

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

COMMENTS OF ASL SERVICES HOLDINGS, LLC dba GLOBALVRS

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September 30, 2019

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COMMENTS OF ASL SERVICES HOLDINGS, LLC dba GLOBALVRS

Pursuant to the Commission’s August 29, 2019 *Public Notice* in the above-captioned proceeding,¹ ASL Services Holdings, LLC dba GlobalVRS (“GlobalVRS”) comments on Convo Communications, LLC’s (Convo”) *Request for Expeditions Clarification of 47 C.F.R. § 64.604(c)(8)(v)*.² Convo raises a critical interpretive concern regarding the Commission’s prohibition on incentives, particularly for smaller providers. GlobalVRS acknowledges and concurs with Convo’s assessment that an unfair incentives issue remains, despite explicit Commission rules and pronouncements to the contrary. Nevertheless, GlobalVRS maintains that the issue is not a matter of additional clarification, rather one of swift and decisive Commission enforcement.

I. NO MEANS NO.

The Commission has made it exceptionally clear that “no means no” regarding unlawful incentives. To the extent that certain providers may game the process by offering incentives, however cloaked as a “public benefit,” the Commission should find such incentives violative of Section 64.604(c)(8)(v).³

¹ *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Public Notice*, DA 19-847 (rel. August 29, 2019).

² *Id.*, Convo Communications, LLC *Request for Expeditions Clarification of 47 C.F.R. § 64.604(c)(8)(v)* (August 19, 2019)[*Convo Clarification Request*].

³ 47 C.F.R. § 64.604(c)(8)(v).

Pursuant to 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 [emphasis supplied].

A plain language reading of this rule should make it sufficient clear that no incentives *of any kind* are acceptable.

The Commission's May 15, 2019 *Report and Order*⁴ clearly supports this plain language interpretation and should leave no doubt as to the Commission's intent:

- Specifically, we adopt a new 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.⁵
- Because the TRS Fund, not the consumer, pays for the cost of TRS, such practices 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,⁶
- 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*.⁷
- Indeed, TRS becomes no longer simply a means for the consumer to obtain functionally equivalent telephone service, but rather an opportunity for financial gain because the consumer may choose a provider just to take advantage of its offer of a free item.¹¹⁹ 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.⁸ and
- Although this new rule does not cover providing VRS-related items, such as videophones and video monitors, at no or minimal charge, we note that *the Commission's existing rule* prohibiting VRS provider practices that improperly stimulate VRS usage *necessarily encompasses* the practice of providing VRS-related equipment at no or minimal charge to select users based on their actual or expected volume of VRS minutes.⁹

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) [Report and Order].

⁵ *Report and Order* at 33 [emphasis supplied].

⁶ *Id.* at 34. Indeed, the only "benefit" of such practices is a provider's own financial gain.

⁷ *Id.* at 35 [emphasis supplied].

⁸ *Id.* [emphasis supplied].

⁹ *Id.* at 37 [emphasis supplied].

How Section 64.604(c)(8)(v) or the Commission's *Report and Order* - and other previous orders cited therein - could be read in any way to justify the use of incentives in a lawful manner requires extensive futile contortions in logic.

II. CERTAIN CURRENT PRACTICES BYPASS COMMISSION REGULATION AND INTENT.

Convo states, "In its Order adopting [47 C.F.R. § 64.604(c)(8)(v)], the Commission determined that VRS providers may not give away non-service-related equipment as an inducement to cause customers to port their numbers.¹⁰ Yet today, GlobalVRS is aware of certain practices that smack of the unlawful incentives the Commission has sought to prohibit remain through the provision of "free" service-related equipment. These practices are cloaked as a "public benefit" to mask their true intent of enriching provider positioning and keeping Registered Users captive. Among them:

- *Restrictive Service "Agreements."* Service "Agreements" are used as a tool to compel Registered Users to remain with service providers for a minimum of two years or lose specialized or "premium," feature enhanced equipment provided to the Registered User at no cost. Such equipment is provided to those who could least afford to purchase or lease such equipment. This no cost premium equipment locks in a provider's Registered Users to remain with the provider, despite their preference to change providers;¹¹
- *The Threat of Losing "Premium" Equipment.* Coupled with restrictive service agreements is the inherent threat of losing "premium" equipment if changing providers after a minimum service period or submitting complaints against the provider. Many users, including those with no service agreements, have come to believe – or been led to believe - that the equipment they receive is a service necessity or at a minimum simplifies their calling capabilities over other options. As a result, many users are exceptionally reluctant, even fearful, to consider using the services of non-equipment-based provider, or other equipment options including computer or off the shelf mobile device video relay services – services which can be as effective as "premium" provider equipment-based services.

