube's proposed tiered rate structure as inappropriate, unreasonable, and indefensible as a matter of fact and policy.

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[4] *See id.* at 8-10; *FNPRM* at paras. 85, 93 (proposing a four-year VRS rate plan with the following per-minute rates: $5.29 for providers with 500,000 or fewer monthly minutes ("emergent rate"); $4.82 for other providers' first 1,000,000 VRS minutes (Tier I); $4.35 for a provider's monthly minutes between 1,000,001 and 2,500,000 (Tier II); and $2.83 for a provider's monthly minutes in excess of 2,500,000 (Tier III)).

[5] Joint Rate Proposal at 10.

I. THE JOINT RATE PROPOSAL HAS AMPLE SUPPORT AND SHOULD BE ADOPTED BY THE COMMISSION IN ITS ENTIRETY.

A. The Majority of Commenters and Industry Leaders Support the Joint Rate Proposal.

ZVRS and Purple join Convo, GlobalVRS, former FCC Commissioner Harold Furchtgott-Roth and the iTRS Advisory Council ("Council") in urging the Commission to adopt the Joint Rate Proposal in its entirety before July 1, 2017.

ZVRS and Purple agree with Convo that adoption of the Joint Rate Proposal "will provide the non-dominant providers with a fair opportunity to stabilize and continue investing in its business, keep the VRS program diverse and competitive and ensure the efficient provision of services by avoiding the over-compensation of providers."[6] GlobalVRS rightly points out that there is "ample justification in the record for Commission adoption of the tiered rate reimbursement proposal in anticipation of a permanent compensation structure that directly accounts for provider costs."[7] In particular, GlobalVRS explains that the Commission's adoption of a tiered compensation structure is "as reasonable today as it was in 2007 in promoting consumer choice, the ability to offer specialized services, and recognition of potential for growth."[8] Conversely, "[m]ovement to a unitary reimbursement methodology would distort the natural provider diversity that has occurred, and further distort the difference in cost structures between providers of varying size by further failing to account for their unique cost structures under the current environment."[9]

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[6] Comments of Convo Communications, LLC, CG Docket Nos. 10-51 & 03-123, at 22-23 (filed Apr. 24, 2017) ("Convo Comments").

[7] Comments of ASL Services Holdings, LLC, d/b/a GlobalVRS, CG Docket Nos. 10-51 & 03-123, at 3 (filed Apr. 24, 2017) ("GlobalVRS Comments").

[8] *Id.* at 5-6.

[9] *Id.*

Adoption of the Joint Rate Proposal also is supported by former FCC Commissioner Harold Furchtgott-Roth, who concludes that despite past failures of price regulation, "the Commission has little choice in the near term but to continue rate regulation of VRS, and the proposal from the smaller providers is a reasonable approach."[10] He notes that "for the past 10 years, the FCC has tried to strike the right regulatory balance with rate tiers and has almost certainly erred in one direction or the other."[11] In concluding that continued rate regulation is needed, and that the Joint Rate Proposal is a reasonable approach, Commissioner Furchtgott-Roth notes that "[u]nder court precedents, providers of VRS must be reasonably compensated for providing services to the government. Obviously, if the rates are not sufficient to more than cover costs, businesses will no longer offer the service."[12] He emphasizes that "[g]etting compensation to reflect costs for firms of different sizes is a constant challenge for the Commission. If the compensation is too generous, firms are unnecessarily enriched. If the compensation is too little, firms discontinue service or reduce the quality of service and investment."[13] Against this backdrop he opines that the Joint Rate Proposal "addresses this delicate balance and makes reasonable recommendations. The proposal focuses on the economies of scale in the industry and attempts to balance compensation with costs. The approach is entirely sound and reasonable. The Commission should pursue such a solution that provides some stability for a few years to have compensation above costs, but not enriching firms, while the Commission can consider longer-term solutions."[14]

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[10] Expert Report of Harold Furchtgott-Roth, CG Docket Nos. 10-51 & 03-123, at 14 (filed Apr. 24, 2017) ("Furchtgott-Roth Report").

[11] *Id.* at 15, para. 33.

[12] *Id.* at 14-15, para. 31.

[13] *Id.* at 15, para. 33.

[14] *Id.* at 16, para. 34.

The Joint Rate Proposal also is unanimously recommended for adoption by the iTRS Advisory Council VRS Rate Recommendation.[15] The Council is a non-paid voluntary advisory committee of persons from the Community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers.[16] The Council meets at regular intervals to monitor TRS cost recovery matters, and it advises the TRS Fund Administrator on such matters.[17] The Council considered various proposals for VRS rate reform at its April 4, 2017 meeting, and voted to recommend Commission adoption of the Joint Rate Proposal.[18]

Recognizing the substantial support for the Joint Rate Proposal, the Commission should adopt it, in its entirety, before July 1, 2017.

B. The Joint Rate Proposal Fulfills the Commission's Goals for VRS and Should Be Adopted.

ZVRS and Purple agree with the Commission that the Joint Rate Proposal "best balances the need to minimize the cost of service for ratepayers, maintain competition in the marketplace pending further structural reforms, reflect the differing costs of differing providers, and give VRS providers the long-term stability in rates to make investment decisions."[19] ZVRS and Purple also believe that the Joint Rate Proposal best balances the "tension between two competing values" that has typified the Commission's past VRS ratemaking proceedings: "(1) providing a competitive spur for improvements in the availability, efficiency, and functional

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[15] *See* Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund, Payment Formula and Fund Size Estimate, CG Docket Nos. 10-51, 03-123, at 36 (filed May 1, 2017) ("Rolka Loube Report") (noting that the rate recommendation was discussed and adopted by the full Council at its April 4, 2017 meeting, although two members abstained from the vote.).

[16] *See* 47 C.F.R. 64.604(c)(5)(H).

[17] *Id.*; *see also* Interstate Telecommunications Relay Services Fund Advisory Council Bylaws, *available at* http://www.rolkaloube.com/advisory-council (last visited May 3, 2017).

[18] *See* iTRS Advisory Council VRS Rate Recommendation, published in Rolka Loube Report at 36-37.

