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Exhibit

EXECUTIVE SUMMARY

Convo Communications, LLC (“Convo”) hereby requests the Federal Communications Commission (“Commission”) to expeditiously clarify the scope and requirements of newly adopted Section 64.604(c)(8)(v) of the Commission’s rules,¹ which states:

A [video relay service (“VRS”)] provider shall not offer or provide to any person or entity any form of direct or indirect incentives, financial or otherwise, for the purpose of encouraging individuals to register for or use the VRS provider’s service.

In its Order adopting the rule,² the Commission determined that VRS providers may not give away non-service-related equipment as an inducement to cause customers to port their numbers. The Commission should provide additional guidance, however, regarding how to differentiate between non-service-related and service-related equipment. In addition, although Section 64.604(c)(8)(v) contains an outright prohibition on “any form of direct or indirect incentives, financial or otherwise,” the Commission determined in the Order that, at least under some circumstances, providers may give away service-related equipment. The Commission should explain whether there are any limits under the rule on the ability of VRS providers to give away service-related equipment. For example, to the extent that a tablet qualifies as service-related equipment, could a VRS provider give a porting user a tablet for every room in their house?

As a result, Convo requests prompt clarification regarding:

- the test that should be used to distinguish between non-service-related and service-related equipment for purposes of the application of new Section 64.604(c)(8)(v); and
- under what circumstances, if any, Section 64.604(c)(8)(v) prohibits the give away by providers of free service-related equipment as an inducement for users to port their TDNs.

Resolution of these issues in the short term is crucial. VRS providers CSDVRS, LLC dba ZVRS (“ZVRS”) and Purple Communications, LLC (“Purple”) currently are offering porting VRS users a “Complete Home Package” aimed at causing customers of other VRS providers to port to ZVRS and Purple. Under this incentive program, each porting user can obtain from ZVRS or Purple without charge a laptop computer and tablet computer and certain other VRS accessories. In addition, in clear violation of the Order, ZVRS continues to give away the NVIDIA SHIELD-based OneVP devices. The Commission determined in the Order that the OneVP qualifies as non-service-related equipment that cannot be provided to users for free. In

¹ 47 C.F.R. § 64.604(c)(8)(v).

² *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 3396 (2019).

combination, these give-aways may have a retail value over \$1500 per user. This very expensive incentive program may be affordable to commonly controlled ZVRS and Purple because they benefit from economies of scale associated with their combined VRS minutes while being compensated individually under the Commission's tiered-compensation mechanism as if they were unaffiliated providers.

Convo's clarification request has current and important real-world ramifications. More than 500 Convo customers already have requested for their TDNs to be ported to ZVRS or Purple. Many of these customers have explained apologetically that they value and are very satisfied with Convo's service, but they simply cannot turn down all of the "free stuff" that ZVRS and Purple are offering. This outflow of customers is impeding Convo's ability to continue to grow to achieve cost reductions through economies of scale. Consequently, Convo needs to take commercial action promptly to stem additional customer ports. The guidance that Convo requests from the Commission is needed to enable Convo to respond to ZVRS and Purple's questionable business tactics. For this reason, Convo requests the Commission to respond to this Request with all due diligence.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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-)	CG Docket No. 03-123
Speech Services for Individuals with Hearing and Speech)	
Disabilities)	

To: Secretary, Federal Communications Commission

REQUEST FOR EXPEDITIOUS CLARIFICATION OF 47 C.F.R. § 64.604(c)(8)(v)

Convo Communications, LLC (“Convo”) hereby requests the Federal Communications Commission (“FCC” or “Commission”) to further clarify the scope and requirements of newly adopted Section 64.604(c)(8)(v) of the Commission’s rules,³ as interpreted in the Report and Order and Further Notice of Proposed Rulemaking released by the Commission in the above-referenced dockets on May 15, 2019 (“Order”).⁴ Specifically, Convo requests the Commission to provide further guidance regarding what test should be used to distinguish between service-

³ 47 C.F.R. § 64.604(c)(8)(v). This rule became effective on July 8, 2019, as a result of a publication in the Federal Register on June 6, 2019 of a summary of the FCC order adopting the rule. *See* Improving Video Relay Service and Direct Video Calling, 84 Fed. Reg. 26364 (June 6, 2019).

⁴ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 3396 (2019) (“Order”).

related and non-service-related equipment for purposes of the application of the new rule and in which category laptop computers and tablets are properly placed. In addition, Convo requests guidance from the Commission regarding under what circumstances, if any, the give away of service-related equipment to induce users to port their video relay service (“VRS”) provider-assigned ten-digit telephone number (“TDN”) is prohibited by the rule.

As further discussed below, commonly controlled VRS providers CSDVRS, LLC dba ZVRS (“ZVRS”) and Purple Communications, LLC (“Purple”)⁵ currently are running an extensive give-away campaign targeting the customers of other VRS providers. Users that agree to port their TDNs from another provider to ZVRS or Purple are eligible to receive a free Hewlett-Packard (“HP”) or Apple laptop computer and a free iPad tablet and certain other VRS accessories. (In lieu of a free laptop computer, ZVRS is offering a free NVIDIA SHIELD-based OneVP device, which the Commission appears to have prohibited in the Order.⁶) In combination, these give-aways may have a retail value over \$1500 per user. As a result, they appear to constitute a substantial direct financial incentive for users to switch providers, which the Commission’s new rule appears on its face to prohibit.

Although the Commission refrained from expressly specifying in the Order whether the gifting of laptop computers and tablets is permissible, and, if so, under what circumstances, ZVRS and Purple’s promotions seem, at minimum, to be inconsistent with the policy rationale underlying Section 64.604(c)(8)(v). For this reason, Convo is filing this Request in an effort to

⁵ Purple was acquired by ZVRS Holding Company, the parent company of ZVRS, in February 2017. *See Purple Communications, Inc. et al.*, Order and Consent Decree, 32 FCC Rcd 1608, 1615 § 9 (2017) (“Purple Consent Decree”) (“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.”). As a result, Purple and ZVRS are affiliated and commonly controlled sister companies.

⁶ *See* Order § 36, n. 124.

obtain guidance from the Commission regarding, among other things, the permissibility of ZVRS and Purple’s give-aways, which, in turn, will enable Convo to determine how to respond commercially to these promotions. Convo customers continue to port their TDNs to ZVRS and Purple on a daily basis, and they frequently explain to Convo that they are doing so merely to obtain free tablets and laptop computers.⁷ Consequently, Convo respectfully requests the Commission to respond to this Request with all due diligence.

I. SECTION 64.604(C)(8)(V) WAS ADOPTED TO PROHIBIT VRS PROVIDERS FROM OFFERING INCENTIVES TO USERS TO SWITCH PROVIDERS

In the Order, the Commission adopted the following new Section 64.604(c)(8)(v):

A VRS provider shall not offer or provide to any person or entity any form of direct or indirect incentives, financial or otherwise, for the purpose of encouraging individuals to register for or use the VRS provider’s service.⁸

The Commission adopted this rule to address “sign-up incentives aimed primarily at inducing current VRS users to switch (or refrain from switching) providers, rather than recruiting entirely new users.” According to the Commission, this “undermine[s] the achievement of statutory objectives” by “increas[ing] VRS costs without improving the quality of service, impairing providers’ ability and incentive to compete on service quality.”⁹ The Commission explained that

⁷ Purple and ZVRS have alternated the time periods during which they offer their extensive promotional give-aways. As a consequence, a significant number of Convo’s customers request Convo to port their TDNs to Purple during a time period in which Purple, and not ZVRS, offers the give-aways. When the two companies switch, and ZVRS begins offering the incentive rather than Purple, Convo begins receiving customer requests to port their TDNs to ZVRS. This pattern (in addition to direct customer statements to Convo’s customer service representatives (“CSRs”)) demonstrates that customers primarily are porting their TDNs to Purple and ZVRS to obtain free electronic devices. In excess of 500 Convo customers ported to ZVRS and Purple in the past twelve months.

