

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE, PETITION FOR  
EXPEDITED LIMITED RETROACTIVE WAIVER**

CSDVRS, LLC d/b/a ZVRS (“ZVRS”) and Purple Communications, Inc. (“Purple”) (collectively, the “Companies”, and each, individually, a “Company”), pursuant to Sections 1.3 and 1.41 of the rules of the Federal Communications Commission (“Commission”), hereby request clarification that the notice requirement in Section 64.604(c)(5)(iii)(N)(2)(iii) of the Commission’s rules does not apply to at-home workstations activated by the Companies in furtherance of their participation in the Commission’s voluntary at-home Video Relay Service (“VRS”) call handling pilot program (“Pilot Program”).<sup>1</sup> Alternatively, the Companies request an expedited limited waiver, retroactive to November 1, 2017, of such notice requirement with respect at-home workstations activated by the Companies pursuant to the Pilot Program. The Companies are the only VRS providers participating in the Pilot Program.

Under Section 64.604(c)(5)(iii)(N)(2)(iii), VRS providers must “file written notification with the Commission and the TRS Fund administrator of any change in a [call] center's location, including the opening, closing, or relocation of any center, at least 30 days prior to any such

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<sup>1</sup> 47 C.F.R. §§ 1.3, 1.41; *see also* 47 C.F.R. § 64.604(c)(5)(iii)(N)(2)(iii).

change.”<sup>2</sup> The Companies respectfully request that the Commission clarify that this requirement is inapplicable to at-home workstations activated in accordance with the Commission’s rules governing VRS provider participation in the Pilot Program.<sup>3</sup> In the alternative, the Companies request that the Commission waive application of this rule to at-home workstations, and instead require VRS providers participating in the Pilot Program to provide three (3) days advance written notice to the Commission and the TRS Fund administrator of any changes in the location of an at-home workstation. Good cause exists to grant this request because: (1) nimbleness is needed in deployment of qualified at-home interpreters in order to quickly ramp up the availability of Communications Assistants (“CAs”) in response to user demand; (2) there is no good policy justification for strict application of the notice requirement, which contravenes the public interest by imposing an artificial constraint on the availability of CAs and effectively reducing the Pilot Program period by a full month; and (3) the Commission appears to already have contemplated that 30 days prior notice would not be necessary for at-home workstations.

Expedited consideration of this request is needed because the TRS Fund administrator is withholding from payment to the Companies reimbursement for minutes served by at-home CAs in reliance on a strict interpretation of the 30-day notice requirement, in spite of the Commission’s clear statement that such notifications are redundant of the Pilot Program reporting rules and the public interest considerations described herein. This has created a dire situation for the Companies, who rely on such reimbursements. As a result of the TRS Fund administrator’s withholding decisions, the Companies must either hold back for a full month at-home CAs who are otherwise prepared to handle VRS calls or forego compensation for calls handled by those CAs, an unsustainable option for the Companies as they seek to grow and

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<sup>2</sup> 47 C.F.R. § 64.604(c)(5)(iii)(N)(2)(iii).

<sup>3</sup> *See id.* § 64.604(b)(8).

advance the competitiveness of the VRS program. Once a qualified CA is trained to work at home, it takes ZVRS or Purple only a few days to complete installment of the network, equipment and monitoring technology necessary for the CA to handle VRS calls from his or her home.

## **I. BACKGROUND.**

In the *VRS Improvements Report and Order*, the Commission established the Pilot Program, authorizing VRS providers to hire qualified CAs to handle VRS calls from at-home work stations, subject to specified safeguards, for a twelve-month period, beginning November 1, 2017, and ending October 31, 2018.<sup>4</sup> In doing so, the Commission adopted detailed reporting requirements to provide the Commission with data that will inform its evaluation of whether to permanently authorize at-home call handling,<sup>5</sup> including monthly reports of “the call center ID and full street address (number, street, city, state, and zip code) for each at-home workstation and the CA ID number for each individual handling VRS calls from that workstation; and the location and call center IDs of call centers providing supervision for at-home workstations, plus the names of persons at such call centers responsible for oversight of such workstations.”<sup>6</sup> In adopting these detailed reporting obligations, the Commission noted their redundancy with the existing call center report and change notification rules, stating “In light of these information reporting requirements, during the pilot program we do not require VRS providers to include

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<sup>4</sup> See 47 CFR § 64.604(b)(8)(i) (setting forth what information must be included in these plans); *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, Notice of Inquiry, Further Notice of Proposed Rulemaking, Order, 32 FCC Rcd. 2436 (2017) (“*VRS Improvements Report and Order*”); see generally 47 CFR § 64.604(b)(8) (rules governing the at-home call handling pilot program).

<sup>5</sup> *VRS Improvements Report and Order*, 32 FCC Rcd. at 2455-56, para. 46; 47 CFR § 64.604(b)(8)(viii), (ix).