[19] *FNPRM* at para. 88.

equivalence of VRS by enabling a diversity of providers, and (2) conserving the TRS Fund by compensating only for the efficient provision of VRS."[20]

1. *The Joint Rate Proposal Will Serve the Commission's Goals by Preserving a Diversity of Providers in the VRS Market and Bringing Rates for VRS Providers Closer to Costs.*

The record is clear that adoption of the Joint Rate Proposal will preserve a diversity of VRS providers. Each of the Non-Dominant Providers filed comments stating that, in the absence of immediate rate relief, as set forth in the Joint Rate Proposal, their ability to continue providing service is in peril. As the Commission knows from Rolka Loube, the TRS Fund administrator, the Non-Dominant Providers continue to incur per-minute costs that are higher than the weighted average per-minute cost of providing VRS.[21]

Convo explains that although it is a "steadily growing and increasingly efficient provider, its allowable operating costs still exceed the current applicable compensation rate."[22] As a result, "[a] lesser rate [than proposed in the Joint Rate Proposal] is unsustainable for Convo and will lead to either a drastic restructuring of its business or its exit from the VRS program."[23] Convo agrees with the Commission that "maintaining tiered rates for another four years is necessary to enable the non-dominant providers a reasonable opportunity to continue providing service in a largely unchanged VRS market."[24]

Similarly, GlobalVRS explains that it has "continued to provide VRS at a loss with the hopes that promised Program reforms coupled with adoption of a cost reimbursement structure that is more closely tied to efficient provider allowable costs will enable development of the type

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[20] *Id.* at para. 86.

[21] *Id.* at para. 87.

[22] Convo Comments at 2.

[23] *Id.*

[24] *Id.*

of meaningfully competitive environment and diversity that the Commission and public seek."[25] GlobalVRS emphasizes, however, that it "cannot and will not sustain unprofitable services indefinitely."[26]

Similar to Convo and GlobalVRS, if the expected VRS rates for 2017 are not changed, those rates will not be sufficient to more than cover costs for ZVRS and Purple, threatening the service they provide.[27] As ZVRS and Purple previously explained, their cost data "demonstrates that their respective costs of providing VRS have grown steadily over the past four years, during which time compensation rates continuously dropped under the glide path. Against actual costs, and assuming the current rate structure is retained in 2017, both ZVRS and Purple are projected to have negative operating margins this year."[28] As a result, failure to adopt the Joint Rate Proposal will threaten ZVRS and Purple's continued ability to provide service.

Moreover, as cost data submitted to the TRS Fund Administrator and the Commission demonstrates, the current rates under the glide path, which took effect January 1, are well below the actual 2016 and projected 2017 total costs of providing service for ZVRS and Purple and, in particular, are lower even than Purple's allowable costs, excluding mandatory expenditures such as research and development and consumer premises equipment.

The Joint Rate Proposal will offer VRS providers rates that are closer to their actual costs of providing service, thereby preserving a diversity of providers in the market. VRS providers must be adequately compensated for their services so that they can continue to provide service, invest in growing their businesses, and develop and deliver higher quality VRS service.

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[25] GlobalVRS Comments at 9.

[26] *Id.*

[27] *See* Comments of ZVRS Holding, ZVRS and Purple Communications to the Further Notice of Proposed Rulemaking ("FNPRM"), CG Docket Nos. 10-51 & 03-123, at 6-7 (filed Apr. 24, 2017) ("ZVRS/Purple Comments").

[28] ZVRS/Purple Comments at 6.

Commissioner Furchtgott-Roth notes that in a rate-regulated market, "if the compensation is too little, firms discontinue service or reduce the quality of service and investment."[29] That is the risk here if rate relief is not adopted by the Commission before July 1, 2017.

The record makes clear that there is concern in the Community that VRS providers will cease to provide services if reimbursement rates are inadequate to cover their costs. In a joint filing, numerous consumer groups representing the Community, including Telecommunications for the Deaf and Hard of Hearing, Inc.; National Association of the Deaf; Deaf and Hard of Hearing Consumer Advocacy Network; Hearing Loss Association of America; Association of Late-Deafened Adults, Inc.; Cerebral Palsy and Deaf Organization; Deaf Seniors of America; and California Coalition of Agencies Serving the Deaf and Hard of Hearing ("Consumer Groups for the Deaf and Hard of Hearing") note that "VRS providers are dependent on reimbursement rates that cover the entirety of their legitimate costs; without such, providers will be financially incapable of maintaining an adequate quality of service and, at worst, may cease providing VRS altogether."[30]

In order to preserve a diversity of providers in the market, the Commission must adopt reimbursement rates that adequately compensate VRS providers and provide "smaller providers a reasonable opportunity to continue providing service."[31] The Joint Rate Proposal will do just that by bringing rates closer to each provider's allowable costs. Fostering some type of VRS competition and adopting rates that reflect the differing costs of providers are both goals of the Commission that are satisfied by the Joint Rate Proposal.

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[29] Furchtgott-Roth Report at 15, para. 33.

[30] *See* Comments of Consumer Groups for the Deaf and Hard of Hearing on Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51 & 03-123, at 3 (filed Apr. 24, 2017) ("Comments of Consumer Groups for the Deaf and Hard of Hearing").

[31] *FNPRM* at para. 88.

2. *Adoption of the Joint Rate Proposal Will Provide Long Term Stability in Rates, Encouraging Innovation and Investment.*

ZVRS and Purple stand with commenters who support the Commission's efforts to adopt a VRS compensation structure that provides a "competitive spur for improvements in the availability, efficiency, and functional equivalence of VRS by enabling a diversity of providers."[32] In joint comments with Convo and GlobalVRS, ZVRS and Purple emphasized that compensation rates under the glide-path have prevented the Non-Dominant Providers from competing and innovating, and that adoption of the Joint Rate Proposal is "is necessary for the Commission to accomplish its mandate under Section 225 to compensate all providers for the costs of providing competitive service and innovative products."[33]

The Consumer Groups for the Deaf and Hard of Hearing also agree that the Commission should adopt a compensation structure that promotes investment and innovation. They emphasize that all VRS providers must be adequately compensated in order to maintain and improve the functional equivalence of the services that they deliver to the Community, as required under the Americans with Disabilities Act ("ADA").[34] They further note that "[t]he rate structure should not penalize growing providers for capturing market share or maintaining existing market share, nor discourage providers from expanding their business to avoid reaching the next tier and being forced into a lower per minute rate," and instead "should encourage all providers to try to expand their market share by differentiation in service quality and

[32] *Id.* at para. 86, citing, *e.g.*, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order on Reconsideration, 20 FCC Rcd. 20577, 20588, 20590, paras. 21, 26 (2005).

