

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 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 (“Rolka”) for July 1, 2016 through June 30, 2017.¹ With respect to Video Relay Services (“VRS”), the Commission specifically seeks comment on “whether Rolka has correctly calculated the weighted average projected costs for VRS for 2016 and 2017 and on the possible relevance of such cost data to the determination of the future ratemaking methodology for VRS.” The Commission also seeks comment on the Rolka proposed funding requirements for the TRS program and carrier contribution factor.

Convo’s total actual allowable per minute costs for its provision of VRS in 2015 (excluding Return on Investment)² is aligned with the total of eight cost categories (including

¹ *Public Notice*, CG Docket Nos. 03-123 and 10-51, DA 16-518 (May 9, 2016) (“PN”).

² *Ex Parte of Convo*, CG Docket Nos. 10-51 & 03-123 (January 28, 2016).

Return on Investment) per minute Rolka reported for the small VRS providers.³ Convo's projected allowable per minute costs for its provision of VRS in 2016 is slightly higher than Rolka's projected total per minute cost for small VRS providers for 2016.⁴ Convo appreciates the Commission's recognition of the cost circumstances of the small VRS providers in its March 1, 2016 grant of a limited duration rate freeze for service provided by providers with 500,000 or fewer monthly minutes.⁵

At the \$2.72 per minute level Rolka calculated as the weighted average of providers' reported projected costs for 2016 and 2017,⁶ Convo would be extremely hard pressed to provide anything more than video interpreting. However Convo is not able to shed the costs of its other service responsibilities such as its technology platform, research & development ("R&D") and outreach since these VRS components provided by neutral entities have yet to take place as envisioned by the Commission in its 2013 *VRS Reform Order*.⁷ Instead of stripping away such services, Convo believes that the true path in crafting an effective and balanced future rate methodology must be premised on the development of quality of service standards.

I. Setting Accurate Compensation Rates Requires Assessing the Quality of VRS

Nearly 15 years after the Commission authorized VRS, there continues to be scant information about the effectiveness of VRS other than the observation of the consumer experience. While VRS is undoubtedly one of the most affirmatively life-changing services for the deaf community which would have never occurred without the Commission's support, the question remains about how VRS as is presently constituted measures against the objectives and

³ Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, Table 6, CG Docket Nos. 03-123 and 10-51 (filed May 5, 2016) ("*2016 TRS Rate Filing*").

⁴ Id.

⁵ *Structure and Practices of the Video Relay Service Program et al.*, Report and Order, 31 FCC Rcd 2339 (Mar. 1, 2016).

⁶ *2016 TRS Rate Filing*, Table 5.

⁷ *Structure and Practices of the Video Relay Service Program et al.*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8702-06 (2013) ("*VRS Reform Order*").

requirements of the Americans with Disabilities Act. The lack of a qualitative assessment of the VRS program was underscored in a report by the U.S. Government Accountability Office (“GAO”), which among other things, found that “the lack of specific TRS performance goals—and specific performance measures crafted around those goals” made it “difficult to determine in an objective, quantifiable way if TRS is making available functionally equivalent telecommunications services”⁸ The Commission responded that it planned to develop specific TRS performance goals and measures and conduct a robust program risk assessment as recommended by GAO.

The Commission took an important step towards developing quality standards in its October 2015 Further Notice of Proposed Rulemaking which in part sought comment on specific measures that could enhance the functional equivalence of VRS.⁹ While supporting the undertaking of certain proposals in the *VRS Improvements FNPRM*, Convo expressed that the rulemaking was a critical time-sensitive opportunity for the Commission to adopt a wide-ranging and systemic examination of functional equivalency in VRS.¹⁰ Convo proposed that the Commission charge the Relay/Equipment Distribution Subcommittee of the Commission’s Disability Advisory Committee with preparing an authoritative report by the end of 2016 informing the Commission about the state of functional equivalency in VRS, recommended measures to progress VRS to attain functional equivalency and a schedule for the implementing those measures.¹¹

An adequate compensation rate for VRS cannot be settled until there is greater certainty about VRS quality standards. These quality standards will help refine the minimum level of

⁸ The GAO TRS Report, published on April 29, 2015, is available at: <http://www.gao.gov/products/GAO-15-409>

⁹ *Structure and Practice of the Video Relay Service Program*, Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51, 03-123, FCC 15-143, Section III (adopted Oct. 21, 2015) (“*VRS Improvements FNPRM*”).

¹⁰ *Comments of Convo Communications, LLC*, Section I, CG Docket Nos. 10-51, 03-123 (January 4, 2016) (“*Convo Comments*”).

