

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Structure and Practices of the Video Relay Service Program)	CG Docket No. 10-51
)	
)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	
)	
Consumer and Governmental Affairs Bureau Seeks Comment on the Request by Convo Communications, LLC for Clarification of Section 64.604(c)(8)(v) of the Commission's Rules)	
)	

COMMENTS OF CONVO COMMUNICATIONS, LLC

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EXECUTIVE SUMMARY

As a company owned, operated, and staffed by consumers of video relay services (“VRS”), Convo Communications, LLC (“Convo”) is greatly invested in ensuring that VRS is both sustainable over the long term and progressively effective for users. Convo requested 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. In particular, Convo asked the Commission to address the current practice of VRS providers CSDVRS, LLC dba ZVRS (“ZVRS”) and Purple Communications, LLC (“Purple”), which both offer porting VRS users a “Complete Home Package” aimed to cause customers of other VRS providers to change their default provider to ZVRS and Purple.

The “Complete Home Package,” which includes equipment with a retail value in excess of \$1,500, exemplifies larger issues in the VRS industry—the unnecessary distribution of free equipment. To address these unnecessary expenditures, which ultimately divert scarce Interstate Telecommunication Relay Service (“TRS”) resources, the Commission should require VRS providers to transition away from this practice. In addition, any use of give-aways to incentivize consumers to change their default providers is an inappropriate use of TRS Fund monies, is contrary to the purpose of the Fund, and serves only to jeopardize Fund resources with little benefit to consumers or the long-term health of the VRS industry. For these reasons, the Commission should affirm that its rules prohibit the provision of financial incentives by VRS providers to induce customer porting.

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COMMENTS OF CONVO COMMUNICATIONS, LLC

Convo Communications, LLC (“Convo”) responds to the Public Notice (“PN”) issued by the Consumer and Governmental Affairs Bureau (“CGB”) of the Federal Communications Commission (“FCC” or “Commission”). The PN requested comment regarding Convo’s request for clarification of the rule prohibiting Video Relay Service (“VRS”) providers from offering incentives to VRS users to register for or use the VRS providers’ service.¹ In its request, Convo asked the Commission to provide further guidance regarding the difference between VRS service-related and non-service-related equipment, as well as the circumstances under which the giving away of service-related equipment to induce users to port their VRS ten-digit telephone number (“TDN”) is prohibited by the rule.²

¹ *Consumer and Governmental Affairs Bureau Seeks Comment on the Request by Convo Communications, LLC for Clarification of Section 64.604(c)(8)(v) of the Commission’s Rules*, Public Notice, CG Docket Nos. 10-51 and 03-123, DA 19-847 (CGB rel. Aug. 29, 2019).

² Convo Communications, LLC, Request for Expedious Clarification of 47 C.F.R. § 64.604(c)(8)(v), CG Docket Nos. 10-51 and 03-123, at 1-2 (filed Aug. 19, 2019) (“Convo Petition”).

I. INTRODUCTION

Convo remains concerned that the commonly controlled VRS providers CSDVRS, LLC dba ZVRS (“ZVRS”) and Purple Communications, LLC (“Purple”) continue to offer free consumer electronics to users as an incentive for the users to switch providers. ZVRS and Purple’s extensive give-away of equipment targets the customers of other VRS providers.³ Specifically, users that agree to port their TDNs from another provider to ZVRS or Purple are eligible to receive a combination of expensive equipment, including a (1) free Hewlett-Packard or Apple laptop computer, (2) a free iPad tablet *and* (3) certain other accessories which together have a retail value totaling over \$1500 per user.⁴ ZVRS’ equipment give-aways siphon valuable Interstate Telecommunications Relay Service (“TRS”) Funds away from investments in ensuring and raising the quality of video interpreting services and VRS technology. The give-away program is also an aggressive attempt to manipulate the market through impermissible agreements aimed at locking down customers under the guise of providing access to telecommunications-related equipment. Agreements tying equipment give-aways to provider usage or registration run contrary to the rules and regulations that govern VRS.

The give-aways are also problematic because they pervert the advancements, and squander the potential cost savings, in the delivery of VRS accomplished over the past few years as the VRS industry moved to software-based VRS applications (“apps”) operating on off-the-shelf devices, broadband speeds increased, faster wireless data transmission became available, and there was greater availability of high-speed Wi-Fi. In particular, the advent of a wide range of commercially available, affordably priced application-based devices has led to the phasing out of purpose-built VRS equipment in the VRS market. With limited exceptions, individuals can

³ ZVRS Complete Home Package, <https://www.zvrs.com/complete/> (last visited Sept. 26, 2019).

