



706 FM 2325 - Suite D  
Wimberley, TX 78676

T (512) 410-1751  
[Ed@convorelay.com](mailto:Ed@convorelay.com)  
[www.convorelay.com](http://www.convorelay.com)

March 8, 2010

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

**Re: Partial Petition for Reconsideration  
CG Docket 10-51 and CG Docket 03-123**

Secretary Dortch:

Convo Communications, LLC, a Texas-registered Interexchange Carrier wholly owned by four deaf and hard of hearing persons, hereby submits a Partial Petition for Reconsideration regarding the February 25, 2010 *Declaratory Ruling* on VRS compensation issues.

While Convo commends FCC efforts to have the VRS industry return to those dignified ethical practices that implement ADA Title IV policies, on other hand, Convo does not believe the *Declaratory Ruling* ensures that deaf or hard of hearing employees of VRS providers will receive functionally equivalent treatment with respect to their use of various telecommunications activities funded by NECA pursuant to Congressional intent.

The unintended effect of the Ruling is that individuals with hearing loss that utilize VRS and also work gainfully as ethical employees of VRS providers will experience increased difficulties in obtaining employment in that industry. As employment of persons with disabilities was a core policy linchpin of the ADA, the *Declaratory Ruling* serves as an economic incentive for employers to discriminate. Convo wishes to address that with this Partial Petition for Reconsideration.

If there any questions about the filing, please do not hesitate to contact the undersigned.

Respectfully Submitted,

A handwritten signature in black ink that reads "Ed Bosson". The letters are cursive and fluid, with the "B" and "s" having prominent loops.

Ed Bosson

Convo Communications, LLC

Vice President of Regulatory Affairs

In the Matter of	)	
	)	
Structure and Practices of the Video Relay Service	)	
Program	)	CG Docket No. 10-51
	)	DA 10-314
	)	
Telecommunications Relay Services	)	
and Speech-to-Speech Services for	)	CG Docket No. 03-123
Individuals with Hearing and Speech Disabilities		

To: Chief, Consumer and Governmental Affairs Bureau

### **Partial Petition for Reconsideration**

Convo Communications, LLC (“Convo”), by and through its Vice President of Regulatory Affairs, Ed Bosson, comes now before the Federal Communications Commission and partially petitions for reconsideration pursuant to FCC Rule § 1.106 the Consumer and Government Affairs Bureau Bureau’s *Declaratory Ruling*, DA 10-314 (February 25, 2010), that sets restrictions on NECA compensation to VRS providers for VRS calls made by their deaf and hard of hearing employees. In support, the following is shown.

#### **I. Convo has standing to petition for reconsideration**

Convo has standing to bring this partial petition as it meets the requisites of standing being that it is a party that will suffer a palpable injury-in-fact caused by action of the FCC and which can be redressed by the FCC. *See Lujan v. Defenders of Wildlife*, 504 US 555, 560-61 (1992).

Convo is a non-certified video relay service (VRS) provider. On September 18, 2009, Convo was registered as an Interexchange Carrier (IXC) within the State of Texas.<sup>1</sup> On October 30, 2009, Convo submitted an application to the FCC to be certified as a VRS provider.

The mission of Convo Communications is to provide functionally equivalent telephone relay interpreting services between persons with hearing loss who sign and hearing persons who use voice communications. Since its inception, Convo has ethically provided video relay services and has submitted compensation minutes in full compliance with federal regulations.

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<sup>1</sup> See Exhibit A

Convo is wholly owned by four deaf persons: Ed Bosson - President of Convo Board and Vice President of Regulatory Affairs; Robin Horwitz - Chief Executive Officer; Chad Taylor - Vice President of Consumer Experience; and Wayne Betts - Vice President of Creative Marketing. Other than VRS CAs, approximately 83.3% of Convo's employees are deaf or hard of hearing.

The Bureau's February 25, 2010 *Declaratory Ruling* will have a disparate impact on Convo as compared to other VRS providers that do not employ persons with hearing loss to as great an extent. Convo believes that the Bureau's decision is in direct contravention to Congressional intent that established the access and use policies underlying Title IV of the ADA. For the following reasons outlined below, Convo partially petitions the Bureau for reconsideration of its *Declaratory Ruling* and to establish proper notice and comment proceedings pursuant to Commission rules so that compensation rules affecting providers of VRS fairly compensates them for the provision of VRS regardless of whether or not its workforce uses VRS or any form of TRS, for that matter.

