Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

REPLY COMMENTS OF ZVRS TO THE COMPENSATION RATE FREEZE

CSDVRS, LLC d/b/a ZVRS ("ZVRS") hereby replies to comments filed in the above-captioned proceeding regarding the proposal from the Federal Communications Commission ("Commission") to temporarily freeze compensation rates for certain providers of Video Relay Service ("VRS").[1] The record makes clear that there is widespread support from the deaf and hard of hearing community, and VRS providers, for the following:

1) The Commission should extend the rate freeze beyond the smallest three VRS providers because other small VRS providers, including ZVRS (the only Tier 2 VRS provider), also need a reasonable opportunity to grow business, build scale, and drive down costs;
2) Until the Commission has viable and long-term solutions for the stark competitive imbalance in the VRS market, including an understanding of why there still is not interoperability or portability in the VRS market today, compensation rates should be frozen for all "smaller VRS providers;"
3) VRS rates should be frozen because rate cuts to date already have adversely affected the quality of VRS, and further rate cuts will threaten functional equivalence for the deaf and hard of hearing; and
4) Compensation rates should be frozen until the structural issues affecting the VRS market are resolved or, at a minimum, for the full 16 months proposed in the FNPRM. The Commission and VRS stakeholders need time to assess barriers to VRS competition and implement measures to address structural issues before further rate cuts are made.

[1] *See Structure and Practices of the Video Relay Services Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Further Notice of Proposed Rulemaking, FCC 15-143 (2015) ("FNPRM").

I. THE COMMISSION SHOULD EXTEND THE RATE FREEZE BEYOND THE SMALLEST THREE VRS PROVIDERS BECAUSE OTHER SMALL VRS PROVIDERS, INCLUDING ZVRS (THE ONLY TIER 2 VRS PROVIDER), ALSO NEED A REASONABLE OPPORTUNITY TO GROW BUSINESS, BUILD SCALE, AND DRIVE DOWN COSTS.

The majority of commenters agree with ZVRS that the Commission should extend the rate freeze beyond the smallest three VRS providers. ZVRS advocates for the Commission to extend the freeze to include the "smaller VRS providers" in Tier 1 and Tier 2, including ZVRS, that are struggling to achieve scale and have obvious competitive challenges.[2] Other commenters suggest the Commission extend the freeze even further, to include Tier 3 providers. Purple Communications, Inc. ("Purple"), Sorenson Communications, Inc. ("Sorenson"), the Registry of Interpreters for the Deaf, Inc. ("RID"), and Consumer Groups all propose approaches that would freeze rates for some or all of the Tier 3 providers.[3]

For example, Purple requests that the Commission freeze rates for providers with fewer than 2.75 million monthly minutes;[4] Sorenson urges the Commission to adopt the Joint Proposal,[5] which would freeze rates for all providers at the levels in effect on June 30, 2015;[6] and RID and Consumer Groups both urge the Commission to forestall any further changes to VRS provider compensation rates for all providers, including additional cuts, until service quality measures are in place.[7] While ZVRS advocates for

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[2] *See* FNPRM at para. 5 (explaining that the Commission set the Tier 1 and Tier 2 rate reductions to progress more slowly than those in Tier 3 because "smaller VRS providers" need a reasonable opportunity to grow their businesses and build scale); *Structure and Practices of the Video Relay Services Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8704, para. 214 (2013) ("VRS Reform Order").

[3] *See* Comments of Purple Communications, Inc., CG Docket Nos. 10-51, 03-123 (filed Dec. 9, 2015) ("Purple Comments"); Sorenson Communications, Inc. Comments on VRS Compensation Rates, CG Docket Nos. 10-51, 03-123 (filed Dec. 9, 2015) ("Sorenson Comments"); The Registry of Interpreters for the Deaf, Inc. in Response to Public Notice Seeking Additional Comments on Structure and Practices of the Video Relay Service (VRS) Program, CG Docket Nos. 10-51, 03-123 (filed Dec. 9, 2015) ("RID Comments"); Comments of Consumer Groups, CG Docket Nos. 10-51, 03-123 (filed Dec. 9, 2015) ("Consumer Groups Comments") (Consumer Groups is comprised of Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI"), National Association of the Deaf ("NAD"), Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN"), Association of Late Deafened Adults ("ALDA"), Cerebral Palsy and Deaf Organization ("CPADO"), Deaf Seniors of America ("DSA"), and California Coalition of Agencies Serving the Deaf and Hard of Hearing ("CCASDHH")).

