

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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

**COMMENTS OF CONVO COMMUNICATIONS, LLC**

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Convo Communications, LLC (“Convo”)<sup>1</sup> hereby responds to the Further Notice of Proposed Rulemaking (“*Further Notice*”)<sup>2</sup> issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned docket that seeks comment regarding various proposals to improve the structure and efficiency of the video relay service (“VRS”) program.

**I. INTRODUCTION AND EXECUTIVE SUMMARY**

Convo commends the Commission’s continued focus on improving the VRS program. The Commission’s efforts over the past several years, and in particular the past twelve months,

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<sup>1</sup> Convo is a primarily deaf-owned and operated, independent VRS provider. *See* Convo Communications, LLC, *Amended and Restated Video Relay Service Certification Application*, CG Docket No. 10-51, at 2 (filed Nov. 4, 2011) (“Convo Application”). Convo received its conditional certification from the FCC to operate as an independent VRS provider in November 2011. *Notice of Conditional Grant of Application of Convo Communications, LLC for Certification as a Provider of Video Relay Service Eligible for Compensation from Interstate Telecommunications Relay Service Fund*, Public Notice, 26 FCC Rcd 15956 (CGB 2011). Prior to its certification, Convo operated as subcontractor to, and provided core VRS functions for, a certified provider, including call centers, communications assistants, and VRS products. *See Structure and Practices of the Video Relay Service Program*, Order, 26 FCC Rcd 15051 (CGB 2011).

<sup>2</sup> *Structure and Practices of the Video Relay Service Program*, Further Notice of Proposed Rulemaking, 26 FCC Rcd 17367 (rel. Dec. 15, 2011) (“*Further Notice*”).

have dramatically reduced the waste, fraud, and abuse that previously plagued the VRS program.<sup>3</sup> Indeed, as a result of the Commission’s reform of the VRS regulatory framework, Convo believes that the opportunity for, and incidence of, fraud have been largely eliminated. However, as the Commission acknowledges in the *Further Notice*, further reform in furtherance of the objectives of the VRS program is warranted to improve the overall efficiency of the program. When considering such additional VRS reform, the Commission should maintain a keen focus on the overarching policy objectives of the program:

- Ensuring access to and availability of functionally equivalent telecommunications service for persons with hearing and speech disabilities;<sup>4</sup>
- Encouraging innovation in the provision of telecommunications relay services (“TRS”), including VRS;<sup>5</sup> and
- Ensuring that TRS, including VRS, is provided in the most efficient manner possible.<sup>6</sup>

The holistic change to the VRS compensation framework proposed by the Commission in the *Further Notice* is premature in light of the Commission’s recent substantial reform to the existing VRS program, including the per-minute compensation mechanism. The Commission should provide the needed time for the benefit of its recent VRS reforms to be fully realized before further contemplating replacing the current, longstanding compensation methodology with a per-user compensation system. Moreover, before further considering a per-user compensation system, the Commission should implement and evaluate certain additional

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<sup>3</sup> See *id.* ¶ 6 n.19.

<sup>4</sup> See 47 U.S.C. § 225(a)(3), (b)(1).

<sup>5</sup> See *id.* § 225(d)(2).

<sup>6</sup> See *id.* § 225(b)(1).

reforms—in particular the deployment of a VRS User Database and the implementation of access standards. These developments should be considered prerequisites to further consideration of switching to such a system because they are needed to address certain shortcomings and/or negative incentive structures that are likely to be introduced by a per-user compensation mechanism. Moreover, they will further improve the existing per-minute compensation system and therefore should be adopted in the short term irrespective of whether the Commission continues to pursue a per-user approach to compensating VRS providers.

Specifically, consistent with the *Further Notice*, the Commission should proceed with the development and implementation of a VRS User Database and VRS access standards.<sup>7</sup> A VRS User Database will provide the Commission with greater transparency and insight into the VRS program and thereby allow the TRS Fund Administrator (“Administrator”) and the Commission to better detect and further root out any remaining waste, fraud, and abuse. Further, the implementation of access standards will help minimize user “lock-in” and help ensure a more competitive and better functioning VRS market, benefiting all VRS users and the public generally.

In addition, the Commission should revise the VRS per-minute rate structure to ensure that it better aligns with VRS providers’ actual costs.<sup>8</sup> However, any per-minute rate changes

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<sup>7</sup> Both of these proposals have been cited by VRS providers in a joint letter to the Commission as necessary prerequisites to further consideration by the Commission of implementation of a per-user compensation system. *See* Joint Letter from Sean Belanger, CEO, CSDVRS, LLC, *et al.*, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51, 03-123 (filed Mar. 6, 2012) (“Joint VRS Providers Letter”).

<sup>8</sup> The Commission should retain the current interim VRS rates until it has a full and complete picture of VRS providers’ actual costs under the recently adopted VRS rules. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 26 FCC Rcd 9972 ¶¶ 22–24 (2011) (“2011 TRS Rate Order”). Compliance with the new rules may significantly impact the industry’s cost structure.

should be made in a predictable and gradual manner to avoid a sudden change in provider compensation that may result in disruptions to the quality and availability of VRS. The Commission also should retain and reform, rather than eliminate, the existing tiered rate structure to avoid providing an insurmountable competitive advantage to the dominant VRS provider. Preserving for VRS users a meaningful choice among multiple competitive providers should be a primary objective of the Commission and is consistent with the Commission's overall objectives of the program.

Finally, the Commission should establish a VRS advisory board comprised of industry representatives, representatives of the deaf community, and appropriate government representatives to further review and analyze the existing VRS program, recommend technical and structural revisions to the program, and evaluate the likely impact of proposed changes to the program.

## **II. THE COMMISSION'S RECENT VRS REFORMS HAVE REDUCED THE OPPORTUNITY FOR, AND INCIDENCE OF, VRS WASTE, FRAUD, AND ABUSE**

Convo applauds the hard work of the Commission and its staff in implementing recent reforms to the VRS program. Convo believes, based on its experience in the market, that this reform has been effective. As a result, when considering further reform, the Commission should take care to separate the historical troubles of the VRS industry from the current reality of the program. The Commission's recent reforms have largely driven out the fraud that previously impacted the program and have dramatically reduced waste and abuse, while retaining effective incentives for VRS providers to provide high-quality, innovative VRS products to users. In large

part, this was accomplished by reducing the number of total VRS providers from over 60 to just 12 through the elimination of over 50 white label providers.<sup>9</sup>

The scope of the Commission's recent VRS reform should not be underestimated. In the past year alone, the Commission has implemented all of the following.