## **II. Summary**

Convo wishes to partially address the *Declaratory Ruling* by the Bureau as it relates to VRS provider compensation from the Interstate TRS Fund (Fund) for certain types of calls made through Video Relay Service (VRS). Convo offers compelling rationales as to why the determination that VRS calls made by employees of VRS providers should be treated a business expense is an *inefficient* business practice and offers an alternative consideration that is more pragmatic, realistic, and fair.

The underlying concept of Video Relay Service is to allow persons with hearing loss who can sign and lipread (hereinafter referred to as "deaf/hoh persons") fully functionally equivalent telecommunications access to a similar variety of calls not unlike those accessed through traditional TTY telecommunications relay services (TRS). The assumption is that whatever the traditional TTY TRS regulations were would then be applied to VRS alongside waivers specifically for VRS. TRS policy mandates under Title IV of the Americans with Disabilities Act (ADA)<sup>2</sup> seem to be clear on what types of calls should be provided. Following numerous ex-parte comments, letters, petitions, and clarifications, the Bureau came to clearly define what types of calls should be allowed and not allowed. At the core of the Bureau's numerous actions surrounding VRS was the concept of universal service access through the application of principles of functional equivalency.

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<sup>2</sup> Title IV of the Americans with Disabilities Act (ADA) of 1990 mandated a nationwide system of telecommunications relay services to make the telephone network accessible to people who are deaf or hard of hearing or who have speech impairments. Title IV of the ADA added Section 225 to the Communications Act of 1934.

Unfortunately, a few VRS providers have distorted “functional equivalence” to the extreme, creating various practices that have resulted in either illegal or unethical calls. Consequently, the Commission has taken enforcement action to disallow and to rightfully recoup compensation payments based on these illegal/unethical calls. In doing so, the Commission has followed proper procedural requirements with those companies and has accorded due process procedures in doing so.

### **III. Declaratory Ruling on VRS Staff Utilizing VRS**

As a result of these nefarious provider actions, the FCC has resorted to an extreme application its own reimbursement rules in a manner unprecedented and unduly focused on one form of TRS. On February 25, 2010, the Bureau issued a “clarification” ruling where VRS calls made by or to a VRS provider’s employee, or the employee of a provider’s subcontractor, are not eligible for per minute rate compensation from the TRS Fund. By disregarding previous historical practices allowing provider compensation for TRS employee interstate calls from the NECA Fund, the Bureau did not follow historical practices by declaring these calls are to be treated as a VRS provider’s business expense. Moreover, the Bureau deemed those funds previously distributed as unlawful and subject to Bureau clawback without ever having clearly instructed all VRS providers, as well as those in traditional TRS who have provided TRS services since 1993, to categorize calls by provider Communications Assistants (CAs) to its employees as reasonable accommodations expenses.

The TRS Fund Administrator under auspices of FCC held back minutes of what seems to be legitimate calls are held back from reimbursement pending review of provider documentation in an arbitrary and capricious manner. The *Ruling* results in an inequitable treatment of VRS providers compared to traditional TRS providers as far as fair compensation goes.

Convo has concerns regarding this ruling and wishes to note the following points:

- a. This ruling means that VRS providers would need to absorb the cost of VRS if their deaf and hard of hearing (deaf/hoh) employees make VRS call by treating those calls as a business expense. This places those VRS providers wholly owned by or which hire deaf/hoh employees at a competitive disadvantage against VRS providers whose VRS staff are largely hearing persons as those providers would not have to absorb the cost of VRS.
- b. Convo is a case in point as Convo is wholly owned by four deaf partners who depend on sign language to communicate. Convo is committed to hiring additional deaf/hoh persons to do various tasks necessary for success of the company. Not counting video interpreters (VRS CAs) in its call centers, 83.3% of Convo staff are deaf persons.

Convo believes that its VRS niche is best understood by its users and with its deaf/hoh staff, Convo can recreate the user experience in a manner that allows it a competitive opportunity to provide high quality VRS services and to innovate and develop future relay enhancements. As a result of this competitive position from its “employees/users”, Convo will likely maintain that hiring percentage for the foreseeable future.