[33] Joint Comments of ZVRS, Purple, Convo, and GlobalVRS to the Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51 & 03-123, at 6 (filed Apr. 24, 2017) ("Joint Comments").

[34] Comments of Consumer Groups for the Deaf and Hard of Hearing at 3.

enhancements."[35] Similarly, the Video Relay Services Consumer Association ("VRSCA") recommends that the Commission "ensure functional equivalency in communications by continuing to adequately compensate all VRS providers to cover essential costs that allow them to grow, and invest in research and development to innovate and remain competitive, and facilitate improved service to their customers."[36]

The Joint Rate Proposal is consistent with the interests of the Consumer Groups for the Deaf and Hard of Hearing and VRSCA. Reduced compensation rates under the glide path, in combination with delays to the structural reforms adopted in the *2013 VRS Reform Order*, have forced ZVRS and Purple to focus on maintaining their user base and stemming their losses as opposed to investing, innovating and competing for market share.[37] Rolka Loube confirms that four out of the five VRS providers, which includes ZVRS and Purple, continue to incur per-minute costs that are higher than the weighted average per-minute cost of providing VRS.[38] The Joint Rate Proposal, which offers fair and stable compensation over the next four (4) years, will allow all VRS providers to make investments, grow their businesses, and expand their service offerings pending further reforms to the VRS market structure.[39] The Community will benefit as a result of increased competition, consumer choice, and investment in VRS technology and service enhancements.

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[35] *Id.* at 4.

[36] Comments of the Video Relay Services Consumer Association, CG Docket Nos. 10-51 & 03-123, at 4 (filed Apr. 24, 2017) ("VRSCA Comments").

[37] *See* ZVRS/Purple Comments at 6-7.

[38] *FNPRM* at para. 87.

[39] ZVRS/Purple Comments at 6-7.

3. *The Rates Adopted in this Proceeding Should Be Retroactive to January 1, 2017 and Maintained for Four Years In Order to Provide Needed Stability.*

ZVRS and Purple agree with the Commission that the proposed four-year rate plan will provide VRS providers with "long-term stability in rates."[40] It is imperative that this long-term stability is maintained throughout the four-year term, without pre-planned reductions every six months. The Commission should not repeat its mistake from the glide path, which tried to predict costs and rates based on structural reforms that were never delivered. Errors from the glide path adopted in 2013 helped create the entrenched competitive imbalance that characterizes the VRS market today, as the Non-Dominant Providers were forced to absorb ever-deepening rate cuts while promised procompetitive structural reforms were "slow to arrive."[41] If the Commission determines that it must assess costs and rates during the four-year plan, then perhaps an annual compensation review, without pre-determined rate changes, would suffice to ensure the continued adequacy of rates without predictive errors.

In seeking to stabilize VRS providers and the VRS program, it is likewise paramount that the Joint Rate Proposal is adopted retroactive to January 1, 2017. As ZVRS and Purple explained in their joint filing with Convo and GlobalVRS, "applying the new rates retroactive to January 1, 2017 will help stabilize the Non-Dominant Providers by reversing the detrimental effect of the January 1, 2017 glide-path rate cut, which set provider compensation rates at levels that "are not sustainable for all providers and do not allow for the investment necessary to grow

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[40] *FNPRM* at para. 88.

[41] *Id.* at para. 87.

market share in the VRS marketplace."[42] The iTRS Advisory Council also recommends adoption of the four rate tiers proposed in the *FNPRM*, retroactive to January 2017.[43]

The record before the Commission demonstrates that the VRS market is far from competitive, and in dire need of stabilization. Adoption of the Joint Rate Proposal, for the full four-year term and retroactive to January 1, 2017, is the best means to accomplish this stabilization, all while simultaneously reducing demands on the TRS Fund by $14 million.[44]

II. THE COMMISSION IS JUSTIFIED IN MAINTAINING RATE TIERS FOR FOUR MORE YEARS AS A TEMPORARY, INTERIM MEASURE.

A. The Joint Rate Proposal is Not a Permanent Solution.

An interim tiered rate structure for VRS compensation remains necessary because the expected competitive reforms which would have allowed the "costs per provider" and the tiers to converge have not come to pass. As detailed hereinabove, ZVRS, Purple, Convo and GlobalASL cannot sustain their operations at current and anticipated rates for 2017. Employing new rates in a tiered rate structure that better maps to the actual costs of providing VRS service for small, medium-sized, and large providers[45] for the next four years will give all VRS providers, including ZVRS and Purple, a reasonable opportunity to continue providing service pending implementation of further structural reforms.

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[42] Joint Comments at 9; *see also* Joint Rate Proposal at 10.

[43] *See* iTRS Advisory Council VRS Rate Recommendation, *supra* note 18; *see also* Convo Comments at 3 (requesting that the "emergent provider rate be made retroactive to no later than January 1, 2017 so [Convo] can start to repay its loans and focus on investing for future growth.").

[44] Joint Rate Proposal at 10.

[45] *See FNPRM* at para. 98.

B. Contrary to the Comments Filed by Sorenson, the Four-Tier Proposal is Not Irrational and Unsupported by Data or Economic Analysis.

There is no merit to Sorenson's claim that the proposed justifications for the four-tier proposal are "irrational and unsupported by data or economic analysis."[46] First and foremost, Commissioner Furchtgott-Roth's expert economic report supports adoption of the Joint Rate Proposal as "a sound and reasonable approach."[47]

Second, confidential cost data submitted to the Commission demonstrates that adoption of the proposed rates will move VRS rates closer to each provider's allowable costs. Sorenson will not be dramatically overcompensated as it is today, and the Non-Dominant providers will be compensated at rates that more closely correspond to the costs of providing service at their size.