- Require that all VRS providers receive certification from the Commission and provide VRS under the name of the certified provider;<sup>10</sup>
- Prohibit any non-certified third party from holding itself out to the public as a provider of VRS;<sup>11</sup>
- Prohibit the use by certified VRS providers of subcontractors for core VRS functions<sup>12</sup> and require certified VRS providers to operate the core facilities necessary to provide VRS and employ their own CAs;<sup>13</sup>
- Require that the lease of an automatic call distribution ("ACD") platform by a VRS provider be in writing, prohibit any compensation under such leases to be tied to minutes of use,<sup>14</sup>; and in the case of the lessor also being a certified VRS provider, require leased ACDs to be located on the lessee's premises and managed by the lessee's employees;<sup>15</sup>

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<sup>9</sup> *Further Notice* ¶ 24. Note that no more than 8 of the 12 remaining certified VRS providers continue to be active participants in the VRS market. Compare Rolka Loube Saltzer Associates, TRS Fund Performance Status Report, Funding Year July 2011 – June 2012, Fund Status as of July 31, 2011, available at <http://www.r-l-s-a.com/TRS/reports/FundPerformanceAsOf7-31-11.pdf> (noting 9 VRS providers paid from the TRS Fund) with Rolka Loube Saltzer Associates, TRS Fund Performance Status Report, Funding Year July 2011 – June 2012, December 2011, available at <http://www.r-l-s-a.com/TRS/reports/2011-12TRSStatus.pdf> (noting 8 VRS providers paid from the TRS Fund).

<sup>10</sup> *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545 ¶ 57 (2011) ("*VRS Practices Order*").

<sup>11</sup> *Id.* ¶ 59.

<sup>12</sup> *Id.* ¶ 58.

<sup>13</sup> *Structure and Practices of the Video Relay Service Program*, Second Report and Order and Order, 26 FCC Rcd 10898 ¶ 15 (2011) ("*iTRS Certification Order*").

<sup>14</sup> *Id.* ¶ 17.

<sup>15</sup> *Id.*

- Require all contracts with third parties to be in writing and available for review by the Commission and/or the Administrator, upon request;<sup>16</sup>
- Require that all calls to any brand or sub-brand of VRS be routed through a single URL address for that brand or sub-brand;<sup>17</sup>
- Prohibit VRS communications assistants (“CAs”) from relaying calls from their homes,<sup>18</sup> using visual privacy screens,<sup>19</sup> and receiving compensation based on minutes or calls relayed;<sup>20</sup>
- Require that VRS providers report to the Commission the location and staffing of call centers twice a year, and provide the Commission with at least 30 days prior notice of any change in the location of a call center;<sup>21</sup>
- Prohibit compensation for VRS calls that originate from international IP addresses, except when a U.S. resident pre-registers prior to leaving the country;<sup>22</sup>
- Require CAs to terminate calls under certain circumstances;<sup>23</sup>
- Prohibit compensation for remote training calls when the VRS provider is involved in any way with such training;<sup>24</sup>
- Require automated recordkeeping of minutes submitted to the TRS Fund for compensation<sup>25</sup> and greater supporting detail for each VRS call submitted for compensation;<sup>26</sup>
- Prohibit compensation on a per-minute basis for costs related to marketing and outreach performed through a subcontractor where such services utilize VRS;<sup>27</sup>

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<sup>16</sup> *VRS Practices Order* ¶ 60.

<sup>17</sup> *Id.* ¶ 57.

<sup>18</sup> *Id.* ¶ 20.

<sup>19</sup> *Id.* ¶ 40.

<sup>20</sup> *Id.* ¶ 23.

<sup>21</sup> *Id.* ¶ 12.

<sup>22</sup> *Id.* ¶ 32.

<sup>23</sup> *Id.* ¶ 41.

<sup>24</sup> *Id.* ¶ 46.

<sup>25</sup> *Id.* ¶ 79.

<sup>26</sup> *Id.* ¶ 73.

<sup>27</sup> *Id.* ¶ 61.

- Implement whistleblower protections for current and former employees and contractors of TRS providers;<sup>28</sup>
- Require VRS providers to retain all required call detail records and any other records that support their claims for payment from the TRS Fund, as well as all records used to substantiate the cost and expense data submitted in the annual relay service data request form, for a minimum of five years;<sup>29</sup>
- Require VRS providers to submit to audits annually or, if necessary, at any other time deemed appropriate<sup>30</sup> and to submit to unannounced on-site visits to ensure continued compliance;<sup>31</sup> and
- Require a senior executive to certify under penalty of perjury that the information submitted to the FCC or Administrator is accurate and complete.<sup>32</sup>

As Chairman Genachowski has explained, these reforms have already saved taxpayers \$250 million by eliminating incentives for fraud, which is a striking accomplishment.<sup>33</sup> The Commission must not lose sight of these significant reforms, only recently implemented, as it contemplates further revisions to the VRS program. As a result of these reforms, the current VRS industry is markedly different than the VRS industry just one year ago and is still in the process of evolving.

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<sup>28</sup> *Id.* ¶ 68.

<sup>29</sup> *Id.* ¶ 87.

<sup>30</sup> *Id.* ¶ 84.

<sup>31</sup> *iTRS Certification Order* ¶ 36.

<sup>32</sup> *VRS Practices Order* ¶ 91.

<sup>33</sup> FCC Chairman Julius Genachowski, Remarks On Reforming And Modernizing The Lifeline Program, Third Way, Washington, DC (Jan. 9, 2012), *available at* [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0110/DOC-311893A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0110/DOC-311893A1.pdf) (“The [VRS] program had suffered from serious abuse; now we’ve made changes to eliminate incentives for fraud and have already saved taxpayers approximately \$250 million.”).

### **III. CONSIDERATION OF A PER-USER COMPENSATION FRAMEWORK IS PREMATURE**

#### **A. The Commission Should Provide the Necessary Time for the Benefits of Its Recent Reforms of the Existing Per-Minute Compensation System to be Fully Realized**

The Commission should provide the necessary time for the benefits of the recent reforms to be fully realized before adopting any radical changes that have the potential to undermine the VRS program's policy objectives set forth above.<sup>34</sup> The Commission adopted its new VRS rules because it believed that they would further the VRS program's statutory objectives. The Commission should now provide time for the VRS industry and user base to adjust to the new rules and should evaluate their effectiveness before determining if they have failed to adequately respond to past problems with the program. These steps should be taken before the Commission adopts a holistic reformulation of the VRS compensation methodology, which is the core of the VRS program.

Moreover, an accurate base line is needed from which to evaluate the potential benefits and adverse consequences of the per-user compensation proposal set forth in the *Further Notice*.<sup>35</sup> Unless it conducts a thorough evaluation of the *current* VRS industry—the industry

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<sup>34</sup> See, e.g., Joint VRS Providers Letter at 1; Ex Parte Notice of ASL Services Holdings, LLC, CG Docket No. 10-51, at 2 (Feb. 23, 2012).

<sup>35</sup> The rules adopted by the *VRS Practices Order* first became effective on September 6, 2011, with the exception of several provisions which contained information collection requirements. See 76 Fed. Reg. 47469 (Aug. 5, 2011). The information collections were approved by the Office of Management and Budget on October 20, 2011, and they became effective on November 7, 2011. See 76 Fed. Reg. 68757 (Nov. 7, 2011). Because the *Further Notice* was adopted little more than a month after the rules became completely effective, the proposals set forth in the *Further Notice*, which was issued on December 15, 2011, likely were developed based on an analysis of the state of the VRS industry prior to the implementation of the sweeping reforms set forth in the *VRS Practices Order*. Instead, the proposed per-user compensation mechanism is largely justified in the *Further Notice* based on the historical problems in the VRS industry. See, e.g., *Further Notice* ¶ 26 (highlighting the problems associated with “white label” providers).

that is evolving from the Commission’s recent, expansive regulatory initiatives—and provides the public with an opportunity to comment on this evaluation, the Commission will lack the sort of compelling evidence of *current and ongoing* problems with the industry to warrant a wholesale change to VRS. Ultimately, the Commission may determine that its progress with respect to VRS reform has been sufficient to weigh against holistic change to the VRS regulatory framework at this time, especially in light of the inherently unpredictable impacts of the Commission’s newest proposals.

