

**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
)	
)	FCC 10-111
)	
NOTICE OF INQUIRY)	
)	
To: Commission		

Reply Comments of Convo Communications, LLC

Convo Communications, LLC (Convo) hereby respectfully submits its Reply Comments to the Notice of Inquiry released by the Federal Communications Commission (“FCC” or “Commission”) on June 28, 2010 regarding Video Relay Service (VRS).

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. On October 30, 2009, Convo submitted an application to the FCC to be certified as a VRS provider.

The underlying mission of Convo Communications, which is wholly owned and managed by deaf and hard of hearing persons, 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 requests for compensation minutes in full compliance with federal regulations.

TABLE OF CONTENTS

Introduction and Summary	3
Rate Issues	5
The Ineffectiveness of Reverse Auctions for VRS	7
Preserving TRS Fund Integrity & Competition through Provisional Certification	10
Concluding Comments	13

I. Introduction and Summary

Convo has reviewed Comments submitted by several VRS providers, stakeholders, and VRS users. Nearly all commentators have emphasized the importance of preserving and progressing functional equivalency in the access to and use of telecommunications, consistent with the core policy goal of Title IV of the Americans with Disabilities Act pursuant to Section 225(a)(3) of the Telecommunications Act of 1996¹. The other two policy goals, being that of efficiency and technological improvement², only serve to keep the functional equivalency mandate on track and vibrant. Taken separately from functional equivalency, they merely become concepts without context. However, with respect to those important, but ultimately subsidiary, goals, there were various comments in the *2010 VRS NOI*³ that proposed differing and sometimes circuitous routes to achieve efficiency and technological improvement and nearly all of those comments were paired with arguments for or against several cost compensation methodologies.

Convo notes that the majority of commentators have voiced support for full interoperability across devices for point to point calling and access to VRS; however, those providers, largely with proprietary server based applications, have made an exception to the interoperability or porting of user call features in the absence of industry standards. Convo notes that a majority have generally agreed that marketing and/or outreach, as well as research and development (R & D) need to be compensated to some degree, to the extent that they are related to the “provisioning” of VRS. Several providers have made more emphatic comments about the need for a national VRS awareness program, but they are divided how it should happen and its scope. Additionally, there is a general consensus that proprietary devices need to be separated from call platforms, that emerging Internet technologies will replace provider issued devices, and that off-the shelf video communications devices should have some degree of subsidization via a voucher program due to their higher cost (compared to devices used by voice callers). Nearly all seek to have profit accorded some degree of inclusion in the compensation regime because under

¹ See 47 U.S.C. § 225, *et. seq.*

² See 47 U.S.C. § 225 (b)(1) and (d)(2), respectively.

³ See *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Notice of Inquiry, FCC 10-111, (June 28, 2010).

cost-based reimbursement schemes efficiency and technological innovation become secondary to rising market costs for interpreter labor and platform maintenance costs. Without an opportunity to be allowed a profit and instead face only a break-even compensation regime (combined with the degree of risk to enter and grow in the market), for providers will face increased pressures from decreasing capitalization opportunities to attract investors, oppressive restraints upon competition *vis a vis* the dominant provider (to the detriment of deaf and hard-of-hearing persons), and ultimately, an unnecessary barrier will present itself and make it ever more difficult in achieving functional equivalency, efficiency, and technological innovation.

Convo notes that the majority of commentators also support the perpetuation of the tier compensation approach due to its inherent fairness and overall efficacy towards meeting TRS policy goals. Comments provided also demonstrate that the Commission must implement due process procedures that allow providers to receive prompt reimbursement, subject to subsequent review and verification, instead of continuing to experience the disruptive effects of suspended payments in the absence of a clear violation of FCC rules. The practice of the Commission and NECA to disallow payments on a “guilty until proven innocent” approach is at odds with American principles of jurisprudence. Lastly, commentators are in support of the assignment of 10-digit numbers to hearing parties, simply because it is more functionally equivalent, efficient, and ultimately, Fund-friendly when those parties are ASL fluent.

That being said, Convo takes the position that those provider arguments seeking to advance opportunities to realize “efficiency” and “technological improvement”, *insomuch as emanate from provider comments related to their own cost recovery and the competitive edge they seek through proprietary technologies, all couched in terms of controlling the growth of the Fund, or some competitive rubric* [emphasis added], may serve only to distract the Commission from properly designing a VRS regulatory regime centered on achieving functional equivalency, especially where such comments lend themselves to the *perceived* potential for excess provider compensation.