⁴ *Id.*

independently acquire devices off-the-shelf to access VRS apps. Accordingly, the Commission should consider transitioning, over a three-year period, to a general restriction prohibiting VRS providers from providing any type of equipment to users. The industry's focus should be on improving the quality of its video interpreting services and innovating the functions and features of its VRS videophone ("VP") apps.

Convo reiterates that any use of give-aways to incentivize consumers to change their default providers, also referred to as "porting," is an inappropriate use of TRS Fund monies, contrary to the purpose of the Fund, and serves only to jeopardize TRS Fund resources with little benefit to consumers or the long-term health of the VRS program. As a company owned, operated, and staffed by consumers of VRS, Convo is greatly invested in ensuring that VRS is both sustainable over the long term and progressively effective for users. Convo's proposal to transition VRS providers out of the unnecessary provision of equipment will place greater emphasis on the use of limited TRS resources for the benefit of improved accessible telecommunications.

II. THE PROVISION OF EQUIPMENT BY VRS PROVIDERS SHOULD BE FULLY PHASED OUT

A. The Free Provision of Expensive Equipment by VRS Providers is Unnecessary and Wasteful

In the early days of VRS, providers offered purpose-built videophones, out of necessity, to enable consumer access to VRS. Sorenson Communications, LLC ("Sorenson") took advantage of that technical reality to flood the market with hardware VPs that were not interoperable, thereby tying consumers to Sorenson. Convo has previously explained that such free equipment distribution distorted the VRS market, subjecting VRS users to "unwarranted

control and manipulation by providers in order to obtain and retain free equipment.”⁵ Convo has further commented that certain VRS providers’ description of VRS consumers as largely financially bereft and in need of free equipment to access VRS is a gross mischaracterization perpetuated to maintain the near-monopolistic control of the industry by such providers through their distribution of free and proprietary equipment.⁶ The Canadian VRS program, for example, does not furnish customers with equipment to access its VRS app. Despite the lack of free equipment, the chief complaint among deaf Canadians is not about the cost of equipment, which is mostly already available to them, but about the cost of broadband given their internet service provider data caps and the steep fees for exceeding those data caps.⁷

More than a decade ago, the Commission rightly disallowed customer premise equipment (“CPE”) from VRS provider costs for the purposes of calculating VRS rates.⁸ Nevertheless, certain VRS providers artificially maintained their market share by tying VRS consumers to their service by providing free equipment—a practice that was later expressly and significantly regulated by the Commission.⁹ Despite this, the overcompensation of certain providers allowed them to continue to conduct extensive equipment give-aways even though the equipment was not

⁵ Comments of Convo Communications, LLC, CG Docket Nos. 03-123 & 10-51, at 16 (filed May 30, 2017) (“Convo Comments May 2017”).

⁶ Comments of Convo Communications, LLC, CG Docket Nos. 03-123 & 10-51, at 12-13 (filed Apr. 24, 2017).

⁷ See, e.g., Telecom Notice of Consultation CRTC 2015-134-1, Intervention of the Canadian Association of the Deaf - Association des Sourds du Canada (CAD-ASC) (July 14, 2015).

⁸ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, 5447, 5457-58 ¶¶ 15, 38 (2006); *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, 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).

⁹ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 ¶ 94 (2007) (prohibiting providers that give consumers relay equipment from “condition[ing] the ongoing use or possession of the equipment, or the receipt of different or upgraded equipment, on the consumer making relay calls through its service or the service of any other provider”).

compensable through the VRS rates.¹⁰ The Commission then set a glide path which significantly lowered the reimbursement rate of large VRS providers to lessen their overcompensation.¹¹ As VRS rates dropped, Sorenson accordingly decreased its provision of free purpose-built equipment. Sorenson now provides some of its customers with a basic unit that is preloaded with its VRS app, “nTouch,” along with a webcam and a remote control.¹² However, customers can freely download and operate the Sorenson VRS app on a wide variety of off-the-shelf electronic devices. Sorenson’s shift to the use of a VRS app indicates that modern VRS no longer requires the expensive equipment previously given to customers. The distribution of free equipment totaling thousands of dollars misuses money derived from the TRS Fund and suggests questionable marketing practices.¹³