¹¹ *Id.*

interpreting competency required by the mandatory TRS standards as compensated by an adequate rate. Convo also proposed a granular rate plan above a base rate to support effective interpreting measures (such as skills based or deaf interpreting) and an incentive-based compensation plan for achieving higher than minimal standards (such as a consistently faster speed of answer) to propel progress towards a functionally equivalent level of VRS.¹²

To be timely for the 2017-2018 rate period, any assessment of the VRS program must begin very soon in order to develop the relevant information and subject it to a notice and comment process prior to the expiration at the end of June 2017 of the rates established in the *VRS Reform Order*. However the need for immediate action by the Commission in assessing the VRS program is made acute by the soon to be forthcoming change of Administration at the end of this year. It appears incumbent on the Commission to prepare the foundation for the new Administration to be able to timely make informed decisions when it needs to establish the new rate methodology prior to July 2017.

II. The Formula for Calculating VRS Cost Data Needs Reforming

The weighted average cost provided by Rolka is skewed towards the significantly lower operating costs of the dominant VRS provider and thus cannot equitably be considered as relevant to a future ratemaking methodology which continues the Commission's goals of preserving choice and competition in the VRS program. Rolka calculates provider costs without regard to the level of service being provided. The Commission needs to set quality standards which would allow Rolka to quantify the cost of providing functionally equivalent services.

In the absence of the implementation of *VRS Reform Order* cost-saving programs, providers have had to continue to shoulder the uncompensated costs of R&D, outreach, achieving interoperability, increasing portability and supporting their VRS access technologies (e.g.,

¹² *Id.*, at Sections II, IV.

videophones). The lack of an operating VRS Access Technology Reference Platform has been especially costly for Convo due to the continuing huge drag inconsistent interoperability causes consumers' willingness to try alternatives to the dominant provider's technology. Convo has described to the Commission in detail that its expenditure of the excluded R&D, outreach and VRS access technology costs was and continues to remain essential for it to capably compete in the VRS marketplace and therefore are legitimate costs that should be considered as appropriately compensable in a future ratemaking methodology.¹³

Other necessary operating costs such as numbering, validation of customers for TRS-URD, CPNI mechanisms are not included in the Rolka cost calculations. Rolka has previously recommended that the Commission consider whether refinements to the rate of return methodology are necessary to better comport with the labor intensive realities of the VRS industry. At a minimum, providers must be compensated with a return on their investment in amassing the labor necessary to deliver VRS.

III. The Contribution Formula Also Requires Reforming.

The Commission also generally seeks comment on various Rolka proposals for the funding requirements and the contribution factor.¹⁴ Convo has no information that calls into question any aspect of Rolka's specific proposals for the Fund revenue requirement including the funding requirements for the relay services covered by the Fund. Rolka did not include in its *2016 TRS Rate Filing* a detailed breakdown of the historical and projected demand data for VRS but Convo sees no cause to differ from Rolka's standing approach of using the demand forecast submitted by VRS providers for calculating the requirements in the succeeding rate year.¹⁵ Convo supports Rolka's recommendation to continue including a two-month payment reserve in the funding

¹³ *E.g., Ex Parte of Convo*, CG Docket Nos. 10-51 & 03-123 (January 27, 2016).

¹⁴ *PN* at page 4.

¹⁵ *2016 TRS Rate Filing* at page 31.

requirement.¹⁶

Convo notes the apparent omission from the *2016 TRS Rate Filing* of the costs paid out of the TRS Fund for the VRS Access Technology Reference Platform, Outreach and R&D subcontracted by the Commission to third party entities following the *VRS Reform Order*. The costs of these three VRS programs are as relevant to the calculation of the funding requirements as the information provided in the *2016 TRS Rate Filing* regarding the iTRS Data Base Administration¹⁷ thus Convo is puzzled about why the significant costs of the three other VRS program costs were also not expressly accounted for. In addition, Convo wonders if all of the current year funding allocation for the Deaf-Blind Distribution Program was used up, and if not, how much of the funds dedicated for that program remains and could be re-allocated for the new funding year.

Exhibit 4 of the *2016 TRS Rate Filing* shows the significant erosion of the contribution base, which Convo urges the Commission to take immediate action to address through a refresh of the record. While the Commission said in its *PN* that it would calculate the contribution factor under its existing rules, it also noted that it had recently sought comment on a petition for a rulemaking to include intrastate revenue in the TRS Fund contribution base.¹⁸ In response, Convo commented that it is an opportune time for the Commission to assess through a NPRM the contribution base for funding TRS and suggested considering adding private line telephone services and shared tenant telephone services, two significant categories of providers currently exempt from contributing to the TRS Fund.¹⁹

In conclusion, Convo appreciates the check in the *PN* about information relevant to the VRS rate. Operating costs essential to providing fully formed VRS and well competing in the

¹⁶ *Id.*, at page 39.

¹⁷ *Id.*, at page 35.

¹⁸ *PN* at footnote 18.

¹⁹ *Reply Comments of Convo Communications, LLC*, CG Docket No. 03-123 (February 16, 2016)

market continue to be excluded and should be considered in future compensation rates. A ratemaking methodology which would adequately compensate for the provision of VRS at a functionally equivalent level of service requires the Commission to engage in an across the board assessment to identify quality standards underlying performance goals for VRS. It is vital that the Commission soon undertake this work in order to timely inform its deliberations for the next ratemaking methodology.

Respectfully submitted,

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