**B. A Per-User Compensation System Has Inherent Deficiencies That Must Be Addressed Before the Commission Further Considers the Per-User Proposal**

The per-user compensation mechanism proposed in the *Further Notice* creates negative incentives for VRS providers that have the very real potential of undermining the overarching policy objectives of the VRS program and harming the very community that the program is meant to serve. Accordingly, any such wholesale change to the VRS program should be considered with due deliberation. The *Further Notice* correctly recognizes that “any compensation mechanism will have its benefits and its drawbacks.”<sup>36</sup> However, the *Further Notice* overly emphasizes the potential but unproven benefits of the proposed per-user compensation mechanism without fully addressing its inherent structural drawbacks. By contrast, prior deficiencies of the per-minute compensation system exposed over the many years that it has been employed largely have been addressed by the Commission through its recent VRS reforms as detailed above. Indeed, any compensation methodology, including the per-user compensation mechanism, will have deficiencies that will become plainly visible only after implementation in a real-world setting.

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<sup>36</sup> *Further Notice* ¶ 54.

Reduction in overall quality of VRS. First, the proposed per-user compensation mechanism creates a structural incentive for VRS providers to reduce the quality of their VRS offerings because VRS providers will not be compensated based on the actual use of their services. In particular, providers with large sales and/or outreach teams with which to attract new customers will have a strong incentive under a per-user compensation mechanism to increase profits through a reduction in service quality and the concomitant reduction of VRS use by their customers.<sup>37</sup>

Currently, providers compete for each and every minute of VRS use by customers. In the absence of price competition, it is this competition that naturally incents providers to offer higher quality VRS, including innovative new products and features. This quality-reinforcing incentive structure will be lost under a per-user compensation system unless customers are able to freely switch providers at any time. Such frictionless porting of users between formally assigned providers, however, is infeasible because of the administrative burden it would impose on both users and providers<sup>38</sup> and, in the context of a per-user compensation system, because users must

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<sup>37</sup> For example, assuming a fixed user base, if a VRS provider's compensation no longer increases as its users' minutes of use increase (due, for instance, to the increased penetration of tablet computers among users), then the provider will seek means of reducing its costs to enable it to remain profitable. In particular, the VRS provider will seek means of reducing its variable costs, which directly increase with increased usage. The primary variable cost incurred by a VRS provider is its CAs. As a result, the Commission's per-user compensation proposal is likely to cause VRS providers to place increased pressure on their CAs over time, which may reduce the quality of the interpreting services provided by the CAs. *See, e.g.*, Comments of Gina Gonzalez, Founder of Video Interpreters United, CG Docket Nos. 10-51 & 03-123, at 6 (Jan. 25, 2012) (raising concerns regarding CA work conditions, including "overly demanding occupancy metrics, unhealthy break systems, and other unfavorable working conditions").

<sup>38</sup> There currently is no formal mechanism in place to manage and record VRS user porting. The Commission's experience with slamming in the long-distance market demonstrates how challenging developing such a porting system can be even in a much larger, more mature, and more sophisticated market like traditional long-distance services. *See, e.g.*, *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*,

select and retain a single provider to enable providers to be paid based on their number of users.<sup>39</sup> As a result, the *Further Notice* asks whether a VRS provider potentially could have “an incentive to provide subpar service to save costs and increase profits once it gains new subscribers because they would be locked in for a period of time.”<sup>40</sup>

Additional quality of service regulations may help offset this inherent weakness of a per-user compensation mechanism but will not fully mitigate it. As an initial matter, adoption and enforcement of such new, detailed regulations will tax the already scarce resources of the Commission, which is not ideally suited to police VRS quality on a day-to-day basis. More importantly, however, such new rules would place a *de facto* upper limit on service quality—there will be no financial incentive for VRS providers ever to exceed the minimum standards. To the contrary, VRS providers that commit the resources needed to exceed the minimum standards will be less profitable due both to the additional expenditures required and the

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Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 (1998) (adopting “more stringent” carrier change verification measures); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, Fourth Report and Order, 23 FCC Rcd 493 (2008) (adopting additional safeguards within the carrier change verification process).

<sup>39</sup> To enable users effectively to be counted for purposes of establishing compensation levels for individual VRS providers, the Commission proposed to allow providers to require their users to enter into service contracts. *Further Notice* ¶¶ 83–84. Under such a system, providers will not be competing for each minute of VRS use, but instead primarily will rely on marketing to capture users.

<sup>40</sup> *Further Notice* ¶ 83. Public interest groups have raised similar concerns regarding user lock-in. *See, e.g.*, Comments of Cerebral Palsy and Deaf Organization, CG Docket Nos. 03-123 & 10-51, at 3 (Mar. 2, 2012) (“CPADO Comments”); Comments of ASL Rose, CG Docket No. 10-51 (Feb. 16, 2012); Ex Parte Notice of Telecommunications for the Deaf and Hard of Hearing, Inc., CG Docket Nos. 03-123 & 10-51, at 1–2 (Feb. 15, 2012); Ex Parte Notice of Video Relay Services Consumer Association, CG Docket Nos. 03-123 & 10-51, at 1 (Feb. 15, 2012); Ex Parte Notice of National Association of the Deaf, CG Docket Nos. 03-123 & 10-51, at 2 (Feb. 15, 2012) (“NAD Ex Parte Notice”).

increased usage by their user base resulting from the improved service quality.<sup>41</sup> By contrast, the current per-minute system naturally incents each VRS provider to aim to offer better service than each of its competitors—every day on a minute-by-minute basis.

*Discrimination against high-volume users.* Second, a per-user compensation mechanism will create a structural incentive for VRS providers to discriminate against high-volume users. Under the proposed per-user compensation system,<sup>42</sup> any user that consumes more minutes of VRS than the hypothetical average user will negatively impact the profitability of the VRS provider because the high-volume user necessarily will cost the provider more than the provider will receive in compensation from the TRS Fund for serving the user. Consequently, providers will have every incentive to identify and avoid high-volume users<sup>43</sup> or, where that is not possible, to provide lower service quality in an effort to discourage or reduce their usage levels or cause them to switch to another provider. Thus, a per-user compensation system would cause discrimination against the high-volume VRS users that most benefit from VRS and currently are most valued by VRS providers under the per-minute compensation system. This is a fundamental structural deficiency of the Commission’s per-user compensation proposal.