Improvements to LTE and high-speed Wi-Fi in conjunction with the development of sophisticated products that support apps, such as iPads and tablets, helped drive VRS providers to shift to an app-based approach to providing VRS service. Convo has never developed a purpose-built VRS hardware option, choosing instead to invest in the development of its VP apps on commercial off-the-shelf equipment such as iPhones, Android devices, laptops, and tablets. This approach is far more resource-efficient and cost-effective than the stationary, proprietary hardware approach. Moreover, reliance on apps by the VRS industry enables them to provide service in a manner that is equivalent to the way hearing individuals are able to make calls from

¹⁰ See Convo Comments May 2017 at 16 (“Convo remains of the view that the right sizing of the compensation rate for certain tiers of providers is the best check against the waste and abuse of inappropriate equipment-related inducements to use a provider.”).

¹¹ *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, 28 FCC Rcd 8618 (2013).

¹² Sorenson Communications, LLC, ntouch[®] VP2, <https://www.sorensonvrs.com/ntouchvp2>, (last visited Sept. 26, 2019).

¹³ Convo Comments May 2017 at 16.

various locations using their devices with voice apps. By shifting to app-based VPs, providers can prioritize the quality of their service, improve the talent of their video interpreters, increase their platform reliability, develop innovative functions and features, and thereby ultimately improve video relay for consumers.

Although the Commission's glide path rate structure at first appeared to help redirect VRS providers away from unnecessary give-aways, commonly controlled ZVRS and Purple operating as distinct entities individually eligible for a higher compensation rate began an aggressive campaign to port users away from other providers by flooding the market with combinations of free laptops, iPads, light signalers, a doorbell webcam,¹⁴ and gaming devices—all conditioned upon a user's decision to port their number to ZVRS or Purple. Once again, the TRS Fund is at risk due to inappropriate uses of its resources. Moreover, ZVRS and Purple are primarily app-based VRS providers. Consequently, the equipment they distribute through their "Complete Home Package" campaign is not provided as purpose-built VPs in the way the Sorenson VPs were distributed in the early 2000s. The "Complete Home Package" instead is a blatant attempt to lure and entrap customers who find it hard to resist free popular devices on which they can stream movies, play video games, use social media, and more.

With the release of its May 2019 Order, the Commission made it absolutely clear that the provision of "non-service" related equipment by VRS providers is impermissible, and the Commission adopted a new incentives prohibition.¹⁵ However, given the evolution of technology, some may argue for a blurring of the distinction between service and non-service-related equipment, as Purple and ZVRS did with their arguments in support of their free give-

¹⁴ See, <https://www.facebook.com/watch/?v=286336115291682>, (last visited Sept. 27, 2019). The Ring is marketed by its manufacturer as a security system, see: <https://shop.ring.com/pages/doorbell-cameras>.

¹⁵ *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, 3414-3617 ¶¶ 33-37 (2019) ("Order").

away of the NVIDIA SHIELD (i.e., the “OneVP” device). This argument was ultimately rejected by the Commission.¹⁶

The Commission should go further. As part of its efforts to enforce its new Section 64.604(c)(8)(v),¹⁷ the Commission should transition providers away from providing any equipment, over a three-year period, regardless of whether providers characterize the equipment as service-related.¹⁸ A three-year transition period will provide customers with notice that they will need to independently procure any equipment they need to access VRS. A three-year transition period also is sufficient for assistive equipment distribution programs to resolve any need to expand their resources or revise any eligibility criteria they may use.

B. The Commission Should Transition Stakeholders Away From the Provision of Free VRS Equipment Over Three Years

The days of free equipment from VRS providers being a requisite for accessing VRS are long past.¹⁹ The Telecommunications Equipment Distribution Program Association²⁰ and the state relay programs can both serve as resources to the Commission and consumers with respect to appropriate guidelines for the provision of equipment during the transition period. For example, several states currently offer iPads, tablets, or iPhones to qualifying residents with VRS

¹⁶ *Id.* 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.”).

¹⁷ 47 C.F.R. § 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.”).

¹⁸ Convo’s proposal would not preclude providers from becoming authorized resellers of third-party hardware. Alternatively, there may be an issue pertaining to hardware manufacturers’ rights against the resale of their goods with respect to certain VRS providers’ practice of charging customers an early termination fee if a user ports their TDN to another provider and keeps the provided equipment, a potential form of a “resale” of hardware equipment.

