

**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

**COMMENTS OF ASL SERVICES HOLDINGS, LLC DBA GLOBALVRS ON  
ROLKA LOUBE PAYMENT FORMULAS AND FUNDING REQUIREMENTS**

ASL Services Holdings, LLC dba GlobalVRS (“ASL/GlobalVRS”) submits these comments in response to the Commission’s May 9, 2016 *Public Notice* requesting comment on Rolka Loube Associates (“RL”) payment formulas and funding requirements for the Interstate Telecommunications Relay Services Fund 2016-17 Fund Year.<sup>1</sup> ASL/GlobalVRS has already provided extensive comment on the Commission’s flawed rate methodology on which RL’s payment formulas remain based.<sup>2</sup> This flawed methodology has directly contributed to the need for the Commission’s March 1, 2016 temporary Tier 1 provider rate freeze<sup>3</sup> and the exit of at least one Video Relay Service (“VRS”) provider. Yet the payment VRS payment formula remains unchanged; Tier 1 provider costs continue to be included with dominant incumbent

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<sup>1</sup> Rolka Loube Associates LLC Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2016-17 Fund Year, Public Notice, CG Docket Nos. 03-123, 10-51 (rel. May 9, 2016)[*Public Notice*].

<sup>2</sup> See, e.g. *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, *Comments of ASL Services Holdings, LLC*, (December 9, 2015)[*ASL/GlobalVRS Rate Freeze NPRM Comments*]

<sup>3</sup> *Id.*, *Report and Order* (Rel. March 1, 2016).

provider costs in RL's weighted average cost calculations. This approach continues to result in a skewed compensation rate that does not compensate Tier 1 providers for their service costs. The perpetuation of this approach will exacerbate Tier 1 provider losses upon the conclusion of the interim Tier 1 rate freeze. And the current methodology offers no relief for the additional exogenous costs providers must assume to remain compliant with Commission-directed reforms.

RL has presumably calculated weighted average costs for VRS for the 2016 and 2017 period correctly, albeit still under the current flawed rate methodology. This methodology must be changed. Further, Tier I VRS providers should be compensated for, and the Commission should allow RL to include compensation estimates associated with documented reasonable provider exogenous VRS reform implementation costs.

**I. Tier 1 Provider Service Costs Should be Calculated Separately from Those of Larger Providers.**

*ASL/GlobalVRS'* recent *Rate Freeze NPRM Comments* detailed the inherent flaws in the current service rate methodology. This rate methodology has had a disproportionately negative financial impact on Tier 1 providers, precipitating the need for Tier 1 provider costs to be calculated separately from those of other providers. *ASL/GlobalVRS* noted that the Commission has "...based its provider cost determinations on averaged widely disparate provider cost data, which only further exacerbates an approximation of costs in lieu of retail rates."<sup>4</sup> The Company stressed that "the need for the [then] proposed interim rate freeze is deeply rooted in the

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<sup>4</sup> *ASL/GlobalVRS Rate Freeze NPRM Comments* at 6 citing to *2013 VRS Reform Order (Structure and Practices of the Video Relay Services Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618 (2013) [VRS Reform Order], aff'd in part and vacated in part sub nom. )* ¶ 217, "we take further action to achieve VRS compensation rates that 'better approximate the actual cost of providing VRS'."

Commission’s current rate methodology and underlying assumptions about providers and their costs.”<sup>5</sup>

Developing compensation structure based on a weighted average of provider costs has provided only a general correlation to smaller provider costs, but has remained based on the aggregate of all provider allowable costs.<sup>6</sup> So while a weighted average cost approach appears to approximate capturing smaller provider costs, the approach still woefully minimizes smaller provider costs by an exaggerated amount.<sup>7</sup>

The Commission has since explicitly acknowledged that Tier 1 provider costs have exceeded the weighted average per minute VRS compensation rates established under the “glide path” compensation rates – and underlying methodology - that do not compensate Tier 1 providers for their reasonable service costs. According to the Commission, “The record of this proceeding confirms that for each of the smallest VRS providers, the per-minute costs incurred or projected by the provider in calendar years 2015 and 2016, respectively, are *higher* than the “blended” compensation rate applicable to that provider in that year”<sup>8</sup> and “Further, the smallest VRS providers credibly argue that available financing arrangements will not permit them to maintain operations indefinitely in accordance with the Commission’s minimum TRS standards while continuing to operate at a loss.”<sup>9</sup>

Yet according to the Commission’s *Public Notice* “Rolka reports that the weighted average of providers’ reported projected costs (excluding outreach) for 2016 and 2017 is \$2.72 per minute, which Rolka notes is ‘well below the rates established by the Commission for the

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<sup>5</sup> *ASL/GlobalVRS’ Rate Freeze NPRM Comments* at 2. See generally, Convo, CAAG/Star VRS, and ASL/GlobalVRS, Emergency Petition for a Temporary Nunc Pro Tunc Waiver (filed Nov. 25, 2015).