The *Further Notice* notes that “if the minutes assumed per user is set at the average level, then providers will be adequately compensated even though some users may generate more

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<sup>41</sup> Convo’s business model in particular focuses heavily on service quality to drive increased usage of its VRS offerings. *See* Convo Application at 2–7. This model may be unsustainable if VRS providers are not reimbursed based on the actual usage of their service by users.

<sup>42</sup> *Further Notice*, App. C, ¶¶ 13-25.

<sup>43</sup> *See, e.g.*, CPADO Comments at 3 (“Another issue with the per user methodology is that it requires extensive time and effort of an interpreter to work with a certain VRS user with a mobility disability.”); NAD Ex Parte Notice at 2 (“A per user system will change the motives of the VRS industry from one that favors the consumers to one that is adverse. VRS will seek customers who rarely use VRS and tailor their services to attract low use customers. VRS providers may even ward off high volume users”).

minutes and others less in a given month.”<sup>44</sup> Moreover, according to the Commission, “there is no reason to think that the average will vary between providers for legitimate reasons.”<sup>45</sup> This assumption seems overly simplistic and fails to acknowledge or address a provider’s strong incentive, even in the face of increased mandatory minimum standards and rules to prevent discrimination, to systematically increase its ratio of low-volume users to high-volume users to reduce the provider’s overall costs and maximize its profits.<sup>46</sup>

This real-world impact will manifest itself immediately upon the implementation of a per-user compensation system. VRS providers will cease marketing to high-volume users who currently most benefit from VRS. Further, providers will more carefully weigh the benefits of developing new and better VRS features and functionalities that may improve the user experience and result in increased VRS usage. Indeed, it is likely that many new and innovative VRS features and functionalities that would have been developed under the existing, per-minute compensation system will not be introduced under a per-user compensation system because they are not financially justifiable. Although these improved features and functionalities may enable a VRS provider to add new users, the aggregate increased VRS usage by the providers’ *new and existing* users cause by the improved service may undermine the financial benefits of securing the new users.

*Increased solicitation of low-volume users.* Third, as the Commission acknowledges in the *Further Notice*,<sup>47</sup> a per-user compensation mechanism may create an incentive for VRS

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<sup>44</sup> *Further Notice*, App. C, ¶ 14.

<sup>45</sup> *Id.*

<sup>46</sup> The provider incentive to discriminate against high volume users holds true for both residential users and enterprise users. Under a per user compensation mechanism, the provider will have the strong incentive to maximize the number of low volume users in each category.

<sup>47</sup> *See Further Notice* ¶ 60.

providers to seek out and enroll large numbers of new low-volume users, who will be highly profitable. Although increased VRS penetration is a laudable goal, it is of limited benefit if the growth in the number of VRS users does not result in an overall increase in VRS usage.

However, rather than providing an incentive to encourage increased VRS usage, the per-user compensation proposal will, at minimum, cause VRS providers to be agnostic regarding usage levels and more likely will cause providers to tacitly discourage additional VRS usage.

To mitigate this problem, the *Further Notice* proposes to adopt a minimum usage requirement that each user must satisfy to be counted for compensation purposes. Specifically, the *Further Notice* defines an “‘active user’ in a given month as a VRS user who makes at least two minutes of out bound calls to parties that are not affiliates of any VRS provider.”<sup>48</sup> As an initial matter, this proposed screen may prove to be over inclusive because it does not take into account users who make less than two minutes of outbound calls in any given month but who receive more than two minutes of inbound calls. In Convo’s experience, some VRS users may go a month or more without making a VRS call, but such users nevertheless may continue to receive inbound VRS calls. More importantly, though, the screen will not reduce a providers’ incentive to enroll as many very low-volume users as possible and to tacitly discourage them from significantly using VRS by providing them only perfunctory support training and service quality.

As set forth above, these structural problems with a per-user compensation system are not easily mitigated. As a result, this proposal has the very real potential of negatively impacting the VRS program and its users over the long term, rather than improving VRS.

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<sup>48</sup>*Id.*, App. C, ¶ 9.

**C. Additional Reforms Are Necessary Before a Per-User Compensation System Is Further Considered by the Commission**

The Commission should not further consider the per-user compensation proposal until it has implemented necessary additional reforms to the VRS program. These reforms will significantly improve the regulation of the VRS industry under the existing per-minute compensation system and thus should be implemented irrespective of whether the Commission considers migrating to a per-user system. They also are fundamental prerequisites for the implementation of a per-user system and thus must be implemented before the Commission further considers such a change to the VRS compensation mechanism.

The Commission recognizes in the *Further Notice* that the implementation phase of the Commission's proposed switch to a per-user compensation system should not commence until a VRS User Database is established and access standards have been developed and implemented, among other things.<sup>49</sup> Although this analysis is correct, it also is incomplete. Until these additional reforms are implemented, the Commission cannot even adequately evaluate the likely effectiveness and impact of its proposal. As a result, this alternative compensation system should not be further considered until a functioning VRS User Database is deployed to enable the Commission to better understand the number and usage patterns of VRS users and access standards have been implemented to prevent user "lock-in."<sup>50</sup>

Without a VRS User Database, the Commission lacks the necessary information to fully and accurately develop an effective per-user compensation mechanism. For example, the

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<sup>49</sup> See *Further Notice* ¶¶ 110, 112.

<sup>50</sup> If the Commission ultimately decides to implement a per-user compensation system in the short-term, under no circumstances should the Commission establish a specific deadline for commencement of the implementation phase that is not directly tied to the completion of these two tasks. See *id.* ¶¶ 122-23.

Commission currently has no accurate data regarding the number of active VRS users; how many different VRS providers each user tends to use and how they proportion their use among providers; the types of VRS offerings and hardware/software they use; the average number of minutes of VRS they utilize monthly; whether usage is subject to significant peaks and troughs during particular months; and whether there is a significant disparity regarding the level of VRS consumption by current users. Creating a centralized VRS User Database, as further described below, can provide the Commission with this information. Adoption, or even further consideration, of a per-user compensation mechanism without access to this data seems ill advised.<sup>51</sup>

Further, access standards would take on a heightened role under a per-user compensation system. Under such a compensation methodology, providers will have an increased incentive to lock in users, especially those users who only use VRS at a minimal level. Such increased lock-in will inhibit non-price competition and the associated consumer benefits. The current lack of clarity regarding access standards and interoperability obligations is one tool that may be used by

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<sup>51</sup> This is true with respect to any holistic change to the compensation system that is the core of the Commission's VRS program, not merely the per-user compensation system on which the *Further Notice* focuses. For example, the "hybrid" compensation approach that has been proposed in this docket also warrants close Commission scrutiny once the VRS User Database has been developed and access standards have been implemented. *See* Ex Parte Notice of Telecommunications for the Deaf and Hard of Hearing, Inc., CG Docket Nos. 03-123 & 10-51, at 2 (Mar. 5, 2012); Ex Parte Notice of CSDVRS, LLC, CG Docket Nos. 10-51 & 03-123, at 1 (Feb. 28, 2012). The hybrid approach seems to offer many of the structural benefits of the existing per-minute compensation system while also furthering certain objectives outlined by the Commission in the *Further Notice*. However, it is difficult to provide a credible comparison of the likely relative advantages and drawbacks of the per-minute, per-user, and hybrid compensation models without better information regarding the current composition of the VRS user base. Similarly, the proposal for a centralized VRS ACD cannot be fully explored until access standards are developed and fully implemented. *See* Letter from "Over 200 VRS Employees and Users," to Marlene H. Dortch, Secretary, FCC, CG Docket No. 10-51, at 3 (Jan. 11, 2012).

providers to accomplish such user lock-in. However, the development and implementation of access standards will not be an easy task, and providers will need some time to come into compliance with meaningful access standards to avoid widespread VRS industry disruption. As a result, the Commission should not further consider its per-user compensation proposal until access standards have been agreed upon and deployed.

