

Before the
Federal Communications Commission
Washington, D.C. 20554

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

COMMENTS OF CSDVRS, LLC

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COMMENTS OF CSDVRS, LLC

CSDVRS, LLC, d/b/a ZVRS, (“ZVRS”) submits its comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) December 15, 2011 Further Notice of Proposed Rulemaking (“FNPRM”).¹ In the FNPRM, the Commission sets forth proposals which, among other things, would change to a per-user compensation methodology for the provision of Video Relay Services (“VRS”). In addition the FNPRM addresses technology and broadband access to make VRS more available to eligible individuals.

ZVRS applauds the FCC initiatives to enhance VRS access through technology enhancement and broadband access. ZVRS also embraces the critical need to continue eliminating waste, fraud and abuse from the VRS program. However, ZVRS adamantly opposes adoption of the per-user methodology proposed in the FNPRM as an inadequate compensation approach that would cause a drastic setback in progressing relay consumers toward the Americans with Disabilities Act’s (“ADA”) mandate of functional equivalent² telecommunications.³ The proposed per-user methodology would perversely incent discrimination against consumers in the provision of VRS. The positive technology and broadband initiatives proposed in the FNPRM risk being capsized by the

¹ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51 and 03-123; FCC 11-184, 77 FR 4948, (“FNPRM”) (December 15, 2011).

² ZVRS endorses the Consumer Group’s definition of functional equivalency in relay services. *See Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech to-Speech Services for Individuals with Hearing and Speech Disabilities, Public Notice, Notice of Ex Parte Meeting, Consumer Groups’ TRS Policy Statement - Functional Equivalency of Telecommunications Relay Services: Meeting the Mandate of the Americans with Disabilities Act*, CG Docket No. 10-51; CG Docket No. 03-123 (“Consumer Groups’ TRS Policy Statement”) (April 12, 2011).

³ Pub. L. No. 101-336, § 401, 104 Stat. 327, 366-69 (adding Section 225 to the Communications Act of 1934, as amended, 47 U.S.C. § 225).

flood of overwhelming problems the proposed per-user methodology presents and by the new types of waste, fraud and abuse it will create. In these comments, ZVRS offers an alternative reform approach which would compensate providers with a fixed monthly fee per eligible customer for the provision of technology and related services to enable their access to VRS and with a tiered per-minute payment to providers for the provision of interpreting services.

Prior to any change to the compensation methodology, however, several foundational refinements to the VRS program proposed in the FNPRM must be implemented: a more detailed database of VRS users; a plan to help connect TRS users to broadband; the creation of VRS access technology standards; and the adoption of consumer safeguards to maintain and stimulate VRS access and quality and to deter slamming and porting abuses.⁴ Better data about VRS users will enable the Commission to more accurately understand customer usage trends and thus more effectively determine a rate which adequately sustains providers' ability to provide functionally equivalent services. The adoption of a broadband plan and technology standards will increase access to VRS and help VRS providers reach scale. Consumer safeguards will enhance customers experience and spur continuing progress for functionally equivalent telecommunications.

I. Introduction

Unquestionably VRS has been a life changing experience for those who had been left behind in using ubiquitous tools to telecommunicate because their primary language

⁴ See *Structure and Practices of the Video Relay Service Program*, Joint letter to the Commission from CSDVRS, LLC, Sorenson Communications, Inc., Snap Telecommunications, Inc., and Convo Communications, LLC, Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51, 03-123 (The Commission should focus on implementing four key structural issues before considering changes to the compensation methodology) (March 6, 2012).

was American Sign Language (“ASL”). The Commission showed vision and profound commitment to equal opportunity by authorizing VRS as a necessary service to achieve the access requirements of the ADA. The Commission put into place rules and a funding mechanism which created a thriving VRS market of constant innovation, dynamic choices through competition, outreach to new and underserved populations, expansion of connections with employers, businesses, government and places of public accommodation, and an upward trajectory of competent interpreting services progressing towards functional equivalency. As a result, the quality of lives and opportunities for deaf and hard of hearing relay users are at a higher level than ever before.

ZVRS has been an integral part of the success of the VRS program. ZVRS originated from a deaf organization, became the first national provider of VRS and served as a principal catalyst of consumer choice through the provision of a variety of video communication devices and programs. ZVRS has innovated in bringing videophones and VRS for deaf and hard of hearing individuals to businesses and government, resulting in new jobs and increased organizational efficiency. In implementing its industry-leading innovation, ZVRS was able to bring videophones and VRS to deaf and hard of hearing employees of numerous Fortune 500 companies and governmental agencies, many of whom previously would not approve access to VRS because of firewall and security concerns. At a considerable expense, ZVRS innovatively engineered an acceptable solution. In addition, ZVRS implemented the first “soft” videophone for use on a Mac, iPad, iPhone, Android mobile phone and Tablet. ZVRS committed to providing customers only high quality 100% certified video interpreters (“VIs”). ZVRS has helped change the lives of deaf and hard of hearing individuals with a focus on deaf and hard of

hearing individuals in the workforce, and such accomplishments could not have been achieved without the tiered per-minute rate.

Sadly, the tremendous strides and breakthroughs in VRS have been sullied by the fraud and abuse of some individuals and entities. ZVRS commends the Commission's efforts in eradicating waste, fraud and abuse within the industry, and is fully supportive of continuing reform initiatives that are necessary to ensure the long term health of the VRS program. To date, the Commission has done a phenomenal job in actual savings to the TRS Fund as a result of its reform and enforcement efforts.⁵

At the same time, reform efforts must occur in the reality that despite its initial tremendous success for consumers, VRS is still far from fully functionally equivalent experience for them. Much too often, deaf people are stymied by linguistic, cultural and technology barriers in using VRS, making telecommunications less accessible and effective for them as compared to hearing individuals using their telephones. This VRS reform rulemaking can and will affect the precepts of functional equivalency as applied to relay consumers. ZVRS agrees entirely with the view of stakeholder organizations that the ADA's mandate of functional equivalency must serve as the prevailing standard for assessing any action considered, proposed, or taken with respect to VRS.⁶

II. The Proposed Per-User Methodology is Unsustainable

The proposed per-user rate suffers from a variety of infirmities. The most fundamental flaw with the proposed rate methodology is that it seeks to compensate

⁵ See *Statement of Chairman Julius Genachowski*, Hearing on "The Budget and Spending of the Federal Communications Commission," U.S. House of Representatives, subcommittee on Communications and Technology, ("We reformed our Video Relay Service Program, which provides vital communications for people who are deaf or hard-of-hearing, saving \$250 million without reducing availability of service.") (February 16, 2012).

⁶ See Consumer Groups' TRS Policy Statement at page 1.

providers with a set per-user fee for a service where costs generally vary based on usage. As such, the per-user fee violates long standing rate making methodology that holds that compensation should be directly related to cost causation. As a result, adoption of the proposed per-user rate will cause a variety of negative consequences, among them discrimination against individuals who utilize the service frequently, a decline in the technology available to access VRS, a decline in the quality of interpreting service, longer wait times, and a decrease in competition among providers.

A. A Flat Rate is Incompatible with the Variable Costs of Providing VRS

The Commission has long recognized that VRS costs fall into three categories: fixed, semi-variable, and variable. Thus, the annual relay reporting form providers must submit to the TRS Fund Administrator breaks relay costs down into these three categories. The costs of VRS are predominately variable, not fixed nor semi-variable. Thus, the application of a per-user compensation scheme for VRS, as if costs were fixed per user, is irrational and contrary to long recognized experience.

The single largest expense in providing VRS is the labor costs of interpreters. All other necessary expenses pale in comparison to the interpreter costs. This is true without regard to whether a VRS provider is servicing five thousand minutes of VRS per month or five million minutes a month. Interpreter costs are directly related to the amount of minutes a VRS provider handles.

As an example of the scale of interpreter costs, if we assume an overall 50 percent utilization level, and we further assume that the average interpreter cost per hour, including benefits, is \$70, then it can be seen that the per minute cost of interpreters alone

(excluding all other interpreter-related costs such as real estate expenditures, network connections and support team) for a provider would be in the order of \$2.33.⁷

Moreover, virtually all other VRS costs vary to one degree or another in proportion to usage. To be sure, the five thousand minutes a month VRS provider or the one hundred thousand minutes a month VRS provider has a higher proportion of fixed costs than the five million minutes a month provider. This is because the smaller and startup providers have not yet reached an economy of scale and must establish a minimum level of personnel and equipment that is not as efficient as a scale provider.

But for all providers, big or small, as usage increases, more interpreters have to be hired, more equipment has to be bought, additional call centers have to be opened, and more human resources personnel and management must be hired. Additional effort must be put into ensuring regulatory compliance, more customer service personnel must be hired, more finance and accounting personnel must be retained, and more engineering personnel are required to maintain the provider's network up and operational. More telephone trunks must be ordered and larger internet access lines must be in place. The key driver of all of these costs is traffic, the actual minutes of VRS use. The largest of those costs are the interpreters who must be in place to service the increased traffic, be equally available during peak calling times and overnight/weekend shifts 24/7/365 and meet the Commission's required speed of answer.⁸

⁷ At a 30 percent utilization level, typical of a non-scale provider, the per-minute cost of interpreters alone would be \$3.88.

⁸ It is noted that the demand for VRS has been causing VRS interpreter salaries to increase substantially in excess of what might be expected from inflation alone. *See, e.g. ASL Interpreters in Short Supply at CSUN, Daily Sundial* (September 7, 2005), available at: <http://sundial.csun.edu/2005/09/aslinterpretersinshortsupplyatcsun/>.