Third, as the Commission has observed before, eliminating rate tiers would force some VRS providers out of business. The Commission's justification for employing rate tiers in the *2013 VRS Reform Order* applies equally today:

> With only [five] providers currently providing VRS, eliminating the rate tiers immediately could force out some of the smallest remaining providers, unnecessarily constricting the service choices available to VRS consumers during the period prior to implementation of structural reforms. Some of these small providers may be able to operate more efficiently and compete more effectively under the structural reform conditions than under current conditions, in which technical barriers to interoperability and portability, as well as other limitations, continue to inhibit the full development of competition. Experienced providers, and the consumers who prefer to use their services, should have an opportunity to find out whether such providers are able to grow sufficiently to reach a more efficient scale under more hospitable conditions. We conclude that it is worth tolerating some degree of additional inefficiency in the short term, in order to maximize the opportunity for successful participation of multiple efficient

[46] Comments of Sorenson Communications, LLC, Regarding Section IV.A-B and F of the Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51 & 03-123, at 49 (filed Apr. 24, 2017) ("Sorenson Comments").

[47] Furchtgott-Roth Report at 16, para. 34.

providers in the future, in the more competition-friendly environment that we expect to result from our structural reforms.[48]

The economic rationales and data submitted in support of the Joint Rate Proposal are more than sufficient to justify continued utilization of a tiered-rate framework for the next four years.

C. The Commission's Proposal to Maintain Rate Tiers is Consistent with D.C. Circuit Rulings.

Despite Sorenson's claims to the contrary, the Commission's proposal to maintain rate tiers for the next four years is consistent with D.C. Circuit precedent.[49] Sorenson argues that "courts have accepted the Commission's justification of tiers only as an interim or transitional mechanism."[50] Sorenson explains that "the D.C. Circuit found that the Commission's tiered rates were permissible so long as they were (1) 'interim' rates; and (2) following a path of reductions 'over time' in the 'gap between the highest and the lowest tiered rates . . . to increase the incentive to achieve the minimum efficient scale.'"[51]

As a general matter, the D.C. Circuit is highly deferential to the Commission's decisions in areas of the agency's expertise.[52] The proposals made by the Commission in the *FNPRM* for continued tiered rates satisfies Sorenson's two-part test for "permissible" tiered rates. First, neither the Commission nor the Non-Dominant Providers suggest that the Joint Rate Proposal is

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[48] *Structure and Practices of the Video Relay Services 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, 28 FCC Rcd. 8618, 8699, para. 200 (2013) ("*2013 VRS Reform Order*"), *aff'd in part and vacated in part sub nom. Sorenson Communications, Inc. v. FCC,* 765 F.3d 37 (D.C. Cir. 2014) ("*Sorenson*").

[49] *Sorenson*, 765 F.3d at 51 (upholding Commission's decision to retain tiered-rate structure for VRS compensation).

[50] Sorenson Comments at 59-62,

[51] *Id.* at 61 (citing *Sorenson*, 765 F.3d at 51).

[52] *EarthLink, Inc. v. FCC*, 462 F.3d 1, 12 (D.C. Cir. 2006) ("An agency's predictive judgments about areas that are within the agency's field of discretion and expertise are entitled to *particularly deferential* review, as long as they are reasonable.") (emphasis in original) (internal quotation marks omitted).

a permanent solution. Instead, it is a temporary, four-year interim measure that will allow the smaller providers to continue their operations and move towards achieving economies of scale pending additional reforms to the VRS program. Second, the Commission recognizes that its previous four-year plan was "too optimistic in assuming that rates for all VRS providers could start to converge in FY2016."[53] The Commission therefore believes that "maintaining a tiered rate structure continues to be necessary to allow smaller providers a reasonable opportunity to continue providing service."[54] It further believes that "another four-year plan best balances the need to minimize the cost of services for ratepayer, maintain competition in the marketplace pending further structural reforms, reflect the differing costs of differing providers, and give VRS providers the long-term stability in rates to make investment decisions."[55] These reasons for maintaining the tiered rate structure for an additional four years are consistent with the Commission's reasons for adopting the existing tiered rate structure in the *2013 VRS Rate Reform Order*, which the D.C. Circuit upheld against challenges by Sorenson.[56]

D. A Tiered Rate Structure Continues to be Needed Because Interoperability Has Not Been Achieved.

The Commission should reject Sorenson's argument that the tiered rate structure should not be maintained because longstanding interoperability problems have been resolved.[57] To support its argument, Sorenson proclaims that "interoperability problems have been resolved, except with respect to some of ASL/Global's endpoints," and that Sorenson's videophones and

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[53] *FNPRM* at para. 87.

[54] *Id.* at para. 88.

[55] *Id.*

[56] *See Sorenson*, 765 F.3d at 41 ("As the [FCC] explained, it was pursuing two goals – setting rates to reflect economies of scale and transitioning the industry from rate regulation to competitive bidding. Because the task of balancing those goals is fairly within the discretion of the agency, we defer to its decision concerning the tiered-rate structure.").

[57] *See* Sorenson Comments at 58-59.

mobile endpoints are interoperable with all of the videophones and endpoints provided by Purple, ZVRS, and Convo."[58]

Contrary to Sorenson's claims, interoperability issues continue to afflict VRS providers and users. As Convo points out in its comments, "[t]he lack of interoperability of the dominant provider's videophones is the primary drag on the mobility of customers in using other competitors."[59] Convo notes that it has invested in new video conferencing software and that other competing providers have introduced high-quality videophones to the VRS market.[60] Nevertheless, Convo explains that "these advanced and proven videophones are tried and disfavored by VRS customers as being perceived to have lesser video quality when connecting with [Sorenson] products, which are engineered to optimally work within its own network."[61] As ZVRS and Purple explained in their joint comments with GlobalVRS and Convo, these ongoing interoperability issues are "even more insidious and damaging to the smaller providers, because when a user decides to try the service of one of the smaller VRS providers (which happens only 20% of the time), and interoperability issues arise between the Sorenson devices and the devices of the smaller provider, users generally conclude that it was the smaller provider's technology or network that caused the problem."[62]

Similarly, ZVRS and Purple can attest that video quality substantially degrades on its videophones when its users are connected to Sorenson users. For example, ZVRS's Z70 videophone was designed by Cisco and provides optimal video quality. However, the connection

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[58] *Id.*

[59] Convo Comments at 10.