Each of these proposed prerequisites to further consideration of the Commission's per-user proposal also will improve the efficacy of the existing per-minute compensation mechanism. Therefore, the relative balance of advantages and disadvantages of the existing per-minute and proposed per-user compensation mechanisms are likely to change once a VRS User Database and access standards are implemented. Therefore, only after such implementation can these two compensation systems be fairly evaluated in comparison to each other, which is a crucial aspect of any consideration of abandoning the existing, longstanding, and recently reformed compensation system for a new, untested system.

#### **IV. BEFORE ADOPTING HOLISTIC VRS REFORM, THE COMMISSION SHOULD ESTABLISH A VRS ADVISORY COUNCIL AND CONDUCT PILOT TESTS**

##### **A. The Commission Should Establish a VRS Advisory Committee to Evaluate the Real-World Implications of the Per-User Compensation Proposal**

The Commission should reconstitute the existing Interstate TRS Advisory Council<sup>52</sup> or, alternatively, establish a separate VRS advisory committee to provide a critical evaluation of the

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<sup>52</sup> 47 C.F.R. § 64.604(c)(5)(iii)(H) (establishing an advisory committee "in order to monitor TRS cost recovery matters"); see also Interstate TRS Fund Advisory Council Members, <http://www.r-l-s-a.com/TRS/AdvisoryCouncil.html> (last visited Feb. 29, 2012) (identifying the current members of the council). Currently, the TRS Advisory Council meets only twice a year. See National Exchange Carrier Association, Inc., CG Docket No. 03-123, Annual Submission of TRS Payment and Revenue Requirements, Ex. F (Apr. 29, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021341474> (providing the minutes from the October 20, 2010 and April 8, 2010 TRS Advisory Council meetings). The Council is

current state of the VRS industry and the likely impact of any proposed reform, including the Commission’s per-user compensation proposal set forth in the *Further Notice*.<sup>53</sup> There is ample precedent for the Commission’s use of advisory committees to provide the Commission with additional and valuable input on complicated policy matters, such as the Video Programming Access Advisory Committee (“VPAAC”),<sup>54</sup> the Technology Advisory Council (“TAC”),<sup>55</sup> and the Emergency Access Advisory Committee (“EAAC”).<sup>56</sup>

A VRS advisory committee should be assigned clear objectives by the Commission and should be comprised of representatives of all stakeholder groups, including deaf and hard-of-hearing VRS users, VRS providers, and appropriate government representatives. The committee will have the real-world experience with the VRS program necessary to provide the type of nuanced and grounded analysis that is challenging to develop on a theoretical policy level. Further, the Commission should provide such an advisory committee with the necessary resources, including funding to retain independent economists and technology experts, to study

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independent of the FCC and only works directly with the Administrator. Moreover, the Council’s limited role is further exemplified by the fact that it does not even allowed access to the data in the iTRS database. *See* Interstate TRS Advisory Council, Draft Meeting Minutes April 14, 2011, Washington, DC, <http://www.r-l-s-a.com/TRS/AdvisoryCouncilMinutes4-11-2011.pdf>.

<sup>53</sup> *See, e.g.*, NAD Ex Parte Notice at 2 (“The NAD is disappointed that the FCC is moving ahead quickly on the FNPRM, with little to no research on the potential effects of the new rate reimbursement methodology, and proposing a new system without a trial program.”).

<sup>54</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, § 201 (2010) (“CVAA”) (related provisions codified at 47 U.S.C. § 613). The Commission renamed the committee the Video Programming Access Advisory Committee from the original name in the statute, the Video Programming Access and Emergency Advisory Committee.

<sup>55</sup> FCC Public Notice, FCC Announces Formation of the Technological Advisory Council (rel. Oct. 25, 2010), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2010/db1025/DOC-302376A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2010/db1025/DOC-302376A1.pdf).

<sup>56</sup> CVAA § 106 (codified at 47 U.S.C. § 615c).

the VRS program and produce a detailed, balanced and credible report of its findings. This type of real-world analysis would benefit the current discussion of the VRS program's strengths and weaknesses and the efficacy of reform proposals. The committee also could be instrumental in designing and implementing the VRS User Database and access standards and should be given responsibility for developing these initiatives.

**B. Pilot Tests Should be Conducted Before Adopting a Nationwide Holistic Change to the VRS Program**

To the extent that the Commission ultimately determines to adopt a per-user compensation mechanism, a pilot test of a per-user system should be undertaken to ensure smooth implementation and to avoid, or at least mitigate, unintended consequences and pitfalls.<sup>57</sup> Such test, which could be limited in scope to a particular market or a particular group of randomly selected users, could involve

- the development and implementation of an authentication database for VRS users subject to the test;
- the implementation of whatever method the Commission determines to assign individual VRS users to specific default providers, such as binding subscription contracts;
- the implementation of whatever limitations the Commission intends to adopt to restrict dial-around calling;

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<sup>57</sup> See, e.g., *Lifeline and Link Up Reform and Modernization*, WC Docket Nos. 11-42, 03-109, and 12-23, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, at ¶ 323 (rel. Feb. 6, 2012) (adopting a Low-Income Broadband Pilot Program to test the necessary amount of universal service fund subsidies for broadband and the length of such support); *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Report and Order, 26 FCC Rcd 5640 (2011) (adopting interim rules to govern a pilot program to support the distribution of specialized customer premises equipment to enhance access to telecommunications, Internet access, and advanced communications services by certain deaf-blind individuals, as well as the provision of associated services); *Rural Health Care Support Mechanism*, Order, 21 FCC Rcd 11111 (2006) (establishing a pilot program to examine how the rural health care funding mechanism can be used to enhance public and non-profit health care providers access to advanced telecommunications and information services).

- the implementation of a formal user porting system; and
- the collection from VRS providers serving the test users of the data that the Commission would use to award per-user compensation.

At minimum, per-user compensation could be calculated during the pilot test as a “dry run” even if VRS providers involved in the test continue to be compensated on a per-minute basis. However, it may be possible to conduct a “live” test pursuant to which VRS compensation in connection with test subjects actually is paid to VRS providers on a per-user basis. Either way, such a pilot test will enable the Commission to better understand some of the anticipated administrative challenges that a per-user compensation system will entail, and it will help identify currently unforeseen obstacles to switching to a per-user compensation system. It also will provide VRS stakeholders with a better understanding of the potential financial and operational impact to VRS providers of any future conversion to a per-user compensation system.