⁸ 47 C.F.R. § 64.604(c)(8)(v).

⁹ Order, 34 FCC Rcd at 3414 ¶ 35 (citations omitted).

give-aways “not only divert provider resources from the provision of functionally equivalent service, but also encourage consumers to select a provider based on the value of such free offers rather than the service provided, thereby reducing providers’ incentives to improve service quality.”¹⁰ Consequently, the Commission adopted this new rule to prevent give-aways from constituting “an opportunity for financial gain” that induces users to “choose a provider just to take advantage of its offer of a free item.”¹¹

The Commission was clear in the Order that non-service related give-aways qualify as improper inducements and are prohibited by Section 64.604(c)(8)(v).¹² But further guidance from the Commission is needed to determine whether a particular device, such as a laptop computer or tablet, qualifies as a service-related device or a non-service-related device. In addition, further guidance is needed from the Commission regarding whether there are circumstances under which the give-away of service-related devices may be barred by the rule, which seems apparent on the face of the rule.

II. COMMISSION GUIDANCE REGARDING THE PROPER APPLICATION OF SECTION 64.604(C)(8)(V) IS WARRANTED

Convo is filing this Request in accordance with the Commission’s direction in the Order. The Commission “invite[d] providers that are uncertain about the permissibility of giving away a particular device to seek guidance from the Commission prior to engaging in such activity.”¹³ As

¹⁰ *Id.* at 3414-15 ¶ 35 (citation omitted).

¹¹ *Id.* at 3415 ¶ 35 (citation omitted).

¹² *Id.* at 3414 ¶ 33 (“We adopt the Commission’s proposal to prohibit VRS providers from offering or providing *non-service related inducements* that are intended to entice consumers to sign up for or use a VRS provider’s service.”) (emphasis added).

¹³ *Id.* at 3416 ¶ 36; *see also id.* at 3415 ¶ 36 n.124 (“To the extent that further clarification is desired regarding a particular type of free offering, parties may request such clarification from

further discussed below, certain of Convo’s competitors, ZVRS and Purple, are providing extensive free consumer electronics to users that agree to port their TDNs from Convo or another VRS provider to ZVRS or Purple. As part of its determination of how to respond to this incentive program, Convo needs to understand the legality of ZVRS and Purple’s give-aways.¹⁴ Moreover, it is crucial that Convo respond to ZVRS and Purple’s questionable business tactics promptly.¹⁵ As further discussed below, Convo customers have been porting their TDNs to ZVRS and Purple to obtain free equipment, and these customer losses are inhibiting Convo’s ability to continue to grow its customer base to recognize increased economies of scale.

Commission guidance is especially important in this instance because of the potential for serious ramifications to any VRS provider that interprets the rule in a manner that is different from the Commission’s view. Any provider that violates Section 64.604(c)(8)(v) is automatically “ineligible for compensation for such service from the [Telecommunications Relay Service (“TRS”)] Fund.”¹⁶ (It is not clear from the text of the rules whether the words “such service” refer to “a VRS provider’s service” generally, thereby rendering the VRS provider ineligible for

the Commission.”); *see* Letter from John T. Nakahata & Julie A. Veach, Counsel to Sorenson Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 & 03-123, at 7 (dated Apr. 30, 2019) (“Sorenson April 30 Letter”) (asserting that the FCC should provide public guidance regarding the permissibility of VRS providers giving away various types of devices to “provide[] clear rules-of-the-road fairly and timely to all providers”).

¹⁴ Prior to the release of the Order, Sorenson Communications, LLC (“Sorenson”) expressed a similar concern. *See* Sorenson April 30 Letter at 8 (stating that paragraph 35 of the Order “is overbroad and does not provide meaningful guidance as to how providers can market service and necessary equipment in a competitive market”).

¹⁵ Convo communicated its concerns to ZVRS and Purple’s Chief Executive Officer Sherri Turpin about the Complete Home Package give-away incentive program on July 6, 2018, and again on July 7, 2019. Nevertheless, ZVRS and Purple’s give-away programs continued unabated.

¹⁶ *See* 47 C.F.R. § 64.604(c)(8)(vi).

TRS Fund compensation, or instead only refer to service to users who received impermissible give-aways.)¹⁷

Moreover, each VRS provider appears to have an obligation under the Commission's rules to report any other VRS provider that violates Section 64.604(c)(8)(v), which makes a common understanding of the scope of the rule within the VRS industry critical. Specifically, Section 64.604(c)(13)(iii) requires "[a]ny VRS or IP CTS provider that becomes aware of any practices listed in paragraphs (c)(13)(i) or (ii) of this section being or having been committed by any person" to, "as soon as practicable, report such practices to the Commission or the TRS Fund Administrator."¹⁸ Among the practices that are required to be reported under Section 64.604(c)(13)(iii) are (i) "[f]alse or unverified claims for TRS Fund compensation" and (ii) "[t]he making of VRS or IP CTS calls that would not otherwise be made."¹⁹ Thus, if a provider is ineligible for TRS Fund compensation under Section 64.604(c)(8)(v) because of its impermissible give-aways and nevertheless seeks compensation, each other provider has an obligation to report this to the Commission or the TRS Fund Administrator. In addition, the Commission acknowledged in the Order that give-aways "continue to be offered ... to attract ...

¹⁷ Section 64.604(c)(8)(vi) is not entirely clear on its face regarding whether a provider that violates the rule is ineligible outright for compensation from the TRS Fund or only is ineligible in connection with VRS provided to a user to whom the provider gave impermissible inducements. Given that Section 64.604(c)(8)(v) refers to "the VRS provider's service" generally and Section 64.604(c)(8)(vi) effectively cross-references this language through its use of the words "such service," it appears that the best interpretation of the rule is the former—that a provider guilty of distributing impermissible give-aways is not eligible for TRS Fund compensation at all. Although the Commission did not clearly specify as much, it also is possible that the Commission intended the words "such service" to refer only to service provided to users who were gifted impermissible inducements by a VRS provider.

¹⁸ 47 C.F.R. § 64.604(c)(13)(iii).

¹⁹ *Id.* § 64.604(c)(13)(i)(A), (C).

additional minutes,”²⁰ especially where the provider targets high-volume users.²¹ Thus, if a provider offers inducements aimed at causing users to make additional calls that otherwise would not have been made, all other providers have an obligation under Section 64.604(c)(13)(iii) to report this.

The Commission should not delay acting on this Request during the pendency of Sorenson’s judicial appeal of the adoption of Section 64.604(c)(8)(v).²² Sorenson requested the United States Circuit Court for the District of Columbia to review, *inter alia*, “[w]hether the Commission’s ban on service-related inducements is arbitrary, capricious, or otherwise contrary to law because it: (a) fails to articulate a comprehensible standard for distinguishing service- and non-service-related inducements [and] (b) fails to address whether nVIDIA Shields, iPads, and laptops constitute non-service-related inducements covered by the order, which was a significant part of the problem and raised in the comments.”

Even if the Commission does not request for the D.C. Circuit to stay its review of Sorenson’s appeal while the Commission addresses this request, it is still likely to take a year or

²⁰ Order, 34 FCC Rcd at 3415 ¶ 35.