Convo is making the following Reply Comments to focus the Commission on certain provider comments endangering functional equivalency, and to further offer a solution, or array of solutions, which can serve as mortar for the structural and operational policy framework the

Commission is addressing via the aforementioned *2010 VRS NOI*. If the Commission is sincere about realizing the promise of functional equivalency, the Commission should not be allowed to be cornered into a policy based on lowest-cost compensation schemes. If the Commission seeks only to remove excess compensation or control the Fund size, defaulting to a lowest cost model will also trigger, as history is our witness, a devolution to a mediocre level of interpreter service quality, ultimately increased costs, and a stifling of breath (perhaps a death knell) for what is emerging to be a vibrant offering to hundreds of thousands of deaf and hard of hearing VRS users.

The caveat of Convo is this: *let us not have a result that shifts the VRS industry into a world where lackluster and low quality services are offered; instead the Commission should endeavor to find a balancing solution that is a win-win for all involved parties and ensures the provision of the highest possible quality of services.*

II. Rate Issues

The current VRS provider universe consists of multiple aspects and principals, consisting of certified providers, their in-house and subcontracted “white label” labor pools, their static or dynamic devices and associated call platforms, their marketing and R & D strategies, and the proclivity and ability of their customers to switch competitors. The 2007 Rate Methodology Order⁴ established a tier-based compensation methodology using an *estimated* projected provider cost and user demand approach. Subsequently, during the period when the Commission actively began prosecuting VRS companies for defrauding the Fund through “manufactured” minutes⁵ and other schemes, it was brought to light through FCC-ordered performance audits by the Office of the Inspector General that the use of projected costs as a basis for compensation was inappropriate. There was clear evidence of excess compensation for those providers that had overestimated their costs or demand or which had hidden disallowed costs within other cost categories. This led to the current interim “weighted average of actual historical cost”

⁴ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 (Nov. 19, 2007).

⁵ See, e.g., Letter from Ed Bosson to Michael Copps (May 28, 2009) (on file in CG Docket No. 03-123), at 2-3.

reimbursement rules, along with specific caps for capitalization, numbering costs, and E-911 costs.⁶

This was a highly controversial change, one that led to very strong and fearful reactions from thousands of VRS users spurred by the dominant provider's advertised claim of imminent collapse of VRS industry as we know it, regardless of whether or not the VRS user was a default customer. The Commission was forced to announce its unwavering support for the continued viability and delivery of VRS. In addition, other providers were likewise compelled to announce they could continue to provide VRS under the proposed NECA rates. FCC and the other providers did that to assuage the fears of VRS users that the VRS industry would collapse.

While the final rate set was above the proposed rates causing a strong reaction by the dominant provider, Sorenson Communications, leading it to file comments in response to the *2010 VRS NOI* which appears to be a continuance of their widely publicized show of dismay over the compensation approach based on actual, historical costs. The Commission should be commended for taking a strong stand when it denied Sorenson's request for a stay to the *2010 Interim Rate Order*.

In response to the new landscape before it, Sorenson filed its Comments to the *2010 VRS NOI* advocating the implementation of a unitary rate, 5-year compensation scheme to be imposed on bidders selected as the result of a reverse auction and advanced several arguments as to how this would protect the Fund. Convo respectfully contends that this will do nothing but make the Commission the brunt of a far more intense level of public distrust and anger than any amount of Congressional alarm over the growth of the TRS Fund would exact. Based on the historical national and international experience with reverse auctions for a telecommunications service feature model (as opposed to an access model, similar to what the High Cost Subsidy Fund is designed to subsidize), Convo maintains that this will more likely result in the unintended growth of the TRS Fund as fixes would need to be eventually applied to rectify degradations in the progress towards functional equivalency wrought by a reverse auction methodology.

⁶ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, (June 28, 2010) (*2010 Interim Rate Order*).