Per-user rates are possible where costs do not vary substantially based on usage. The prime example of such would be local loop telephone service. The twisted pair is there and available for service without regard to how much traffic the customer places on the network. But that model is plainly inapplicable to VRS where costs vary directly based on usage.⁹ It is a fundamental principal of rate making to match cost recovery to cost causation. By attempting to arrive at a per user rate, unrelated to actual usage, the FNPRM promises to create a host of discontinuities which will adversely impact functional equivalency and the VRS user community.

B. The Per-User Proposal is Not Aligned with Actual Operating Costs

ZVRS emphasizes that the factored costs in the proposed per-user compensation methodology are unrealistic and do not include all the elements needed to operate a VRS company. It appears that the proposed rate calculation calls for a four dollar per-minute equivalent rate for VRS interpreting, required associated technologies and support services. ZVRS and other providers will simply fail at that rate or anything remotely close to that level of compensation. The implication in the FNPRM that the provision of customer premises equipment (“CPE”) and interpreting are exclusively the basic costs involved in VRS is perplexing. ZVRS has spent considerable time outlining our organization, which includes among other things platform engineering and support, CPE engineering, finance and legal support, customer and installation support, outreach, and

⁹ See *Structure and Practices of the Video Relay Service Program, Ex Parte* of CSDVRS, LLC, CG Docket No. 10-51 (“unlike telecommunication service providers which costs per customer remain approximately the same regardless of the volume of telephone calls made by the customer, the costs of video relay providers per customer are wholly tied to the volume of VRS calls made by the customer due to the need to compensate video interpreters for their time worked”) (July 21, 2011).

human resources.¹⁰ Interpreting centers require real estate expenditures, network connections and quality backbone networks as well as multiple high-end technology products and the team to support them. As stated by the Commission, “[p]roviders are entitled to their reasonable costs of providing service consistent with the mandatory minimum standards, as well as an 11.25% rate of return on capital investment....”¹¹ A cost structure such as the one proposed in the FNPRM which fails to cover essential operating expenses gives ZVRS great pause why it should continue in operation when it has invested tens of millions of dollars and gained no return in its five years of operations.

1. iTRS access technology cost. The example in Appendix C of the FNPRM provides an estimate of \$650 every two years, or \$27 per month for the cost of iTRS access technology and installation.¹² ZVRS’ iTRS access technology cost is significantly higher. It includes not only the phone and installation cost, but also routers, flashers, shipping charges, training, test, travel, repair and replacement costs. Point to point video calls also require infrastructure support. If the cost is to be reimbursed over two years, then there is an inconsistency with the FNPRM’s proposed one year commitment period. In addition, the FNPRM calculation does not factor in months when the customer is not “active” (i.e., generating no VRS minutes). The proposed calculation reimburses costs only to the “active” customers on a monthly basis. In our industry, it is typical for a

¹⁰ See, e.g., *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Ex Partes of CSDVRS, LLC*, CG Docket Nos. 10-51 (PowerPoint presentations detailing corporate costs) (September 2, 2011, February 1, 2011 and April 29, 2010).

¹¹ FNPRM, Appendix C, FN 8, citing *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20161, para. 49 (footnote omitted); see also *2004 TRS Report & Order*, 19 FCC Rcd at 12542-45, paras. 177-182.

¹² FNPRM Appendix C, para. 15.

customer not to use VRS services for a month or more during any given period. Under the proposed formula, for the months VRS is not used, the costs of serving a customer will not be recovered. This will undercompensate providers. The Commission should account for all the costs associated with providing VRS access technology to a customer during the commitment period for all users (including those who did not use VRS in a given month), not just active users.¹³

2. G&A costs. The proposed rate methodology for general and administrative expenses (“G&A”) is similarly flawed.¹⁴ Assigning a margin above the direct interpretation (“CA”) and iTRS technology costs to cover indirect costs is over simplified (example: $40\% * (\$175 \text{ CA cost} + \$27 \text{ iTRS cost}) = \$81 \text{ G\&A cost per active customer}$). Simply assigning a percentage to CA and iTRS costs does not confirm that all G&A costs are being covered. G&A costs are the fixed and semi-variable costs of running a business, above and beyond the CA and iTRS technology costs. G&A costs include, among other things, platform engineering and support, CPE engineering, finance and legal support, customer support, outreach, and human resources. In addition, interpreting centers require real estate expenditures, network connections, technical interpreting products and support personnel. It is critical to understand all the indirect costs associated with running a business and how they relate to the size of the business. As size increases, G&A costs increase, but at a slower pace, until economies of scale are reached. The Annual TRS Provider Data Request Forms clearly identifies “Administrative Expenses” (“G&A”). In addition, the FCC Office of Inspector General is in the process of performing an audit of

¹³ We note that the ZVRS’ hybrid approach discussed below excludes a monthly compensation per-user for a customer inactive on VRS or point to point calling during that month as a means to prevent fraud in registering individuals who do not need to use VRS or point to point calling.

¹⁴ *Id.* at para. 17.

company-wide expenditures for all the providers. This procedure, as well as reviewing the Annual TRS Provider Data Request Forms and the data from the proposed enhanced database of VRS users, should be used to obtain an in-depth understanding of the costs and how to apply them to the proposed rate setting exercise. It does not appear that the FNPRM is predicated on such an assessment.

C. The Proposal will Incent Discrimination and New Types of Fraud

If the proposed per-user compensation methodology is adopted, ZVRS submits that the Commission would, for the first time, incent discrimination against consumers in the provision of VRS, flying in the face of the purpose of the ADA, its implementing TRS regulations, and years of Commission dedication to the communications needs of deaf and hard-of-hearing individuals. Because interpreting is the largest variable expense in providing VRS, a per-user methodology would perversely motivate VRS providers to seek only those customers doing very low volume of minutes and to perform in a manner which obstructs or shortens customers' calls. In addition, certain types of consumers take significantly more time in making relay calls due to their specific communication methods, styles, needs, and disabilities, and those people will also be directly negatively affected by the proposed compensation modification. For example, those VRS users who are elderly, those who are deaf-blind, those who primarily speak in a foreign language such as Spanish, those with limited ASL or English proficiency, those students who use relay to participate in distance learning and those with secondary or multiple disabilities would all be adversely effected by a per-user compensation methodology as they all require more time to communicate through VRS.¹⁵ The FNPRM addresses only a single

¹⁵ At this time the demography of deafness and ASL use is largely unknown, *see e.g., How Many People Use ASL in the United States? Why Estimates Need Updating*, Ross E. Mitchell, Travas A. Young,

category of a high quantity user - those who use VRS as part of their business or work - but leaves exposed to unequal treatment other types of customers whose more intensive VRS use requirements place them outside the circumscribed parameters of the “average” VRS customer used as the basis to determine per-user compensation. This outcome is inapposite to the ADA’s precept of attacking discrimination in creating accessible telecommunications.¹⁶ Under the current per-minute reimbursement plan, every VRS customer is served uniquely when they make a call without regard to their type, how they use VRS or the length of their call.

The experience of ZVRS in the VRS industry leads us to firmly believe that the per-user proposal will ultimately lead to a drastic reduction in the quality of service, invidious discrimination, and several new kinds of fraud and abuse. Some examples of possible new improper schemes incited by the per-user approach are:

- Providers will avoid heavy volume users;
- Individuals will seek to obtain multiple IDs for the same person;
- Providers will delay remedying customer issues in accessing VRS;
- “Outreach” is conducted to ensure one qualifying call a month; and
- Bounties are paid for “customers” who are deaf and hard of hearing children, have limited or no ASL-proficiency, primarily use CapTel and other low incidence VRS users.

Bellamie Bachleda, and Michael A. Karchmer, Gallaudet Research Institute Gallaudet University at http://research.gallaudet.edu/Publications/ASL_Users.pdf. However, a number of identified risk factors have been associated with deaf and hard of hearing people including low socioeconomic status, being a member of a minority community or being from an environment where the spoken language in the home is not English, lack of access to appropriate education, and secondary disabilities. *See, e.g.,* Long, G., Long, N., & Ouellette, S. (1993). Service provision issues with traditionally underserved deaf. In O. Welch (Ed.), *Research and practice in deafness*. Springfield, IL: Charles E. Thomas.

¹⁶ Indeed the Commission proposes to prohibit discriminatory practices caused by per-user compensation, *see*, FNPRM at paras. 101, 104.

This would be a setback to the considerable progress made by the Commission and Department of Justice in weeding out and eliminating fraud in the VRS industry. The Commission has the ability to spot anomalous calls, to withhold funds, and the demonstrated willingness to enforce and prosecute fraudulent actors and outliers. We believe that fraudulent activities have greatly abated in the past year, that the regular audit processes and whistleblowing procedures serve to tamp down fraud, and that certain modifications to the current rules will clear up any grey areas without the need to completely restructure the industry in a way that portends harm to consumers. In any event, there is simply no escaping the need for accurate reporting of VRS call data. Policing against fraud and discrimination would necessitate the Commission to continue requiring VRS providers to report call data including their length (“minutes”) to detect unlawful and impermissible use of VRS.

