

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

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

COMMENTS OF CONVO COMMUNICATIONS, LLC

Convo Communications, LLC (“Convo”) hereby responds to the May 20, 2015 Federal Communications Commission (“FCC” or “Commission”) Public Notice (“PN”) seeking comments on the telecommunications relay services (“TRS”) provider compensation rates, funding requirement, and carrier contribution factor proposed by TRS Fund Administrator Rolka Loube Associates LLC (“RLA”) for July 1, 2015 through June 30, 2016.¹ Video relay services (“VRS”) providers jointly commented that the imminent rate cut left intact in the PN forces us to consider or make operational reductions and those changes correspondingly affect service quality.² Further, there is clear and credible information in the Commission records showing that emergent providers such as Convo are incurring allowable, reasonable and necessary operational costs which are higher than the present compensation rate and thus further rate reductions heighten the risk of us going out of business before we can mature to operate at an efficient scale. Convo pleads the Commission to stabilize the rates prior to the next scheduled rate cut on July 1, 2015 rather than risking pushing things to the brink by deferring the consideration of the rates as

¹ Public Notice (“PN”), CG Docket Nos. 03-123 and 10-51, DA 15-612 (Released: May 20, 2015).

² Joint Comments of All Six VRS Providers on Rolka Loube Payment Formulas and Funding Requirements, CG Docket Nos. 10-51 & 03-123 (“Joint VRS Providers Comments”) (June 4, 2015).

the Commission indefinitely deliberates about unrelated VRS program initiatives.

I. Deferral of Sustainable Rate Stabilization is Harmful and Inequitable

More than being just a slogan, Convo's "deaf owned and operated" position has created a distinctively consumer and interpreter-centric design, development and provision of relay products and services. In its short time, Convo has introduced into VRS innovative videophones which uniquely support consumer autonomy in their use of telecommunications and an approach to video interpreting which personifies the essence of consumer communications. As a consequence, Convo has experienced a vigorous increase of relay consumers choosing to use their products and services with virtually no interpreter turnover in the past two years. This organic and contributive growth by Convo is a desirable component of a healthy VRS marketplace which sustains robust competition and consumer choices. Adequate funding for VRS providers – especially emergent providers like Convo - is essential in pushing for functional equivalency with the unceasingly evolving telecommunications capabilities and choices of hearing people.

However, Convo has had to begin building its business without the significantly higher past compensation rates that mature VRS providers have availed themselves to grow to scale. As Convo described to the Commission, it has made some considerable loans to fund the necessary investments in technology, equipment and human resources, and will lose a significant amount of money this year despite its steady growth.³ Compounding Convo's fiscal challenges as an emergent provider, the Commission established in 2013 a "glide path" of declining rates in anticipation of new programs which were intended to permit providers to reduce certain service costs through the engagement with third party entities.⁴ These new programs either have not yet moved forward or are at its earliest stages, thus Convo must absorb all of the rate cuts without the

³ *Ex Partes* of Convo Communications, LLC, CG Docket Nos. 10-51 & 03-123 (April 15 and 21, 2015).

⁴ Report and Order and Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51, 03-123, 28 FCC Rcd 8618, 8696, ¶ 216 ("VRS Reform Order") (Adopted: June 7, 2013).

opportunities the Commission set out in the VRS Reform Order to alleviate the rate cuts. RLA in its 2015 TRS Rate Filing reported to the FCC that “the historic and projected costs for the smallest of the providers’ remains above the rates, potentially jeopardizing their continuation of service.”⁵ All six VRS providers jointly expressed to the Commission their unified support for an adequate compensation for smaller providers, writing that “[w]hile all providers have had negative impacts as a result of the rate cuts in anticipation of these new program offerings, the most severely affected are the smallest three providers who are least positioned to sustain those cuts. Accordingly, given the reductions that have already occurred, even rate stabilization may not be enough to keep these smallest three providers in business.”⁶

Regardless of the demonstrated clear need for immediate sustainable rate stabilization, particularly for the smallest providers, the Commission in its PN deferred to an indeterminate time its consideration of the joint provider request for stabilization. The Commission acknowledged that it is anticipated that at least the **fifth** consecutive rate cut under the VRS Reform Order schedule will take effect prior to any determination on the Joint Providers Proposal.⁷ The rate cut on July 1, 2015 places Convo in a severe fiscal shortfall, which requires cutting services or raising additional capital to stay upright until it reaches a different scale. Convo has stated in meetings with the FCC that it would elect to exit the business rather than compromising on the essential operational costs that consumers and interpreters require to experience an adequate level of service. Convo added in those FCC meetings that it has to date declined to bring in venture capitalists who could float Convo until a period of sustainability because doing so would risk

⁵ Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123, 10-51, p.25, Table 4 (“2015 TRS Rate Filing”) (April 24, 2015).