III. The Ineffectiveness of Reverse Auctions for VRS

Convo is fully aware of what reverse auctions entail from a procurement and award standpoint: there is a scope of work, qualifying criteria, and basis for award, usually based on a lowest-cost bidder approach. All or nearly all non-Internet based TRS services in America where there are jurisdictional separations possible use this kind of model. All of the states, with the exception of California, have a single provider for TTY Relay and CapTel Relay (hereinafter referred to as “traditional TRS”) selected through a reverse auction mechanism. California uses a multi-vendoring approach involving a minimum number of major traditional TRS providers through a reverse auction process. In each and every instance, the lowest cost bidder approach has resulted in the emergence of TRS provider freezing or slowing down its activities and negatively impacting quality improvement, service innovation and technological progress are involved throughout the duration of the award period. Major carriers have done two things under a lowest cost bidder approach: hired college students to work as Relay Operators, kept typing speeds close to or below the FCC mandatory minimum, and are engaged in marketing and outreach programs to the same community year in and year out with the occasional incremental window dressing of user interfaces and functional features. The only time they have demonstrated their ability to provide innovative ideas is when their contracts expire and a Request for Proposal is released by the state(s). Since states are often statutorily obligated to award to the lowest cost bidder, with certain exceptions, the incumbent provider tends to stay entrenched in status quo. A few states have offered incentives to TRS incumbents by increasing state allocations for outreach or by purchasing optional enhancements, but for the most part states are left to hope that their contracts will suffice to improve the quality of their constituents’ TRS experience as time passes.

The California experience with multi-vendoring through a reverse auction is instructive. The original bid award in 1995 was given to MCI at a cost level so low that other prospective bidders withdrew from further participation. With MCI left alone to its own devices based on cost, the quality of relay accuracy, response time, and relay awareness fell to alarming and ultimately unacceptable levels, to the point wherein the California Public Utilities Commission (CPUC) had to revise its award and bring aboard other providers to shore up service quality and

response times at a much higher overall cost. Please note that the CPUC staff incurred much additional work in the attempt to rectify problems; CPUC had to tap the resources of various departments to address the issues. In the end, the original contract awarded to MCI for 0.69 cents per minute had soared to 1.09 cents per minute (63% increase)⁷ in addition to the costs of the CPUC staff efforts. One likely scenario is that a provider could provide a bid below reasonable costs to provide the service, and then in a blatantly anti-competitive fashion, raise the costs because they are the only provider on the market for next several procurement cycles. There are or may be companies in the market with very low payroll costs and zero debt which could capitalize on the reverse auction opportunity and the ideal Reverse Auction model that the Commission hoped to accomplish would not materialize.

On the international front, the use of reverse auctions has largely occurred in the context of Universal Service distribution efforts. One eerily analogous experience was that of the nation of Australia in 2000. As it turned out, none of the incumbent telecommunications firm's competitors bid to provide service in the pilot regions, for several reasons: the incumbent's cost was too low for the other bidders to effectively compete, given the incumbents "existing installed capacity and informational asymmetry".⁸ The quoted words are telling and should sound the alarm for the Commission.

Another concern on Reverse Auction is that if this procedure is applied to VRS, then once the providers are selected, it will effectively destroy any chances for future VRS providers to jump in the wagon because these selected providers will then have monopoly on VRS. It will be extremely difficult for new entrants to bid for the next Reverse Auction.

Convo finds very little ground left in which it can agree with Sorenson's proffered solution(s) to the TRS compensation dilemma, as will most probably be the case with the majority of other commentators. If anything, Convo agrees that the Commission must

⁷ To give an idea what 63% represents. Let's assume VRS compensable rate is \$4.50 per min. 63% would increase \$4.50 to \$7.33 per minute.

⁸ See Scott Wallsten, "Reverse Auctions and Universal Telecommunications Service: Lessons from Global Experience", at 381, which can be found at http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=scott_wallsten. The author is a former economist at the Commission and is currently affiliated with the Technology Policy Institute. The entire article bears close reading, largely due to the historical results other countries experienced with reverse auctions and its conclusion that efforts to maintain competition while seeking to reduce costs with a dominant or incumbent provider in the mix have not achieved desired real-world and policy outcomes.

implement a stable funding term upon which providers can implement cost-effective business strategies without unnecessary risk exposure. It is important to have a compensation methodology over a sufficient period of time to afford market participants an opportunity to achieve the level of fiscal stability that will lead to investments in feature-rich enhancements as technologies evolve. The FCC must view much of Sorenson's comments with a skeptical eye, especially given Sorenson's questionable claim that "small, inefficient providers of VRS currently receive a subsidy of about \$1 per minute, or up to \$6 million per year per provider, even though the ADA requires VRS to be made available 'in the most efficient manner'." ⁹ Convo believes that this is without basis in fact for the majority of providers and finds the comment unsubstantiated, given that Sorenson, with a purported average of over 6 million minutes per month, is most likely the only one benefitting thusly. Surely the Commission, having had a viewing under its own audit microscope, would agree that this is more likely the case. Furthermore, Sorenson takes the word "efficiency" out of context; the ADA does not use the term in the context of "fiscal" efficiency, but only in the context of functional efficiency.¹⁰