[4] *See* Purple Comments at 3.

[5] *See* 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) ("Joint Proposal").

[6] *See* Sorenson Comments at 5-6.

[7] *See* RID Comments at 3-4; Consumer Groups Comments at 1.

inclusion of Tier 1 and Tier 2 VRS providers, at a minimum, it does not at this time propose a precise "cut-off point" for eligibility for the rate freeze, given the larger structural issues that remain unresolved. These issues are directly related to provider costs and the ability to build efficiencies of scale, and are thus intertwined with the analysis of the exact point at which smaller VRS providers become "efficient" for purposes of the rate freeze. The majority of commenters share the view that the Commission's proposed rate freeze for the smallest three providers does not go far enough, is not responsive to the competitive imbalances in the VRS program, and does not provide relief where it is needed.

Even the three VRS providers who would receive relief under the proposed rate freeze—Convo Communications, LLC ("Convo"), Hancock, Jahn, Lee & Puckett, LLC d/b/a Communication Axess Ability Group ("CAAG/Star VRS"), and ASL Services Holdings, LLC ("ASL/Global") (collectively, "Tier 1 providers")—present no argument that other VRS providers should be excluded from the rate freeze.[8] Instead, the Tier 1 providers argue that "the plight of smaller providers" should move the Commission to freeze compensation rates for smaller providers.[9] ZVRS agrees. As ZVRS explained in its comments and in its meetings with Commission staff, its operating realities are far more similar to the Tier 1 providers than they are to the largest VRS provider. Similar to the Tier 1 providers, the majority of ZVRS' minutes reside in Tier 1. Tier 1 and Tier 2 providers also lack scale, have declining market share, suffer high costs of doing business (many of which are not "allowable"), serve niche and underserved communities, are stymied in their efforts to grow and build scale due to the lack of interoperability and portability, and will be disproportionately harmed by the expected Tier 1 rate cuts. The Commission should treat these similarly situated, smaller VRS providers the same. Any rate relief accorded to the Tier 1 providers must also, at a minimum, be provided to ZVRS, the lone Tier 2 VRS provider.[10]

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[8] *See* Comments of Convo Communications, LLC, CG Docket Nos. 10-51, 03-123 (filed Dec. 9, 2015) ("Convo Comments"); Comments of Hancock, Jahn, Lee & Puckett, LLC, CG Docket Nos. 10-51, 03-123 (filed Dec. 9, 2015) ("CAAG/Star VRS Comments"); Comments of ASL Services Holdings, LLC, CG Docket Nos. 10-51, 03-123 (filed Dec. 9, 2015) ("ASL/Global Comments").

[9] ASL/Global Comments at 2.

[10] *See* Comments of ZVRS to the Compensation Rate Freeze, CG Docket Nos. 10-51, 03-123, at 17-20 (filed Dec. 9, 2015) ("ZVRS Comments").

ZVRS agrees with ASL/Global that "[t]he need for the proposed interim rate freeze is deeply rooted in the Commission's current rate methodology and underlying assumptions about providers and their costs."[11] The overly narrow focus on allowable costs when setting compensation rates—to the exclusion of many legitimate, unavoidable costs of operating a telecommunications service that seeks to be reasonably competitive—produces an unrealistic picture of the disparity between those rates and provider costs.[12] Actual provider costs are much higher and thus the Commission's view of the gap between rates and costs lacks the proper foundation.

Sorenson agrees, and correctly states that the focus on setting compensation rates by reference to only allowable costs "paints an excessively rosy picture of financial realities facing VRS providers" and "does not account for the real-world costs that providers must and do incur to provide service, including outreach, equipment costs, and research and development costs."[13] ZVRS agrees with ASL/Global and Sorenson. When examining costs per minute, the Commission should take into account the actual and essential costs of providing VRS service. All of these costs must be taken into account when determining the rates at which "a reasonably efficient provider is able to operate profitably."[14] Comparing the actual costs of providing VRS service against the declining per-minute rates, it should be clear to the Commission that provider compensation rates must be frozen, especially for smaller providers such as ZVRS, who do not have the scale to defray these costs over large volumes of minutes.

