

February 12, 2012

Marlene H. Dortch, Secretary,
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: FCC 11-184 NPRM Comment

Filed electronically via ECFS on Docket 10-51

Please allow me to introduce myself briefly. I am Todd Elliott and a VRS consumer.

I would like to begin with a quote from Charles Dickens in *Great Expectations*; “I must be taken as I have been made. The success is not mine, the failure is not mine, but the two together make me.” The current VRS industry, despite its recent failings, is a tremendous and enduring success of how regulatory forces created a dynamic private marketplace of services that benefit the public as a whole. The Commission is to be commended in its regulatory efforts in shaping the VRS industry, an enviable model of telecommunications access around the world.

BRIEF LESSONS FROM HISTORY

The current NPRM (FCC 11-184) threatens the existence of the VRS industry. The VRS industry has shown integrity issues (i.e., waste, misuse, and fraud) that threaten its long term survival, but the attempted ‘cure’ may only hasten its demise. A cautionary tale from the STS industry will prove instructive on this point.

According to a report by Rebecca Ladew¹, the STS user pool only consists of 1,000 users, out of potential 1 million users.² While there may be a lot of factors accounting for this huge discrepancy, profit is singled out. Rebecca continues, “We are told that one serious problem preventing the growth of STS is the lack of profit in most situations.[...] For STS to succeed,

¹ October 2010 Report on Speech to Speech to the TRS Council, 3/25/2011.

² Id., Page 2, “Underutilization of STS” Also, the potential 1,000,000 user market statistic is probably suspect.

providers must make sufficient profit to be motivated to provide high quality of service and increase usage. Video Relay Service (VRS) providers is a good example[...]"³

THE IMPORTANCE OF PROFIT

Profit, as encapsulated in the tiered per-minute reimbursement rate has allowed the VRS industry to grow and service an actual market of well over 100K users.⁴ Profit allows VRS providers to access capital markets to fund its day to day operations, R&D, outreach, marketing, and to expand their operations.⁵ Profit is the very engine driving the VRS industry and promotes functional equivalence in which VRS providers exceed MMS rules.

Unfortunately, by proposing a per active user compensation scheme, the Commission risks the profit dynamic currently driving the VRS industry. There is a near infinite set of minutes the VRS industry can bill to the TRS Fund for reimbursement, but there is a finite set of users for the VRS industry to draw upon. The number of VRS minutes vastly dwarfs the number of VRS users, and changes the profit structure dramatically on a per user compensation basis.

Should the Commission go ahead with the per active user compensation scheme, the VRS industry will have to make their profits on each and every user they service, and not on their minutes. I don't know the exact numbers of Deaf American citizens who use ASL, but I know it to be a small number. The dominant provider currently controls well over 100K TRS access endpoints, and roughly 85%⁶ of the VRS market, leaving just only 17,650 endpoints⁷ controlled by the rest of the VRS industry.

³ Id, Page 1, "Provider Profit"

⁴ Purple Communications Comment, Filed in Docket #03-123 on 6/18/2009, Page 15, "Given that the dominant provider has distributed some 100,000 video devices at no charge to consumers[.]" Undoubtedly, this 100K figure is a little bit higher now.

⁵ Convo Communications NOI Comment, filed 8/16/2010, "it is very important that the reimbursement rate contain sufficient allowance for profit to ensure that new market entrants are able to attract investors and as those entrants mature, the profit allowance ensures they can rely on it for longer-term financial stability."

⁶ Various industry participants have offered their take on the dominant provider's percentage of the VRS market, ranging from 80% to 90%. It is not clear that the percentages reflect VRS minutes or users, or both.

At the time of this writing there are 12 VRS providers.⁸ Taking the dominant provider out of the equation, 11 VRS providers divvy up this small pie of the overall VRS market, numbering just 17,650 TRS access technology endpoints. It all averages out to just 1,605 endpoints per VRS provider.⁹ When you look at the numbers this way, how can the VRS provider grow and get the profits needed to run its operations if it has a small and finite userbase to draw upon?