**V. ACCESS STANDARDS SHOULD BE DEVELOPED AND IMPLEMENTED TO REDUCE LOCK-IN AND IMPROVE THE VRS USER EXPERIENCE**

Clarification of the Commission’s existing interoperability rule and adoption of one or more VRS access standards directly will benefit VRS users provided that certain core objectives are maintained. Two primary benefits flow from the development of interoperable access standards. First, access standards prevent users from being locked in to certain VRS providers by specialized hardware distributed by such providers. Instead, access standards enable users to select which providers’ CAs to rely on when placing or receiving VRS calls, which promotes service-quality competition. Second, access standards promote seamless point-to-point calling capabilities—*i.e.*, the ability of users to utilize their VRS equipment and hardware to call each other without having to access a CA, which is a crucial part of ensuring the functional equivalence of VRS.

However, the focus of the Commission's current interoperability policies on backwards compatibility is at friction with the adoption by the VRS industry of advancing technologies to benefit the deaf and hard-of hearing community. Due to the relatively small size of the VRS user base compared to the hearing user base, VRS-specific technologies will never advance as rapidly as the video conferencing technologies relied on by the hearing community. For example, commercial products for desktop video calling were available to the hearing community before there were VRS products for desktop video calling. Similarly, commercial products enabling 3G mobile network video calls were available to the hearing community before there were VRS products for 3G calling. Given the relative economies of scale and research and development funding available to the hearing community relative to the VRS industry, this trend will continue. As a result, any adoption of VRS access standards by the Commission must both rely on off-the-shelf commercial technologies available to the hearing community<sup>58</sup> and must be sufficiently flexible to evolve with the advancement of such technologies. These objectives are in tension with the Commission's objective of universal interoperability among VRS providers, technology, and equipment, which makes the development of access standards technologically challenging.

In the absence of universal interoperable video conferencing standards,<sup>59</sup> the best way to develop an access standard appropriate for the VRS industry is through the use of an industry

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<sup>58</sup> Convo has modified commercially available video communication software for use with VRS, which it believes is a highly cost-efficient means of developing new and innovative VRS products. Any VRS access standards adopted by the Commission should facilitate, and not create obstacles, to this approach to serving VRS users. Convo Communications, LLC Comments on the Application of New and Emerging Technologies for Video Relay Service Use, CG Docket No. 10-51 (filed Apr. 1, 2011).

<sup>59</sup> The Commission has taken the position that the CVAA does not grant the Commission the authority to require the establishment of universal interoperable video conferencing standards. *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*,

standards setting organization with the experience and technical expertise necessary to achieve and maintain the Commission’s objectives, such as the Institute of Electronics and Electrical Engineers (“IEEE”).<sup>60</sup> The Commission should establish formal objectives for a VRS access standard and a timeline for its development and implementation. The Commission also should facilitate a joint process between VRS providers and an appropriate technical standards setting body to develop the standard under the auspices of the VRS advisory committee. Among other things, objectives of the VRS access standard should include the improvement of overall video quality, the efficient use of available bandwidth, resiliency against firewall issues and differing routing configurations, and the use, whenever possible, of off-the-shelf hardware, software, and cloud technologies.<sup>61</sup> The resulting standard should then be codified and, to avoid any disruption to VRS users, an appropriate glide path of not less than three years should be mandated for the phase out of any non-compliant VRS offerings and the full adoption of the mandated standard.

Most importantly, VRS standard setting should not be viewed as a one-time event. Rather, it should be viewed as an ongoing process. Standards organizations provide mechanisms by which standards can be continually updated, thereby providing the needed flexibility to enable VRS technologies to advance as the technologies used for hearing communications improve.

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Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 ¶ 48 (2011) (“We also find that the inclusion of the word ‘interoperable’ does not suggest that Congress sought to *require* interoperability, as some commenters have suggested.”) (emphasis in original).

<sup>60</sup> Convo does not believe that the VRS providers are likely to voluntarily and independently resolve interoperability issues given their disparate business objectives and the potential financial impact of mandatory access standards. This is especially true in light of the market dominance of a single VRS provider, which has made significant investments in the distribution to its user base of VRS-specific videophones that rely on the outdated H.323 standard.

<sup>61</sup> *See, e.g.*, CPADO Comments at 3 (“Regarding ‘off the shelf’ technology, CPADO gives tremendous support for a future where we experience a number of choices in equipment from VRS providers and/or mainstream companies, since some videophones currently are difficult to use or to handle, particularly those operated by remote control.”).

Similarly, the VRS access standard should be permitted to evolve over time in a managed way with clear implementation milestones for new requirements and the phase out of legacy technologies that have become outdated as a result of innovation with respect to interoperable video conferencing.

Finally, adopting a published standard for VRS through the auspices of an industry standards setting organization increases the likelihood of commercial products being created for the hearing community that comply with such standard. Such a benefit is not possible with a closed industry standard specific to VRS. Convo recognizes that the VRS user community could greatly benefit from being able to use commercially available video conferencing equipment and technology, especially given the much larger scale of the hearing telecommunications market, and therefore encourages the Commission to approach the establishment of VRS access standards in a manner that is likely have broader impact beyond VRS.

#### **VI. A VRS USER DATABASE WILL IMPROVE THE TRANSPARENCY AND EFFICIENCY OF THE PROGRAM**

One of the primary challenges in evaluating proposed changes to the VRS compensation mechanism—the primary component of the Commission’s VRS program—is the lack of information available regarding the VRS user base. The Commission does not currently know how many unique VRS users exist and therefore cannot gain an understanding of the usage habits of individual VRS users, such as how many VRS providers a user typically relies upon. This has hampered the ability of the Commission to identify waste, fraud, and abuse under the current per-minute compensation system and would prevent the Commission from establishing an appropriate per-user compensation rate if the Commission were to switch to a per-user compensation system. As set forth above, the Commission should implement a VRS User Database to resolve this shortcoming of its VRS program.

Most VRS users have been assigned multiple ten-digit VRS telephone numbers (“TDNs”) because they use multiple VRS providers or because a VRS provider assigns them different TDNs to access different types of VRS products.<sup>62</sup> In addition, as a result of the Commission’s emphasis on streamlining the VRS registration process for users, some users have registered with a single VRS provider many times rather than attempting to keep track of prior TDNs assigned by the VRS provider. Although the Commission’s iTRS database includes information about all TDNs assigned by VRS providers, it does not incorporate a mechanism by which to identify unique users who have been assigned multiple TDNs. Consequently, neither the Commission nor the VRS providers know how many VRS users there are. A VRS User Database that identifies unique VRS users would resolve this problem and thereby provide to the Commission and the VRS industry the type of data that is needed to effectively evaluate the current VRS program, as well as the proposed reforms.