- c. Any company, especially start-up companies, rely heavily on external telecommunications to explore, negotiate, discuss, and perform business functions that create business partnerships and contractual relationships that change innovative ideas into viable services and products. VRS providers whose top management are hearing can make calls, including business, personal, technical, conference calls using the company’s non-VRS telephone system to make these calls at a vastly lower cost per minute rate than businesses whose employees are deaf/hoh. This logic alone shows VRS providers with lot of deaf employees are placed at a competitive disadvantage and will sustain losses to an extent detrimental to competition and the goals of universal service.
- d. The *Declaratory Ruling* has a policy fallout effect in that it disparately impacts VRS providers whose business model success relies on deaf/hoh persons only when they are accessing what is supposed to be a transparent opportunity to use the nation’s public telecommunications infrastructure. VRS businesses whose employees who can hear can access the same “transparent” network without facing similar negative impacts.
- e. The actions of the FCC are penalizing smaller legitimate VRS providers to the advantage of the largest provider since the latter is able to absorb the costs of non-reimbursable calls as it has only one deaf person situated in executive management and has a disproportionately low number of deaf employees given the size of its VRS administrative workforce. These cost burdens on smaller companies will result in a monopoly opportunity in conflict with the Commissions goals and policies supporting competitive markets. Convo believes that it was unintentional on FCC’s part. Consequently, FCC should re-evaluate and promptly redress the uneven and patently unfair landscape its *Declaratory Ruling* has created for VRS markets as soon as possible.
- f. By electing to issue a declaratory ruling instead of following the Commission’s Notice and Comment rulemaking procedures, the Bureau acted on an erroneous assumption that VRS calls by VRS staff are not compensable from the Interstate TRS Fund on the grounds it is clarifying a long-standing rule. There has never been a

pleading before the Bureau requesting clarification of the expense categorization of VRS interpreter-related labor costs for a provider's employees' VRS calls.

While the Commission can issue a ruling on its own motion to clarify a matter under its jurisdiction, this action by the Bureau is *ultra vires* and in violation of Federal Administrative Procedures Act provisions. It issues a ruling on a matter that retracts rights that numerous VRS providers have relied upon to their utter detriment. The mere fact that it has chosen to clawback previous disbursements every provider legitimately and lawfully serviced and billed for without notice and comment and it has done so without regard to the deleterious effect it would cause industry participants. This act is unprecedented given previous Bureau actions regarding traditional TRS cost categorization and billing practices. Since this clearly is a new ruling, not a long-standing rule, the *Ruling* should be reconsidered and allowed to be subject to rulemaking procedures with an opportunity for notice and comment.

- g. There is evidence the Bureau is misinformed. It believes that VRS calls made by deaf /hoh employees are already submitted in cost projections as a business expense. The unvarnished truth is that VRS providers included the annual labor cost of VRS interpreters which does not account for VRS calls made by deaf/hoh employees in the way the Bureau assumes was done! This argument would be supported by calculations, if undertaken, that would reveal that if VRS calls made by VRS employees were taken out of the factoring, the reimbursement rates would be much higher. The damning irony of this observation is that even with an appropriate accounting under the Bureau's ruling, only VRS providers with a majority of its non-VRS CA employees being hearing persons would stand to benefit from the higher rate while VRS providers who are run by deaf/hoh would not so benefit. The profit margin would be greater for the former than the latter. Also, during the year, VRS providers with lot of deaf/hoh will have greater cash flow issues while VRS providers with fewer deaf/hoh employees would not suffer as much.

#### **IV. Proposition: Different Reimbursable Rate for VRS Employees Utilizing its Own VRS**

- a. Convo has a proposition for a different reimbursement methodology for VRS staff making VRS calls. VRS reimbursement rates for business calls by deaf/hoh employees of VRS providers should be allowed for full recovery at a reasonably modified rate that captures the cost of VRS Communications Assistants plus overhead costs *minus* the cost of telecommunications infrastructure access. This would make the cost of using VRS no greater for anyone, provider or otherwise, at

rates fundamentally no different than what other IP-based telecommunications providers pay for their own employees in a business environment.

Typically, the average business pays for its employees' telephone network access at a rate of approximately 1/2 cents to a few cents per minute. From a policy standpoint, VRS providers should not be obligated to enable access to the benefits of Title IV at a rate greater than it would have to pay for VRS calls used by its hearing employees. Thus the calculation of modified VRS rates should be equal to about 1/2 to a few cents under the break-even cost. This would remove all incentive to create artificial minutes, yet enable a fair compensation scenario between VRS providers regardless of whether or not they have deaf/hoh employees.

