November 20, 2015

Ex Parte Notice

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

Re: *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

Dear Ms. Dortch:

On November 18, 2015, the individuals listed on the attached list ("Provider Representatives") met (in person or telephonically) with Matt Sandgren, Senior Counsel to Sen. Hatch and Ryder Jensen, Intern to Sen. Hatch. Also in attendance (in person or telephonically) and participating at this meeting were Nicholas Degani, Legal Adviser to Commissioner Pai, Zainab Alkesbi and Howard Rosenblum of the National Association of the Deaf, and Tamar Finn of Morgan, Lewis & Bockius, LLP, on behalf of Telecommunications for the Deaf and Hard of Hearing. The purpose of the meeting was to discuss whether a freeze of all VRS rates is necessary to protect the quality of VRS while the FCC completes various market structure reforms and develops a market-based compensation system for VRS, as it said it would do in its June 2013 Order. Although this discussion was not directed to the merits or outcome of an FCC proceeding, but was made in the presence of a Commission staff member and contained information that is relevant to an ongoing permit-but-disclose FCC proceeding, we are filing this ex parte out of an abundance of caution. This ex parte summarizes only the presentations made by the Provider Representatives. The other non-FCC participants are filing their own summaries of their presentations.

Provider Representatives argued that a freeze is necessary to protect the quality of VRS until the FCC reaches a sustainable, market-based compensation mechanism because the current compensation mechanism is fundamentally and fatally flawed as applied to all VRS providers. The current compensation mechanism and rate schedule was set wholly ignoring many actually incurred costs (including actual taxes paid), the fact that the Commission historically set VRS rates above levels generated by its allowable cost-based rate-of-return calculation implicitly recognizing that such rates would be too low, and that the cost-based rate-of-methodology generates margins of approximately one percent even considering only allowable costs (not all actual costs).

Most critically, the current rate schedule also does not take into account the fact that the burden of cost reductions will fall primarily on VRS' highly skilled interpreters – who are the backbone of quality VRS. VRS providers' primary non-fixed costs are their labor costs. VRS is and always has been a stressful work environment for interpreters, and will likely become more demanding to the extent that providers must seek further cost reductions. This is already driving highly skilled interpreters from VRS, which undermines the quality of the actual service delivered. Other significant non-fixed costs incurred by VRS providers include customer service, outreach to deaf and hard of hearing communities (now treated as non-compensable by the FCC), and research and development (also non-compensable to the extent focused on developing VRS endpoint technologies or supplementary enhanced features). Significant cuts to these non-fixed costs directly affect service quality and innovation. Yet when facing rate cuts, VRS providers have little alternative to cutting these types of non-fixed costs given the magnitude of the cuts.

Provider Representatives noted that the Federal Relay Service rate for VRS is over $12 per minute, far in excess of current rates for VRS providers compensated through the TRS Fund. This shows that current rates are reasonable, and that the rates yield by the Commission's existing methodology are likely to be unreasonably low to sustain quality VRS and continued innovation.

Provider Representatives also observed that many of the reforms that were supposed to make it easier for smaller providers to reduce costs have not occurred on schedule, if at all. The FCC, for example, has not taken over outreach, even though it has already disallowed outreach costs. The Commission has not yet put in place the TRS User Registration Database ("TRS-URD"), which was supposed to eliminate providers' obligation to verify VRS users, with associated compliance costs.

Provider Representatives also noted that they have actually incurred – and continue to incur – additional costs as a result of the Commission's 2013 Order. In that Order, the Commission made clear that it wanted the industry to develop SIP-based interoperability standards, which the Commission would undertake if the industry was not successful. The industry bore the costs of that development, which has been successful. Industry continues to bear the costs of ongoing interoperability meetings and testing. Similarly, the Commission has mandated that providers participate in the TRS-URD. Providers are incurring the costs of working with the TRS-URD contractor with respect to the development of the database, as well as collecting and ultimately populating the URD. Providers have also cooperated with the Commission's contractors from MITRE, which requires staff time and resources. Finally, providers are spending time working with the Commission's ACE contractor with respect to that contractor's development of a software-based end point – which ironically is being funded from the TRS at the same time as the Commission refuses to recognize provider expenditures on end point development as allowable costs.

Angela Roth of Global VRS stated that the VRS operations within her company are in the red. They are currently sustained by ASL/Global's earnings in non-TRS interpreting businesses, in which ASL/Global has been successful. Ms. Roth noted that her company does not provide equipment and was self-financed, so provides a particularly good example for evaluating the problems with the FCC's compensation methodology. Jeremy Jack of StarVRS similarly stated that its VRS operations were under water. These are the most dramatic examples, but, as described above, the continued rate cuts will continue to press all providers to cut those costs that they can cut, which will necessarily affect service quality, customer service and innovation.

Continued implementation of VRS rate decreases could drive some providers from VRS. A similar use of the FCC's allowable cost/rate-of-return-based rate calculations led the FCC to set unsustainably low rates for IP Relay in June 2013 – which rate cuts eventually had to be reversed in order to preserve the existence of IP Relay (now provisioned by a single provider).

A freeze at June 30, 2015 rates across all tiers would preserve current levels of competition and quality, and permit modest improvements in mandatory minimum speed of answer requirements, as well as piloting skills-based routing and expanded use of deaf interpreters, improvements long sought by deaf consumers. These each outlined in the Joint Proposal submitted by all VRS providers on March 30, 2015.[1] A freeze is imperative at this time, before consumers see reduced choices and further reduced VRS quality. The rate freeze is also necessary to address concerns regarding the rate methodology before the adverse financial impacts of further rate reductions on providers are realized.

Sincerely,

/s/__________________
Angela M. Roth
President & CEO
ASL Services Holdings, LLC (GlobalVRS)

/s/__________________
Michael Strecker
Vice President of Regulatory Affairs
Purple Communications, Inc.

/s/__________________
Michael D. Maddix
Director of Government and Regulatory
Affairs, Sorenson Communications, Inc.

/s/__________________
Jeremy M. Jack
Vice President
Hancock Jahn Lee & Puckett, LLC (Star VRS)

cc: Nicholas Degani

1 Joint Proposal of All Six VRS Providers for Improving Functional Equivalence and Stabilizing Rates, CG Docket Nos. 10-51 & 03-123 (filed Mar. 30, 2015).

Provider Representatives

Andrew Isar, Miller & Isar, for Global VRS
Jeremy Jack, Star VRS
Gabrielle Joseph, Global VRS
Paul Kershisnik, Sorenson Communications
Tom Korologos, DLA Piper, for Sorenson Communications
Michael Maddix, Sorenson Communications
John Nakahata, Harris, Wiltshire & Grannis, for Sorenson Communications
Mark Paoletta, DLA Piper, for Sorenson Communications
Angela Roth, Global VRS
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