



HARRIS, WILTSHIRE
& GRANNIS LLP

December 21, 2018

Via ECFS

Ms. Marlene H. Dortch
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* in CG Docket Nos. 10-51 and 03-123

Dear Ms. Dortch:

I write to urge the Commission to deny the waiver petition filed by CSDVRS and Purple Communications (collectively “ZVRS”), which seeks to allow ZVRS to expand its at-home interpreting program to include inexperienced interpreters who have never worked in VRS. There is no justification to adjust the rules governing the at-home interpreting pilot program before the Commission has decided whether to make that program permanent—a decision that ZVRS acknowledges must be made through rulemaking by the full Commission. ZVRS has been permitted to continue its pilot program in order to preserve the *status quo* and to prevent stranding of the investments it has already made.¹ But it would be unfair to allow ZVRS to expand the program when other providers who would like to begin at-home interpreting have not been permitted to do so.

Allowing ZVRS to continue—or even expand—the pilot program while other providers cannot participate gives ZVRS an unfair competitive advantage. As ZVRS concedes, “the pool of qualified interpreters is small,”² and “VRS call volumes outpace the pool of qualified interpreters that live near call centers.”³ This is an issue that affects all providers, and ZVRS has

¹ In an *ex parte* filed in October 2018, ZVRS represented that “extension of the Pilot Program is **only** needed to prevent disruption of the at-home call handling processes, procedures, and workforce already in place at the Companies.” Letter from Gregory Hlibok, Chief Legal Officer, ZVRS and Purple, to Marlene Dortch, Secretary, Federal Communications Commission, CG Docket Nos. 10-51 & 03-123 (filed Oct. 17, 2018) (emphasis added). In the order granting ZVRS’s waiver, the Bureau allowed ZVRS to continue providing at-home interpreting beyond the deadline established by the rules to “preserv[e] the *status quo*” and to prevent the stranding of investments that would occur “if there is a significant lapse in the program.” *Structure and Practices of the Video Relay Service Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, DA No. 18-1119, CG Docket Nos. 10-51 & 03-123 at ¶¶ 7-8 (rel. Oct. 31, 2018).

² ZVRS and Purple Request for Expedited Limited Waiver at 4, CG Docket Nos. 10-51 & 03-123 (filed Dec. 11, 2018) (“ZVRS Waiver Petition”).

³ *Id.* at 3.

been using its pilot program to recruit interpreters away from other providers. Sorenson already has difficulty recruiting a sufficient number of interpreters—a problem exacerbated by the fact that ZVRS has been permitted to extend its use of at-home interpreters beyond the one-year deadline imposed by rule. Allowing ZVRS to expand its use of at-home interpreters before making this option available to all VRS providers equally would only exacerbate ZVRS’s unfair competitive advantage.

In any case, ZVRS has not presented any “special circumstances” that could justify a waiver. The purpose of a waiver is to act as a safety valve when application of a general rule in a particular case would not be in the public interest.⁴ But the Commission may not repeal a rule by waiver.⁵ That is effectively what ZVRS seeks here: it disagrees with the Commission’s current rule requiring that interpreters who work from home must have at least 3 years of experience with VRS, and the justifications it proffers for a waiver are the same justifications it would give for a general repeal of the rule. These are not “special circumstances” justifying a waiver but are general policy arguments that must be made in a rulemaking.⁶

⁴ *Applications for Authority to Construct and Operate an Automated Maritime Telecommunications System Using the Group C Channels (216.5125 to 216.9875 MHz) Along the Lower Mississippi River and the Gulf Intracoastal Waterway filed by Riverphone, Inc. T/A Maritel*, Memorandum Opinion and Order, 3 FCC Rcd. 4690, 4692 ¶ 12 (1988) (“*Riverphone Order*”) (“The function of a waiver is not to change the general standard, a matter for which the opportunity for general comment is a prerequisite under the Administrative Procedure Act, but to justify an ad hoc exception to that standard in a particular case.”); *WITN-TV, Inc. v. FCC*, 849 F.2d 1521, 1522 (D.C. Cir 1988) (“The waiver concept does not serve in this context, for petitioner’s plea, although ingeniously crafted, is in essence one for agency reconsideration of existing policy.”).

⁵ *Riverphone Order*, 3 FCC Rcd. at 4692 ¶ 12 (“While waivers are a necessary safety valve for rules of general applicability and an agency need give meaningful consideration to waiver requests, it also must not eviscerate a rule by waiver.”); *Communications Satellite Corporation Request for Waiver of Section 25.131(J)(1) of the Commission’s Rules as It Applies to Services Provided via the Intelsat K Satellite*, Memorandum Opinion and Order, 7 FCC Rcd. 4602, ¶ 5 (Common Carrier Bureau 1992) (“*Communications Satellite Order*.”) (“While waivers are a necessary safety valve for rules of general applicability, the court stated that an agency’s obligation to give meaningful consideration to waiver requests does not contemplate that the agency must or should tolerate evisceration of a rule by waivers. A waiver must not undermine the underlying policy of the rule. The function of a waiver is not to change the general standard of the rule, since this is a matter for which the opportunity for general comment is a prerequisite under the Administrative Procedure Act, but instead to justify an ad hoc exception to that standard in a particular case.”).

⁶ *Communications Satellite Order*, 7 FCC Rcd. at 4602 ¶ 6 (“We have examined Comsat’s waiver request and find it is not based on special circumstances which would make strict application of Section 25.131(j)(1) inconsistent with the purposes of the rule. Instead, Comsat’s waiver request is grounded primarily on Comsat’s general view that the rule itself should be eliminated, and it states that the facts that support repeal of the rule are the ones

Respectfully submitted,

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Counsel for Sorenson Communications, LLC

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Karen Peltz Strauss
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which support an immediate waiver. Therefore, if we were to grant a waiver on this basis, we would have to apply it across the board to all international satellites, thereby eviscerating the rule by waivers. Thus, as some commenters point out, Comsat's waiver request is not based on special circumstances; rather it raises broad legal and policy questions that appear to affect a large class of receive-only earth stations used with the international satellites. We accordingly conclude that Comsat's request raises questions of general applicability which are properly addressed in a notice-and-comment Rule Making context.”).

Certificate of Service

I hereby certify that on this day, December 21, 2018, true and correct copies of the foregoing were sent by electronic mail and first-class mail to the following parties:

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A handwritten signature in black ink that reads "Mark D. Davis". The signature is written in a cursive, flowing style.

Mark D. Davis
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