Therefore, the Commission should expand the information required to be submitted by VRS providers to the iTRS database to include registration and user verification information. Further, the Commission should make the Administrator responsible for analyzing this information in an effort to identify unique users. Although VRS providers’ registration records currently are unlikely to be sufficient to enable the Administrator to accurately identify each individual VRS user, the results of such an initial evaluation by the Administrator should enable

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<sup>62</sup> The VRS products offered by different VRS providers vary in their effectiveness depending on a variety of factors. These include the nature (*e.g.*, mobile or fixed) and speed (*e.g.*, cable or DSL; 3G or 4G) of a VRS user’s broadband connection; the type of endpoint hardware used by the VRS provider (*e.g.*, VRS-specific hardware, laptop, tablet, or smartphone); the identity and location of a VRS user’s broadband provider, which may effect latency and jitter; and other characteristics of the broadband networks used by VRS users, including firewalls. As a result, many VRS users have found that certain VRS providers, or certain VRS products offered by a single VRS provider, are preferable for certain purposes. Consequently, many VRS users rely on multiple VRS providers or multiple VRS products.

the Commission to hone its registration and verification requirements to help mitigate this shortcoming of the VRS program going forward.<sup>63</sup>

Moreover, once the Administrator has collected, analyzed, and rationalized VRS user registration and verification records, the Commission should consider making the Administrator, rather than individual VRS providers, responsible for user registration and verification going forward. Specifically, the Administrator should be required to offer online and VRS-based mechanisms to register and verify individual users. Once registered and verified by the Administrator, each user can be assigned an authorization code from the Administrator, which the user can then utilize to obtain TDNs from VRS providers. The VRS providers, in turn, should be required to query the Administrator's centralized VRS User Database to confirm that a potential user seeking a TDN has been verified by the Administrator.

Such a system will enable the Commission and Administrator to better analyze the usage patterns of VRS users and to evaluate the VRS call records submitted by VRS providers as part of their compensation requests. This, in turn, will greatly facilitate the Commission's further evaluation of the VRS program, including identifying any remaining incidences of waste, fraud, and abuse in the program.<sup>64</sup> In addition, an Administrator-managed, centralized VRS User

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<sup>63</sup> Based on its experience registering and verifying its VRS users, Convo believes that VRS providers will receive significant backlash from VRS users if the users are newly required to provide personal information, such as social security numbers, to VRS providers as part of the registration and verification process. VRS users never previously have been required to provide this type of personal information to VRS providers as part of the registration process and therefore are not accustomed to doing so. Accordingly, to the extent that the Commission determines that social security numbers or other personal information is required to be collected from VRS users, the Commission should work with the VRS providers and deaf advocacy organizations to provide appropriate educational outreach to VRS users regarding the need for any newly adopted registration and verification requirements.

<sup>64</sup> For example, by evaluating call completion records in conjunction with the information contained in the VRS User Database, the Administrator will be able to detect voice inbound calls

Database could be used as a porting platform to the extent that the Commission ultimately determines to assign VRS users to individual providers for purposes of a per-user compensation system.

**VII. VRS RATES SHOULD BE DEVELOPED AND MAINTAINED IN A MANNER THAT FULLY SUPPORTS THE OVERARCHING POLICY OBJECTIVES OF THE VRS PROGRAM**

**A. High Quality and Innovative VRS Requires Consistent and Predictable Provider Compensation.**

*Retaining the current interim rates.* Until the Commission has an accurate and full picture of the *actual* costs of providing VRS following the implementation of the Commission’s recent VRS reforms, it should retain the current interim rates and compensation structure to ensure providers can continue to provide high-quality and innovative VRS.<sup>65</sup> Irrespective of the compensation mechanism, the Commission must seek to better ensure that it receives accurate and complete cost data in a more uniform, transparent, and verifiable manner. Absent greater standardization of providers’ financial and cost data, the Commission has struggled to ensure the accuracy and completeness of data submitted. This has hampered the Commission’s ability to confidently set rates that appropriately balance cost containment with encouraging innovation and quality in the provision of VRS. This is true for the current per-minute compensation mechanism, but will equally hold true under a per-user compensation system.

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to inactive TDNs that result in stranded video messages (*i.e.*, the VRS equivalent of voicemail). Convo believes that such stranded video messages, which may never be viewed by an active VRS user, are commonplace and are billed to the TRS Fund as relayed VRS minutes even though they serve no useful purpose.

<sup>65</sup> As the Commission has previously recognized, extending the current interim rates and compensation structure temporarily will provide “the best means to ensure stability and certainty for VRS” while the Commission contemplates further reform. *Further Notice* ¶ 111 (quoting *2011 TRS Rate Order* ¶ 7).

In addition, the Commission currently lacks actual cost data to set rates that fully reflect the increased costs associated with the recent changes to the FCC's rules governing VRS, which require VRS providers to "internalize" many of the costs that VRS providers historically have pushed to outside vendors. For example, VRS providers now must operate all core functions necessary to provide VRS as well as employ all of their own CAs.<sup>66</sup> In the past, VRS providers often utilized third parties to provide such core functions as ACD and overflow capacity and typically hired CAs as independent contractors to reduce their overall cost structure. These fundamental changes to the VRS program will have an impact on the cost of providing VRS. Because these regulatory changes only became effective in the latter part of 2011, even the most recently submitted cost data does not fully reflect this increased cost structure.<sup>67</sup> Until the Commission has accurate and complete cost data for VRS providers operating under the newly adopted regulations,<sup>68</sup> it should retain the current interim rates.

Phase-in of new rates. Any changes to the existing rates should be implemented gradually and predictably to help ensure providers have the opportunity to adjust and adapt to any rate reductions.<sup>69</sup> A lack of predictable VRS rates will have a chilling effect on VRS providers' access to capital and therefore may impact their ability to invest in the infrastructure and staffing necessary to provide innovative and high-quality VRS. In particular, the regulatory risk posed by a sudden and drastic change in rates will adversely impact smaller VRS providers

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<sup>66</sup> See, e.g., *iTRS Certification Order* ¶ 15.

<sup>67</sup> On March 1, 2012, TRS providers, including VRS providers, were required to make their annual filing of actual and projected cost data.

<sup>68</sup> See, e.g., *Further Notice* ¶ 140 (finding "it reasonable to move to a rate based entirely on providers' actual costs").

<sup>69</sup> Similarly, if the Commission ultimately determines to replace the existing per-minute compensation system with a per-user compensation system, a rate modification collar still should be implemented to avoid extreme volatility in the annual revenue of VRS providers.

who need access to new capital to grow in scale to compete with the dominant provider. As the *Further Notice* recognizes, most VRS providers rely almost entirely on the TRS Fund for their revenue.<sup>70</sup> As a result, a sudden, precipitous decline in the per-minute rate easily could eliminate one or more of the smaller VRS providers, thereby reducing overall competition in the VRS industry and causing disruption to the defunct providers' users.

To ensure gradual and predictable rate changes, the Commission should adopt a "collar" around VRS rates to prevent them from suddenly decreasing more than a specified percentage in any given year.<sup>71</sup> The collar could be accomplished through a price-cap mechanism similar to that proposed in the *Further Notice*<sup>72</sup> or by simply setting a maximum percentage that VRS rates may fall each year irrespective of changes in the cost structure of providing VRS as reported to the Commission annually. The collar should be a fixed percentage less some measure of inflation to take into account year-to-year variations in the value of the dollar. Further, to the extent that a rate reduction would have exceeded the collar based on cost data provided by VRS providers, the portion of the rate reduction that is not implemented in a given year due to the collar can be carried over from year to year until it can be fully realized without exceeding the collar—much the same as is the case with respect to taxable assessment of increases in real property values in many localities.<sup>73</sup>

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<sup>70</sup> *Further Notice* ¶ 50 (finding that "in many cases [VRS] providers' primary or only source of revenue may be the TRS Fund").