Convo further asserts that if the Commission seeks abate and reverse increasing TRS Fund costs, while encouraging innovations leading to efficiency and competition that support functional equivalency, the Commission has to accept the reality that a unitary price will defeat the Commission's goal in this regard. As Convo and other commentators have argued in their *2010 VRS NOI* comments, the current tiered approach more closely approaches real-world realities because it recognizes that economies of scale place all providers at differing points along the average cost curve at different times. Convo especially agrees with the arguments advanced by Purple in its Comments as to why a single unitary price or price cap, whether or not based on actual, historical, or projected costs, *whenever paired with a bidding approach that includes the dominant provider in the award pool*, is ultimately an exercise in futility. Purple relies on several expert industry analyses related to price caps, rate of return regulation, and other

⁹ Sorenson *2010 VRS NOI* Comments, "Executive Summary" at page i, filed August 18, 2010.

¹⁰ Section 225 (b)(1) states as follows: "In order to carry out the purposes established under section 151 of this title, to make available to all individuals in the United States a rapid, *efficient* nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most *efficient* manner, to hearing-impaired and speech-impaired individuals in the United States." [Italics added for emphasis].

compensation methodologies in support of its arguments. Convo encourages the Commission to give such studies their due deference.

To summarize, if the Commission were to institute a reverse auction approach, there is no possible way it could make it competitive for other companies *and* reduce the Fund size. If a reverse auction were to happen for the VRS industry, it will ultimately become an “exploding cigar” in the face of the Commission. Convo posits that the Commission would ultimately be forced to implement a compensation scheme that, in the final analysis, is similar to the current tiered rate structure.

Convo would like to offer a solution that will assist the Commission in achieving its goal of effective enforcement of the Commission’s rules and compensation regime without resorting to a whole cloth revamping of the current compensation methodology. Convo and other commentators have argued for a more transparent and flexible certification process that will separate the good from the bad and the ugly. Convo strongly asserts that its proposed Provisional Certification approach will effectively assist the Commission in resolving the dilemma(s) it faces.

IV. Preserving TRS Fund Integrity & Competition through Provisional Certification

Convo has argued in several instances before the Commission that its proposal for the creation of a Provisional Certification procedure will achieve several Commission objectives. As stated, Convo proposes a certification process whereby applicants must demonstrate several core operational and management features, such as the following:

1. Applicant senior staff must be familiar with TRS regulations;
2. Applicants must demonstrate their ability to meet 47 C.F.R § 64.604 mandatory minimum standards for VRS;
3. CEO or Senior management must be able to certify that the demand data and relay calls is developed and handled within FCC VRS rules and must be able to verify the accuracy of submitted minutes for reimbursement;
4. Must own, operate, and manage a Call Center 24/7 and that their Call Center(s) must demonstrate its technical capability to comport with FCC operational rules prior to being provisionally certified;

5. Applicant provider(s) agree to report directly to the FCC on a more frequent or detailed basis;
6. Applicant must report periodically as to their R&D, marketing/outreach, and customer service activities to demonstrate its commitment to join a finite pool of certified providers;
7. Applicant must send in relevant and pertinent financial information on a monthly basis as may be deemed necessary, using a FCC-directed reporting format; and
8. Applicant must own or lease a fully operational Automatic Call Distribution technical platform prior to assuming online services.

β While this will result in more review and enforcement activities for the Commission, it will also reduce the likelihood that unscrupulous entities that hide behind their billing agents can escape the light of day and do business in the shadows.

What about the existing white label companies that already have subcontracts with certified providers? Convo recommends that after the date when Commission creates the provisional certification procedure that the Commission establish a threshold for entry into the Provisional Certification pool by requiring the *current* stable of white label providers to come forward as provisional applicants only if they can demonstrate a relatively consistent history of providing service at levels of 20,000 minutes a month after 1 year of providing the service and demonstrate that they meet all the additional criteria as well. Convo suggests that after the date of creation of the provisional certification procedure, the Commission must prohibit new entrants from working with certified providers and that they can apply for provisional certification procedure instead. Convo believes that one year is an adequate timeframe for any white label provider to have the ability to provide service for 20,000 minutes since it shows that their parent provider has been engaged in an active effort to provide competitive features that attract a stable consumer base. Those entities will have two business decisions to make: opt to be provisionally certified, and cut the umbilical cord from certified provider, or be absorbed into their current “brand” provider and give up its brand name.