D. The Proposal will have a Detrimental Impact on Functional Equivalency

One of the reasons the FCC adopted VRS was that it represented a truly functionally equivalent form of telecommunications as envisaged by the ADA with the use of sign language in VRS being akin to using voice in regular telephony.¹⁷ As a result, VRS has been adopted by a steadily growing number of ASL signers for an increasing length of time of use in catching up with the much higher level of telephone use of hearing callers. Consequentially deaf people now have greater opportunities than ever before through VRS to participate in employment, education, commerce, recreation and other aspects of society, all as envisioned by the ADA. Deaf people have just begun to

¹⁷ The conversation speed as measured in words per minute (“wpm”) have been assessed as an average of 170 wpm for voice calls, 30 wpm for text relay and 150 wpm for VRS, *see*, Lewin, D.; Glennon, B. & Hoemburg, B. (July, 2009). *Voice telephony services for deaf people: An Independent report for Ofcom*, Plum: London. http://www.ofcom.org.uk/research/telecoms/reports/voice_telep/voice_telep.pdf

emerge from the shadows of exclusion and dependence on others as they experience the benefits of accessible telecommunications. VRS has helped turn on a bright light in deaf and hard of hearing people's lives and it is because of this emancipation that they are passionate about and vigorous in ensuring that the VRS program continues undiminished.

Although deaf people are experiencing the tremendous value of VRS, they will also describe a multitude of challenges that continue to make VRS less than a fully functionally equivalent service. Frequently ASL signers encounter a video interpreter whose unfamiliarity with the caller and the conversation context adversely impacts the effectiveness of the communication.¹⁸ Moreover, the compatibility issues of culture, signing skills and subject matter unacceptably cause deaf and hard of hearing people to become reluctant in fully participating in VRS or become atypically reticent during a VRS conversation. Far too many deaf and hard of hearing people prematurely terminate their VRS calls because of the sense that the level of communication is misrepresentative or inadequate. If the greatest aspiration for VRS is to allow deaf people to order pizza from home, then perhaps we could consider our work complete. However, because deaf and hard of hearing people and their families look for more in life, we must continue our diligence in fulfilling the ADA's mandate for them.

In such a context, it is paramount to consider how the rate methodology adopted in this proceeding will ultimately impact functional equivalency objectives. It is undisputed that the per-minute compensation approach has served as the fundamental means for the tremendous progress experienced in video interpreting services and technology. The fact we are not fully where we need to be in that progress is attributed to

¹⁸ See discussion on Consumer Safeguards, *infra*.

the need for more time and service/technology refinements, not due to any deficiencies in the existing funding mechanism.

In contrast, the FNPRM contains no substantive examination of the proposed per-user compensation methodology's impact on the ability to progress towards full functional equivalency, or even for that matter to maintain the current level of services and technological innovation. The level of VRS compensation from the proposed per-user rate is significantly lower than the current rate. This makes it safe to assume that the adoption of even a moderate approximation of the per-user rate will substantially slash provider capability to innovate and refine service and technology offerings. The uncertainties associated with the per-user approach will require VRS providers to discard their institutional experience with budgeting and allocating costs and usher in a chilling effect on their investments in VRS until tangible outcomes from the radically new rate structure are fully realized and understood. Even in the best case scenario, where the per user rate is sufficiently commensurate to the current per minute rate, the mechanisms inherent in the per user methodology will serve as a powerful incentive to provide relay customers with only the most minimal level of service and technology necessary to maintain their eligibility for compensation, rather than seeking to provide them with superior service and technology to support a fully functionally equivalent calling experience.

III. Crossing the Chasm – Transitioning to a New VRS Market

While on balance the VRS program has been overwhelmingly successful, we must also acknowledge and address significant challenges to the program. In addition to the issues with waste, fraud and abuse, the lack of sufficient consumer data, the

insufficient incentives for consumer commitment to providers causing constant consumer migration, the incomplete structure to grow providers to scale or exit the market as non-competitive, the slow progress towards functional equivalency, and the inadequate support of VRS access technology all have caused serious inefficiencies in the VRS program. ZVRS believes that we must continue careful and measured reform to the VRS program while ensuring that the gains to date are not lost in any changes. This work will require a structured collaboration between regulators, industry and relay stakeholders in methodologically assessing and determining the best approaches for the VRS program.

To that end, ZVRS offers a hybrid approach where relay consumers select a default provider to provide them with technology access to VRS (“VRS Access Provider”) and select a default provider to provide the interpreting of their VRS calls (“VRS Interpreting Provider”). Providers would be compensated by a monthly fixed fee per-user as a customer’s VRS Access Provider and would be compensated per-minute for video interpreting services. This approach would deter waste, fraud and abuse by concentrating providers on serving customers, motivating their delivery of quality interpreting services and innovative VRS access technologies and enhancing the efficiency of the expenditures from the TRS Fund.

A. A Hybrid Approach: Selecting a VRS Access and Interpreter Provider

A severe inefficiency of the VRS program is the ability of providers to “piggyback” on the VRS access technologies of a few providers without the need to make similar scale investments in innovating and making available technology for their customers to use VRS. This “disincentive” has led to great disparities in providers’ cost per customer, caused certain providers to focus on generating minutes using other

providers' technologies rather than concentrating on servicing their customers, and contributed to the inertia of some providers in creating fully interoperable CPEs or enabling their full functioning after a consumer ports to another provider.

At the same time it is also inefficient for providers to require the allocation of limited resources for both access products and interpreting services which may have been historically imbalanced in favor of technology as a matter of need to be fully operational and minimally compliant with TRS rules. Furthermore, the Commission expresses at length in the FNPRM its concern about consumers becoming effectively "locked in" to a particular provider because of its technology offering regardless of the quality of its interpreting services.¹⁹ ZVRS agrees that this is a serious problem.

ZVRS proposes to resolve those competing and conflicting inefficiencies by creating a balanced system where eligible VRS consumers select and register a default VRS Access Provider responsible for accomplishing the customer's access to VRS and a default VRS Interpreting Provider to supply the interpreting for the customer's VRS calls. ZVRS notes that it is not making a novel proposal in response to the FNPRM, but rather has proposed in the past iterations of this approach specifically to address waste, fraud and abuse, promote functional equivalency, enhance consumer choice, and increase VRS marketplace competition.²⁰ We also note that Consumer Groups have been considering a hybrid system similar in that default providers would be paid a flat rate per-user for "non-traffic-sensitive or variable costs" and per-minute reimbursement for their

¹⁹ See FNPRM at paras. 16-18.

²⁰ See e.g., *Structure and Practices of the Video Relay Service Program*, CSDVRS Petition for Rulemaking on CPE Support and Portability, CG Docket No. 10-51 (proposes to require the maintenance of full CPE functionality for a monthly fee in the event a customer ports the number associated with the CPE to a different default provider.) (August 9, 2010).

provision of interpreting.²¹

The VRS Access Provider would be responsible for the provision and support of the customer's technology access to VRS. The value added access to VRS made available by the VRS Access Provider to the customer is much greater than the cost of the CPE and the associated phone number but also includes installation, training, support, maintenance, network and platform operations, engineering (including ensuring interoperability), failed unit repair and replacement, testing and other related services. The VRS Access Provider is responsible for telephone number acquisition and provisioning, populating the iTRS database, ensuring that the customer's address is correct for E911, and routing their emergency calls. The VRS Access Provider should be charged with handling their customers' 911 dialed calls as the best way to ensure that the customers' access to VRS is kept up to date and in constant good working order. All VRS Access Provider CPEs must be fully interoperable with the CPEs and networks of all other certified VRS providers.

The default VRS Interpreting Provider would automatically receive all direct dialed VRS calls (except for 911 calls) regardless of the telecommunications equipment used by the caller to place the call. The VRS Interpreter Provider would solely focus on providing consumers with the interpretation of their calls.

Customers may register different providers to be their VRS Interpreting Provider and VRS Access Provider. If a customer's VRS Access Provider is not also selected as his or her VRS Interpreting Provider, the VRS Access Provider would be required to

²¹ See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Ex Parte of Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, and the Association of Late Deafened Adults, Inc.*, CG Dockets No. 03-123 and 10-51 (March 5, 2012).

direct all of the customer's calls (with the exception of dialed around and 911 dialed calls) to the default VRS Interpreting Provider. VRS Access Providers must have a robust platform to support interoperability and wide area networking to deliver a call successfully to the default VRS Interpreting Provider. The VRS Access Provider must also maintain its non-network features (such as video mail, address books and caller ID) upon a customer selecting a different VRS Interpreting Provider. Dialing around to a different VRS provider than the default VRS Interpreting Provider would be permitted and the VRS provider that interpreted a dialed around call would submit the call detail record for compensation.

Under the hybrid approach, VRS Access Providers would be compensated a fixed monthly amount per-user for the support of VRS access technologies for that customer. Customers are limited to selecting one default VRS Access Provider and the selected default VRS Access Provider is limited to only one payment per-user. The interpretation of compensable VRS calls, whether as a default VRS Interpreting Provider or handling a dialed around VRS call, would continue to be paid on a per-minute basis.

VRS Access Providers may offer their customers as many CPEs as they determine. This will allow customers to receive more than one CPE from their default VRS Access Provider. VRS Access Providers may provide additional CPEs for their customers who require them at their workplaces or at different locations. In addition, eligible individuals would have the option of subsequently obtaining additional CPEs offered by a different and non-default VRS provider for a variety of reasons and individual needs by purchasing, downloading or otherwise procuring them from the non-default VRS provider. A VRS provider would not be compensated from the TRS Fund

for providing a CPE to a customer who has registered with a different default VRS Access Provider, only for any interpreting services handled through a VRS call. Entities such as employers, businesses, government agencies and places of public accommodation may purchase or otherwise obtain CPEs from VRS providers for their deaf and hard of hearing employees, constituents or customers but the VRS provider would not be compensated per-user unless the customer has selected the provider as their default VRS Access Provider. Customers using a CPE obtained from a VRS provider other than their default VRS Access Provider must register with a VRS Interpreting Provider the phone number associated with the CPE to gain access to VRS, 911 and point to point calling through a number registered in the iTRS database. Any CPEs offered by VRS providers must be fully compliant with the Commission's interoperability requirements, otherwise the VRS provider should become ineligible for compensation.²²

As proposed in the FNPRM, a commitment period would be required.²³ ZVRS supports a one year commitment period for both VRS Access and Interpreting Providers. We propose an initial six month outreach period to relay consumers to provide them with an opportunity to learn about the selection program and the available products and interpreting services²⁴ followed by a six month default registration period to select their VRS Access and Interpreting Providers. These time periods could include outreach about the TRS Broadband Pilot Program and registering eligible individuals for broadband support. ZVRS recommends that deaf organizations be contracted to help provide

²² See generally, *VRS Interoperability Declaratory Ruling*, 21 FCC Rcd 5442.