[60] *Id.*

[61] *Id.* at 10-11.

[62] Joint Comments at 7-8.

and quality of the video degrades and is constantly subpar when connected with Sorenson's videophone.

In short, interoperability problems have *not* been resolved. In fact, Convo estimates that, given the significant delays in delivery of the interoperability-focused structural reforms promised in the *2013 VRS Reform Order*, "VRS will likely not realize a level playing field for video connectivity any sooner than a four year period of transitioning, testing and enforcing interoperability standards."[63] The need for true VRS interoperability and portability is just as dire as it was in 2013, and provides equally sufficient justification for the employment of a tiered-rate structure as reforms to address these issues begin to take hold.

III. THE COMMISSION MUST ENSURE THAT THERE IS A FUNCTIONING MARKET FOR VRS BEFORE IT CONSIDERS ADOPTING A UNITARY RATE OR MARKET-BASED APPROACH TO VRS COMPENSATION

Before moving to a unitary rate or market-based approach to VRS compensation, the Commission must first level the competitive playing field for VRS. In his expert report, Commissioner Furchtgott-Roth notes that moving to a unitary rate at this point in time would result in one of two negative outcomes.[64]

First, if the rate is set too low, smaller VRS providers will be unable to continue providing service, and only one provider (Sorenson) will remain in the market.[65] Indeed, just as the Commission concluded in the *2013 VRS Reform Order*, "Immediate imposition of a unitary cost-based rate would represent a significant and sudden cut to providers' compensation with potentially negative consequences for consumers."[66] The resulting lack of competition would

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[63] Convo Comments at 11.

[64] *See* Reply Report of Harold Furchtgott-Roth, CG Docket Nos. 10-51 & 03-123, at 5 (filed May 4, 2017) ("Furchtgott-Roth Reply Report").

[65] *Id.*

[66] *2013 VRS Reform Order*, 28 FCC Rcd. at 8703-04, para. 212.

remove any incentive for the remaining provider to invest in enhancements to its technology and quality of service.

Second, if the unitary rate is set too high, smaller VRS providers will remain in the market, but Sorenson will be greatly overcompensated for its services.[67] This would threaten the long-term stability of the TRS Fund and result in a windfall for Sorenson. Commissioner Furchtgott-Roth concludes that the Joint Rate Proposal, containing tiered rates for the next four-years, is the Commission's best option to promote competition and address the current imbalance in the VRS market.[68] It is premature for the Commission to move towards a unitary rate without first adopting measures to address existing market failures.

IV. SORENSON'S PROPOSALS WOULD STIFLE INNOVATION AND COMPETITION AND SHOULD BE REJECTED BY THE COMMISSION

As Commissioner Furchtgott-Roth noted in his report, (A) The market for VRS in the United States is not competitive; (B) The Commission has consistently expressed a preference for maintaining multiple VRS vendors; and (C) The Sorenson proposals will not likely lead to more competitive outcomes.[69] For all these reasons, and the reasons discussed below, the Sorenson proposals in response to the *FNPRM* should be rejected.

A. Sorenson Would Be Overcompensated Under its Proposed Tier III Rates.

The Commission should reject Sorenson's proposed rates for Tier III. Sorenson proposes that if the Commission sets rates for VRS instead of pursuing a market-based approach, it "should raise the Tier III (and other tiers') rate to $4.19 to cover both the service *and* necessary end-user equipment" to provide functionally equivalent service at rates no greater than those paid

[67] *See* Furchtgott-Roth Reply Report at 5.

[68] *See id.* at 2.

[69] *See* Furtchgott-Roth Report at 5-6, para. 13.

by hearing users of voice services.[70] Alternatively, Sorenson proposes that "[e]ven if the Commission were to continue to ignore end-user equipment charges—which it should not—the rate for VRS alone should not be below $3.73."[71]

These proposed rates would result in a windfall for Sorenson. It is safe to assume that Sorenson's costs per minute are below $2.71 per minute—the combined, average cost for all VRS providers—because it is the only provider that does not incur per-minute costs that are higher than the weighted average per-minute cost of providing VRS.[72] Rates of $4.19 or $3.73 per minute are not justifiable for Tier III.

B. Sorenson's Proposal to Set a Price Cap is Inappropriate for the VRS Market, Which is Not Competitive and is Characterized by Rapidly-Evolving Technologies.

Sorenson proposes that after any rate transition, the Commission should "initialize a multiyear price cap regime that accounts for the true costs of providing VRS," and that the cap "should be a unified rate of no less than $4.19" to account for both service and access device costs.[73]

Consideration of a price cap is premature until the Commission first addresses competitive imbalances in the VRS market. Moreover, a price-cap approach is ill-suited to the VRS market. As Commissioner Furchtgott-Roth explained in his report, "price regulation is difficult to implement even when other regulations are fixed, technology is constant, and market conditions are fixed."[74] But, he noted, "[n]one of these conditions holds for the VRS market:

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[70] Sorenson Comments at 40-41 (emphasis in original).

[71] *Id.* at 41.

[72] Per Sorenson's filing (presumably following data corrections): "[T]he most recent data from the Administrator states that total industry allowable costs averaged $2.7270 per minute for 2015, and increased to $2.7937 in 2016." Sorenson Comments at 20.

[73] Sorenson Comments at 42.

[74] Furchtgott-Roth Report at 14, para. 30.