<sup>6</sup> 47 C.F.R. § 64.604(b)(8)(viii).

redundant data pertaining to at-home call handling workstations in semi-annual call center reports and in call center change notifications under the Commission's existing rules.”<sup>7</sup>

On September 1, 2017, ZVRS and Purple each submitted to the Commission a notice of its intent to participate in the Pilot Program.<sup>8</sup> Each Company's notice included a detailed plan demonstrating that the Company intended to achieve compliance with the mandatory minimum standards applicable to VRS and with the nine elements required by Section 64.604(b)(8)(i) of the rules.<sup>9</sup> On October 31, 2017, the Consumer and Governmental Affairs Bureau (“Bureau”) authorized ZVRS and Purple to participate in the Pilot Program from November 1, 2017, to October 31, 2018. After reviewing the Companies' plans, the Bureau found that ZVRS and Purple “sufficiently demonstrated that their use of at-home work stations will comply with the Commission's standards and safeguards.”<sup>10</sup>

## **II. DISCUSSION**

### **A. Request For Clarification**

The Companies request that the Commission clarify that the call center reporting requirements in Section 64.604(c)(5)(iii)(N)(2)(iii) of the rules do not apply to at-home workstations activated in furtherance of the Companies' participation in the Pilot Program. For each month of the at-Pilot Program, participating VRS providers must submit to the TRS Fund

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<sup>7</sup> *VRS Improvements Report and Order*, 32 FCC Rcd. at 2462, n.167.

<sup>8</sup> See Notification of CSDVRS, LLC, d/b/a ZVRS, Intent to Participate in Voluntary At-Home VRS Call Handling Pilot Program, CG Docket Nos. 10-51 and 03-123 (filed Sept. 1, 2017) (“ZVRS Notification”); Notification of Purple Communications, Inc., Intent to Participate in Voluntary At-Home VRS Call Handling Pilot Program, CG Docket Nos. 10-51 and 03-123 (filed Sept. 1, 2017) (“Purple Notification”).

<sup>9</sup> See 47 CFR § 64.604(b)(8)(i); ZVRS Notification, Exhs. A-I; Purple Notification, Exhs. A-I

<sup>10</sup> Authorizations Granted to CSDVRS, LLC, and Purple Communications, Inc. to Participate in the VRS At-Home Call Handling Pilot Program, Public Notice, 32 FCC Rcd. 9245, 9246 (CGB 2017) (“Authorization Notice”).

administrator each month, with their requests for compensation, the call center ID and full street address for at-home workstation handling VRS calls.<sup>11</sup>

In adopting these reporting requirements, the Commission recognized that application of the VRS call center change notification requirements to at-home workstations handling calls pursuant to the Pilot Program creates redundant reporting obligations—and, as a result, unnecessarily burdens providers who must report the same information multiple times. The Commission therefore held that “during the pilot program we do not require VRS providers to include redundant data *pertaining to at-home call handling workstations in semi-annual call center reports and in call center change notifications* under the Commission’s existing rules.”<sup>12</sup>

Despite the Commission’s clear intent to relieve providers participating in the Pilot Program of the burden of complying with redundant reporting obligations, the TRS Fund Administrator continues to withhold reimbursement for minutes handled by at-home CAs in reliance on a strict interpretation of Section 64.604(c)(5)(iii)(N)(2) that would require the Companies, contrary to the Commission’s clear language, to file with the TRS Fund Administrator a notice of each new at-home workstation activated pursuant to the Pilot Program containing information that is entirely redundant of that required under the Pilot Program reporting rules. This interpretation renders meaningless the Commission’s statement that providers would be relieved of the obligation to report redundant data. The Companies therefore request that the Commission clarify that the requirement to provide 30 days’ advance notice of the “opening” of a new call center does not apply to at-home workstations activated pursuant to the Pilot Program, which clarification will give the Commission’s holdings in the *VRS Improvements Report and Order* their intended effect.

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<sup>11</sup> *VRS Improvements Report and Order*, 32 FCC Rcd. at 2462, para. 57; 47 C.F.R. § 64.604(b)(8)(viii).

<sup>12</sup> *Id.* at para. 58, n.167 (emphasis added).

## **B. Petition for Expedited Limited Retroactive Waiver**

In the alternative, the Companies request that the Commission waive application of the requirement to file with the Commission and the TRS Fund administrator 30 days prior written notice of any change in the location of an at-home workstation's location, and instead require VRS providers participating in the Pilot Program to provide three (3) days advance written notice to the Commission and the TRS Fund administrator of any such changes.

Generally, the Commission's rules may be waived for good cause shown.<sup>13</sup> The Commission may waive a rule where the particular facts make strict compliance with the rule inconsistent with the public interest.<sup>14</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy in electing to waive one or more of its rules.<sup>15</sup>

Grant of the Companies' waiver request is in the public interest for the following three reasons: (1) the 30-day advance notice requirement restricts the Companies' nimbleness and flexibility to staff an appropriate number of qualified CAs in response to VRS call volume; (2) there is no good public policy justification for strict application of the 30-day notice requirement, which artificially constrains the number of CAs and contravenes one of the purposes underlying the Pilot Program by reducing the window of time during which participants can gather data on the efficiency and effectiveness of at-home VRS call handling; and (3) the Commission previously recognized that application of the VRS call center change notification requirements to at-home workstations handling calls pursuant to the Pilot Program creates redundant reporting obligations.