²³ FNPRM at paras. 83-84.

²⁴ The outreach period should be limited to educating consumers, no default provider selections should be permitted during this period.

outreach given their intrinsic knowledge of the targeted population and experience in communicating with consumers. ZVRS also recommends that the registration be administered by an independent non-provider affiliated entity to ensure that consumers get the benefit of equal access to information about their registrations and to mitigate the possibility of fraudulent registrations or impermissible incentives to register. The commitment period would save the costs associated with continual outreach to consumers solely for the purpose of churning them from one provider to another. We also believe the Commission would see a rapid decrease in complaints related to the marketing practices of competitive providers saving time and resources.

In addition to the continuing availability of dialing around to preserve consumers' free choice of interpreter providers at any time, consumers would have the ability to port his or her existing phone number to and/or receive access technology from a different VRS Access Provider after the commitment period ends. This system will spur the quality of interpreting services and product innovation. To win customers, providers will be driven to make a robust offer of VRS access technologies and related support services and similarly make a robust offer as to the quality of interpreting. Consumers will see multiple fixed and soft phones available to meet their needs and a dramatic uptick in the quality of interpreting to win their business through their commitment. At the same time consumers will continue to be able to dial around and use a different VRS provider when average speed of answer becomes too long, they wish to use a different service from a specific provider (such as Voice Carry Over ("VCO")), or they are simply not satisfied with the quality of the interpreting received from their default VRS Interpreting Provider.

Finally, the hybrid approach would enable a seamless transition to the use of off-the-shelf technology²⁵ while maintaining the availability of robust video interpreting services.

B. Funding VRS Access and Interpreting Services

As an initial matter, it is essential that the Commission develop and collect accurate data about consumer usage trends from an enhanced database to set appropriate rates. It is only through this necessary data that adequate reimbursement levels for any new rate methodology, including the hybrid model, may be reasonably determined.

Hypothetically, assume that 8,800,000 minutes were generated in January 2012 by 125,000 VRS users. Under the current compensation plan, VRS providers would be reimbursed approximately \$46,640,000. Applying a hybrid rate methodology for the same pool of VRS users, default VRS Access Providers would be reimbursed \$6,750,000 (\$54 per month per-user²⁶). At that \$54 per-user rate, ZVRS proposes a reimbursement rate for interpreting of \$5.5143 per-minute up to 750,000 minutes per month (Tier I) and a per-minute reimbursement rate of \$4.20 per-minute in excess of 750,000 minutes per month (Tier II). Total compensation under the hybrid methodology would be approximately \$12,131,000 for Tier I and \$27,720,000 for Tier II. The total reimbursement amount under the hybrid methodology using ZVRS' proposed figures would be \$46,601,000 which would be below the total payment using the current compensation plan.

²⁵ See 47 U.S.C. § 617(a) and (b), Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Pub. L. No. 111-260, 124 Stat. 2751 (2010) (requiring that advanced communications services – which include interoperable video services – and equipment for such services be accessible to and useable by individuals with disabilities).

²⁶ The FNPRM estimates in Appendix C para. 15 \$27 a month for iTRS access technology over a two year period, but however given the proposed commitment period of one year, and accounting for the actual true costs and challenges in providing technology access, it is our view that that the Access Provider should be reimbursed \$54 per month per-user.

The tiered rate structure, which the Commission, providers and consumers have vigorously promoted, was recently upheld by the 10th circuit.²⁷ It has been the foundation for the growth and development of competition and consumer choice. The tiered rate structure has been described as a tremendous success story which has “accomplish[ed], among other things, shorter hold times, clearer video displays and connections, higher quality video interpreting, the establishment of a ten-digit numbering system, automatic 9-1-1 services, new videophone hardware and application software, video mail, expanded video technology installations in businesses, workplaces and public places, and enhanced features for video dialing and connections.”²⁸ ZVRS has described in detail the life-changing new and enhanced technologies and the highly qualified fully certified VI workforce made possible by the tiered rate plan.²⁹ Rates should remain tiered under the hybrid approach to achieve a rate structure which reasonably compensates smaller providers by “more accurately correlat[ing] with their actual costs”³⁰ as they grow to scale. By reasonably compensating smaller providers, tiered rates also minimize any incentive for fraud or abuse due to inadequate funding while providers transition to scale. Tiered rates also help ensure that the dominant provider is not “overcompensated due to

²⁷ *Sorenson Communications, Inc. v. FCC*, 659 F.3d 1038 (10th Cir. 2011).

²⁸ *See Written Ex Parte: Structure and Practices of the Video Relay Service Program*, Joint letter to Chairman Genachowski from CSDVRS, LLC, Snap Telecommunications, Inc., Purple Communications, Inc., AT&T Services, Inc., and Convo Communications, Inc., CG Docket No. 10-51 (“offered in further support of the tiered rate reimbursement methodology”) (January 21, 2011).

²⁹ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Comments of CSDVRS, LLC, CG Docket Nos. 10-51 and 03-123 (May 16, 2011).

³⁰ *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 (2007), as corrected by Erratum, DA 07-5089, 22 FCC Rcd 21842 (2007).

economies of scale.”³¹ Although we support continuation of tiered rates, the evidence of record, specifically the record that led to the adoption of the 2010-11 VRS rates, now shows that contracting the tiers from three to two would better align compensation to costs.³² That evidence showed that small and medium size providers have substantially similar cost structures; hence the Commission adopted for compensation of VRS in 2011-2012 Tier I and Tier II rates which varied by only.0055 cent per-minute.³³

If the per-minute tiers are kept at the same level as they are today, ZVRS proposes two tiers for VRS Access Providers for the same reasons as discussed above. For VRS Access Providers, we suggest a payment of \$70 per month per-user up to 25,000 customers (Tier I) and a payment of \$50 per month per-user above 25,000 customers (Tier II). These figures would provide approximately the same totals of \$6,750,000 as provided in the hypothetical above. Alternatively, the Commission could choose to widen the per-minute tiers instead of employing a two tiered approach for VRS Access Providers. Once the enhanced database is established and customers select their default providers, the Commission can conduct accurate cost modeling to set the appropriate rates in the future.

We concur with the FNPRM that the qualifying threshold for per-user compensation for VRS access should be an individual who makes at least two minutes of outbound calls per month – either VRS or point to point -- to parties who are not affiliates

³¹ *Id.*

³² See generally *Telecommunications Relay Services & Speech-to-Speech Services for Individuals with Hearing & Speech Disabilities*, 25 FCC Rcd. 8689 (2010).

³³ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program*, Order, CG Docket Nos. 03-123 and 10-51, FCC 11-104 (June 30, 2011).

of any VRS provider during that month.³⁴ We emphasize the need to support outbound point-to-point video calling as an eligibility criterion in addition to VRS use. The two minute minimum will help to mitigate fraud in signing up customers who are not deaf or hard of hearing, who do not communicate in ASL, or who do not intend to use VRS. Allowing point-to-point calling as an eligibility criterion will lessen the incentive for providers to drive customers' use of VRS for calls they would not otherwise make.

It is imperative for the Commission to provide the right rate mechanism to enable providers not only to provide an adequate level of service, but to continue to support competition and innovation. The variable cost of interpreting is too large a factor to obviate the need to pay by the minute and to avoid discrimination against those who use VRS frequently. There is simply no way to avoid counting usage as a critical element of compensation for VRS.

Use of a per-minute compensation rate for VRS will not encourage fraud or abuse. It must be noted that much of the abuse the Commission uncovered arose from certain providers exploiting ambiguities in the rules, most notably the lack of a clear prohibition on the billing of internally generated minutes as well as a lack of a history of strict enforcement of the rules concerning permissible marketing and outreach. The Commission has now firmly addressed these issues and has instituted strong structural safeguard to further prevent abuse. With strict enforcement and the addition of these structural safeguards, the Commission has done an outstanding job of remedying the conditions that led to fraud and abuse. Elimination of per-minute compensation is

³⁴ FNPRM Appendix C, para. 9.

unlikely to add any appreciable deterrence to abuse; yet, it would create serious impediments to continued functional equivalency.

The proposed hybrid approach would provide a stable and predictable multi-year rate plan which would sustain both the integrity of the TRS Fund and provider capacity for the delivery of high quality interpreting services. As a general matter of rate methodology, compensation should align with cost causation. The hybrid approach follows this long standing rate setting methodology. The per-user access rate compensates the generally fixed costs a provider incurs in providing the consumer access to VRS: the capital and personnel structure necessary to allow the consumer to make a VRS call. An appropriate analogy to the public switched telephone network would be the customer's local wired loop to the telephone end office. The per-minute interpreter rate element compensates the VRS provider for variable costs incurred in actually handling the consumer's traffic. That may be five minutes of VRS use per month in the case of a light user, or in the case of a heavy business user several thousand minutes per month.

Both per-minute and hybrid per-user/per-minute rates are commonplace within the telephone network. Most interexchange carriers have rate plans based on the hybrid approach, a fixed access fee and per-minute usage charges. Indeed, virtually all utilities, gas, water and electric are compensated through a combination of a fixed per-user charge and a traffic sensitive charge because, like VRS, these providers have both fixed access costs and variable costs based on usage.