On the basis of the strong record supporting extension of the rate freeze beyond the smallest three providers, ZVRS urges the Commission to freeze rates at compensation levels in effect on June 30, 2015 for, at a minimum, all the "smaller VRS providers," whose monthly minutes fall entirely within Tiers 1 and 2.

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[11] ASL/Global Comments at 2.

[12] *See* ZVRS Comments at 14-17.

[13] Sorenson Comments at 7.

[14] FNPRM at para. 13.

II. UNTIL THE COMMISSION HAS VIABLE AND LONG-TERM SOLUTIONS FOR THE STARK COMPETITIVE IMBALANCE IN THE VRS MARKET, INCLUDING AN UNDERSTANDING OF WHY THERE STILL IS NOT INTEROPERABILITY OR PORTABILITY IN THE VRS MARKET TODAY, COMPENSATION RATES SHOULD BE FROZEN FOR ALL "SMALLER VRS PROVIDERS."

Convo and ASL/Global agree with ZVRS that the absence of true interoperability and portability is a significant obstacle to smaller providers gaining and retaining clients, gaining market share, and gaining efficiencies of scale. Persistent interoperability and portability problems are impeding meaningful competition in the VRS market. As ZVRS has explained, smaller VRS providers must go to great lengths to gain a new customer but, given the likelihood that the new customer will encounter technical difficulties caused by a lack of interoperability with the previous provider's technology, the chances of retaining that customer long-term are slim.[15] Instead, that customer is likely to blame any interoperability difficulties on the new provider and revert back to his or her historical provider.[16]

As Convo notes, competitive providers are "challenged by the hardened consumer perception that competitors' videophones do not interoperate at all or as well with Sorenson videophones."[17] Indeed, "the most common question Convo receives from customers regardless of the level of their sophistication regarding technology is whether Convo videophones will work with Sorenson videophones."[18] Moreover, in ZVRS' experience, even the possibility of interoperability issues that may cut off a user's access to VRS creates a level of reluctance in VRS users to switch providers that is nearly impossible for a competitive provider to overcome. This, in turn, further raises the costs a provider must incur to win over and try to retain a new customer, knowing all the while that any customer gain is unlikely to last.

ZVRS agrees with ASL/Global that, as a smaller provider, it has "struggle[d] with ensuring that its services are interoperable with all proprietary equipment [of other VRS providers], and witnessed marginal

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[15] *See* ZVRS Comments at 25-27.

[16] *Id.*

[17] Convo Comments at 9.

[18] *Id.* at 9-10.

improvements."[19] Smaller providers must fund the significant cost of trying to achieve interoperability, which is not an allowable cost, at the same time that compensation rates are falling substantially. Until the Commission has a better understanding of why interoperability and portability are largely absent from the VRS market, and until the Commission and VRS stakeholders have agreed upon solutions to these problems which will help level the competitive playing field, the Commission should freeze compensation rates for at least Tier 1 and Tier 2 smaller providers and dedicate itself to gaining a better understanding of why the competitive imbalance in the VRS market persists. ZVRS is eager to assist the Commission in these efforts and pledges to help the Commission identify the challenges and potential solutions.

III. THE RATES SHOULD BE FROZEN FOR ALL SMALLER VRS PROVIDERS TO PREVENT FURTHER DETERIORATION IN THE QUALITY OF VRS SERVICE; THE RATE CUTS TO DATE ALREADY HAVE ADVERSELY AFFECTED THE QUALITY OF VRS.

Consumer Groups, Convo, Purple, RID, and Sorenson all concur with ZVRS that continuation of the rate cuts adopted in the VRS Reform Order will likely serve to deteriorate VRS quality. As commenters point out, the Americans with Disabilities Act ("ADA") guarantees VRS users functionally equivalent telecommunications service.[20] "Quality of service is paramount here, and the FCC should not lose sight of that in its quest to fulfill other goals."[21] However, as the Commission has focused solely on aligning compensation rates with narrow categories of allowable costs that do not reflect the actual investment required to provide VRS, "four scheduled years of successive rate cuts, coming on top of a dramatic rate cut in 2010, are putting dramatic downward pressure on the quality of VRS service."[22]

The effects of this downward pressure have not gone unnoticed by VRS users and, as NAD explained, "[o]ver the last two years, we have seen and been alarmed by the deterioration of VRS, which

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[19] ASL/Global Comments at 14.