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<sup>13</sup> 47 C.F.R. § 1.3.

<sup>14</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

<sup>15</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) ("*WAIT Radio*"); *Northeast Cellular*, 897 F.2d at 1166.

First, strict application of the 30-day notice requirement for notifications of the “opening” of new at-home workstation locations unduly burdens the Companies’ ability to quickly ramp up the availability of CAs to meet user demand. Waiver of the advance notice requirement will enable the Companies to more nimbly and dynamically staff an appropriate number of CAs qualified to work at home in response to VRS call volume, thereby providing enhanced speed of answer and functional equivalence for VRS users. The limited, retroactive waiver requested herein advances the goals espoused in Section 225 of the Communications Act of 1934, as amended,<sup>16</sup> serves the public interest, and furthers the Commission’s aim of improved functional equivalence for VRS users.

Second, there is no good public policy justification for strict application of the 30-day notice requirement, which only will serve to delay deployment of qualified at-home CAs to serve the Deaf and Hard-of-Hearing community within a limited one-year timeframe under the Pilot Program, and create unnecessary obstacles to utilizing a pool of available at-home interpreters who are otherwise trained as required under the Pilot Program rules and are ready to begin handling calls.

To reduce the impact of this artificial constraint on the availability of CAs, the Companies request that the Commission waive the 30-day notice requirement and reduce it to three (3) days with respect to at-home workstations, as doing so will both provide the Commission and the TRS Fund administrator with notice of the new workstation and ensure users are not unnecessarily delayed in gaining access to the Companies’ highly qualified at-home CAs.

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<sup>16</sup> 47 U.S.C. § 225.

Strict application of the 30-day notice requirement also is not in the public interest because it contravenes one of the purposes underlying the Pilot Program—gathering data for the Commission to evaluate in determining whether to permanently authorize at-home VRS call handling. The 30-day notice requirement effectively shortens the one-year Pilot Program by a full month, which reduces the window of time during which participants can gather data on the efficiency and effectiveness of at-home VRS call handling. The result will be less information available to the Commission to inform its evaluation of the program and determination of whether to make it permanent.

Third, as discussed above, the Commission already has recognized that the application of the VRS call center change notification requirements to at-home workstations handling calls pursuant to the Pilot Program creates redundant reporting obligations—and, as a result, unnecessarily burdens providers who must report the same information multiple times. In light of this redundancy and the regular reporting of detailed information on at-home workstations to both the Commission and the TRS Fund administrator, good cause exists for the Commission to waive its call center change notification requirements to at-home workstations under the Pilot Program.

### **III. CONCLUSION**

The Companies request that the Commission clarify that the call center reporting requirements in Section 64.604(c)(5)(iii)(N)(2)(iii) of the rules do not apply to at-home workstations activated in furtherance of the Companies' participation in the Pilot Program. In the alternative, the Commission should expeditiously grant the Companies' request for a limited waiver of the requirement that VRS providers participating in the Pilot Program provide 30-days prior written notice of changes to at-home workstation locations.



The Companies have qualified CAs trained and ready to handle VRS calls from at-home workstations, but the 30-day advance notice requirement unnecessarily constrains the Companies' ability to flexibly and nimbly staff those CAs in response to fluctuations in VRS user demand. Moreover, strict application of the 30-day notice requirement undermines a core purpose of the Pilot Program by reducing the window of time during which participants can gather data on the efficiency and effectiveness of at-home VRS call handling, which will result in less information available for the Commission to inform its evaluation of the program and determination of whether to make it permanent. The Commission also has recognized that application of call center reporting requirements to at-home workstations creates redundant reporting obligations for participating providers, who must report the locations of at-home workstations to the TRS Fund administrator each month. Finally, this request should be acted upon expeditiously because the TRS Fund administrator is withholding from the Companies compensation for minutes handled by at-home CAs, which deprives the Companies of funding necessary to sustain their participation in the Pilot Program and efforts to grow and advance the competitiveness of the VRS program.

For the foregoing reasons, the Companies respectfully request either that the Commission clarify that the requirement in Section 64.604(c)(5)(iii)(N)(2)(iii) of the rules that VRS providers give 30-day advance written notice to the Commission and the TRS Fund administrator of changes in the locations of call centers does not apply to at-home workstations activated pursuant to the Pilot Program, or that the Commission grant a limited waiver, retroactive to November 1, 2017, of the application of this requirement to at-home workstations, and instead require VRS providers participating in the Pilot Program to provide three days advance notice of any such changes.

Respectfully submitted,

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