ZVRS recommends that any change in VRS compensation must be transitioned in a way which protects the service and consumers. To do this, tiered rates must be maintained to allow for stable and predictable funding to ensure quality service while the

VRS market undergoes the significant changes contemplated in this proceeding. Extending the tiered rate structure into the next funding year will help ensure a stable and predictable funding mechanism which will balance the objectives of progressing toward an ADA-compliant level of relay services and ensuring that providers have the opportunity to realize a fair and reasonable return.

We are steadfast in the view that the tiered rate is a proven methodology for sustaining the enormous progress made to date toward functional equivalency. The Commission should not imperil this progress with a new untried rate structure at this critical juncture in VRS reform. The Commission has accomplished significant reforms under the current tiered per-minute rate structure and should continue with that rate structure as it implements VRS access and consumer protection measures while compiling the consumer data necessary for a fair and reasonable rate.

Since the Commission would be adopting a novel funding mechanism without peered modeling regarding impact, it is imperative that any compensation plan change be implemented only after a minimum one year period where the current methodology and any new plan are run concurrently, using the current methodology for payment and using the reporting and results of the new plan to measure fairness and accuracy while in an implementation phase.

C. Commission Authority to Fund VRS Access Technology

Although stating it does not intend “to alter our prior decision that [VRS] equipment costs are not ‘costs caused by interstate telecommunications relay service,’”³⁵

³⁵ FNPRM at para. 51, citing *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Memorandum Opinion and Order*, 21 FCC Rcd 8063, para. 17 (2006).

the FNPRM asks whether the “availability” mandate in Section 225(d)(3) of the ADA³⁶ gives the Commission authority to use the TRS Fund to support access technology for VRS users, and whether establishing an “explicit compensation for iTRS access technology would help further the goal of ensuring that TRS is “available, to the extent possible and in the most efficient manner?”

The history of consumer adoption of VRS supports both the authority of the Commission to use TRS Fund monies for consumer access technology and the wisdom of that approach. Congress directed the FCC to “ensure” that TRS is “available, to the extent possible and in the most efficient manner, to [deaf and hard of hearing] and speech-impaired individuals in the United States.”³⁷ That is a broad grant of remedial authority to address the historic lack of access deaf and hard of hearing persons have had to functionally equivalent telecommunications. It is plainly sufficient to allow the FCC to take steps to ensure consumers have the means to access VRS. Moreover, Congress further directed the FCC to ensure TRS users paid no more to use TRS than users of the telephone network generally.³⁸ Achieving that result for VRS is problematic without addressing equipment costs. VRS requires a high speed data-line, considerably more expensive than a basic telephone local loop, often called a POTS line.³⁹ It also requires a videophone or equivalent equipment (such as a personal computer equipped with a video camera), again costing considerably more than the equivalent landline telephone. In light

³⁶ 47 U.S.C. § 225(d)(3).

³⁷ 47 U.S.C. § 225(b)(1).

³⁸ 47 U.S.C. § 225(d)(1)(D).

³⁹ POTS stands for “plain old telephone service.” In fact the standard access modality for VRS is a digital subscriber line (“DSL”), which is provided on top of a POTS line. Thus, users of VRS generally pay for both a POTS telephone line and a DSL, in essence paying more than double for access to VRS compared to basic telephone service.

of these facts, the authority from Section 225(d)(1)(D) is plainly sufficient to allow the Commission to institute a program to subsidize from the TRS Fund the equipment necessary to allow access to VRS at a cost comparable to that which the public in general pays to access the telephone network.

The phenomenal growth and acceptance by deaf and hard of hearing persons of VRS did not occur until the widespread availability of videophone equipment and software specifically tailored for VRS provided free or at very low cost from providers. Prior to 2003, consumer use and acceptance of VRS was limited. Although videophones and video software were commercially available, their expense was substantial and their utility for VRS was limited. Microsoft's Net Meeting software, for example, was available for free; however, that software was awkward to use, was unsupported by Microsoft, and offered insufficient video resolution for reading finger spelling. Commercial videophones offered clear resolution, but their high cost priced them out of the reach of the overwhelming majority of deaf and hard of hearing ASL signers.⁴⁰ Thus, despite the enormous potential VRS offered for bringing functionally equivalent telecommunications to deaf and hard of hearing persons, few ASL signers could make use of the service. That changed with the introduction of provider distributed videophones and video software tailored for VRS use. VRS use skyrocketed.⁴¹

⁴⁰ As the Commission is aware, unemployment and underemployment among deaf and hard of hearing persons is substantially higher than among the general population. *See, e.g.,* Report of the California Deaf and Hard of Hearing Education Advisory Task Force, *Communications Access and Quality Education for Deaf and Hard of Hearing Children* (1999).

⁴¹ For example, from April 2002 to March 2003, providers serviced only 1,010,633 minutes of VRS. Following the introduction of the Sorenson VP-100, in April of 2003, provided free to Sorenson's users, providers serviced 4,111,244 VRS minutes through March of 2004. Through its free distribution of the VP-100 videophone and by blocking consumer access to other providers, Sorenson quickly rose to dominate the VRS market. Results from April 2004 through March 2005 are even more startling as 14,436,252 minutes of VRS were provided, some 80 percent of which was processed by Sorenson. The

VRS would not be widely available to deaf and hard of hearing persons without subsidized video access technology. The history of consumer VRS adoption is thus compelling evidence that the widespread availability of VRS – plainly mandated by Section 225(b)(1)⁴² -- is dependent on consumers having cost effective access to videophone technology tailored to its use. ZVRS notes, as the FNPRM concedes,⁴³ that TRS Fund monies have indirectly supported the distribution of consumer VRS equipment. Without that support, VRS would not be available to the extent possible as Congress requires. Accordingly, Section 225 plainly provides the FCC with sufficient authority to support VRS access technology from the TRS Fund.⁴⁴

D. What Must First Occur Before Changing the Methodology?

The VRS program must set into place certain critical foundational pieces to support any significant change to the compensation structure so that the access and quality of VRS is not compromised by any premature or inadequate changes in funding. The following components must be implemented to effectuate a stable and well-tailored transition to the new VRS regime. To ensure that these components are well developed and properly integrated into the transitioning VRS program, we recommend that the Commission establish a “blue ribbon” advisory committee comprised of industry and

comparable period for 2005 through 2006 saw 31,898,551 minutes of VRS, again with Sorenson dominating the market through its videophone/service tie-in arrangement.

⁴² 47 U.S.C. § 225(b)(1).

⁴³ FNPRM at para. 50.

⁴⁴ The FNPRM at paragraph 146 asks, “whether section 225(d)(3)(B) limits the Commission’s ability to disburse support only for “costs caused by interstate telecommunications relay services,” or does the Commission have authority to disburse additional funds to the extent necessary to ensure that the mandate of section 225(b)(1) – to make TRS “available” – is met?” ZVRS suggests that costs of equipment to access VRS are in fact costs caused by interstate TRS notwithstanding prior Commission determination to the contrary. In any event, however, it would seem incongruous for Congress to mandate the Commission to ensure the widespread availability of TRS to the extent possible, yet at the same time limit, sub silentio, its ability effectively to achieve that mandate.

consumer stakeholder representatives, such as the Video Programming and Emergency Access Advisory Committee (“VPAAC”) and the Emergency Advisory Committee (“EAAC”), to engage the multiple and complex issues and to provide recommendations for how we should move forward with the mutual objectives of the VRS program.

1. An Enhanced Database of VRS Users. The VRS program is not well served by the ambiguity of multiple identifications and phone numbers associated with a single individual. It is essential that there be an accurate accounting of VRS users and their phone numbers in refining the VRS program and in setting appropriate rates. ZVRS submits that measures need be taken to eliminate multiple identifications and inactive phone numbers from the VRS system. We must first have an accurate count of eligible VRS users and clear data pertaining to their usage to make a solidly informed policy decision about a fair and reasonable rate level and methodology which properly supports the provision of VRS, lest we continue with the uncertainties which have plagued our discussions about properly funding the VRS program.

ZVRS’ default VRS Access and Interpreting Provider compensation proposal would require a database which, at minimum, supports the ability to clearly identify eligible VRS users and associate with a single individual all of his or her phone numbers and choices of providers. ZVRS suggests considering expanding the current iTRS database for that purpose rather than incurring the additional costs of creating a new database, and increasing the compensation of the iTRS database administrator commensurate with the additional responsibilities which we believe would be moderate to handle due to the availability of technology. This approach would be consistent with the exciting promise of the iTRS numbering directory evolving to an universally designed

telecommunications database which eventually allows the registration of anyone's video phone number, whether they have a disability or not.

However, ZVRS would not support the creation of any system which would infringe on the privacy rights of deaf and hard of hearing individuals. Likewise ZVRS would oppose any requirement to produce documentation of medical conditions and/or ASL proficiency. This production of proof is rendered unnecessary in VRS by virtue of the face to face interaction between the VI and the customer and the rigorous requirement to disconnect individuals who are not relying on ASL to communicate. Furthermore President Obama and his Administration in signing the U.N. Convention on the Rights of People with Disabilities, and carrying out the mandates of the ADA, have committed to migrating away from treating people with disabilities as an issue of health or medical deficiency. Under our new understanding of disability policy, access to telecommunications has nothing to do with the ability to hear or speak, but rather has everything to do with implementing a barrier free environment. The Commission in populating the database of VRS users should do nothing which will undermine the privacy of personal information or mark deaf people as a segregated special needs population which requires unique services to enable them. Rather, the protection against fraud and abuse in the eligibility to use VRS will best be provided by well trained VIs.