²¹ *Id.* (“Further, to the extent that inducements to choose a particular provider are offered selectively to relatively high volume users (or to consumers perceived as such), they are likely to increase the cost burden on the TRS Fund, by *generating a perverse incentive for users to make calls that otherwise would not be made.*”) (emphasis added and citations omitted); *id.* at 3416-17 ¶ 37 (“Because VRS users themselves do not incur any additional cost from placing additional VRS calls, selectively providing VRS-related equipment at no or minimal charge based on the recipient’s level of usage is likely to encourage consumers to increase such usage solely in order to qualify for free or minimal cost equipment. Accordingly, we remind VRS providers that, [subject to certain potential exceptions,] the provision of equipment at no or minimal charge to select individuals, whether or not service-related, may be deemed evidence that a provider has violated the rule against practices that cause or encourage the making of VRS calls that would not otherwise be made.”).

²² See *Sorenson Communications, LLC v. Federal Communications Commission*, Non-Binding Statement of Issues to be Raised, Case No. 19-1145 (D.C. Cir. Aug. 14, 2019).

more for the D.C. Circuit to issue just its initial decision in the appeal proceeding. And this initial decision may be further appealed by either party. The Commission, therefore, should not wait for the resolution of the judicial appeal to provide the VRS industry with guidance on the important questions raised in Convo's Request. Convo is losing customers on a daily basis to ZVRS and Purple due to the potentially impermissible incentives that they are offering users to port the users' TDNs. As a result, Convo requests the Commission to expeditiously act to provide the guidance sought in this Request regarding the legality of the types of incentive programs discussed herein. Convo requires this guidance to enable it to determine an appropriate commercial response to ZVRS and Purple's extensive give-aways.

III. THE COMMISSION SHOULD CLARIFY HOW TO DISTINGUISH BETWEEN IMPERMISSIBLE NON-SERVICE-RELATED AND PERMISSIBLE SERVICE-RELATED EQUIPMENT FOR PURPOSES OF SECTION 64.604(C)(8)(V)

On its face, the rule adopted by the Commission in the Order prohibits *every* "form of direct or indirect incentives, financial or otherwise, [provided] for the purpose of encouraging individuals to register for or use the VRS provider's service." Thus, the rule does not differentiate between service-related equipment and non-service-related equipment when prohibiting providers from offering incentives to users to port their TDNs. Nevertheless, despite the broad wording of Section 64.604(c)(8)(v), the Commission in the Order distinguishes between the gifting of non-service-related equipment, which the Commission prohibits as an impermissible inducement, and the gifting of service-related equipment, which the Commission states is permissible at least under some circumstances.

The scant guidance provided by the Commission in the Order regarding how to differentiate between service-related and non-service-related equipment leaves a vast gray area that encompasses the business practices of certain providers, including ZVRS and Purple. On the

one hand, the Commission expressly states in the Order that its new rule “does not cover providing VRS-related items, such as videophones and video monitors, at no or minimal charge.”²³ On the other hand, despite the pleading of ZVRS in an *ex parte* presentation,²⁴ the Commission appears to have determined that ZVRS’ OneVP device qualifies as non-service-related equipment.²⁵ The OneVP device is a NVIDIA SHIELD streaming media player²⁶ with ZVRS’ OneVP software installed.²⁷ The Commission characterizes the device as a video game console “that can be used for multiple purposes in addition to VRS.”²⁸

The Commission, however, provides very little guidance regarding what test it used to categorize videophones and video monitors as service-related equipment and ZVRS’ OneVP as a non-service-related device. The Commission merely states that, “[i]n determining whether a free give-away constitutes a non-service related inducement, the Commission will consider, among other things, the extent to which the equipment is designed, marketed, and used for relay

²³ Order, 34 FCC Rcd at 3416 ¶ 37.

²⁴ See Letter from Gregory Hlibok, Chief Legal Officer, ZVRS Holding Company, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 & 03-123, at 2-4 (dated May 2, 2019) (“ZVRS May 2 Letter”).

²⁵ See Order, 34 FCC Rcd at 3415 ¶ 36 n.124 (“[W]e conclude that giveaways of video gaming systems cannot be justified as service related. We believe that this clarification sufficiently addresses the issues raised in the *ex partes* regarding ZVRS’ ‘OneVP’ device, which reportedly can be used for multiple purposes in addition to VRS, including but not limited to video gaming.”).

²⁶ Although the Commission appears to characterize the NVIDIA SHIELD as a gaming device in the Order (*see infra* note 28), NVIDIA characterizes it as a “streaming media player” and explains that it has a wide variety of uses beyond video games. For example, in addition to video games, the NVIDIA SHIELD can run thousands of apps and most 4K video entertainment, as well as serve a digital video recorder, media server, smart home hub, and voice assistance. Thus, it has many, although not all, of the capabilities of a laptop computer. The NVIDIA SHIELD has a retail value of approximately \$180 to \$220. See NVIDIA, Shield, <https://www.nvidia.com/en-us/shield/> (last visited Aug. 16, 2019).

²⁷ See ZVRS May 2 Letter at 2.

²⁸ Order, 34 FCC Rcd at 3415 ¶ 36 n.124

communication,” as well as whether it is “ordinarily needed or used to place a VRS call.”²⁹ This is not sufficient guidance to enable VRS providers to properly and uniformly classify other equipment for purposes of complying with the Order’s interpretation of Section 64.604(c)(8)(v). As a result, with the exception of OneVP, which the Commission determined is a non-service-related device, it currently is difficult, if not impossible, for providers to determine the permissibility of giving away other equipment. In particular, Convo seeks guidance from the Commission regarding the appropriate categorization of laptop computers and tablets. Despite the request of both Sorenson and ZVRS,³⁰ the Commission refrained from addressing in the Order whether laptop computers and tablets qualify as non-service-related or service-related equipment. Neither device is “needed” to place a VRS call, although both commonly are “used” to place such calls. In addition, neither is designed for relay communications, but both often are “marketed” and “used” in connection with VRS.

Both ZVRS and Purple currently are actively marketing their respective “Complete Home Package” incentive programs to induce VRS users to port their TDNs by providing users free laptop computers and tablets, among other things.³¹ Pursuant to ZVRS’ Complete Home

²⁹ *Id.* at 3416 ¶ 36 (citation omitted).

³⁰ See Letter from John T. Nakahata, Counsel to Sorenson Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 & 03-123, at 2 (dated May 6, 2019) (requesting, *inter alia*, that the Commission “clarify” in the Order “whether the existing equipment that VRS providers commonly offer users—including iPads or other tablets, laptops, and the NVIDIA SHIELD—will be (1) permitted, (2) permitted under certain conditions, or (3) prohibited.”) (citation omitted); Sorenson April 30 Letter at 10 (asserting that the FCC “would go a long way to providing actionable and enforceable guidance to all parties, providers and consumers” if the FCC specified whether “tablets, laptops, and video servers can qualify as ‘service-related’”; ZVRS May 2 Letter at 3 (discussing whether “tablets, laptops, and the NVIDIA Shield” should qualify as service-related or non-service-related equipment).

³¹ See ZVRS, ZVRS Complete Home Package, <https://www.zvrs.com/complete/> (last visited Aug. 19, 2019); ZVRS, The Complete Package is Back, <https://www.facebook.com/like.zvrs/videos/344198653148529/> (last visited Aug. 19, 2019);

Package, ZVRS provides free to users who port their VRS TDNs from another provider (but not new users, who are ineligible for the Complete Home Package):³²

- a NVIDIA SHIELD-based OneVP device,³³ Z70 videophone, an HP laptop, a MacBook, or an iPad with a keyboard;³⁴ and
- an iPad with keyboard to be used as a secondary videophone; and
- a Firefly signaler or POP light and Socket.