¹⁹ It is highly unlikely that VRS providers will ever again be in a financial position to afford making available purpose-built VRS hardware given the decreasing compensation rate only marginally covering the provision of services.

²⁰ Telecommunications Equipment Distribution Program Association, About Us – TEDPA, <https://tedpa.org/about-us/> (last visited Sept. 27, 2019).

provider apps pre-installed. Although requirements vary by state, equipment programs generally cap the number of devices an individual or household may obtain and provide a timeline for replacing devices, such as every three years.²¹

The Commission's National Deaf Blind Equipment Distribution Program ("NDBEP") offers another possible framework for the transition period. The NDBEP requires that state programs verify an individual's disability and low-income status and prohibits any conditions requiring employment. When a recipient relocates to another state, the state programs must "permit transfer of the recipient's account and any control of the distributed equipment to the new state's certified program," and the users may take the equipment to their new state of residency.²² The Commission's reasonable requirements are particularly informative when contrasted with certain providers who have insisted upon the return of equipment if customers port away.

At the outset, the Commission should affirm its rule prohibiting the use of financial incentives for individuals to register for or use a provider's service.²³ The Commission should also confirm that VRS providers cannot give away non-service items of more than a "*de minimis*" value.²⁴ Additionally, to prevent the prioritization of distributed equipment to preferred consumers, the Commission should confirm that the provision of equipment to, and the retention

²¹ See, e.g., State of New Mexico Commission for Deaf & Hard of Hearing, *Telecommunications Equipment Distribution Program Catalog: Impacting & Empowering Communication Access*, at 36-39, https://www.cdhh.state.nm.us/uploads/files/iOS__TED_Catalog_FY19_Fall_Edition_007_SPL.pdf; State of Rhode Island - (ATEL) Adaptive Telephone Equipment Loan, <http://www.atel.ri.gov/equipment.html#SmartDevices> (last visited Sept. 26, 2019); Minnesota Department of Human Services Deaf and Hard of Hearing Services Division, *Telephone Equipment Distribution Program*, <https://mn.gov/deaf-hard-of-hearing/communication-access/ted/> (last visited Sept. 26, 2019).

²² 47 C.F.R. §64.610.

²³ 47 C.F.R. § 64.604(c)(8)(v).

²⁴ Order, 34 FCC Rcd at 3416 ¶ 36 n.125 ("We do not prohibit *de minimis* give-aways, such as pens and T-shirts").

of equipment by, users cannot be contingent upon current or predicted usage.²⁵ These rules are currently in force and thus should be part of the Commission's expedited response to Convo's petition.

Further, Convo proposes the following interim requirements as part of a three-year transition plan to completely phase out VRS providers' provision of any equipment:

1. Prior to the provision of any equipment, VRS providers must first obtain from the VRS user a self-certification attesting to the following:
 - A. The user is an eligible VRS user registered in the TRS User Registration Database;
 - B. The equipment is necessary for the user to access VRS;
 - C. The user has no other equipment available at their location to use to make VRS calls; and
 - D. The user cannot obtain the equipment from another source.²⁶
2. The user may retain any equipment provided by a VRS provider, even if a user chooses to change VRS providers or register for an additional TDN from the same or different provider to access VRS.²⁷
3. Providers may only distribute or replace one equipment item per year per user.

The Commission should clarify that "service-related equipment" means any equipment that allows users to access VRS in a functionally equivalent manner as hearing people do with their telecommunications devices. Convo's proposed additional requirements for the interim

²⁵ 47 C.F.R. §64.604(N)(12)(i).

²⁶ Such as from a state equipment distribution program.

²⁷ Consumers have said that their attempts to retain equipment by registering for an additional TDN for use on the equipment when porting to another provider the TDN registered with ZVRS or Purple to receive the free equipment were rebuffed. Additionally, the restriction against equipment removal should apply regardless of whether it is characterized as the property of the VRS provider on loan to the user.

transition period is intended to help safeguard against any abuse in distinguishing between service and non-service equipment, especially in the absence of an impractical list of permissible and non-permissible equipment.