2. TRS Broadband Pilot Program. ZVRS applauds the Commission's commitment to include more eligible individuals in the use of VRS by removing the barrier of the lack of affordability of broadband. ZVRS supports implementing a program which would bring discounted or free high speed internet to deaf and hard of hearing individuals who

need a broadband subsidy to access VRS.⁴⁵ ZVRS would like to offer some observations to assist the effective implementation of the proposed pilot program.

Although income is a significant factor in being able to access the technology necessary for VRS, we have seen that connecting individuals to broadband is in itself insufficient to accomplish the availability of VRS for many. Limited income often is accompanied by other challenges, such as limited education, limited English or ASL proficiency and limited familiarity with technology. All of these pose hurdles to VRS use. As the Commission notes in the FNPRM, programs which offer significant discounts on service and equipment still have had difficulty obtaining deaf broadband subscribers. VRS providers have found individuals with limited income to need intensive training in how to use VRS technology and services. This has served generally to disincent providers to identify and serve such persons. Even so, once connected, many VRS users with limited income are severely challenged because video interpreters often have difficulty understanding them due to language barriers. The lack of support for certain interpreting services which facilitate the communication gap between primarily English speaking ASL signers (which describe the vast majority of video interpreters) and those who have limited English or ASL proficiency whom may require additional interpreting support such as Certified Deaf Interpreters, have contributed to the difficulties for underserved populations in accessing VRS. The additional communication facilitation has been found necessary to ensure access in the legal system for deaf and hard of hearing people with limited English proficiency. It is our experience that the language barrier will also require addressing to truly include underserved populations in VRS.

⁴⁵ ZVRS does not take a position whether the subsidy should come from the TRS Fund or from some other source such as the Universal Service Fund.

ZVRS reiterates its concern with establishing eligibility criteria tied to medical conditions or ASL proficiency, believing that to be an unnecessary step in the wrong direction. We would prefer deaf and hard of hearing individuals with limited income to establish their eligibility by registering with default VRS providers, then become qualified for broadband assistance on the basis of the economic criteria established in the Universal Service Fund and/or the overhauled Lifeline program.

Finally, if the Commission is of the opinion that the residential VRS market may be nearing saturation, then there may be great value in allowing the use of the Pilot Program resources to spur the expansion to new markets. For example, there is nowhere near the same penetration of videophones as compared to TTY/TDD installations in businesses, government offices, health facilities, educational institutions, places of public accommodation etc. The Pilot Program could be impactful if used to subsidize the greater availability of video technology so that it not only just becomes as prevalent in the public as TTY/TDDs are now, but so it ushers in an era where video technology becomes the standard interoperable universal telecommunication modality for the general public.⁴⁶

3. VRS Technology Standards. ZVRS addresses standards in detail in Part IV “TRS Technology.” In summary, ZVRS believes any standard must allow VRS Access Providers to provide fully functional CPE. This means all features must stay intact when a consumer selects an alternate VRS Interpreting Provider or when the consumer makes a dial-around call. ZVRS supports the evolution to “off-the-shelf” CPE or mainstream CPE available to the general market at a fair price. We believe that VRS providers should

⁴⁶ Similarly Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (d), while poorly implemented, is intended to use the force of Federal regulation to generally stimulate the public availability and use of accessible technology.

not be in the equipment design and manufacture business. Similar to the breakup of AT&T, a separation of equipment manufacturer and VRS interpreting service provider is appropriate. We recognize the challenge this presents to certain providers and believe this should be accomplished over a two year transition period. At the end of two years, all CPE should be acquired in the open market and VRS Access Providers will no longer be allowed to manufacture CPE.

4. Consumer Safeguards. ZVRS addresses porting and slamming issues and provides recommendations for the Commission in Part VI “Creating a Better Port in the VRS Market.” In addition, ZVRS recommends the Commission adopt its FNPRM proposal to safeguard access to VRS by prohibiting discrimination by providers against consumers based on the frequency and length of their use of VRS.⁴⁷

Any holistic approach to reforming VRS as the FNPRM aspires to do, must also consider systemic interpreting issues. At its core, the effectiveness of VRS for consumers reposes in the hands of video interpreters. ZVRS has made tremendous financial investments in support of providing the best quality interpreting possible. As previously mentioned ZVRS only employs certified interpreters. ZVRS employs a rigorous recruiting and training program. Once placed in the workforce, ZVRS provides continual monitoring and feedback systems to enhance the abilities of its VIs in accurately and competently facilitating telecommunications for every call. At the same time ZVRS employs a number of management strategies to ensure that its VIs are able to handle a myriad of different consumer styles and contexts while being thoroughly supported and well balanced mentally, physically and emotionally. ZVRS is unwilling to rest on its

⁴⁷ FNPRM at para. 104. We note that the enforcement of the rule would be far more effective by maintaining per-minute compensation for the interpreting element of VRS.

laurels as the premier interpreting service, but has constantly challenged itself to innovate its service to provide greater compatibility and effectiveness in its interpreting services. ZVRS' greatest objective is to allow the calling parties' conversation to become seamless, with full consumer direction of the conversation.

Nevertheless, the inherent nature of the current system in which VRS is delivered makes it challenging for functional equivalence to occur. The well founded Commission rule which requires providers to handle incoming calls in the order they are received⁴⁸ has been applied unchangingly by providers to become a system of constant random assignment of VIs in responding to VRS calls. This indiscriminate approach has caused “cold” launches of calls where the consumer expectation is to be immediately connected with the calling party and thoroughly effective interpreting to transpire without the VI having advance knowledge of the consumer's signing style, communication preferences and the context of the conversation. At times atypical circumstances present challenges such as those persons who require specialized signing vocabularies or who are experienced with interpreting for persons, for example, who are deaf-blind, have a strong ASL mode or communicate in English as a second language.

Consumer Groups have proposed advancements in interpreting services which would enable “matching VRS CAs and callers [to] improve functional equivalency” and provide “consumers the ability to control the quality of their calls.”⁴⁹ The implementation of rigorous interpreting standards will not only protect consumers from any degradation

⁴⁸ Public Notice issued January 26, 2005 (DA 05-141).

⁴⁹ See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Ex Parte* of National Association of the Deaf, CG Docket No. 10-51; CG Docket No. 03-123 (February 15, 2012). See, also, *Ex Parte* of Telecommunications for the Deaf and Hard of Hearing, Inc., CG Docket No. 10-51; CG Docket No. 03-123 (February 15, 2012).

of their interpreting services during the transitional period of the VRS program, but also help mitigate abuse by elevating the “cost of entry” into VRS and deter new entities who try doing VRS on the cheap, merely to end up in over their heads and tempted to engage in improper activities to close the financial gap. ZVRS is of the view that much of the interpreting services enhancements can be accomplished without needing major regulatory changes. We believe that these changes will be stimulated under our proposed hybrid approach, in which providers have incentive to provide high quality services and to innovate to draw customers. ZVRS supports structured collaborative efforts among the providers and stakeholders to ensure that we maintain and progress interpreting services to a more functionally equivalent experience.

IV. iTRS Technology

Per the hybrid approach, ZVRS proposes that the VRS Access Provider provide the CPE, 10-digit telephone number, including the iTRS database population, and E911 services and perform all of the registration and LNP duties required of the “default provider” as defined in the FCC’s June and December 2008 Numbering Orders.⁵⁰ When selecting a default VRS Interpreting Provider different from the default VRS Access Provider, all hardware and software features of the CPE must stay intact including, but not limited to, address book, caller ID, and video mail. ZVRS supports requiring the VRS industry to evolve to “off-the-shelf” CPE and standards based call routing.

⁵⁰ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11615, para. 60 (2008); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, CC Docket No. 98-67, *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791 (2008).

A. Current Environment

VoIP (voice and video) providers run federated networks of endpoints that are both qualified to interwork with, and often locked-down to only operate on, their federated network. Mandating that every telepresence video endpoint sold in the United States must be interoperable to a common specification could potentially reduce the need for a federated network. VoIP providers subsidize the cost of CPE. In many ways, they parallel the wireless industry where the cost of mobile phones is subsidized by the wireless carriers. The hardware cost is amortized over the service contract with the customer, eventually to be “customer owned.” Historically, that customer ownership was somewhat of a contrivance because the mobile device had typically been “locked” to the carrier for which the service was obtained, and often the underlying wireless technology has prevented the customer from using the same device on another wireless carrier’s network. This circumstance is analogous to the videophone marketplace today. In the United States, the wireless market size (more than 330 million handsets in the US) has fostered innovation of new wireless technologies (GSM, CDMA, WiMax, LTE) where the wireless carriers have funded the private capacity to service these customers. This is comparable to the innovation that VRS providers have afforded customers today with a market size less than 0.1% of the wireless market. Alternative non-standard telepresence technologies are being regularly placed into service by entrepreneurial companies: Skype, Facetime, Gtalk, Qik, Oovoo, AIM video, Yahoo video, Adobe Flash video, etc. Not allowing these non-interoperable technologies to exist for the purpose of VRS would deprive deaf and hard of hearing individuals of these innovations, many of which are ubiquitous and life-changing. Due to the transition from a web-centric model to an

application-centric model, it is easy for anyone to deploy software to a personal communications device that services the needs of a given customer base.