¹⁰ *Convo Clarification Request* at ii.

¹¹ This long-standing practice has also undermined the ability of smaller providers to compete effectively and achieve greater operational efficiencies.

- *Reliance on Untranslated Terms and Conditions.* In instances, Registered User rights and options are not easily available in their primary language. There is insufficient linguistic accessibility. Subsequently, terms and conditions in written English without readily available terms and conditions translated into American sign language undermine the ability of many Deaf individuals to fully understand their options. This includes the right to file a complaint with the Commission over restrictive terms that keep Registered Users captive. Registered users cannot raise concerns if they are unclear about their right to raise concerns.
- *Inherently Stifling Competition by Fettering Consumer Choice.* “A VRS provider may not take steps that restrict a user's unfettered access to another provider's service, such as providing degraded service quality to VRS users using VRS equipment or service with another provider's service.”¹² The underlying principle is that equipment should not be used to fetter callers. The Commission has correctly established that technology and equipment can be wrongly used to undermine other providers in interoperability or number porting. Yet the reliance on proprietary equipment may be used in other ways that still result in “fettering” consumer choice; is still effectively using the technology and equipment to fetter user choice in the same manner as any “incentive.”

III. SWIFT COMMISSION ENFORCEMENT ACTION IS THE MOST EFFECTIVE FORM OF CLARIFICATION.

There is an established tenant that without swift action, delay enables perpetrators to gain; in the vernacular “Crime Pays.” Over the months, if not years, of unlawful incentives, those engaged in such practice have continued to “gain.” In the interim, the gain in minutes means added funds. That such practices continue is a reflection of a prevailing perception that it is still possible to engage in such practices with impunity. Believing that the Enforcement Bureau’s ability to enforce incentives rules may be limited, whether due to perceived regulatory ambiguity or resources, it remains possible to hold users captive and realize continued compensable usage, further cementing market dominance, contrary to the Commission’s expressed intent.¹³ Protracted enforcement will have allowed an entity engaging in unlawful incentives to benefit from the increased funds, expand its operations, and lure limited interpreter resources away from other providers and entities, while undermining the work of other providers whose focus is on enhancing

¹² 47 C.F.R. § 64.621(2). Though pertaining to interoperability, the underlying principle of the Commission’s incentives ruling and this regulation is that equipment should not be used to fetter – to undermine – a Registered User’s ability to access another provider’s service *or ability to change providers*.

¹³ Such dominance also engenders practices aimed at undermining competitors such as offering inflated video interpreter compensation to cull the pool of available interpreters, which further serves to undermine smaller competitors and other entities needing qualified interpreters.

quality services have accomplished.¹⁴ Unfortunately, since the TRS program's inception, VRS equipment was not set up as was other equipment distribution, *i.e.* under a separate development and distribution contract rather than tied to a specific service provider. This arrangement has contributed to a host of unique "incentives" issues that should be addressed

GlobalVRS maintains that Section 64.604(c)(8)(v) and the Commission's reasoning behind the prohibition on any incentives requires no further clarification. In this instance, further clarifications could otherwise lead to an exercise in semantic hair splitting, finding loopholes that should never have been available, and further efforts to twist interpretation of the Commission's prohibition.

The Commission states, "... 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."¹⁵ GlobalVRS certainly concurs. Yet limited or protracted enforcement against blatant violations of the Commission's incentives prohibitions, have seemingly emboldened continued unlawful incentive practices, as noted by Convo and above.

The Commission has an obligation to uphold *swiftly* and *decisively* enforce its regulations to maintain TRS Fund integrity and sustainability.

Conclusion. GlobalVRS supports Convo's request in concept. The plain language reading of the Section 64.604(c)(8)(v) prohibition on incentives of any kind, coupled with the Commission's extensive conclusions regarding incentives, render the need for further clarification unnecessary. Alternatively, GlobalVRS maintains that swift and decisive Commission enforcement of Section 64.604(c)(8)(v) will serve as the ultimate clarification of its incentive prohibition.

[Signature on Following Page.]

¹⁴ Ultimately, no fine levied against violators can truly undo the damage done, unless restitution to impacted providers is paid. Restitution would be ideally service as a definitive deterrent.

¹⁵ *Id.*

Respectfully submitted this 30th day of September, 2019,

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