FCC rules constantly change; technology changes; and market conditions change."[75] The Commission should instead adopt the Joint Rate Proposal, which Commissioner Furchtgott-Roth deemed an "entirely sound and reasonable" approach.[76]

C. Sorenson's Proposal to Adopt an Industry-wide Productivity Factor is Premature.

Similar to its proposed price cap approach, Sorenson's calls for an industry-wide productivity factor are premature.[77] Sorenson suggests that setting a productivity factor on a provider-by-provider basis "would improperly discourage providers that are currently inefficient from becoming more efficient."[78] The problem with this proposal is that Sorenson is the only VRS provider that has fully realized the benefits of scale. The Commission should not set any such productivity factor until it adopts meaningful rate reform, coupled with implementation of the structural reforms adopted in the *2013 VRS Reform Order*[79] and those proposed in other sections of the *FNPRM*, to address the structural and competitive imbalances of the VRS market.

D. Sorenson's Alternative "Market-Based" Proposals Are Self-Serving, Unduly Favoring Only Them.

The Commission should reject Sorenson's two alternative, "market-based" proposals, which would undermine consumer choice by reinforcing Sorenson's position as the dominant VRS provider.[80] Under a reverse-auction approach,[81] Sorenson would always be able to bid the lowest rate. Under a deregulatory approach where TRS is offered through private contracts,[82]

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[75] *Id.*

[76] *Id.* at 16, para. 34.

[77] *See* Sorenson Comments at 47-48.

[78] *Id.*

[79] *See 2013 VRS Reform Order,* 28 FCC Rcd. at 8698, paras. 199-200.

[80] *See* Sorenson Comments at 49-74.

[81] *See id.* at 64-71.

[82] *See id.* at 71-74.

Sorenson would always be able to bid the lowest rate. These proposals do nothing to promote competition for VRS consistent with Commission goals. Without a competitive spur from other VRS providers, Sorenson would have no incentive to invest in improvements to VRS technologies and services. Such a result is inconsistent with the ADA's mandate to make functionally equivalent telecommunications services available to the Community. At this juncture in the VRS program, the four-year Joint Rate Proposal is the Commission's best option to fix the broken VRS market and move toward its ultimate goal of achieving market-based rates.

E. The Commission Has Acknowledged That Setting a Too-Low Boundary Between Tiers II and III Could Inhibit Competition in the Marketplace.

The Commission should ensure that the boundary between Tiers II and III is set at a level that permits providers to fully reach scale. The Commission agrees with ZVRS, Purple, Convo, and GlobalVRS that economies of scale increase significantly for VRS providers with more than 1,000,000 monthly minutes, and proposes to draw the line between Tiers II and III at 2,500,000 monthly minutes. Critically, the Commission acknowledges that it "should err on the side of setting the boundary too high given the risk that a too-low level could inhibit competition in the marketplace," and notes that "this calculus remains valid, and may have even greater force given the reduction in the number of VRS competitors since 2013."[83] ZVRS and Purple agree with the Commission's proposed approach.

In its comments, Sorenson claims that "there is not a scintilla of evidence either in this record or in the record from the 2013 proceedings" indicating significant economies of scale up to that threshold.[84] First, Sorenson's argument is demonstrably false. In 2012, Purple submitted to the Commission an expert report explaining that VRS costs are volume sensitive, and that the

[83] *FNPRM* at para. 91.

[84] Sorenson Comments at 55.

VRS industry is characterized by significant economies of scale.[85] Second, the D.C. Circuit rejected a similar challenge by Sorenson to the tiered rates adopted in the *2013 VRS Reform Order*, holding that the Commission adequately justified the 500,000- and 1,000,000-minute cutoffs.[86] The court noted that the Commission explained that "it was pursuing two goals – setting rates to reflect economies of scale and transitioning the industry from rate regulation to competitive bidding."[87] The court found that "[b]ecause the task of balancing those goals is fairly within the discretion of the agency, we defer to its decision concerning the tiered-rate structure."[88] As the court made clear, when it comes to the setting of boundaries in a tiered-rate structure, "[t]he relevant question is whether the agency's numbers are within a zone of reasonableness, not whether its numbers are precisely right."[89] The Commission's proposal to set the boundary between Tiers II and III at 2,500,000 monthly minutes is both justified and reasonable.

V. THE COMMISSION SHOULD REJECT THE ROLKA LOUBE PROPOSAL AS INAPPROPRIATE, UNREASONABLE, AND INDEFENSIBLE AS A MATTER OF FACT AND POLICY

In its annual report on the TRS payment formulas and fund size estimate, Rolka Loube proposes alternative VRS rates and tiers.[90] In particular, Rolka Loube proposes to apply a $5.29 per minute rate to emergent providers handling less than 500,000 monthly minutes, collapse Tiers I and II into a single tier, up to 2.5 million monthly minutes, and apply a $4.17 per minute rate to that newly constituted Tier I, and apply a new Tier II rate of $2.83 for minutes in excess of

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[85] *See* Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123, Addendum A: Report of Steven E. Turner, Managing Director – Economic Consulting, FTI Consulting (Nov. 14, 2012).

[86] *See Sorenson,* 765 F.3d at 41.

[87] *Id.*

[88] *Id.*

[89] *Id.* at 51 (quoting *WorldCom, Inc. v. FCC*, 238 F.3d 449, 462 (D.C.Cir. 2001)).

[90] *See* Rolka Loube Report, *supra* note 15 at 41-43.

2.5 million.[91] The Commission should reject Rolka Loube's proposal, which (1) expressly and improperly targets ZVRS and Purple for provider-specific regulation, (2) provides no substantiation in support of its claim that its proposal is a "reasonable compromise," (3) seeks to provide Sorenson windfall profits, and (4) shares a number of flaws with the Rolka Loube 2013 rate proposals that the Commission rightly rejected.

A. Rolka Loube's Proposal Amounts to Improper Provider-Specific Rate Regulation.

In support of its proposal that Tiers I and II be merged into a single tier of up to 2.5 million monthly minutes, Rolka Loube offers the following as justification:

> Whereas ZVRS Holding acquired Purple on February 14, 2017 and will continue to offer VRS under their existing brands as two wholly owned subsidiaries of ZVRS Holding until the businesses are integrated, but no more than three years from the effective date of a Consent Decree, RL's recommendation to establish Tier I at 2,500,000 minutes removes any incentive to delay the integration of the two VRS subsidiaries to afford the two companies undue reimbursement via the tier structure.[92]

That is, Rolka Loube's proposal is premised almost entirely on a desire to severely cut ZVRS and Purple's reimbursement rates in an effort to undermine the three-year integration plan the Commission has already reviewed and deemed reasonable.[93]

This is a wholly improper rationale on which to base a proposed tiered rate structure, and it is far beyond Rolka Loube's purview as TRS Fund Administrator to seek to dictate the ZVRS-Purple integration timeline. While this integration timeline is none of Rolka Loube's concern, it is properly a matter of interest to the Commission and takes into account a number of factors unknown—and unknowable—to Rolka Loube, given the limits of its authority. ZVRS and

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[91] *Id.*

[92] *Id.* at 41-42.