B. Establishing Standards

ZVRS supports the creation of iTRS Access Technology standards as referenced in the FNPRM. However, ZVRS is concerned that a standard for VRS access technology has been proposed which is not in concert with where the leaders in the video industry are headed.⁵¹ Cisco, Polycom, and Lifesize offer “off-the-shelf” video CPE, using SIP, H.323 and even XMPP Jingle based signaling, which provide both residential and enterprise consumers the ability to communicate through VRS today. These technologies will not all be supported by the proposed standard. ZVRS could not have accomplished what we have done in regard to innovation and reaching deaf professionals without utilizing technology and products from the video industry experts. Google, Microsoft and Apple are making great strides in providing video capabilities in software on mobile and personal computers as well as cloud-based solutions, and what is being proposed in the FNPRM eliminates these solutions as options for deaf and hard of hearing VRS users. Current video technologies include Microsoft’s Skype, Apple’s Facetime, Google’s Gtalk, AIM video, and Adobe Flash video, and some are more open than others. Depriving VRS users of innovative technologies driven by a much larger market is wasting federal funds by forcing VRS providers to perform “custom” developments for a small market. The proposed device standards do not allow any of the current VRS CPE to function except for the Sorenson nTouch products. The VRS market must enable access to new technologies including those being developed by Google, Microsoft, and Apple. Point to point communication using new technologies must be preserved for the use of

⁵¹ FNPRM at Appendix B.

deaf and hard of hearing people. The interoperability of video equipment must be solved by the leaders in the industry but the burden should not be placed on VRS companies to solve video equipment interoperability. This would cause unnecessary costs in development when the leaders in the video industry are progressing towards addressing the needs of the VRS market.

The standard being proposed would eliminate all but one videophone in the current VRS marketplace. It would eliminate “off-the-shelf” video CPE from Cisco, Polycom, and Lifesize. In fact, the proposed standard is only met by the dominant provider that provides a proprietary videophone that is not available “off-the-shelf.” ZVRS supports a transition to “off-the-shelf” equipment. ZVRS believes interoperability should not be relegated to the CPE. Interoperability between VRS Access Providers must be established. Test labs need to be established to ensure interoperability. CPE need only be qualified to work within a given VRS Access Provider’s federated network. As an example with SIP, various CPE will have issues with details such as:

- Meeting the established SIP RFC implementation that set/ignore the agreed upon SIP headers, and send the agreed upon SIP messages (picture-fast-update, etc.);
- Registering with user credentials in a secure manner;
- Using UDP without fragmenting, or using TCP properly for reliable signaling;
- Handling timeouts properly; and
- Agreement on which video codecs will be supported

VoIP service providers do this today. The recent Neustar interoperability event was a good first step toward having the industry work together to solve the interoperability issues. These issues are not merely with the CPE, however. There are

also issues between gateways from other VRS Access Providers. ZVRS supports H.323 and SIP today using such gateways. Establishing rules for server based routing will allow for “off-the-shelf” CPE to be supported. The FCC must address interoperability, affordability, supportability, and compatibility.

ZVRS supports a monthly reimbursement for the VRS Access Provider, in support of the CPE, telephone number, and E911, and ensuring interoperability is intact even when a deaf or hard of hearing user selects an alternate VRS Interpreting Provider. When VRS Access Providers employ CPE that are based upon video industry standards, there will be achieved interoperability by routing calls through a series of gateways. VRS call routing is accomplished via a Fully Qualified Domain Name (“FQDN”) within the Domain Name Service (“DNS”), server-based routing rather than equipment based routing. Server-based routing, using session border controllers, to “peer” with other federated networks is another key that VoIP service providers do and is functionally equivalent. By placing the call routing on the server side and requiring standards-based technology between VRS Access Providers and VRS Interpreting providers, innovative new CPE signaling approaches can be afforded without requiring device portability. As new video telepresence technologies such as WebRTC are added to all consumer web browsers, without SIP or H.323 signaling of any kind, any web browser capable device implementing that new HTML5 standard may access their VRS Access Provider’s website to use it as a portal to other SIP and H.323 standards based devices in the VRS world. VRS Access Provider CPE need only qualify for that VRS Access Provider’s federated network. It is not necessary for the VRS Access Provider CPE to be usable directly with another VRS Access Provider’s federated network. What is essential is the

interoperability between peering VRS Access Providers. So long as calls are interoperable between VRS Access Provider gateways, any “off-the-shelf” technology may be used for any given VRS Access Provider’s CPE. This allows for innovation, and for interoperability between VRS customers.

By allowing any “off-the-shelf” CPE using any signaling and media path mechanisms that are innovative at the time, all of the VRS Access Providers may allow standards based point-to-point calls to other VRS Access Providers, as well as calls to a customer’s designated VRS Interpreting Provider or to a different “dial-around” VRS Interpreting Provider. Utilizing “off-the-shelf” CPE keeps the service affordable by allowing the VRS Interpreting Providers to focus on providing superior VRS service. It also allows for economies of scale when purchasing CPE from vendors who are not just designing CPE exclusively for VRS users. This allows for video CPE manufacturers to provide support and ensure compatibility. This also allows for economies of scale, as telepresence endpoint manufacturers can produce and market endpoints to a much larger market. Finally, this prevents lock-in to an “assistive technology” manufacturer only situation as was experienced with TTYs.

C. Off-the-shelf Equipment

ZVRS currently supports five different CPE today: the Z150 (H.323) from Cisco (a rebranded Cisco T150 videophone), the Z20 (SIP) from Cisco (a rebranded Cisco E20 IP videophone), the ZOjo (SIP) from Worldgate (a rebranded Worldgate OJO personal videophone), the Z340 (SIP) from Creative Labs (a rebranded Creative Labs inPerson videophone), and the Z4 (SIP) for PC and Mac and Z4 Mobile for iOS and Android. All of the above hardware is “off-the-shelf” CPE which is commercially available. Cisco,

Polycom, and Lifesize are the leaders in offering “off-the-shelf” video CPE, using SIP and H.323 to enterprise consumers today. ZVRS supports requiring all VRS CPE equipment to be “off-the-shelf” and/or mainstream products including both hardware and software applications. Encouraging the use of existing technology as well as allowing for innovation is a plus for all hearing, deaf, and hard of hearing individuals within the United States. “Off-the-shelf” must be defined to include products within the telepresence industry, and interoperable using industry standards based protocols as advertised in the iTRS database as well as allowing support for cloud-based, desktop, laptops, tablets, and mobile software applications which meet the standards being proposed. A phased in approach must be established with the goal being “off-the-shelf” and/or mainstream products including both hardware and software applications in the future. Interoperability must be established using industry standards based protocols.

ZVRS supports a transition to “off-the-shelf” equipment. Interoperability test labs must be established which would provide certification of CPE devices and software. CPE needs to be qualified to work within the VRS Access Providers’ network. While it is not particularly important that CPE implement SIP, H.323, XMPP/Jingle, or WebRTC for signaling, it is quite important that common interoperable video codecs are selected such as H.263 or H.264. A baseline at a common encoding level, packetization, and with common extensions must be established. Likewise, it is important that common concepts like bandwidth negotiation and picture-fast-update (i-frame refresh requests) are implemented in a way that can be mapped to a standard when calling other VRS Access Providers or VRS Interpreting services. When VRS providers employ CPE that are based

upon video industry standards, you may achieve interoperability by routing calls through a series of gateways.

A defined timeline, which we suggest as two years, should be set which allows for a complete transition to the VRS Access technology standard. A third party test and certification system must be established for VRS providers to work with to have the CPE (hardware and software) and gateways tested and certified as interoperable. The current rate structure should stay in place until such time as the VRS Access technology standards and certification process is fully established and a time period set for VRS providers to achieve certification of the current VRS Access technology. “Off-the-shelf” CPE along with standards will help ensure interoperability. ZVRS supports the goal of establishing functional requirements, operational procedures, and interoperability test labs which will allow the industry to evolve to supporting “off-the-shelf” equipment and preventing a single provider from locking consumers in and not allowing them choice in VRS Interpreting Providers and VRS Access Providers.

V. Marketing & Outreach are Reasonable and Necessary Provider Costs

The FNPRM (at paras. 31-40) proposes to eliminate the current compensation for marketing and outreach and replace it with a “new to category” one-time payment per new VRS user. Underlying the FNPRM proposal is the assumption that providers are directing their marketing and outreach dollars to churning existing VRS users rather than seeking out new VRS users. According to the FNPRM, this is not a “reasonable and legitimate expense for the [TRS] Fund.”⁵² The FNPRM does not explain how it came to this assumption, which we view as unfounded. The question should be whether the

⁵² FNPRM at para. 33.

expense in question reasonably furthers functional equivalence. If so, it is a reasonable and legitimate expense for the TRS Fund. Undoubtedly, provider marketing and outreach efforts benefit VRS consumers and promote functionally equivalent service. As such, these expenses should be compensated.

ZVRS's marketing and outreach efforts are not directed to simply churning customers. Instead, those efforts are directed to introducing consumers to new products, features and services. Marketing and outreach expenses are necessary expenses of providing VRS. Providing the public and consumers with information on services, product availability, and training on use is a necessary element of functional equivalency.⁵³ Marketing and outreach efforts principally educate consumers as to the availability of service, service providers and service options.⁵⁴ The hearing public has the benefit of the substantial marketing efforts of telecommunications providers in this regard. Far from being a static market, VRS continues to grow. It cannot logically be growing by providers enticing each other's users away; rather the service is growing because more and more deaf and hard of hearing consumers are using VRS for their communications needs.

Marketing and outreach⁵⁵ efforts plainly benefit VRS consumers. First, these efforts advise consumers of the services and the specific features available from various

⁵³ Provider assistance in installation of video equipment and training consumers to use their equipment, wherever obtained, is an essential element of outreach. Many consumers lack even an elemental understanding of how the Internet works and need technical assistance in installing a videophone and in learning to make a VRS call. Provider assistance in this regard is thus essential to facilitating consumer access to VRS.