This will promote a more competitive playing field, since those provisionally certified providers will be able to directly bill the Fund without having to tithe their billing agent or

Automatic Call Distributor at double digit percentages. As a result of this, they will have the fiscal resources to engage in further competitive activities, such as marketing, enhancing service synergies through product innovation and R & D. The Commission may elect to keep the Provisional Applicant under appropriate degrees of scrutiny and should ultimately award full certification if the entity reaches 50,000 minutes a month by the end of a proposed five-year term and has satisfactorily performed under all the criteria required to be a provisionally certified provider.

Convo has conducted a review of existing white label providers that suggest the implementation of its Provisional Certification procedure will likely result in possibly no more than three to five current white label entities qualifying under Convo's proposed criteria. Convo's review indicates there are approximately 27 white label providers, not counting the Clear Blue program entities (primarily which are branded URLs under state associations for the deaf acronyms, such as CADVRS.TV, TADVRS.TV et al.). With the prospective loss of white label providers, existing companies that rely on them to handle their call traffic will be forced to take more direct control of their call centers by directly owning and managing them. It will in fact allow the Commission to go more directly scrutinize the new universe of providers and detect disallowed practices. For example, one white brand provider has in fact engaged in the unethical practice of having its VRSCAs tell callers that are state vocational rehabilitation participants to set up counselor appointments and meet online via VRS, even when their rehabilitation counselor has offered to provide on-site live ASL interpreting services.

Convo is also aware of the practice of certified providers to use small scale white label call centers that generate a steady three to seven thousand minutes of service a month simply because they have a local connection to the user community and are not interested in expanding the capacity of the call center to take traffic from outside a particular region. This is happening because users then have an incentive to switch from their default provider, primarily Sorenson or Purple, to that local white label presence. The drawing card is the fact the interpreter in the screen is someone they know from local community interpreting settings. As one can discern, this has nothing to do with call center cost-efficiency since economies of scale for such low call volumes are practically non-existent. If the Commission were to strictly adhere to the

provisional certification criteria, it will likely result in more control of the practice of economic inefficiencies that lead to waste and abuse.

Finally, Convo asserts that the Provisional Certification procedure will achieve many of the aims that theoretically flow from a reverse auction regime, but without its concomitant pitfalls that detract from achieving innovation and competition in the presence of a dominant provider. In support of this view, Convo notes that as part of a typical lowest-bidder solicitation, there are qualifying criteria that must be demonstrated or met in order to be eligible to bid. The Commission can use Convo's suggested criteria, in addition to its own, to set a viable field of participants focused on achieving functional goals in a competitive spirit. As previously noted, the Commission should use a tiered rate approach to allow this to happen.

Convo further asserts that the Commission is legally obligated to continue with a tiered rate approach. Convo notes that the Commission's own rules require that it assess the reasonableness of costs submitted for reimbursement from the Fund, among other fiscal oversight responsibilities.¹¹ If the Commission were to implement a procurement approach that achieves a reverse auction result, such as the one recommended by Sorenson in its Comments, it would have to largely ignore its statutorily mandated responsibility to exercise periodic fiscal reviews of cost data. Convo argues that the Provisional Certification approach will enable the Commission to implement strict provider behaviors monitoring to ensure rule compliance while allowing it to periodically apply a steady, fiscally prudent hand to ensure that VRS cost compensation approaches do not result in the slaughtering of cherished ADA functional equivalency objectives.

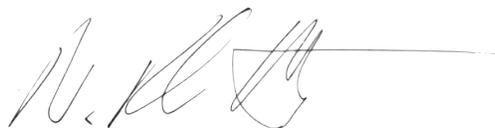
V. Concluding Comments

Convo has made the above arguments in a cooperative effort to effectively partner with the Commission in preserving the integrity, long-term viability, and the promise of the VRS offering that can accomplish broad telecommunications and social welfare policy goals. While there are many other issues on the table for the Commission's consideration, Convo believes that the current regulatory approach requires further fine-tuning to achieve the outcomes sought by

¹¹ See 47 CFR § 604(c)(5)(iii)(E).

the 2010 VRS NOI. To restate and to reiterate, Convo feels that the Commission is fully capable of cleansing the toxic residue permeating the waters of VRS without resorting to measures that will only erode the competitive and fair compensation ecosystem it is seeking to nourish. It has existing resources and tools to continue guiding the evolution of VRS into a more mature and self-sustaining organism.

Respectfully Submitted,



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