As the TRS Fund Administrator has access to all the cost of VRS CA and overhead costs and when it acquires appropriate employee usage data, it can come forth with a more equitable reimbursement scheme. Convo petitions for the Bureau to order the TRS Fund Administrator to figure out a fair and modified reimbursable rate that will be applied only to VRS calls made by VRS employees using its employer's VRS.

- b. FCC can require each VRS provider to submit in a separate report total minutes generated by its own employees to which modified reimbursement rates will apply. The FCC can require all VRS providers to provide a list of employees as well as contracted vendors who may use VRS to make calls; that way, the FCC can monitor and verify data reports if needed to ensure calls properly captured for purposes of reimbursement.
- c. For VRS providers who may want to contract out to other companies to conduct VRS sales work, for example, modified rates would apply to the VRS minutes the contracted companies create as part of their business relationship. With the modified reimbursable rates, VRS providers would be left to focus on the ROI in their use of contracted company instead of focusing on the ramped up VRS minutes. The result is that the parties would be focused on purposeful and beneficial results based on service objectives, rather than on purely remunerative outcomes.
- d. The modified reduced reimbursable rates would force VRS providers to hire deaf/hoh based on their qualifications and return of investment instead of focusing on VRS minutes that they may rack up. VRS providers whose management are mostly or all deaf/hoh would feel comfortable making legitimate VRS calls without second guessing reimbursement allowances. VRS management will then need to determine whether to keep their employees solely based on their contributory effectiveness to corporate objectives and investment risk.

- e. Modified VRS rates should apply only to these employment conditions: VRS staff making personal or business calls using their work computers/laptops/video phones/downloadable video conference programs, as well as for VRS staff making conference calls that include hearing persons. The minutes generated will be reimbursed at modified rates for those VRS calls made by the VRS-provider's sub-contractors.

**V. In Support of FCC**

- a. However, let it be understood that Convo supports the FCC's intention to clean up the unreimbursable calls that are clearly identified by relay regulations which were submitted by nefarious providers to collect funds. Partial petition does not cover these type of unreimbursable relay calls that intentionally rack up manufactured minutes and not for providing video relay service.

**VI. Conclusion**

Convo believes that with the business model of modified reimbursement rates at the break-even cost of an average salary of VRS CA, plus restricted overhead costs minus a few pennies would offer pragmatic and realistic solution. This business model offers opportunities to resolve several problematic implementation and future enforcement issues.

For the foregoing reasons, Convo partially petitions the Bureau to reconsider its *Declaratory Ruling* and return to the appropriate due process protections enabled through long-standing regulatory procedures and are realized by proper opportunity for public notice and comment.

Respectfully submitted,

Ed Bosson  
Vice President Regulatory Affairs  
706 FM 2325 Suite D  
Wimberley, Texas 78676

**Barry T. Smitherman**  
Chairman

**Donna L. Nelson**  
Commissioner

**Kenneth W. Anderson, Jr.**  
Commissioner

**W. Lane Lanford**  
Executive Director



**Rick Perry**  
Governor

**Public Utility Commission of Texas**

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September 18, 2009

Mr. Roy E. Bosson  
Convo Communications LLC  
706 FM 2325  
Suite D  
Wimberly, Texas 78676

Subject: IXC Registration

As of September 10, 2009, Convo Communications LLC is registered as an Interexchange Carrier (IXC) within the State of Texas subject to the applicable rules and regulations of Public Utility Regulatory Act and the PUC Texas Substantive Rules. The IXC Registration Number is IX090029 and the registered name on IXC #IX090029 is "Convo".

Sincerely,

A handwritten signature in blue ink, appearing to read "N.V. Srinivasa".

Nara V. Srinivasa, P.E.  
Director of Reliability and Licensing  
Infrastructure & Reliability Division  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
P.O.Box 13326  
Austin, Texas 78711-3326  
Tel: 512-936-7335

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1701 N. Congress Avenue PO Box 13326 Austin, TX 78711 512/936-7000 Fax: 512/936-7003 web site: [www.puc.state.tx.us](http://www.puc.state.tx.us)