Thus, in addition to apparently continuing to give away OneVP devices, which the Commission prohibited in the Order, ZVRS also gives away free of charge laptop computers (HP or MacBook) and tablets (iPads). In fact, ZVRS gifts to each porting user both a laptop computer and a tablet, in addition to other VRS-related accessories.³⁵ Purple offers a similar Complete

Purple Communications, Complete Home Package, <http://get.purplevrs.com/complete> (last visited Aug. 19, 2019). Screenshots from ZVRS and Purple’s websites advertising the Complete Home Package on August 19, 2019 are attached as an Exhibit to this Request.

³² Convo’s CSRs uniformly were informed by customers requesting to be ported to ZVRS or Purple that the Complete Home Package only is available to an existing VRS customer of another provider who ports his or her TDN provided by such provider to ZVRS or Purple.

³³ It is not clear why ZVRS continues to give away the NVIDIA SHIELD-based OneVP device given that the Order expressly prohibiting the give away of the device became effective on July 8, 2019. *See supra* note 1.

³⁴ These devices each are considerably more capable and valuable than a NVIDIA SHIELD. HP laptops typically retail for around \$500 to \$800; most Apple MacBooks retail for around \$1,000 or more, and Apple iPads typically retail around \$300 but can cost over \$600.

³⁵ The terms and conditions applicable to ZVRS’ give-away program can be found here: ZVRS, Z Product Agreement, <https://www.zvrs.com/about/product-agreement/> (last visited Aug. 16, 2018) (“Z Product Agreement”). (If Purple has adopted similar terms and conditions, they only are available to Purple subscribers.) ZVRS’ terms and conditions permit users to access other VRS providers from a device gifted by ZVRS, but they also require users to pay ZVRS a penalty, which can be as high as the retail price of the product, if the user port its ZVRS-assigned TDN to another provider during the first six or 12 months depending on the circumstances. Z Product Agreement, § 2(D). This term appears to violate the Commission’s 2008 requirement that a “provider cannot condition the ongoing use or possession of equipment, or the receipt of different or upgraded equipment, on the consumer continuing to use the provider as its default provider.” *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 810 ¶ 38 (2008)

Home Package, pursuant to which porting users can receive a P70 videophone or a laptop and an iPad tablet and a POP. These Complete Home Package give-aways may have a retail value in excess of \$1500 per user, and the equipment obviously has many uses beyond VRS.

ZVRS and Purple's Complete Home Package demonstrates that Convo's request for guidance regarding how to differentiate between service-related and non-service-related equipment is not academic. Instead, the clarification requested herein has current and important real-world ramifications. Convo on a daily basis receives porting requests from current customers who explain apologetically to Convo's CSRs that the customers value and are very satisfied with Convo's service, but they simply cannot turn down all of the "free stuff" that ZVRS and Purple are offering.³⁶ In the past twelve months, more than 500 Convo customers have requested Convo to port their TDNs to ZVRS or Purple.³⁷

(citation omitted). In addition, the Z Product Agreement prohibits a customer from selling, leasing, or transferring the product to a third party. Z Product Agreement, § 2(C).

³⁶ A number of Convo customers who ported their initial Convo-assigned TDNs to ZVRS or Purple to receive free Complete Home Package equipment thereafter obtained a second TDN from Convo. This enabled the users to continue to rely on Convo's VRS offering as their preferred service while keeping the free electronics provided by ZVRS and Purple. However, due to the ZVRS and Purple agreements that relay users must sign to receive the free equipment, a far greater number of customers have expressed a misunderstanding that they cannot use other VRS providers out of fear that they may lose their ZVRS or Purple equipment.

³⁷ Most recently, Convo has begun receiving porting requests from as many as a dozen *new registrants* a day. To qualify to obtain free electronic devices from ZVRS and/or Purple, these individuals register with Convo and immediately port their TDNs to ZVRS or Purple without materially using Convo's service. Convo has an automated registration system and therefore provides the most expedient registration process among the VRS providers for a user to qualify for the ZVRS and Purple Complete Home Packages. Additionally, a bulk of these nominal Convo registrants port to ZVRS and Purple during the last few days of each month, which suggests that ZVRS and Purple are actively encouraging this practice to fulfill internal sales quotas. This, in turn, suggests that the Complete Home Package give-aways may encourage fraud, waste, and abuse within the VRS program. *See* 47 C.F.R. § 64.604(c)(13)(i)(C) ("A VRS or IP CTS provider shall not engage in any practice that the provider knows or has reason to know will cause or encourage ... [t]he making of VRS or IP CTS calls that would not otherwise be made.").

Thus, Convo is facing daily the type of severe impediments to competing on service quality of which the Commission warned in the Order.³⁸ As a result of ZVRS and Purple's questionable business tactics, Convo's growth to scale has been significantly blunted, which has deprived Convo of the opportunity the Commission envisioned for emerging providers under the 2017 VRS Order.³⁹ Moreover, through their Complete Home Package incentive programs, ZVRS and Purple have caused an artificial and harmful distortion of the VRS market by reviving issues relating to the "wasteful and disruptive" manipulation of VRS users through free give-aways, which the Commission has been concerned about for years.⁴⁰

IV. THE COMMISSION SHOULD PROVIDE GUIDANCE UNDER WHAT CIRCUMSTANCES THE GIVE AWAY OF SERVICE-RELATED EQUIPMENT VIOLATES SECTION 64.604(C)(8)(V)

In addition to a lack of clarity regarding how to properly determine whether equipment qualifies as service-related or non-service-related, the Order also is not clear whether there are

³⁸ Order, 34 FCC Rcd at 3414 ¶ 35 ("Competition among providers to offer sign-up inducements tends to increase VRS costs without improving the quality of service, impairing providers' ability and incentive to compete on service quality.") (citation omitted).

³⁹ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order, 32 FCC Rcd 5891 §§ 27-30 (2017) (discussing and affirming tiered VRS rates) ("2017 VRS Order"). It is notable that, following the VRS rate reductions imposed by the 2017 VRS Order, Sorenson no longer engages in the scale of free equipment give-aways that it has in the past.

⁴⁰ See, e.g., *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, and Further Notice of Proposed Rulemaking, and Order, 32 FCC Rcd 2436 ¶ 99 (2017) ("2017 VRS FNPRM") ("Despite the past four years of significant reductions in compensation rates, VRS providers apparently continue to give out iPads, video monitors, and state-of-the-art videophones to customers in order to secure their default VRS traffic.... The continuation of such wasteful and disruptive marketing tactics seems to confirm the importance of bringing the rate for each tier as close as possible to the marginal per-minute cost of the affected firms.").

circumstances under which gifting service-related equipment may violate the Commission’s new rule. As noted above, the text of the rule does not distinguish in any way between service-related and non-service-related equipment. It appears to apply to both when it prohibits “any form of direct or indirect incentives, financial or otherwise” if the incentive is intended to encourage “individuals to register for or use the VRS provider’s service.”⁴¹ Consequently, the rule, on its face, appears to bar the provision of free service-related equipment if the equipment is intended to cause users to port to, register for, or use a VRS provider’s service, which is clearly the case with respect to ZVRS and Purple’s Complete Home Package promotion.