⁶ Joint *Ex Parte* Letter of All Six VRS Providers, CG Docket Nos. 10-51 & 03-123 (April 30, 2015).

⁷ See Joint Proposal of All Six VRS Providers for Improving Functional Equivalence and Stabilizing Rates, CG Docket Nos. 10-51, 03-123 (“Joint Providers Proposal”) (March 30, 2015).

Convo’s focus of a consumer and interpreter-centric relay services.⁸

II. Increased Required Costs Require Immediate Rate Adjustments

The VRS Reform Order imposed several new cost burdens on providers including the need to collect additional registration information from customers, adopt regulatory compliance plans, establish consumer information privacy mechanisms, and implement lower wait times (the last since then vacated by the D.C. Circuit Court). In the absence of the effective implementation of several VRS Reform Order programs, providers have had to continue to shoulder the costs of research & development, outreach, achieving interoperability, increasing portability and maintaining and upgrading their VRS access technologies (e.g., videophones). The Commission is obligated to sufficiently compensate providers for their costs in providing services consistent with minimum TRS requirements and to adjust the compensation rate to reflect exogenous cost changes. The Commission obligation to properly set rates exists independent of any review of the Joint Provider Proposal and requires prompt action if there is any indication that the cost of service is inadequately compensated lest this unacceptably causes a detrimental impact on service quality. Here, the Commission not only declined to address in the PN whether cost changes have occurred nor whether service quality is being consequently affected, it presumes that providers will somehow make ends meet until some indeterminate time the Commission reconsiders the rates regardless of solid information that emergent providers like Convo are being compensated at less than their actual allowable operating costs.

III. GAO TRS Report Findings Require an Immediate Pause of Rate Cuts

Prior to the Commission’s issuance of the PN, the U.S. Government Accountability Office (“GAO”) published an extensive report on the FCC’s management of TRS, which among other things, found at the FCC “the lack of specific TRS performance goals—and specific performance

⁸ See Convo April 15, 2015 *Ex Parte*.

measures crafted around those goals” which made it “difficult to determine in an objective, quantifiable way if TRS is making available functionally equivalent telecommunications services”⁹ GAO in its TRS report recommended that the Commission develop specific TRS performance goals and measures and conduct a robust program risk assessment. The Commission indicated in a letter included in the GAO report that it agreed with and discussed actions it planned to take to implement the GAO recommendations. In several meetings with the Commission, consumer organizations stated that “[u]nless and until the FCC acts on this responsibility [of establishing TRS performance goals and internal controls], further rate cuts threaten to erode deaf, hard of hearing, deaf-blind, and deaf and mobile-disabled consumers’ access to telecommunications services.”¹⁰ The GAO TRS report alone provides the Commission with an urgent and compelling need to immediately stabilize the rate to ensure that no harm is occasioned while it moves to consider and implement the actions the FCC stated it would take in response to the report.

IV. Notice should be Provided of Possible Contribution Adjustments

The Commission PN proposes to set the contribution factor while not mentioning whether it reserves the capability to make an adjustment of the factor as the Commission addresses TRS issues such as those raised by relay consumers and the GAO Report. The Commission should equitably provide notice to contributors in its 2015-2016 TRS Rate Methodology Order that the TRS Fund administrator may be requested to provide additional information during the funding year regarding the TRS Fund and that Office of the Managing Director (“OMD”) has the delegated authority to accordingly adopt a new contribution factor. This approach would be consistent with the flexibility for readjustment of the contribution factor for the Universal Service Fund. Convo

⁹ The GAO TRS Report, published on April 29, 2015, is available at: <http://www.gao.gov/products/GAO-15-409>

¹⁰ See e.g., *Consumer Groups Ex Parte*, CG Docket Nos. 10-51 & 03-123 (May 18, 2015).

supports this greater regulatory flexibility as a matter of administrative efficiency irrespective of any determination of the Joint Providers Proposal since the planned TRS Fund reserve could amply absorb the cost of the proposed VRS rate stabilization.¹¹ Moreover the Commission has already proposed such flexibility in its notice of proposed rulemaking section of the VRS Reform Order.¹²

In conclusion, a clear and convincing showing has been made that the Commission would risk the VRS program and its providers if it were to let the rate cut take effect on July 1, 2015. The Commission can act before that date to stabilize the rate with no impact on the contribution factor for the new TRS Fund year. Convo appreciates the Commission's commitment and hard work in sustaining TRS through its challenges. Convo has done everything the Commission has asked of TRS providers, now we in turn along with other relay stakeholders ask the Commission to act in a timely way to protect the quality of services by immediately staying the compensation rate while it addresses TRS program initiatives.

Respectfully submitted,

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¹¹ See Joint VRS Providers Comments at p. 2.

¹² VRS Reform Order at ¶ 242.