<sup>6</sup> Original citation: “ ‘In this FNRPM, the term “average,” when used to describe multiple providers’ costs, means a weighted average of provider costs weighted in proportion to each provider’s total minutes.’ See, *VRS FNPRM* at footnote 5.”

<sup>7</sup> *Id.* at 7.

<sup>8</sup> *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, *Report and Order* (Rel. March 3, 2016)[*VRS Rate Freeze Order*] para. 8 [Emphasis supplied].

<sup>9</sup> *Id.* at para. 10.

upcoming year.”<sup>10</sup> This statement is entirely misleading because RL’s accompanying statement, “Neither the historic nor the projected VRS rate compared favorably to the historic or projected costs for the three smallest VRS services providers whose costs remained above the established reimbursement levels.....potentially jeopardizing their continuation of service”<sup>11</sup> is omitted. Moreover, the statement is misleading before a backdrop of the Commission’s own conclusions in the VRS Rate Freeze Order, noted above.<sup>12</sup>

Albert Einstein’s quote, “Insanity (is) doing the same thing over and over again and expecting different results,” is apt. Perpetuation of a flawed compensation methodology perpetuates the resulting failure to compensate Tier 1 providers for their reasonable service costs, no matter the accuracy RL’s rate calculations under the current methodology. The interim rate freeze only provides limited temporary relief to Tier 1 providers. Unless Tier 1 provider costs are separately weighted, the existing cost methodology that has led to Tier 1 providers operating at a loss will exacerbate Tier 1 provider losses upon the expiration of the interim rate. Perpetuation of the current rate methodology will further promote Tier 1 provider market exit, and will likely chill new provider entry at a time when the neutral platform is intended to, among other things, encourage new providers to seek Fund eligibility. This approach is contrary to the

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<sup>10</sup> Public Notice at 3 citing to RL’s 2016 TRS Rate Filing at 27.

<sup>11</sup> See RL April 29, 2016 Interstate Telecommunications Relay Service Fund Payment Formula and Fund Size Estimate {*Annual Report*} at page 28.

<sup>12</sup> COMPTTEL (nka INCOMPAS) raised concern over the significant TRS contribution factor proposed for the 2015 – 2016 funding year and asked the Commission to carefully scrutinize the Fund Administrator’s justification. *See, 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, *COMPTTEL’s Comments on the Proposed Contribution Factor*. (June 4, 2015). In light of contributor sensitivity over TRS contribution factors, clarity regarding provider costs is imperative to avoid misperceptions that Tier 1 providers are unfairly being compensated from the provision of VRS. Certainly this is not the case.

Commission's stated expectations. The current rate methodology must be amended to at a minimum separately average Tier 1 provider costs.<sup>13</sup>

**2. Estimates and Recommendations for Additional VRS Reform Implementation Funding Should Include Funding Estimates to Compensate VRS Providers for Their Exogenous Implementation Costs.**

The Commission has also requested comment on RL's "estimates and recommendations for additional funding to cover the costs of VRS reform implementation, among other Fund costs."<sup>14</sup> ASL/GlobalVRS cannot address RL estimates on VRS reform implementation costs, because RL has not made any.<sup>15</sup> This is a glaring omission of relevant data resulting from the Commission's apparent current disregard for ensuring that VRS providers are compensated for their reasonable costs including reform compliance costs, and particularly troublesome now that the Commission has determined that Tier 1 providers are not being adequately compensated for their service costs. This has not been the case in the past.

The 2013 *VRS Reform Order* imposed a myriad of reforms not the least of which included implementation of the TRS(VRS)-User Registration Database, account verification and transfer regulations, customer proprietary network information protections, and user VRS eligibility verification, among others. Implementation of these new "reforms" – requirements – has obligated providers to assume significant costs associated with planning, training, and additional capital investments necessary to remain in compliance. Separately, ASL/GlobalVRS

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<sup>13</sup> The Commission should direct RL to use current data to calculate Tier 1 and other provider costs and compensation separately as a basis of comparison between costs and resultant methodology. It is anticipated that such an exercise would factually underscore the disparity in costs and affirmatively confirm RL's conclusion that per minute service compensation rates established under the current methodology are not compensating Tier 1 providers for their reasonable costs of service.

<sup>14</sup> *Public Notice* at 4.