Despite this, the Commission states in the Order that it “will not, at this time, prohibit the distribution of service-related equipment.”⁴² The Commission also states that the “new rule does not cover providing VRS-related items, such as videophones and video monitors, at no or minimal charge.”⁴³ This suggests that, provided equipment qualifies as service-related, there are no limits on a provider’s right to give away such equipment to induce users to port their TDNs to the provider. Such a result seems counterintuitive given the text of the rule, and clearly would be poor public policy. Each of the rationales that the Commission cites for prohibiting the give away of non-service-related equipment also apply to the give away of a substantial dollar amount of service-related equipment. Both types of incentives:

- “increase VRS costs without improving the quality of service;”
- “impair[] providers’ ability and incentive to compete on service quality;”
- “divert provider resources from the provision of functionally equivalent service;”

⁴¹ Order at 3414 ¶ 33.

⁴² *Id.* at 3416 ¶ 36 n.127.

⁴³ *Id.* at 3416 ¶ 37.

- “encourage consumers to select a provider based on the value of such free offers rather than the service provided;” and
- cause porting to a new provider to constitute an “opportunity for financial gain” by enabling the user to “choose a provider just to take advantage of its offer of a free item.”⁴⁴

If a provider gives a VRS user a significant dollar value in free service-related equipment, the provider is actively inducing the user to switch providers by effectively offering material financial incentives, especially when that equipment has a multitude of non-VRS purposes such as laptop computers and tablets. Thus, an incentive program like ZVRS and Purple’s Complete Home Package, which provides multiple, free multi-use electronic devices that could have a retail value in excess of \$1500 per user, appears fundamentally inconsistent with both the text of Section 64.604(c)(8)(v) and its underlying policy rationale. Moreover, the broad carve out for service-related equipment set forth in the Order—the Commission “will not, at this time, prohibit the distribution of service-related equipment”—suggests that there may be no limit to the amount of service-related equipment a provider may offer a user to gain a competitive advantage over other providers. ZVRS and Purple already offer users two free expensive electronic devices to port their TDNs—a tablet and a laptop computer. Could they offer three or four devices or a device for each room in the user’s home? To place some reasonable bound on the provision of service-related equipment as an inducement, Convo requests the Commission to clarify under what circumstances, if any, a provider’s incentive

⁴⁴ *Id.* at 3414-15 ¶ 35 (citations omitted).

program involving the provision of free service-related equipment violates Section 64.604(c)(8)(v).

In the case of ZVRS and Purple in particular, the Commission is correct that it is not sufficient to rely on its existing prohibitions against providers treating the costs of give-aways as allowable VRS costs.⁴⁵ This prohibition may be helpful when providers are compensated from the TRS Fund at a level that mirrors, or at least is close to, their allowable costs. Under such a circumstance, a provider is not likely to have a sufficient margin to expend substantial funds (*i.e.*, disallowed costs) on equipment give-aways. However, that may not currently be the case with respect to ZVRS and Purple. Although these two providers are commonly controlled and likely recognize resulting economies of scale based on their joint volume of minutes, they nevertheless are treated by the Commission as independent entities for purposes of determining to which VRS compensation tier they belong.⁴⁶ As a result, it seems likely that the per-minute compensation that each sister company receives is in excess of its allowable costs, which provides ZVRS and Purple the large margins necessary to fund extensive equipment give-aways

⁴⁵ *Id.* at 3415 ¶ 35 (“To prevent these harms, we conclude that it would be insufficient to simply reaffirm that such give-aways cannot be supported by the TRS Fund as an allowable cost. Despite their non-allowability, such give-aways continue to be offered in the competition to attract additional users and minutes.”); *see 2017 VRS Order*, 32 FCC Rcd at 5897 ¶ 12 (affirming the FCC’s 2006 holding that costs attributable to customer premises equipment are not allowable costs for purposes of setting VRS compensation rates).

⁴⁶ The Commission has acknowledged that “application of the tiered rate structure to separate entities of the same corporate parent could in fact create undesirable incentives to exploit the tier structure by creating multiple subsidiaries for the provision of VRS.” Further, the Commission held that “the VRS compensation system should be designed, as far as possible, to avoid such perverse incentives.” *2017 VRS Order*, 32 FCC Rcd at 5920-21 ¶ 56. Nevertheless, the Commission determined to permit ZVRS and Purple to continue to reap the tiered-rate benefits of being treated as independent entities until February 15, 2020, despite the fact that they have been commonly controlled since February 2017. *See id.* at 5920-21 ¶¶ 55-57; *Purple Consent Decree*, 32 FCC Rcd at 1615 ¶ 9 (permitting Purple and ZVRS to offer VRS under their existing brands as separate entities and treating them as nonaffiliated for compensation purposes for up to three years).

even though the cost of doing so is disallowed. Thus, ZVRS and Purple appear to have a window available through February 2020 in which they can game, to the detriment of other providers such as Convo, the interplay of the Commission's rate tiers, its decision to allow ZVRS and Purple to be treated as unaffiliated providers, and the lack of clarity around the appropriate scope and interpretation of Section 64.604(c)(8)(v).

V. CONCLUSION

For the reasons discussed herein, Convo requests the Commission expeditiously to provide clarification regarding:

- the test that should be used to distinguish between non-service-related and service-related equipment for purposes of the application of new Section 64.604(c)(8)(v); and
- under what circumstances, if any, Section 64.604(c)(8)(v) prohibits the give away by providers of free service-related equipment as an inducement for users to port their TDNs.

The Commission stated in the Order that it was amenable to providing clarification regarding the appropriate interpretation of this new rule. As explained herein, such clarification is greatly needed on an accelerated basis because of the disruptive effect on the VRS market of ZVRS and Purple's Complete Home Package incentive program. Prompt and express Commission guidance regarding the permissibility of the free give-aways offered by these

companies is needed to enable Convo to take appropriate commercial action to stem the loss of its VRS customer caused by ZVRS and Purple's questionable business tactics.

Respectfully submitted,

CONVO COMMUNICATIONS LLC

By: /s/ Jeff Rosen

Jeff Rosen

General Counsel

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August 19, 2019

EXHIBIT

SCREENSHOTS FROM ZVRS WEBSITE ADVERTISING THE ZVRS COMPLETE HOME PACKAGE
AS OF AUGUST 19, 2019: <https://www.zvrs.com/complete/>.
(THE SAME MATERIAL WAS PRESENT ON ZVRS'S FACEBOOK PAGE AS OF AUGUST 19, 2019:
<https://www.facebook.com/like.zvrs/videos/344198653148529/>.)

