

November 14, 2019

VIA ECFS

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123; CG Docket No. 10-51

Dear Ms. Dortch:

The undersigned of Convo Communications, LLC (“Convo”) met on November 12, 2019 with Jean Kiddoo of the Office of Economics and Analytics, David “Raster” Schmidt of the Office of Managing Director, Diane Burstein and Robert Aldrich of the Consumer and Governmental Affairs Bureau, and Eliot Greenwald, Michael Scott, and Debra Patkin, Disability Rights Office.

Convo requested that the Federal Communications Commission (“Commission”) finds impermissible under its rules governing the use of financial incentives CSDVRS, LLC dba ZVRS and Purple Communications, LLC’s (“ZVRS/Purple”) give-aways of a combination of a laptop computer or a NVIDIA SHIELD streaming media player (labeled as a “OneVP”) and tablet computer and certain other consumer electronics accessories (totaling a retail value of over \$1500), conditioned on the recipient porting from another Video Relay Services (“VRS”) provider to ZVRS/Purple. Convo also requested that the Commission finds that ZVRS/Purple’s requirement that recipients agree that they must either pay a monetary penalty or return the equipment package if they port out within a two year period violates its rule against the forced removal of provided equipment. It has almost been three months since Convo made its request for clarification.¹ ZVRS/Purple’s give-aways in the past year and a half have significantly altered the VRS marketplace, and they have dramatically escalated the pace of the give-aways in recent months, making imperative an immediate clarification from the Commission.

The following facts were presented:

- ZVRS/Purple’s expensive multiple equipment package give-aways are not available to new customers, only for those who port to them from other VRS providers;
- There is no attempt by ZVRS/Purple to assess whether the recipients need the free equipment to access VRS; Convo call detail records establish that those who port to them from Convo to receive the free equipment already have the means to access VRS;
- The multiple free equipment provided by ZVRS/Purple are exclusively off-the-shelf hardware which have not been physically customized for VRS use; the provided hardware only serves as a commercially available technology platform to download and operate their VRS videophone (“VP”) apps or software;

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

- ZVRS/Purple have primarily marketed its NVIDIA Shield/OneVP to consumers as “a top-notch multi-function entertainment unit that can play multiple apps.”²
- Documentation has been provided to the Commission’s Enforcement Bureau showing that a) applicants for the multiple equipment give-aways are screened and selected by ZVRS/Purple based on the likelihood of their greater use of VRS; b) recipients have been contacted by ZVRS/Purple regarding their low usage of the free equipment package, along with a suggestion that they should return the equipment if they don’t need them; c) ZVRS/Purple have refused to provide a second ten digit number (“TDN”) to use on the provided equipment if they port their primary TDN to another provider; d) ZVRS/Purple have on occasion, required all VRS users in a household to port to them in order to become eligible for the give-aways; and e) recipients who port out to another provider have received demand letters from ZVRS/Purple threatening legal action based on the free equipment they were provided ostensibly to access VRS;
- Former customers have contacted Convo to say that they prefer the quality of Convo’s services but could not pass up the offer of ZVRS/Purple’s free multiple equipment packages in porting their primary TDN to them. Customers also expressed to Convo that they felt locked in to ZVRS/Purple due to the agreements they signed in order to receive the free equipment;
- ZVRS/Purple are aware that a substantial number of VRS users “game” their eligibility for the give-aways by registering for a TDN from Convo only to promptly port to them, yet still provide the expensive multiple equipment packages to those individuals.
- Given that virtually all of ZVRS/Purple’s revenue is derived from VRS, their ongoing give-aways that have already cost several millions of dollars have been and will continue to be paid for by the Telecommunications Relay Services (“TRS”) Fund; and
- The ability of the commonly-controlled ZVRS/Purple to engage in these give-aways has been facilitated by their overcompensation, in that they are currently treated as two separate entities individually eligible for a higher compensation rate.

It is indisputable that the ZVRS/Purple giveaways, although they “contribute nothing to the provider’s quality of service” have served as a financial incentive for consumers to port to them “based on the value of such free offers rather than the service provided.” To prevent continuing harm to the VRS program and TRS Fund by the ZVRS/Purple give-aways being a source of fraud, waste and abuse, Convo urges the Commission as follows:

1) *The Commission should clarify that general consumer electronic devices do not qualify as service-related equipment allowable under its incentives restrictions unless such devices have been “locked down” to prevent usage other than for VRS.* In its oversight of the VRS program, the Commission has regulated the provision of equipment through disallowing their cost in the compensation rate to decrease the market distortion caused by consumers driven by free equipment rather than making choices based on the quality of their services. Nevertheless, providers continue to find sufficient margin in their compensation rates to lure and entrap consumers with extravagant equipment give-aways. Rather than further decreasing the compensation rates in an effort to contain the adverse impact of free equipment giveaways which will have the effect of causing less funding to be available for VRS quality