DISTRIBUTING PROFITS UNDER A HYBRID APPROACH

The logical conclusion for the Commission is to calculate profit into the per-minute reimbursement rate, in addition to the per active user compensation rate in a proposed ‘hybrid’ approach on VRS compensation I am somewhat reticent in allocating any funds in the per-minute rate reimbursement above CA-related costs, as it would only encourage the evils of gaming the TRS Fund. Even a small allowance of profit in the per-minute rate would be sufficient for unscrupulous individuals to game the TRS Fund under a hybrid approach.

Alternatively, the Commission could decide to grant a bigger profit incentive in the proposed per active user compensation scheme, to account for the low incidence of Deaf people who use ASL in the general population, and the fact that the remaining VRS participants have small userbases to sustain and grow their operations in the VRS market. Unfortunately, it may

⁷ Proportionality formula:

$$\frac{x}{100\%} = \frac{100,000}{85\%}$$

$$85x = 10,000,000$$

$$\frac{85x}{85} = \frac{10,000,000}{85}$$

$$x = 117,647$$

$$x = 117,647 - 100,000$$

$$x = 17,647$$

However, the 100K statistic was dated in June 2009. The numbers would be slightly higher in February 2012. Also, this is based on number of VRS users, not minutes. Take it for what it’s worth.

⁸ Paragraph 24, FCC 11-184.

⁹ This is a simplistic approach. Not all remaining 11 VRS providers are created equal.

amount to waste, as the TRS Fund is inefficiently supporting subscale providers and is granting an enormous subsidy to the dominant provider in the VRS marketplace.

My proposed solution on profit is to ‘diffuse’ it throughout the proposed hybrid compensation scheme governing the VRS industry. My understanding is that the Commission has established a rate of return (“profit”) of 11.25%.¹⁰ Perhaps dividing up the rate, say, 3% for the per-minute reimbursement rate and 8.25% for the per active-user compensation rate¹¹ would ensure that VRS providers get the profit they need to sustain their operations, tap the capital markets, engage in R&D to come up with innovative products and services, exceed MMS rules, and to grow within the VRS market.

THE VRS INDUSTRY IS SATURATED

All anecdotal evidence suggests that the VRS industry is saturated.¹² As a result, the VRS industry turned to VRS minutes as a metric of ‘growth’¹³, because they can barely acquire new users without resorting to unseemly methods such as poaching users, service contracts with ETF fees, winback efforts, etc. I have arrived at the conclusion that the VRS industry’s laser-like focus on VRS minutes is unsustainable over a long-term basis. The Commission needs to incentivize the VRS industry to acquire and serve new users.

This is because, in a saturated market, users will usually have more than one VRS provider handling their telecommunication needs. The Commission made an astute observation in its 11-184 NPRM, “the total reimbursements paid from the TRS Fund for each VRS user’s

¹⁰ See, *In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket 98-67, FCC DA03-2111 (2003). (via a CSDVRS Comment filed on 5/16/2011, page 10.)

¹¹ These are just proposed percentages; the VRS industry can work with the Commission should it decide on the hybrid compensation route. The percentage of profit should be smaller on the per-minute rate because of its near infinite capacity, and the potential for abuse, waste, and fraud. The percentage of profit should be higher on the per active user rate to encourage the VRS industry to seek out new users.

¹² Footnote 51, FCC 11-184.

¹³ “Today VRS providers measure their efficiency though minutes of service.”, CSDVRS NOI Comment filed on 8/18/2010, page 20.

minutes of use will be roughly the same, regardless of which providers process the calls.”¹⁴ In a saturated market, the growth chart illustrating the total aggregate VRS minutes should be at a plateau, with flatline growth or de minimis growth.

Eventually, the growth chart will show a slow and small decline. If the growth chart for total aggregate VRS minutes is on an upward trajectory, it is a strong indicator that there is waste, fraud, and misuse occurring in the VRS industry. Either way, on the decline slope or an upward trajectory, no real growth is occurring in a saturated VRS market focusing on VRS minutes. This is why the per-minute reimbursement rate, standing alone, is unsustainable over a long term basis.

ENTER THE POTENTIAL MARKET

Under my proposed hybrid approach on VRS compensation, the VRS industry would be incentivized to seek out new users and to grow the VRS market. The VRS industry will seek out a new generation of users, and with it, a new set of minutes to break out of its saturated growth plateau onto an upward trajectory.