[20] *See* 47 U.S.C. § 225(a)(3); *see also* RID Comments at 2-3; Sorenson Comments at 1,2.

[21] Consumer Groups Comments at 3.

[22] Sorenson Comments at 2.

appear to be exacerbated each time the Commission reduces the rates."[23] ZVRS agrees that continuation of the rate cuts adopted in the VRS Reform Order will worsen this trend. Indeed, continuation of rate cuts "will unquestionably harm the ability of all small providers to effectively leverage the structural reforms called for by the Commission in 2011 and 2013."[24] Sorenson notes that "[t]he burden of continuing cost reductions across the industry will fall primarily on VRS' highly skilled interpreters—the backbone of quality VRS—whose pay and benefits are VRS providers' primary non-fixed costs." [25] Sorenson further observes that "[r]ate cuts have already forced decreases in compensation . . . Highly skilled veteran interpreters are, unsurprisingly, moving away from VRS. Their absence undermines the quality of the service and may actually *increase* costs in the long run by requiring longer and repeated conversations."[26]

In a similar vein, RID, Consumer Groups, and Purple argue that the Commission should not further reduce provider compensation rates until VRS service quality measures are in place,[27] and ZVRS agrees. VRS users have a right under the ADA to functionally equivalent telecommunications service, and have expressed to the Commission a concern that the functional equivalence of VRS is being eroded by the rate cuts adopted in the VRS Reform Order.[28] Quality of service measures would allow the Commission and the community to better ensure that VRS meets this statutory mandate by providing a baseline for assessing the impact on service of any future compensation changes.

ZVRS agrees with Consumer Groups, Convo, Purple, RID, and Sorenson that extension of the rate freeze is necessary to stave off deterioration in VRS quality and comply with the mandates of the ADA. As Consumer Groups point out, "[a]dequate compensation to VRS providers is critical to ensuring

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[23] Letter from Zainab Alkebsi, Policy Counsel, NAD, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51, 03-123, at 1 (filed Nov. 20, 2015) ("NAD November 20 Letter").

[24] Purple Comments at 11.

[25] Sorenson Comments at 3 (emphasis in original); *see also* ZVRS Comments at 7 (detailing the steps necessary to absorb further rate cuts and the attending effects on VRS quality).

[26] Sorenson Comments at 3.

[27] RID Comments at 3-4; Consumer Groups Comments at 2-4; Purple Comments at 13-14.

[28] *See* NAD November 20 Letter.

that consumers who require VRS services have a functional equivalent to voice telephone services."[29] Until such time as appropriate quality of service measures are in place, compensation rates should be frozen for, at a minimum, the smaller VRS providers whose monthly minutes fall within Tiers 1 and 2.

IV. THE VRS COMPENSATION RATES SHOULD BE FROZEN UNTIL THE STRUCTURAL ISSUES THAT ARE HARMING THE COMPETITIVE VIABILITY OF THE VRS MARKET HAVE BEEN FULLY ADDRESSED.

Purple joined ZVRS in arguing that rates should be frozen until reforms to address the structural issues in the VRS market are implemented and the market has had time to react. As Purple explains:

> [T]he majority of the Commission's anticipated structural reforms have either not yet been implemented or taken effect in the market. Accordingly, moving forward with the scheduled rate declines in the absence of competitive reform . . . will jeopardize the very program objectives that the Commission has sought to effectuate.[30]

The Commission should freeze rates until such reforms as are necessary to level the competitive playing field in the VRS market are implemented because, as Purple observes, "[e]ach subsequent rate cut makes more drastic the small competitive providers' need for market share gains."[31] Proceeding with the rate cuts in the absence of competitive reform will place smaller providers at a further disadvantage requiring them to make up more ground just to remain level, if they can. Competition and gaining market share will not be possible for smaller VRS providers. As ZVRS explained in its initial comments, it will have to exceed its volume projections for 2016 by a significant percentage, which is unattainable given current trends for ZVRS.[32] Further rate cuts at this juncture will contravene the Commission's goal of a competitive market for VRS. Rates should be frozen, at least for smaller VRS providers whose minutes reside entirely or predominantly in Tier 1, including ZVRS, until the Commission can make progress on VRS structural reforms that are critically needed.