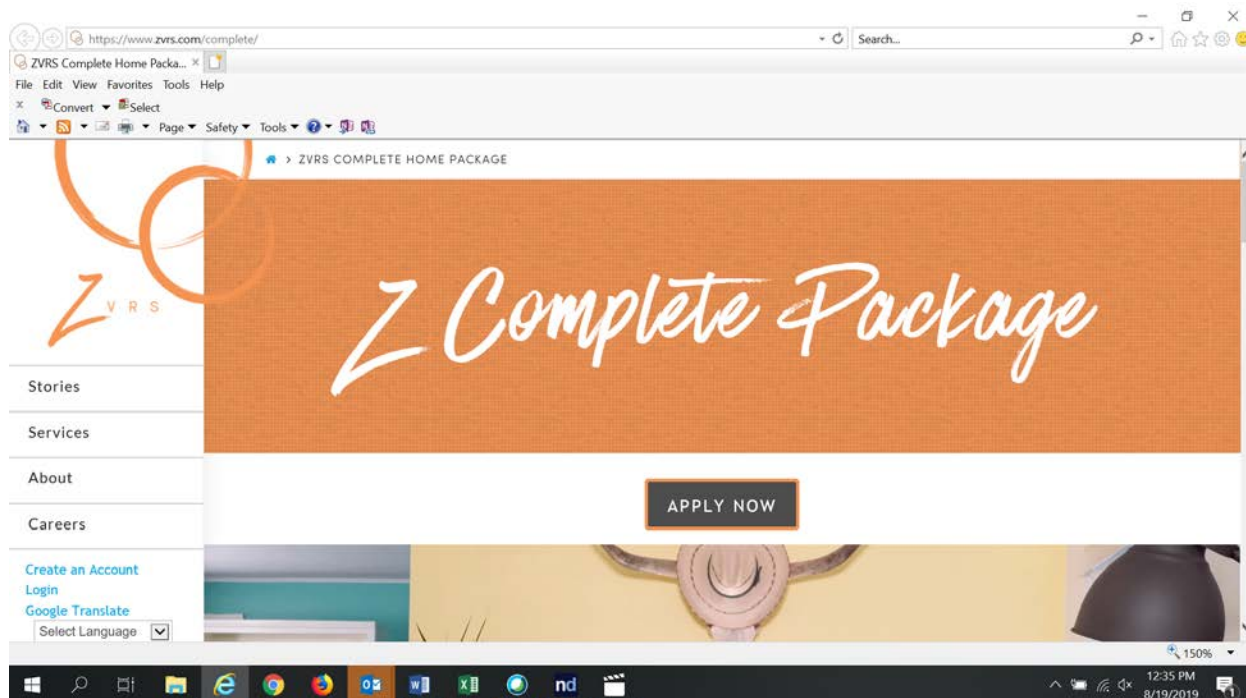


EXHIBIT: ZVRS AND PURPLE SCREENSHOTS

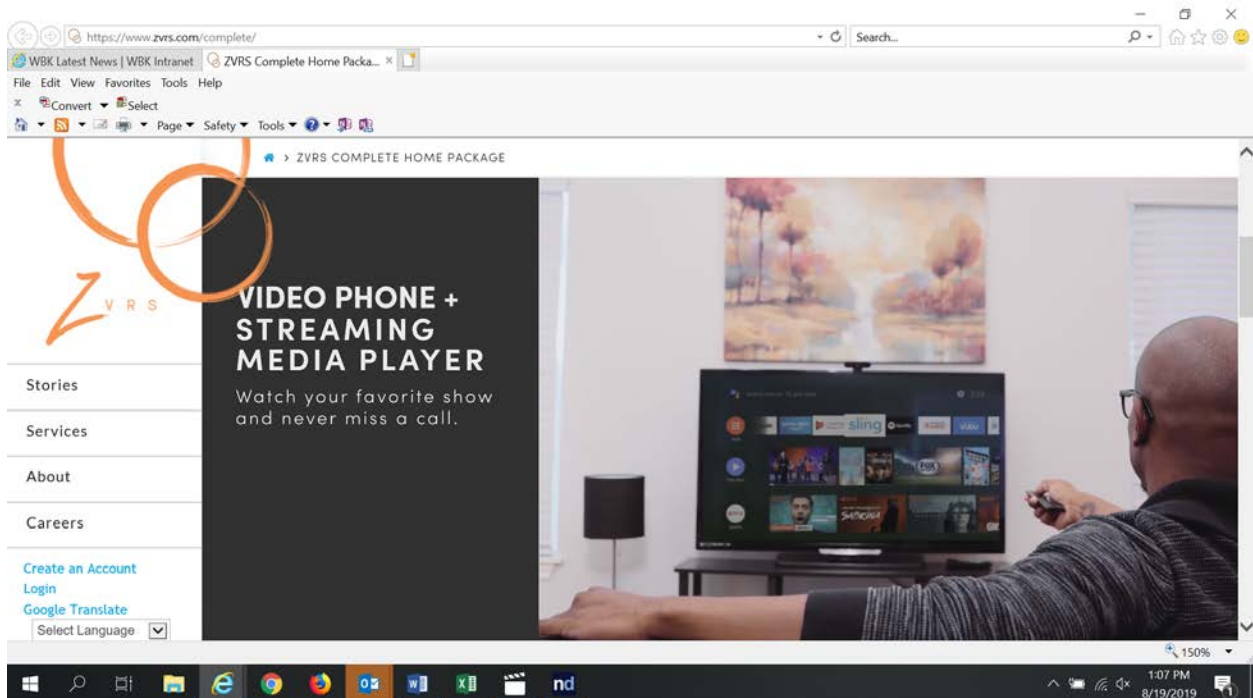
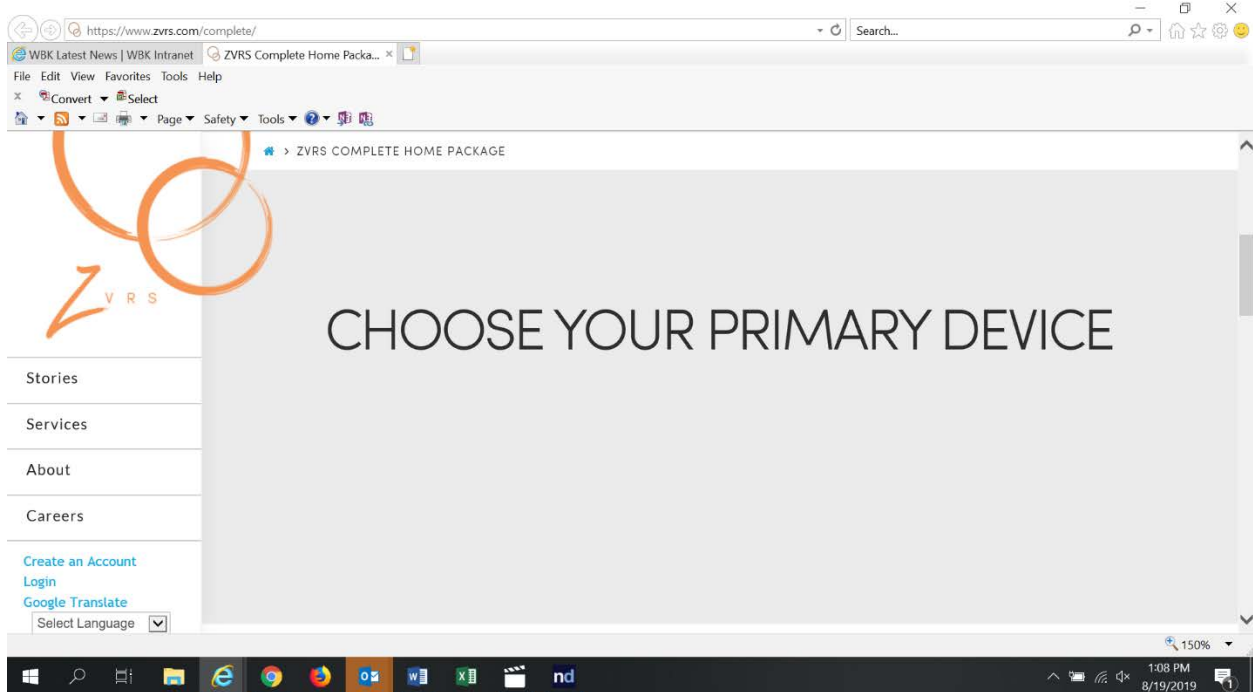