The general public will also benefit, as it means more Deaf people are accessing the nation’s telecommunications infrastructure. The Commission will also benefit, as the VRS industry shifts its focus from servicing VRS minutes to VRS users. More importantly, the VRS user ultimately benefits, as he/she will be accessing VRS services on a functionally equivalent basis, choosing from a preferred VRS provider in a competitive marketplace.

Admittedly, I do not know how big this potential market exists. There are numerous barriers to entry for accessing VRS services, chiefly among them the cost and speeds of internet broadband services. While I do not advocate for the TRSBPP, I strongly recommend the Commission extend the Lifeline offering to true high-speed broadband internet services.

¹⁴ Para. 79, FCC 11-184.

THE TOTEM AND THE STOOL

My proposed hybrid approach on VRS compensation only focuses on two components central to VRS providers; the VRS users and their VRS minutes. While this is a good approach, I believe, on adequately compensating and incentivizing VRS providers, I still feel it misses out on one more important component; VP services.

Allow me to illustrate with a totem analogy. My proposed hybrid VRS compensation only has two components, and they are complementary pieces supporting one goal in supporting the VRS industry and its users. That one goal is a singular totem, with the two constituent parts supporting one another. While totems in real life have stood strong for hundreds of years, some of them inevitably fall to the forces of nature. Once fallen, they are difficult to re-raise.

I still feel that VRS users need to have a monthly 'stake' in their VRS/VP services, in accessing the nation's telecommunications infrastructure. This means that the VRS users will have to pay a monthly fee to their VRS providers. In turn, the VRS providers will take care of their entire telecommunication needs, including direct point to point VP calls, video mail messages, and enhanced features such as contacts, conference calling, and much more.

This is akin to a stool, where all three components form a leg each, and work together in unison, servicing the user's entire telecommunication needs on a functionally equivalent basis. A stool, naturally standing alone, lays the foundation for a strong, long life. While it may fall down in response to forces of nature, a single person can easily pick it up and set it upright.

I know this to be a bone of contention, and potentially frustrates the Availability Mandate, as users have not paid for their VP/VRS services since the industry's inception in 2003. Users, knowing that there is a small monthly fee, may quit using VRS services, or

gravitate towards to a single provider at the expense of other VRS providers in the marketplace. Consumer response to monthly fees will be unpredictable.

VERIFYING ACTIVE USERS

This is where my proposed ‘third leg’ of the proposed hybrid compensation approach would shine best. Verifying active users can be a simple task; require VRS providers to have a major credit card on file for each and every user, regardless of whether the Commission requires a monthly fee or not. This way, a ‘third party’ is used to verify the user’s unique existence.

For those users who have poor credit or do not have a major credit card on file, the VRS provider will have to acquire some other means of identifying and sensitive information, such as SSN, residential address, etc. Whenever possible, the VRS providers need to be incentivized to acquire their user’s major credit cards in lieu of sensitive identifying information to verify their status as an active user for FCC compensation.

If the users are required to pay a monthly fee, the VRS providers would collect it in a monthly fashion from their major credit card numbers on file. Moreover, if the users are paying a monthly fee, they can be considered ‘active’ users for the purposes of determining whether that user is active or not. Consumer psychology plays a large part, as the consumer is paying for the service, they are inclined to use the service, and in this case, would make/receive VRS calls.

Adding to consumer psychology, a Deaf user who does not use ASL would not ordinarily sign up for VRS services if he/she has to pay a monthly fee. Still, the Commission should require a standardized narrative form attesting to the user’s eligibility to use VRS, i.e., this user is Deaf, uses ASL on an Intermediate basis, and is an unique user. This form will be collected at time of signing up for VRS services and would be made available for auditing and inspection purposes by the Commission in ensuring integrity of the rules governing active users.

Otherwise, the Commission would tread into difficult territory in determining what constitutes an ‘active’ user, delving into sensitive and identifying information normally withheld from public scrutiny. I encourage the Commission to adopt a simple approach in verifying active VRS users under the proposed per active user compensation scheme by requiring VRS providers to have major credit cards on file for their users, whether a monthly fee is assessed or not, and to collect a standardized narrative form attesting to their user’s eligibility for VRS services.