As described above, it is particularly important that the Commission gain a better understanding of obstacles to interoperability and portability which are impeding the ability of smaller VRS providers to gain

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[29] Consumer Groups Comments at 4.

[30] Purple Comments at 2.

[31] *Id.* at 15.

[32] *See* ZVRS Comments at 10.

market share. As described in more detail above,[33] the current challenges to interoperability with proprietary VRS access devices are a significant obstacle to meaningful competition and the ability of smaller VRS providers to advance in the market. Much has been made of the impact that the Accessible Communications for Everyone ("ACE") reference platform will have on the interoperability of VRS providers' services. However, that impact is likely to fall short of the Commission's expectations.

As an initial matter, ACE is better understood not as a "platform," but rather as an application that will exist separate and apart from each VRS provider's own application. As an application, ACE will only be usable on broadband-enabled, soft-client-compatible devices. To that end, ACE will not benefit the vast majority of VRS users who access their service via devices, large and small, that are not soft-client-compatible. ACE cannot be loaded onto, or launched from, a significant percentage of the devices that are used to access VRS today, many of which are proprietary to the top providers. Thus ACE will not be available to all VRS users, or even a majority of VRS users. The potential impact of ACE will be minimal if additional policy and structural reforms to advance interoperability are not implemented. As the Commission clearly agrees,[34] market-wide interoperability is essential for any kind of competition (in VRS and in other services) and, without it, one provider will continue to dominate the market without any possibility of competition from the smaller VRS providers.

In sum, the rate freeze should continue until meaningful structural reforms have been implemented. However, should the Commission instead set the rate freeze to expire on a predetermined date, the freeze should remain in place for the full 16 months proposed in the FNPRM.[35]

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[33] *See supra* section II.

[34] *See, e.g.*, Remarks of Chairman Tom Wheeler, TDI Conference, Baltimore, MD (delivered Aug. 20, 2015) (explaining the importance of interoperability standards in VRS by stating that "[i]t's time for you to be able to have your video products work together, so you can call whomever you wish, whenever you wish, from anywhere"), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-334979A1.pdf (last accessed Dec. 20, 2015); *see also Promoting Interoperability in the 700 MHz Commercial Spectrum, Requests for Waiver and Extension of Lower 700 MHz Band Interim Construction Benchmark Deadlines*, WT Docket Nos. 12-69, 12-332, Report and Order and Order of Proposed Modification, FCC 13-136 (2013) (taking steps to ensure interoperability in the lower 700 MHz band, which "serve the public interest by enabling consumers . . . to enjoy the benefits of greater competition and more choices").

[35] *See* CAAG/Star VRS Comments at 5; Convo Comments at 1; ASL/Global Comments at 1-2 (expressing serious doubts that 16 months is sufficient time for smaller providers to become competitive absent significant changes to the current VRS market structure).

V. CONCLUSION.

To the extent the Commission decides to freeze compensation rates for smaller VRS providers to allow them an opportunity to grow and achieve the scale needed to compete, the Commission must extend the freeze to all smaller VRS providers, at least those whose minutes reside entirely or predominantly in Tier 1 (including ZVRS). The Commission should then turn its attention to the structural issues constraining the competitiveness of the VRS market. The record in this proceeding demonstrates that:

1) The Commission should extend the rate freeze beyond the smallest three VRS providers because other small VRS providers, including ZVRS (the only Tier 2 provider), also need a reasonable opportunity to grow business, build scale, and drive down costs;
2) Until the Commission has viable and long-term solutions for the stark competitive imbalance in the VRS market, including an understanding of why there still is not interoperability or portability in the VRS market today, compensation rates should be frozen for all "smaller VRS providers;"
3) VRS rates should be frozen because the rate cuts to date already have adversely affected the quality of VRS, and further rate cuts will threaten functional equivalence for the deaf and hard of hearing; and
4) Compensation rates should be frozen until the structural issues affecting the VRS market are resolved or, at a minimum, for the full 16 months proposed in the FNPRM. The Commission and VRS stakeholders need time to assess barriers to VRS competition and implement measures to address structural issues before further rate cuts are made.

ZVRS urges the Commission to initiate a comprehensive review of the market conditions impeding true competition in the provision of VRS. ZVRS pledges its assistance to the Commission in examining the challenges to competition , determining their root causes, and proposing potential solutions.

Respectfully submitted,

/s/

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