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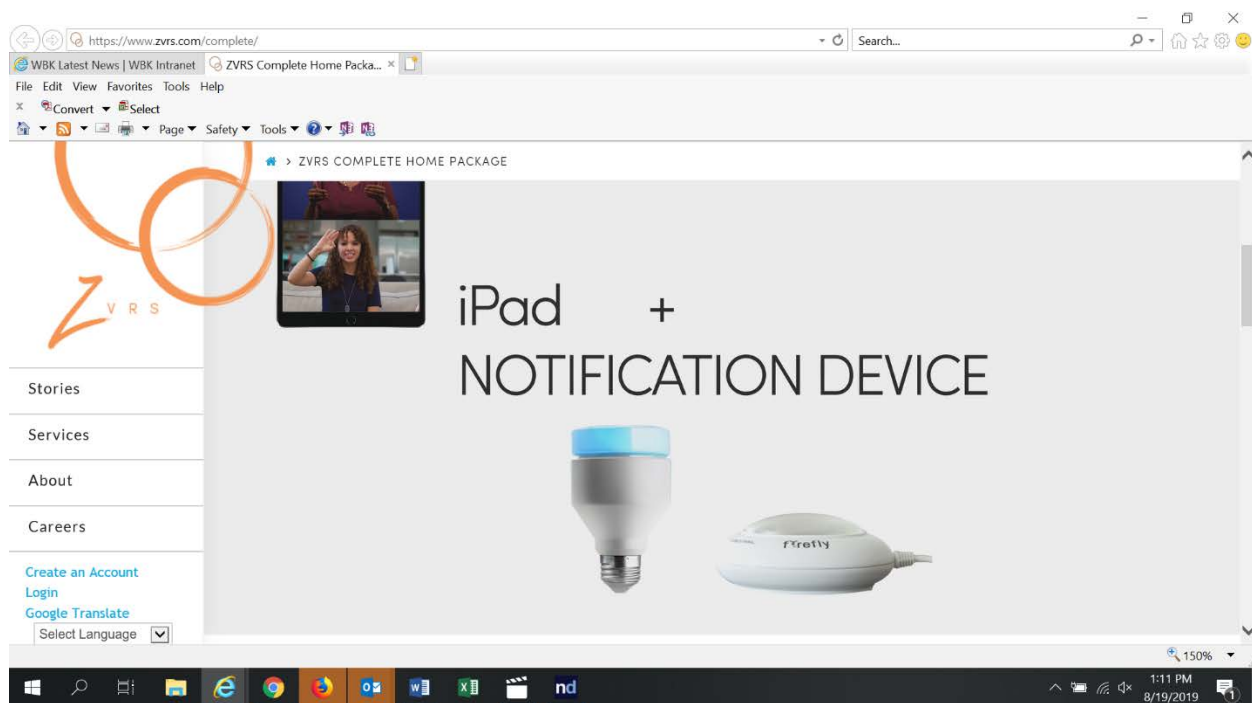
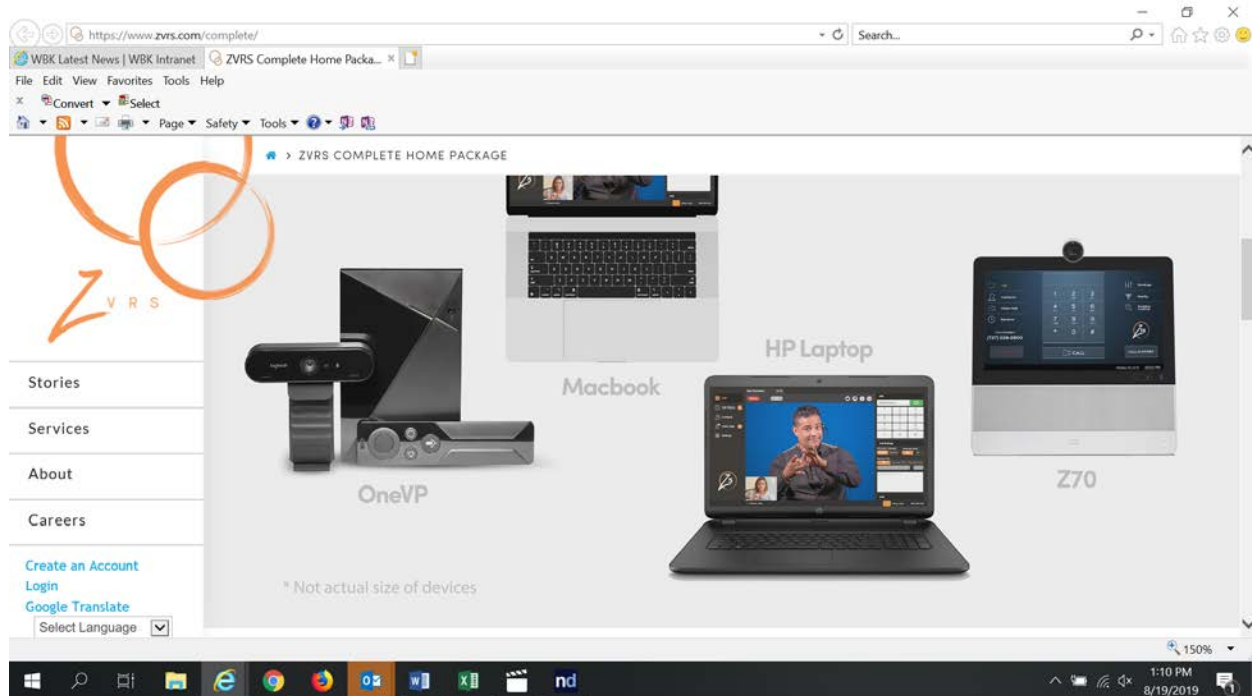