² OneVP FAQs, ZVRS, <https://www.zvrs.com/about/faqs/faq-for-onevp/> (last visited Nov. 14, 2019).

improvements and technological innovation, the Commission should mitigate the unnecessary provision of equipment in its clarification of its incentives policies. Given that VRS providers now predominately use VP apps and software, any technology functions and features innovations will become available to consumers through the VP software, not the hardware, making the provision of free off-the-shelf devices irrelevant to improving the quality of services.

Functional equivalence does not—and should not—be construed as enabling VRS providers to buy for deaf users the same laptops, tablets, phones, and other off-the-shelf consumer electronic devices that hearing individuals purchase for themselves. Rather, functional equivalence requires that deaf users are not required to pay more than hearing users to access communications services. Consequently, restricting providers from giving away consumer electronic devices under the guise that they constitute VRS service-related equipment is not a step backward as alleged by ZVRS/Purple. The provision 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. The Commission’s clarification of its incentive give-away policy will increase real consumer choice through increased service-quality competition among providers. ZVRS/Purple’s give-aways represent a false “choice” because they are financial incentives that induce selection based on the value of free offers, and they pose a significant risk to the integrity and long term health of the VRS program and TRS Fund.

2) *The Commission should clarify that restrictive terms and conditions imposed by providers on their give-away of equipment represent improper anti-competitive practices.* ZVRS/Purple use restrictive service “agreements” as a tool to compel recipients of their equipment give-aways to remain with them for a minimum of two years, makes it difficult for users to understand the terms governing equipment give-aways and leverages the threat of paying a monetary penalty or losing access to VRS equipment to lock in recipients. These improper practices enable providers to capture users, thereby constraining consumer choice and undermining service-quality competition. Such practices create artificial and unlawful barriers to competition, which undermine the Commission’s mandate in Section 225 of the Communications Act of 1934, as amended, to ensure relay services are available “in the most efficient manner.” The integrity of the VRS program is put at risk when providers purposefully foster user misconceptions about the circumstances under which providers can demand the return of such equipment or when providers expressly demand for equipment to be returned in situations that violate the Commission’s rules.

The Commission should act now to provide the requested clarifications. Doing so will not disturb the Commission’s conclusion that “service-related equipment” is excluded from the financial incentives restriction and therefore does not constitute the promulgation of a new rule or the reconsideration of a prior order.

However, the ongoing willingness of providers to manipulate consumers through the distribution of free equipment makes it likely that equipment-related issues will nonetheless persist after the Commission provides its clarification. Given the importance of sustaining quality VRS for consumers in an environment of limited funding and increasing operational

costs, Convo believes it timely and imperative that the Commission subsequently engage in rulemaking to further address the role of equipment in VRS, separately and after it clarifies the application of the incentives rules to the ZVRS/Purple give-aways. Convo has proposed a three-year transition plan in restricting the provision of any type of equipment, which we believe should be considered in a rulemaking proceeding.³

The decision of the United States Court of Appeals for the District of Columbia Circuit to vacate the Commission's \$75 rule for IP CTS-capable phones⁴ does not serve as a barrier to the regulatory review of the provision of equipment in VRS. In that decision, the Court found that the agency record was insufficient for the Commission to adopt the rule, which supports the need for rulemaking to develop a record regarding the significant impact that the provision of free equipment has had on the VRS program and the TRS Fund. The Court decision does not stand for TRS providers being completely unfettered in providing goods including equipment to consumers, nor does it stand for providers being able to engage in unlimited give-aways by characterizing them as being funded by their "money." The Commission has engaged in multiple rulemakings concerning equipment in VRS, such as its prohibition on giving away "non-service-related" equipment as an incentive to register for or use the VRS provider's service, and has the clear authority and the compelling need to continue its regulatory review of the use of equipment in VRS that potentially corrupt the Commission's statutory mandates regarding relay services.

Sincerely,

/s/

Jeff Rosen
General Counsel

cc: Jean Kiddoo
David Schmidt
Diane Burstein
Robert Aldrich
Eliot Greenwald
Michael Scott
Debra Patkin

³ Comments of Convo Communications, LLC, CG Docket Nos. 10-51, 03-123, at II (Sept. 30, 2019).

⁴ Sorenson Communications, LLC and CaptionCall, LLC v. Federal Communications Commission, 755 F.3d 702 (D.C. Cir. 2014).