[93] *See Purple Communications, et al.*, Order and Consent Decree, FCC 17-10, at *6, para. 9 (Feb. 15, 2017) ("Purple and [ZVRS] will continue to offer VRS under their existing brands as wholly owned subsidiaries of ZVRS Holding until the businesses are integrated, but no more than three years from the Effective Date.").

Purple must, among other things, migrate from separate platforms onto one, integrate workforces, and merge IT systems, human resources practices and policies, and billing and compliance functions. To accomplish this in the most expeditious manner possible while maintaining stability and quality of service for ZVRS and Purple's users, the Commission reviewed the ZVRS-Purple integration plan and agreed that three years was an appropriate timeline. Rolka Loube has no authority to undermine that agreement.

Moreover, the Commission cannot establish a tiered rate structure that chooses winners and losers, and the Rolka Loube proposal would do just that. In particular, the Commission has stated that "the purpose of the tiered rate structure has been to set rates for providers in discrete size classes based on general differentials between large, medium-sized, and small providers."[94] This approach is intended to ensure that the rate tiers hew more closely to the "general differentials" between smaller and larger providers' costs of providing service as those providers monthly call volumes increase and they achieve greater economies of scale. The Rolka Loube proposal to establish a 2.5 million minute Tier I would treat ZVRS and Purple—each of which is indisputably a small or, at most, medium-sized provider—the same as Sorenson, which carries roughly *eight times* the volume of either company. The Rolka Loube proposal is entirely contrary to the Commission's aims in enacting tiered rate structures that allow VRS providers to compete based on their size and costs, and should be rejected as such.

B. Rolka Loube's Proposed Rate Tiers Are Wholly Unsupported and Are Undercut by Information in Its Possession.

Rolka Loube claims that "$4.17 per minute is a reasonable compromise between the high and low rates proposed by the Commission on March 23, 2017 and is above the costs of the non-

[94] *FNPRM* at para. 98.

emergent providers to be applicable to the [Rolka Loube] proposed 2,500,000 minute Tier I."[95] However, Rolka Loube offers no substantiation for its assertion as to the "reasonableness" of the compromise it proposes. In fact, Rolka Loube refuses to provide any basis for its contention: "The three non-emergent VRS providers include only a holding company's two operating subsidiaries ([ZVRS] and Purple) and Sorenson Communications. Therefore, due to the confidential nature of the respective providers [*sic*] cost data [Rolka Loube] will not be reporting on the supporting details of our recommendation for VRS rates."[96]

It is little surprise that Rolka Loube declines to provide any support for its proposal beyond conclusory statements about "reasonable compromises;" the factual information as to ZVRS and Purple's allowable and total costs of providing VRS—*which is in Rolka Loube's possession*—gives the lie to this claim. The cost data reported annually to Rolka Loube demonstrates that a $4.17 per minute rate for the first 2.5 million monthly minutes is not sustainable for any "non-emergent" provider other than Sorenson.

In particular, the Rolka Loube proposal would cast grave doubts on Purple's ability to continue providing VRS. The proposed $4.17 rate is *** **BEGIN HIGHLY CONFIDENTIAL INFORMATION** *** [redacted] *** **END HIGHLY CONFIDENTIAL INFORMATION** *** Purple's actual allowable costs for 2016, and *** **BEGIN HIGHLY CONFIDENTIAL INFORMATION** *** [redacted] *** **END HIGHLY CONFIDENTIAL INFORMATION** *** its actual allowable costs for 2015. No provider could reasonably be expected to survive with a *** **BEGIN HIGHLY CONFIDENTIAL INFORMATION** *** [redacted] *** **END HIGHLY CONFIDENTIAL INFORMATION** *** margin on its allowable

[95] Rolka Loube Report at 43.
[96] *Id.*

costs. Moreover, and as Rolka Loube well knows given its access to years of annual cost submissions, the threat its proposal poses to Purple's continued viability as a VRS provider is graver still when Purple's *total* costs of providing VRS are taken into account: in 2016, Purple's total per-minute costs were *** **BEGIN HIGHLY CONFIDENTIAL INFORMATION** *** [redacted] *** **END HIGHLY CONFIDENTIAL INFORMATION** ***; in 2017, they are projected to be *** **BEGIN HIGHLY CONFIDENTIAL INFORMATION** *** [redacted] *** **END HIGHLY CONFIDENTIAL INFORMATION** ***. The proposed rate is equally likely to force ZVRS to discontinue service, as it is *** **BEGIN HIGHLY CONFIDENTIAL INFORMATION** *** [redacted] *** **END HIGHLY CONFIDENTIAL INFORMATION** *** the company's projected *** **BEGIN HIGHLY CONFIDENTIAL INFORMATION** *** [redacted] *** **END HIGHLY CONFIDENTIAL INFORMATION** *** per-minute total costs for 2017.

If the Commission's goal in this proceeding were to remove the second- and third-largest providers from the VRS program and leave the largest firm with a 98% share of the market, it could hardly do better than to adopt the Rolka Loube proposal. However, as noted hereinabove,[97] such an outcome would be contrary to the Commission's stated goal of preserving a diversity of providers in the market, and the Rolka Loube proposal must therefore be rejected.

C. Rolka Loube's Proposal Would Provide Yet Another Windfall to Sorenson.

In detailing its proposed rate tiers, Rolka Loube expressly acknowledges that Sorenson's costs are already below the $2.83 rate for minutes above 2.5 million, and that Sorenson could also "receive the benefit of the higher [$4.17] rate for its first 2,500,000 minutes per month."[98]

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[97] *See supra* section I.B.1.