<sup>15</sup> See *Annual Report* at pages 8 and 9: "The Administrator has made no effort to estimate what expenses may have been incurred regarding the processing or development expenditures of the affected VRS providers. RL has not made a recommendation regarding any expenses incurred by service providers regarding the processing of development expenditures of the affected VRS service providers nor has RL included an estimate in this Annual report to address any expenses that the FCC may deem eligible."

has assumed non-compensable function-specific costs including the provision of professional Spanish VRS for underserved Spanish speaking individuals, and most recently the assumption of another provider's Deaf Blind subscribers at the Commission's urging. VRS providers have further assumed significant costs associated with neutral platform interoperability, and the industry coordination associated with the transition to Internet Protocol-enabled networks.<sup>16</sup> It appears that the Commission presumes – if not otherwise recognizes – that providers should simply assume the exogenous costs of remaining compliant with these significant reforms. How Tier 1 providers are to do so when the Commission itself acknowledges that the current service compensation rate does not compensate Tier 1 providers for their reasonable costs is entirely unclear.<sup>17</sup>

On June 11, 2008, the Commission issued a *Report and Order and Further Notice of Proposed Rulemaking* adopting a uniform ten-digit telephone numbering system for Internet-based TRS.<sup>18</sup> The *R&O*, among other things adopted “a system for assigning users of Internet-based Telecommunications Relay Services (TRS), specifically Video Relay Service (VRS) and Internet Protocol (IP) Relay, ten-digit telephone numbers linked to the North American Numbering Plan (NANP).”<sup>19</sup> In pertinent part, the Commission allowed providers to request compensation from the Fund associated with implementation costs:

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<sup>16</sup> Also referred to SIP protocol transition.

<sup>17</sup> To be sure, the *VRS Rate Freeze Order* hints at the possibility that exogenous compliance cost reimbursement could be possible: “..while a number of parties contend that implementation of structural reforms has imposed additional costs, no party has submitted specific estimates or documentation regarding such implementation costs [footnotes in original omitted].”

<sup>18</sup> See, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities and E911 Requirements for IP-Enabled Service Providers*, Docket Nos. CG Docket No. 03-123 and WC Docket No. 05-196, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 08-151 (Rel. June 24, 2008) [*R&O*].

<sup>19</sup> *Id.* at para. 1.

...we conclude that Internet-based TRS providers may seek compensation from the Fund for their actual reasonable costs of complying with the new requirements adopted in the foregoing Order. ...<sup>20</sup>

No opportunity for providers to seek reimbursement for exogenous reform-related costs has existed since, at least not in ASL/GlobalVRS' experience. The cited *VRS Rate Freeze Order* comment addressing submission of specific estimates of documentation regarding implementation costs could be interpreted as an indication that the Commission might entertain requests for exogenous cost reimbursement. Yet this is entirely unclear.

At a time when Tier 1 providers are not being compensated for their actual reasonable service costs and providers are assuming significant costs of complying with Commission reforms, Tier 1 providers in particular should be able to seek reimbursement for reasonable, documented exogenous reform implementation costs. It follows that RL should incorporate Tier 1 provider reform implementation costs into their reform implementation estimates to quantify the impact on the Fund. This is valuable information that should help the Commission in understanding the full financial implications on the Fund associated with reforms. This further provides the Commission with the benefit of RL's objective review of projected provider implementation costs.

To the extent that RL has not been directed to incorporate provider reform implementation costs into its VRS reform funding projections, current Fund projections are incomplete and ignore the legitimate and compensable reasonable provider costs of VRS reform implementation. ASL/GlobalVRS urges the Commission direct RL to solicit provider implementation cost projections and actual costs and include such costs in its VRS reform implementation estimates for purposes of appropriate funding. Providers should then be authorized to seek compensation for exogenous reform implementation with supporting

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<sup>20</sup> *Id.* at para. 147.

documentation consistent with Commission's approach in the ten digit dialing implementation *R&O*.

### **3. Conclusion.**

The Commission is exacerbating cost compensation issues by maintaining its current compensation rate methodology as reflected in the Annual Report. At a time when the Commission has acknowledged that Tier 1 providers are not being fully compensated for their service costs, it is entirely unclear why the Commission is perpetuating a flawed rate methodology that will further exacerbate the current underpayment of Tier 1 provider service costs. The Commission should authorize RL to calculate Tier 1 provider compensation separately from that of entrenched dominant providers and provide the Commission with specific data reflecting the significant difference in Tier 1 and other provider costs and resultant compensation.

And at a time when the Commission has acknowledged that Tier 1 providers are not being fully compensated for their service costs, the Commission should direct RL to collect exogenous VRS reform implementation cost data and incorporate estimates for funding of these costs. This will enable providers to request compensation for reasonable costs that have already been funded. Otherwise RL's estimates are incomplete, the Commission is deprived of the actual costs of reform, and smaller providers in particular will continue to assume unsustainable costs leading to their exit of the market, to the ultimate detriment of the Deaf Community.

Respectfully submitted this 23<sup>rd</sup> day of May, 2016,

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