The above transition proposal focuses the VRS program on the service, protects the long-term health of the VRS program and TRS Fund, and provides consumers with a clear timeframe for the sunset of free equipment. The Commission has long asserted its ancillary jurisdiction to regulate matters integral to the provision of VRS, and thus is well within its authority to implement new guidelines and criteria regarding equipment distribution within VRS.²⁸ Convo agrees that “[b]ecause the TRS Fund, not the consumer, pays for the cost of TRS,” unnecessary equipment give-aways “increase the costs borne by all providers and users of voice communications service, with no commensurate public benefit, and thereby impede the statutory goal of making functionally equivalent service available in the most efficient manner.”²⁹

Convo acknowledges that there are several population groups who are underserved in VRS, especially those with visual, mobility, or cognitive disabilities or very low income. These groups may require specialized equipment or other support to access VRS. Convo is unaware of any specialized equipment made by VRS providers for users with mobility or cognitive disabilities. Rather, any such equipment, where available, is manufactured by companies specializing in assistive technology (“AT”) and is sometimes made available to deaf people with such disabilities through state-funded AT programs.³⁰ Equipment that provides for access for

²⁸ 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 and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8686 ¶ 171 (2013) (“The Commission also has ancillary authority to apply the CPNI requirements to point-to-point video services provided by VRS providers over the VRS network.”).

²⁹ Order, 34 FCC Rcd at 3414 ¶ 34.

³⁰ For example, members of the Assistive Technology Industry Association make such equipment. See generally, Assistive Technology Industry Association, About ATIA, <https://www.atia.org> (last visited Sept. 26, 2019). The

individuals who are deaf or hard of hearing and who are blind or have limited vision³¹ also is not manufactured by any VRS providers, but instead is manufactured by third parties. Accordingly, the specialized equipment needs of these users should be referred to NDBEP, which has particular expertise to provide accommodations to users who qualify.³² In addition, qualifying low-income individuals who are financially unable to purchase their own tablets, phones, or other app-supporting devices may find assistance through Lifeline³³ or the state programs that are far more appropriately established and funded to satisfy that need.

The Commission did not intend for VRS providers to be the purveyors of TRS equipment. As a result, the TRS program is not designed to support VRS providers taking on that role. Convo recognizes that phasing out equipment give-aways may pose challenges to certain relay consumers, but such a step is necessary to reform VRS program and equipment distribution pathways, which will ultimately benefit VRS consumers. Providers should not be permitted to freely distribute costly material goods simply because consumers may run VRS apps on the products (in addition to every other app available, such as gaming, entertainment streaming, email applications, and so on), regardless of their exorbitant costs and no matter the burden on the TRS Fund. This is akin to suggesting that it is appropriate to distribute televisions (“TVs”) for “free” (or in actuality using public funding) to any requesting deaf or hard of hearing

Rhode Island Adaptive Telephone Equipment Loan Program is an example on a state level. State of Rhode Island - (ATEL) Adaptive Telephone Equipment Loan, <http://www.atel.ri.gov/equipment.html#LimitedMobility> (last visited Sept. 26, 2019).

³¹ Convo notes, however, that VRS providers’ VP apps can be customized to provide better legibility such as bigger fonts or greater contrasts for those with limited vision.

³² Convo acknowledges that the NDBEP has a statutorily mandated low-income cap and a strict statutory budget cap, and that it therefore may not be able to meet the needs of certain deaf-blind individuals. Its Convo’s understanding that currently only one VRS provider makes available specialized equipment for deaf-blind, and only to a relatively small subgroup whom are able to use Braille. Deaf-blind people are decidedly currently underserved by VRS providers with no real sense of any prospects of increased availability of equipment from VRS providers for them. Nevertheless, Convo would support a waiver of a general restriction of VRS provider free equipment distribution so that VRS providers can make available any necessary equipment for their deaf-blind consumers.

³³ <https://www.fcc.gov/consumers/guides/lifeline-support-affordable-communications>.

individual because the televisions are manufactured with built-in closed captioning decoders. The Commission did not authorize such an absurd result following the passage of the Television Decoder Circuitry Act.³⁴ Instead, deaf and hard of hearing people bought their own TVs. With limited exceptions, deaf and hard of hearing people are well capable of choosing their own equipment and providing it for themselves. The Commission should prohibit diverting public funds to VRS equipment that is intended and better used to ensure quality of service and functional equivalency in telecommunications.