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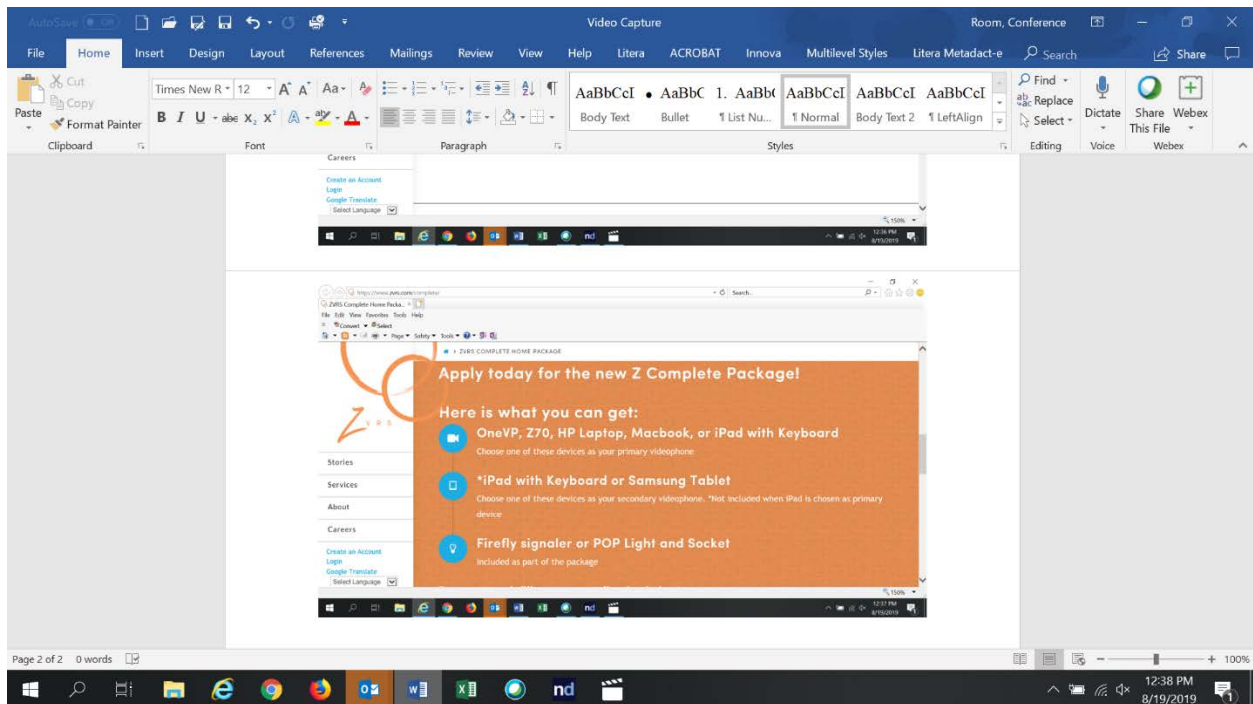
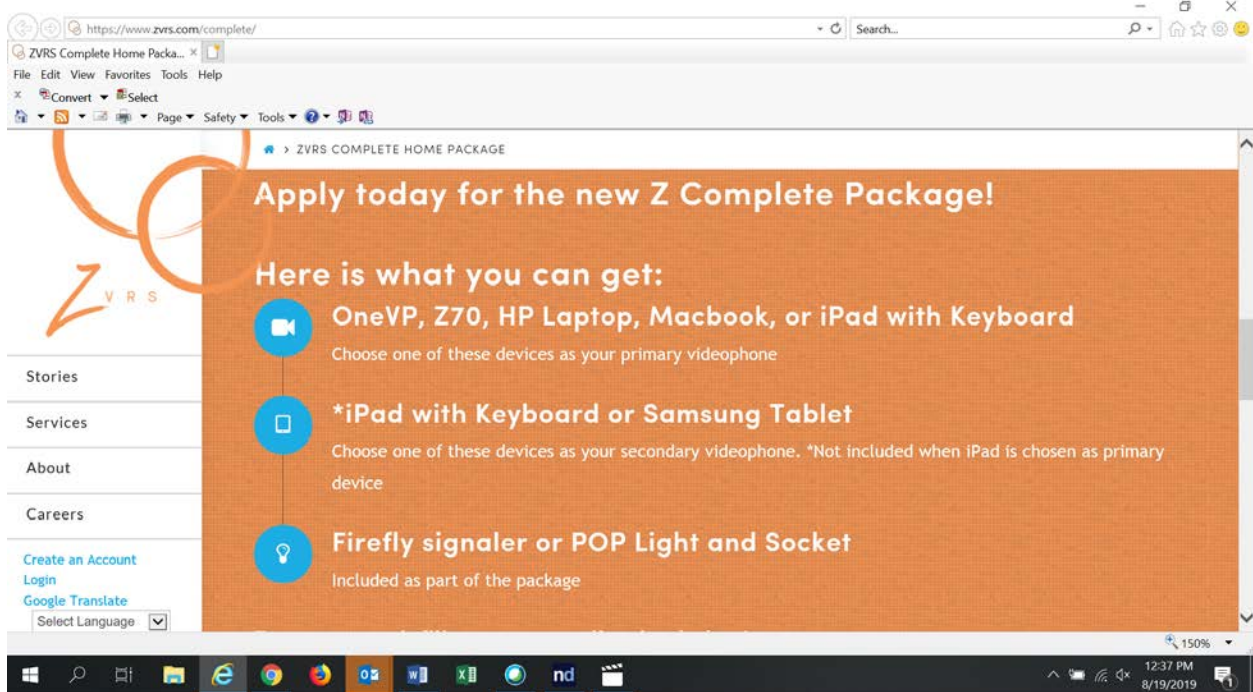


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First Name *

Last Name *

Email Address *

Deaf/Hard of Hearing Videophone Number *

Enter numerical value only. No hyphens, periods, etc. Ex: 1112223333

SMS (Text) Number *

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Zip or Postal Code *

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How will you use our services? *

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Current Products Used *

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☐ Sorenson nVP1

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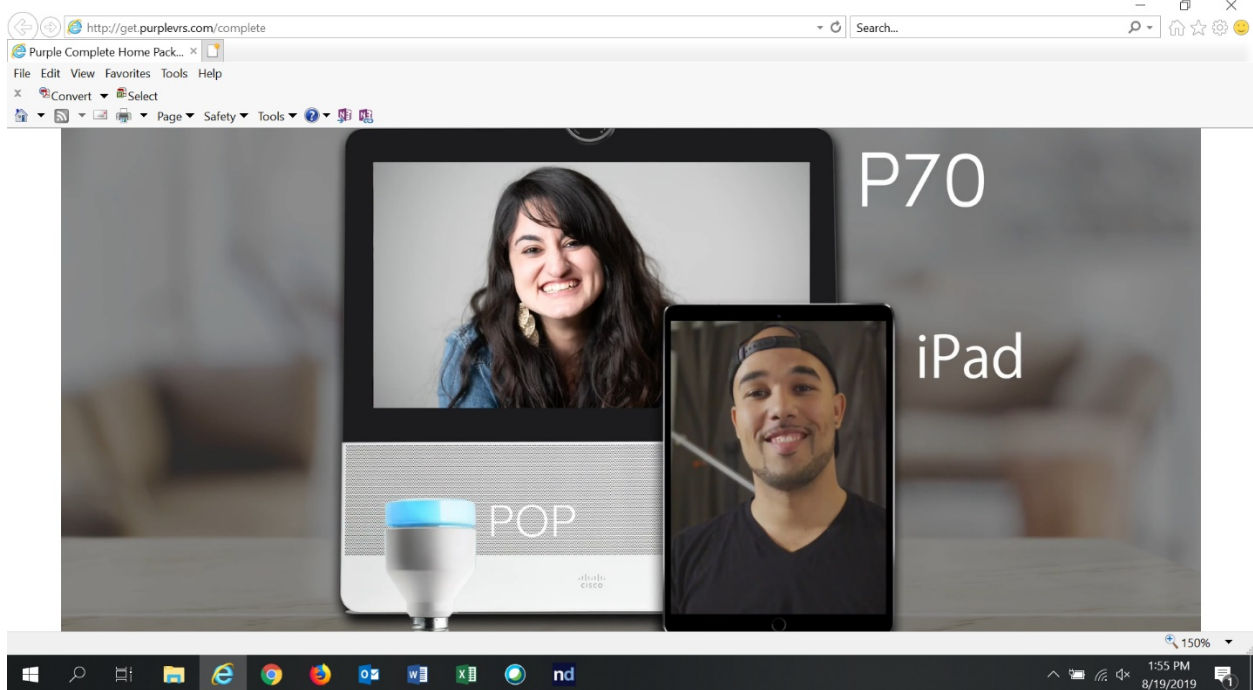
☐ Z70

Please select all that apply.

SUBMIT

EXHIBIT: ZVRS AND PURPLE SCREENSHOTS

SCREENSHOTS FROM PURPLE'S WEBSITE ADVERTISING THE PURPLE COMPLETE HOME PACKAGE AS OF AUGUST 19, 2019: <http://get.purplevrs.com/complete>.



Apply today for the new Purple Complete Home Package!

Here's what you can get:

- P70 or Laptop
- iPad
- POP

Complete the form below to submit your application.

First Name *

Last Name *

Email Address *

Deaf/Hard of Hearing Videophone Number *

Enter numerical value only. No hyphens, periods, etc. Ex: 1111111

SMS (Text) Number

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☐ Sorenson Desktop

☐ Sorenson mobile

☐ Sorenson nVP1

☐ Sorenson nVP2

☐ Z5 Desktop

☐ Z5 Mobile

☐ Z70

Please select all that apply.

Participants in the Complete program are not required to place VRS and/or point-to-point video calls with Purple. Participants will not

150%

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