⁵⁴ We note that a significant part of our outreach involves educating consumers about the TRS rules and the FCC's role in administering the VRS program.

⁵⁵ Although traditionally two separate categories in the annual data collection form, marketing and outreach are really very similar as illustrated by the historically similar definition used in the data collection form *See, e.g.*, Relay Services Data Request Instructions at 4 (2006 edition).

providers that meet their unique functionally equivalent needs for communicating. Marketing and outreach efforts are thus necessary to allow consumers to reap the benefits of competition. This is especially important given the existing structure of the VRS industry, where one provider has amassed a dominant market share as a result of systematic anticompetitive behavior. Marketing and outreach expense is necessary to allow other providers a chance to acquire those customers previously locked-in to the dominant provider⁵⁶ as a result of its monopolistic control of VRS subscriber equipment. Conversely, preventing providers from marketing to existing users will cement the dominant provider's market position, essentially rewarding it for its history of anticompetitive conduct.

The FNPRM's proposal for a single payment tied to "new category users" is problematic. As the FNPRM makes clear, the payment scheme would require creation of a complex validation system which would not only be expensive for both providers and the FCC to administer, but improperly would require evincing eligibility based on medical and ASL proficiency criteria. In addition to provisions for provider verification, there would need to be extensive audits to minimize fraud and abuse. Even then, we foresee the potential for fraudulent or abusive schemes to arise that would not be easily detectable. For example, providers would be incented to recruit new to category users with limited or no proficiency in sign language. Moreover, any effective validation scheme – e.g., requiring medical records to verify deafness – would infringe on consumer privacy and constitute a serious disability policy misstep in addressing deaf people primarily through a medical issue. For these reasons, we see the proposal as unworkable

⁵⁶ See, FNPRM at Appendix B, para 11, "The dominant VRS provider, Sorenson Communications...."

and inadvisable. Providers should continue to be compensated for their reasonable marketing and outreach activities to the deaf community.

We believe the FCC has a critical role in ensuring that outreach to the hearing public occurs so that they understand the purpose of the relay program and do not refuse calls made over relay. The unfortunate fact is that even today, many relay calls to hearing persons are met with hang-ups because the called party believes the call is a telemarketing call. This is true with respect to calls to businesses as well, despite that the refusal to accept relay calls violates the ADA. We believe the FCC should sponsor a nationwide outreach campaign to inform the public that relay calls are a legitimate means for deaf and hard of hearing persons to use telecommunications services, that they are not necessarily telemarketing calls, and that businesses must accept such calls.

VI. Creating a Better Port in the VRS Market

In the TRS Numbering Order,⁵⁷ the Commission found “that Internet-based TRS providers and their numbering partners are subject to the same porting obligations [as VoIP providers], with the sole exception of contributing to meet shared numbering administration costs and LNP costs, as the Commission set forth in the VoIP LNP Order.” Essentially, those obligations require a VRS provider to facilitate a VRS user's valid number portability request by taking all steps necessary to initiate or allow a port-in or port-out without unreasonable delay or unreasonable procedures that have the effect of

⁵⁷ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123; WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11606-07 (2008).

delaying or denying the port. Furthermore, a VRS provider may not enter into any agreement that would prohibit the VRS user from porting his or her number.⁵⁸

In the instant FNPRM, the Commission has raised substantial concerns regarding “slamming” in the VRS industry.⁵⁹ In a prior Petition for Rulemaking, ZVRS suggested the need for adoption of “best practices standards” for VRS users to port their numbers between providers to prevent consumer confusion and minimize slamming.⁶⁰ Moreover, on January 29, 2010, ZVRS filed a petition alerting the Commission, *inter alia*, to a systematic breakdown of seamless VRS porting, absent a coherent standard.⁶¹ ZVRS identified serious problems occurring in the porting of phone numbers from Sorenson to ZVRS, and sought a declaratory ruling compelling VRS providers to maintain their functionalities as a default provider until a port is fully completed.⁶² In that petition, ZVRS highlighted a model porting process. Adoption of the standard presented therein would effectively simplify the porting process and help prevent the occurrence of slamming. Upon further reflection, however, we believe additional measures should be

⁵⁸ See FCC Rule § 52.34.

⁵⁹ FNPRM at paras. 105-06.

⁶⁰ See *Structure and Practices of the Video Relay Service Program*, CSDVRS Petition for Rulemaking, CG Docket No. 10-51 (March 1, 2010).

⁶¹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CSDVRS Petition for Expedited Declaratory Ruling, CG Docket No. 03-123 (January 29, 2010).

⁶² *Id.* Issues with Sorenson and porting continue to this day, see, *Structure and Practices of the Video Relay Service Program, Ex Parte of CSDVRS, LLC*, CG Docket No. 10-51 (“provided an example of Sorenson personnel instant messaging someone falsely stating that the customer’s ported phone number was not operating properly... shared our responses to a number of consumers who were misrepresented to by Sorenson personnel that their technical issues were due to ZVRS “stealing” their numbers where the record clearly established that ZVRS never dealt with that customer nor their numbers... provided copies of screenshots of Sorenson’s defeatured VPs once they learn that the customer has elected to port...shared emails from Sorenson personnel indicating that they would port customers solely based on a “verbal” agreement.”) (March 6, 2012).

instituted to protect consumer interests. ZVRS therefore urges the FCC to institute a "best practices" porting standard to include the measures set forth below. Accordingly, we take this opportunity as requested in the FNPRM, to refresh the record on this matter.

ZVRS believes that despite years of outreach and marketing, considerable consumer confusion still exists as to what a port actually does and how it works. The VRS providers presumably know the requirements and processes for number porting as well as their obligations as default providers. These technicalities, however, are often lost on deaf consumers. ZVRS therefore proposes that a porting-in provider must obtain informed consent from the porting consumer prior to initiating the porting process. This should involve, at a minimum, a formal letter of agency ("LOA") (1) that summarizes in the text of the LOA itself the porting process, (2) that includes an actual signed confirmation (electronic signature is acceptable as long as it can be verified) from the consumer affirming that the porting process has been explained to the consumer, (3) that contains the consumer's agreement to the porting process and that the consumer understand the obligations, and authorizes the porting-in provider to act on their behalf with other carriers to effectuate the port.

These signed LOAs should be maintained by the porting-in provider for a period of no less than two years and should be subject to audit by the FCC or the TRS Fund Administrator. The effect of this standard would be to help obviate consumer confusion as to number porting. It will also help ensure that no VRS provider can violate the Commission's "slamming" rules and port a consumer's number without first offering a written explanation to the consumer and obtaining the consumer's written confirmation. It is important that the Commission require these LOAs to be in writing and actually

signed by the consumers (electronic signature is acceptable as long as it can be verified), and not simply allow a pop up screen on the consumer's video device asking if they would like their number or features back, or some other similar method that fails to ensure full disclosure and consumer consent.

ZVRS believes a failure to implement the above described procedure could result in providers acquiring LOAs by deceitful measures without full consumer awareness of the porting process. ZVRS also suggests that LOAs should not be maintained for marketing, win-back or other purposes unrelated to porting, and should only be maintained and used by providers, as necessary, to evidence a valid and legal port between providers.

To further prevent slamming, ZVRS submits that following the execution of an LOA, the porting-in provider can then begin the porting process with the appropriate exchange carriers. The rules now require that the porting-in and porting-out providers must work together to ensure the port is expeditiously implemented. As part of this process, however, the Commission should require that the porting out provider not disable or de-feature the consumer's video device, or otherwise render the device unusable until such time as the porting-in provider assumes the role of the new default provider on the Firm Order Commitment ("FOC") date. Until a commitment period as discussed in the FNPRM and the ZVRS hybrid proposal is made part of the VRS program, we recommend the Commission adopt an interim measure which establishes a 45 day time period following the port where no marketing by the former default provider to the consumer is permitted.

It is essential that the Commission mandate that VRS providers fully and expeditiously cooperate with one another to effectuate a seamless port just as landline, wireless, and VoIP providers are required to do. ZVRS also recommends that the Commission mandate the prioritization of iTRS number ports in a manner equivalent to landline voice numbers so they can be effectuated within hours not days.

ZVRS reminds the FCC that the slamming rules and policies are very clear and unambiguous.⁶³ The rules are an integral part of protecting telecommunications consumers and must equally apply in the VRS industry for the Commission to meet the functional equivalency mandate of the ADA.

VII. Conclusion

The Commission has saved considerable funds with the current rates and rule changes, and that is certainly an admirable achievement. Competition remains sustainable and progress continues to occur in the areas of certification and elimination of industry fraud. However, despite the fact that the FNPRM contains positive initiatives, they are lost in the overwhelming problems created by the per-user proposal.

ZVRS has proposed a hybrid approach we believe will accomplish significant reform while driving the quality of VRS access and consumer choices. In the interim we must do no harm to consumers' access to VRS by sustaining the current tiered rate while implementing the fundamental components of an enhanced database, greater broadband access, standards for VRS Access Technology and safeguards for consumers against porting abuses and degradation of interpreting services.

⁶³ See *Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket 94-129, 14 FCC Rcd 1508 (1998). See also 47 C.F.R. 64.1120(a).

ZVRS is confident that the Commission will take great care and time to comprehensively work through the proposals with relay stakeholders to accomplish practical solutions which maintain fidelity to consumer access rights including functional equivalency, and sustain the ability of VRS companies to provide such services. ZVRS looks forward to continuing to work with the Commission and relay stakeholders in accomplishing an efficient and effective VRS program for all.

Respectfully Submitted,

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