III. THE COMMISSION SHOULD AFFIRM ITS RULES AGAINST FINANCIAL INCENTIVES FOR PORTING

The Commission recently adopted a rule “prohibiting VRS providers from offering or providing, to any individual or entity, any form of direct or indirect incentives, financial or otherwise, whether express or implied, for the purpose of encouraging individuals to register for or use a VRS provider’s service.”³⁵ Convo agrees with prohibiting the use of financial incentives in order to entice customers to switch default providers. This method of using costly material goods to recruit customers away from their default providers increases the cost burden on the TRS Fund without improving the quality of VRS for consumers.

Not only does this approach manipulate consumers and increase the cost burden on the TRS Fund, but, as discussed above, it also circumvents the intent of the VRS program and the TRS Fund. The Commission correctly concluded:

“[G]ive-aways that contribute nothing to the provider’s quality of service 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

³⁴ Pub. L. No. 101-431, 104 Stat. 960 (1990).

³⁵ Order, 34 FCC Rcd at 3414 ¶ 33.

offers rather than the service provided, thereby reducing providers' incentives to improve service quality.”³⁶

It has been Convo's experience that give-aways pervert the provider selection process by focusing it on financial gains of users, rather than the quality of the providers' respective VRS offering. In addition, users become locked into a relationship with the provider who gave them the equipment, which prevents the user from switching to a different provider if they change their minds. Users who port away due to financial incentives such as free equipment and then find that they want to port back out of a preference for Convo's video interpreters are often reluctant to do so. They have expressed fear of losing their material goods from their existing VRS provider. Such practices clearly violate the Commission's 2008 determination 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.”³⁷

The Commission has long protected consumer choice by requiring providers to port a TDN and allowing users to have several TDNs, each with a different default provider if so desired. But the provision by providers of high-value equipment as an incentive to port, and the threat to then take away that equipment if the user ports out, has undermined consumer choice within the VRS program. As the Commission explained in its May 2019 Order, this environment frustrates the statutory objective of the TRS program—even if the giveaways fall under non-allowable costs—because it causes users to pursue TDNs for financial gain (i.e., to obtain

³⁶ *Id.* at 3415 ¶ 35.

³⁷ *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). Convo notes that ZVRS and Purple are attempting to circumvent this rule by characterizing the equipment as their property on “loan” to the customer. The characterization of equipment as “loaned” was deemed to be immaterial in the Commission's 2008 prohibition.

valuable equipment for free), rather than to secure access to TRS.³⁸ When one considers that the equipment distributed by certain VRS providers are popular mainstream consumer electronics (for instance, Apple sold 11.6 million iPads in one quarter of 2018 alone³⁹), it is not hard to infer that at least some consumer decisions regarding which provider to register with or port to is influenced by their interest in the VRS provider's financial incentive.

Give-aways chosen for their financial value and conditioned upon registration or ports serve only to create a market in which providers are constantly trying to out-give each other,⁴⁰ rather than a market focused inward on the quality of interpreters, the functionality of VRS platforms, video quality, and interoperability metrics. For this reason, the Commission should affirm that, under its rules, give-aways are restricted to “*de minimis* give-aways, such as pens and T-shirts, as [these] do not ... rise to the level of an inducement sufficient to entice a consumer to sign up for or use a particular provider's service.”⁴¹ The Commission should also affirm that its prohibition against financial incentives for consumers to register for or use a provider's services includes free equipment give-aways.

IV. CONCLUSION

Convo appreciates the opportunity to offer comment on the provision of give-aways and on the unethical practice of enticing consumers to port via gift packages unrelated to the actual quality of VRS services. Convo is operated and managed by consumers of VRS. As such, Convo

³⁸ Order, 34 FCC Rcd at 3415 ¶ 35.

³⁹ Novet Jordan, *Apple says the iPad is outselling every laptop on the market*, (2018), <https://www.cnbc.com/2018/10/30/apple-says-the-ipad-is-outselling-every-laptop-on-the-market.html> (last visited September 25, 2019).

⁴⁰ A comparison cannot be drawn with common carriers' use of incentives for consumers to port to them in that they will at least recoup the value of the give-away through payments made by the billed customer, whereas VRS providers do not recoup the cost of the give-aways through payments made by the ported customers, but recover the cost of the give-aways through their VRS calls compensated by the TRS Fund.

⁴¹ Order, 34 FCC Rcd at 3416 ¶ 36 n.125.

is intimately invested in ensuring the longevity of the VRS program and the TRS Fund. VRS is essential to ensuring deaf and hard of hearing people have access to functionally equivalent telecommunications. Convo commends the Commission's dedication toward ensuring the VRS program's success.

Respectfully submitted,

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