[98] Rolka Loube Report at 43.

That is, Rolka Loube provides as justification for its proposed Tier II rate a plan to compensate Sorenson for its first 2.5 million monthly minutes at a level at least $1.34 [$4.17-$2.83] above its per-minute costs—an overcompensation of $40.2 million per year, at the expense of the TRS Fund that Rolka Loube administers and the consumers who ultimately bear the cost of TRS contributions. As a result, the Rolka Loube proposal would not only harm VRS consumers by causing the likely exit of two providers from the market and reducing competitive choice, but also by forcing consumers to foot the bill for $40 million in annual overcompensation to, perhaps, the only remaining provider. Ironically, Rolka Loube suggests that Sorenson, with 80% of the VRS market, should be able to take advantage of two rate tiers but ZVRS and Purple should be punished with one rate tier that is set so low it will devastate the companies.

The windfall Rolka Loube expressly directs to Sorenson, the "one provider that is providing in excess of 2,500,000 minutes per month" in order to provide it the benefit of a higher tier rate—would be wholly inconsistent with Rolka Loube's improper argument that it is necessary to cut the rates applicable to ZVRS and Purple to levels below their costs during the integration period to "remove any incentive to delay the integration of the two VRS subsidiaries to afford the two companies *undue reimbursement via the tier structure*."[99] If Sorenson is to "receive the benefit" of a rate wholly untethered to its actual costs, as Rolka Loube suggests is necessary, then it would be arbitrary and capricious to deny ZVRS and Purple the same benefit, whether by incorporating the Non-Dominant Provider proposed Tier I rate of $4.82 or by compensating them at the emergent rate of $5.29 for their first 500,000 monthly minutes.

To provide a windfall of this sort only to the dominant, already-overcompensated provider while forcing others out of the market would be an absurd, indefensible outcome. In

[99] *Id.* at 42.

fact, not only would it fail to balance the "tension between two competing values: (1) providing a competitive spur for improvements in the availability, efficiency, and functional equivalence of VRS by enabling a diversity of providers, and (2) conserving the TRS Fund by compensating only for the efficient provision of VRS,"[100] it would violate both.

D. The Commission Rightly Rejected Rolka Loube's Proposals in 2013, and Should Do So Again in this Proceeding for the Same Reasons.

In 2013, just as now, Rolka Loube proposed that the Commission reduce rates to levels that would threaten the ongoing viability of a number of providers, and that the rate tiers be collapsed from three to two with little justification. The same reasons that led the Commission to reject Rolka Loube's ill-advised proposals then apply equally today.

In 2013, Rolka Loube proposed that the Commission dramatically cut rates, based on its analysis of weighted average provider costs—a measure that then, as now, unduly favors the largest provider and leads to skewed ratemaking outcomes for the remaining VRS providers. In response, the Commission set rates at levels $0.30-0.60 higher than Rolka Loube's proposal, to "provide a less disruptive 'glide path' for providers."[101]

Moreover, the Commission found that a less punitive rate plan than the one proposed by Rolka Loube was necessary in view of the competitive and structural reforms needed in the VRS program. "Pending the implementation of structural reforms, we expect that the rate reduction plan adopted in this order will permit service providers to continue offering VRS in accordance with our mandatory minimum standards for high quality services, as we transition to structural reforms and a disaggregated, market-based compensation methodology."[102] As the Commission

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[100] *FNPRM* at para. 86.

[101] *2013 VRS Reform Order* 28 FCC Rcd. at 8703-04, para. 212.

[102] *Id.* 28 FCC Rcd. at 8706, para. 216.

has noted, these reforms have been "slow to arrive" or abandoned entirely,[103] when they were intended to be implemented alongside the glide path and contemporaneously reduce the costs of providing service as the locked-in rate cuts progressed. As ZVRS, Purple, and other commenters have demonstrated, the structural and competitive problems of the VRS market remain largely unchanged since the adoption of the *2013 VRS Reform Order*.[104] Given this, the Commission should dispose of Rolka Loube's proposals today in the same manner as it did then, and reject them entirely.

VI. CONCLUSION

ZVRS and Purple urge the Commission to adopt the Joint Rate Proposal in its entirety. The Joint Rate Proposal satisfies the Commission's goals to adopt a VRS compensation structure that minimizes the cost of service for ratepayers, maintains competition in the marketplace pending further structural reforms, reflects the differing costs of differing providers, and gives VRS providers the long-term stability in rates to make investment decisions. The Joint Rate Proposal would accomplish these goals by: (1) preserving a diversity of providers in the VRS market and bringing rates for VRS providers closer to costs; (2) providing long term stability in rates, encouraging innovation and investment; and (3) applying the rates adopted in this proceeding retroactive to January 1, 2017 and maintaining the rates for four years in order to stabilize VRS providers and the VRS program.

Adoption of the Joint Rate Proposal is also justified for the following reasons. First, the record in this proceeding includes ample support for the Joint Rate Proposal. Second, the Commission is justified in maintaining rate tiers for four more years as a temporary, interim

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[103] *FNPRM* at para. 87.

[104] *See, e.g.*, Furchtgott-Roth Report at 8-9, paras. 18-19; Joint Comments at 6-8; GlobalVRS Comments at 2.

measure. Third, any proposal to adopt a unitary rate or market-based approach to VRS compensation is premature until the Commission ensures that there is a functioning market for VRS. Fourth, Sorenson's proposals would stifle innovation and competition and should be rejected by the Commission. Fifth, Rolka Loube's proposed tiered rate structure is inappropriate, unreasonable, and indefensible as a matter of fact and policy, and it should also be rejected by the Commission. For all of the foregoing reasons, ZVRS and Purple urge the Commission to act expeditiously to adopt the Joint Rate Proposal before the current Fund Year ends on June 30, 2017.

Respectfully submitted,

*/s/*_____

Gregory Hlibok
Chief Legal Officer
ZVRS Holding Company
Parent company of CSDVRS, LLC d/b/a ZVRS
and Purple Communications, Inc.
595 Menlo Drive
Rocklin, CA 95765

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