VRS ENTERPRISE USERS

One proposed suggestion for accommodating VRS Enterprise Users is to have them sign up for Federal Relay Services for their personal telecommunication needs. Federal Relay Services needs to utilize the entire VRS industry in a round-robin fashion in servicing VRS Enterprise User’s telecommunication needs. Some business logic is needed to ensure that VRS Enterprise Users cannot reach their own VRS Enterprise Employer’s VRS services.

With Federal Relay Services handling VRS Enterprise User’s personal telecommunication needs, VRS Enterprise Employers are free to employ any individual for its operations and not view their employees as ‘profit’ or ‘subsidy’ centers, but as valued employees who contribute to its bottom line. It untangles incentivized web of employment arrangements the VRS Enterprise Employers may have for their employees via their personal calls.

This way, the entire VRS industry is responsible for accommodating its worker’s telecommunication needs on a personal basis. The VRS Enterprise Employer is still responsible for accommodating their worker’s business calls. I don’t know if Federal Relay Services is a feasible platform, as round-robin technology needs to be used. VRS employees deserve quality telecommunications service on a fully functional equivalent basis, and have personal security, knowing that their 911 calls will be handled promptly.

THE EFFECTS OF WASTE, MISUSE, AND FRAUD

Allow me to expound on the effects of waste, misuse, and fraud, beyond the obvious impact on the TRS Fund and public confidence in relay services. It misallocates scarce interpreting resources towards the VRS industry at the expense of community interpreting. It undermines public confidence in the interpreting profession as a whole, as salaries skyrocket out of reach of the public and private sector for community interpreting. It endangers the interpreting profession, with interpreters enduring repetitive stress injuries and fatigue resulting from long working hours w/o frequent breaks.

By switching to the proposed per active user compensation scheme, the Commission avoids this scenario. Yes, the fraud, waste, and misuse will still occur; it will simply be on an accounting ledger rather than manifesting in the VRS industry interpreting ranks. Unscrupulous individuals will simply manufacture users in an effort to game the TRS Fund, instead of manufacturing minutes by using interpreters.

Interpreters should not face the pressures in responding to VRS minutes and as a result, face lessened threats to their overall health and career prospects in form of fatigue and repetitive stress injuries. The public and private sectors should not face inflated salaries for these interpreters in community interpreting settings, as the maladjustments distorting these costs will be contained in accounting ledgers. The proposed per active user compensation scheme may even result in more layoffs for interpreters, as the focus shifts upon VRS users in lieu of VRS minutes. This frees up scarce interpreting capital for community interpreting.

THE DOMINANT PROVIDER – ANTITRUST SCRUTINY

Currently, there is an asymmetrical VRS marketplace dominated by one VRS provider, Sorenson Communications. Apparently, the Commission has recognized this dynamic, even

referring to Sorenson as a dominant provider.¹⁵ Moreover, the Commission has made repeated references to competition, at-scale and sub-scale competitors, throughout its 11-184 NPRM in describing the VRS market.

However, I will not characterize Sorenson Communications as a monopoly for the purposes of antitrust law.¹⁶ I cannot emphasize how much potential for market failure this 11-184 NPRM entails for the entire VRS industry. If the Commission goes ahead with a single per active user compensation rate in compensating VRS providers, it will be giving a windfall to the dominant provider, as it already has 100K endpoints, and cripple its competitors simultaneously, as the rest only have 18K endpoints collectively.

The Commission is urged to consider all factors that profit plays into its proposed compensation schemes for the VRS industry. It has to listen to all VRS industry and stakeholders in crafting the final rules reforming the VRS market. It needs to set them with absolute certainty and issue a compensation rate methodology with a three-year rate setting period.

Otherwise, the Commission faces market failure in its VRS market, and invites private antitrust litigation and as well as litigation from the Department of Justice. The Commission is urged to protect competition in the VRS marketplace, and has to craft final rules with this in mind. Otherwise, they are risking antitrust scrutiny and intrusion from outside sources.

CONCLUSION

I thank the Commission in this important undertaking, reforming the VRS industry.

Thank you for your time in reading this comment, and the opportunity to participate. Sincerely,

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¹⁵ Appendix B, Section II. Background, Paragraph 11, page 76 of FCC 11-184 NPRM.

¹⁶ Obviously, other VRS providers may disagree with me.