<sup>71</sup> *See, e.g., id.* ¶ 22 (explaining how uncertainty has impeded VRS providers' ability to make long term plans).

<sup>72</sup> *Id.* ¶¶ 133-134.

<sup>73</sup> *See, e.g.,* Maryland Department of Assessments & Taxation, Maryland Homestead Tax Credit, <http://www.dat.state.md.us/sdatweb/homestead.html> (explaining the Maryland Homestead Tax Credit, which requires localities to limit taxable assessment increases to 10% or less each year).

VRS providers would be faced with a very difficult financial circumstance if the Commission were to suddenly and significantly cut the rate paid to them as dramatically as referenced in the *Further Notice*.<sup>74</sup> They simply will not be able to sustain their current and projected near-term operations if the Commission suddenly cuts the VRS reimbursement rate to \$3.90 per minute.<sup>75</sup> If the Commission ultimately determines that a significant rate reduction is appropriate, the rate reduction should be implemented gradually to enable VRS providers to adjust their cost structure and business operations accordingly. No business can maintain its current customer service levels if it suddenly loses nearly 40% of its revenue.<sup>76</sup>

**B. Irrespective of the Compensation Mechanism, the Commission Should Retain a Tiered Rate Structure to Preserve and Ensure Consumer Choice**

Independent of whether a per-minute or per-user mechanism is used to compensate VRS providers, a tiered compensation model better supports the policy objectives of the VRS program than a single-unitary rate structure. The current VRS market structure is comprised of a single dominant provider that handles the “vast majority of VRS minutes” and a handful of significantly smaller providers dividing the remaining market.<sup>77</sup> In light of this highly

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<sup>74</sup> Although Convo’s organic and self-funded growth has enabled it to avoid the heavy debt burdens facing many VRS providers, providers with substantial interest obligations are especially at risk if the Commission suddenly and substantially reduces VRS compensation rates.

<sup>75</sup> *Further Notice* ¶ 140 n.234.

<sup>76</sup> VRS providers currently are reimbursed \$6.24 per minute for the first 50,000 VRS minutes that they relay per month and \$6.23 per minute for each subsequent VRS minute per month up to 500,000 minutes. If a single-tier rate of \$3.90 were imposed by the Commission, VRS providers relaying less than 500,000 minutes per month (*i.e.*, all VRS providers other than Sorenson) would experience more than a 37% decrease in their monthly reimbursement.

<sup>77</sup> *Further Notice* ¶ 24. See also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order Denying Stay Motion, 25 FCC Rcd 9115 ¶ 19 (2010) (“lion’s share of all users”); Reply Comments of Purple, CG Docket No. 03-123, at 5 (May 21, 2010) (asserting that Fund Administrator data have shown repeatedly that Sorenson has approximately 80 percent market share as measured by compensable minutes of use). Because provider-specific usage data is not publicly available,

concentrated market structure, a tiered rate structure is necessary to ensure that VRS users have competitive alternatives to the dominant provider, which, in turn, helps ensure that the market competition will continue to drive the availability of high-quality and innovative VRS.<sup>78</sup> The imposition of a uniform rate structure (assuming such uniform rate is based primarily on the dominant provider’s actual costs) runs the real risk of pricing smaller competing providers out of the market, thereby eliminating meaningful competition and allowing the dominant provider to gain even more market share. Such a result would directly harm VRS users by substantially curtailing, or possibly eliminating, their ability to choose an alternative provider.<sup>79</sup>

Without Commission action to level the playing field in terms of market share, the smaller providers always will be at a disadvantage to the dominant provider in terms of economies of scale and the lock-in caused by network effects. This disadvantage will only be exacerbated by a uniform rate structure. Convo supports the Commission’s efforts to reduce the switching costs for a VRS user<sup>80</sup> and the efforts to identify new VRS users,<sup>81</sup> but these efforts alone are unlikely to substantially reduce the market concentration of the VRS industry, at least in the foreseeable future. For example, the development and implementation of effective VRS interoperability standards is a long-term effort that is likely to take years and that will not

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there does not appear to be a public source of information regarding how large the dominant provider’s market share is. Given that the Commission is the sole payer in the VRS market, it is not clear that provider-specific usage data should be considered the confidential and proprietary information of the individual providers. Consequently, the Commission should consider publicly releasing additional data regarding the usage and market share levels of each VRS provider to provide a more transparent view of the structure of the VRS industry to interested stakeholders.

<sup>78</sup> In addition, a tiered rate structure enables entry of new entrepreneurial VRS providers, such as Convo.

<sup>79</sup> See, e.g., *Further Notice*, App. C, ¶ 11 (seeking “a reasonable balance between efficiency and the freedom of users to have more than one choice of VRS service provider”).

<sup>80</sup> See, e.g., *Further Notice* ¶¶ 18, 41-48.

<sup>81</sup> See *id.* ¶¶ 31-40.

necessarily result in a significant reduction in market concentration. Moreover, based on Convo's outreach experience, there do not appear to be nearly enough potential new-to-category VRS users to enable the smaller VRS providers to obtain a significant increase in market share relative to the dominant provider merely through an expansion of VRS penetration, even assuming that the smaller providers can capture a disproportionately high share of new-to-category users.

As a result, the Commission faces a choice. It can substantially disadvantage smaller providers competitively vis-à-vis the dominant provider by establishing a uniform rate for all providers, thereby virtually ensuring that the dominant provider continues to grow its market share. In the alternative, the Commission can provide smaller providers a higher compensation rate to encourage market share growth by smaller providers and accept this relatively small financial inefficiency as the cost of ensuring that some level of competition continues to exist in the VRS market.

**C. The Commission Should Reform, Rather Than Eliminate, the Current Tiered Rate Structure**

Reform to the current tiered rate structure is appropriate to reduce the complexity and associated costs to the TRS Fund while still maintaining a tiered structure to ensure adequate consumer choice. First, the Commission should reduce the number of tiers from three<sup>82</sup> to two – one applicable to the dominant provider and a second applicable to all other providers. As discussed above, it has been asserted that the dominant provider controls approximately 80% of

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<sup>82</sup> Currently, the three tiers consist of: (i) Tier I ( $\leq 50,000$  minutes per month) compensated at \$6.24 per minute; (ii) Tier II (50,001 – 500,000 minutes per month) compensated at \$6.23 per minute; and (iii) Tier III ( $>500,000$  minutes per month) compensated at \$5.07 per minute. *Id.* ¶ 24, Table 1.

the VRS industry.<sup>83</sup> The tier division should be established in a manner that recognizes this gap in economies of scale.

Utilizing two tiers, *i.e.*, a tier applicable solely to the dominant provider and a tier applicable to all other VRS providers, would not create substantial financial inefficiency and would ensure that VRS users have access to alternative providers. Fundamentally, the use of a single, uniform rate based on a weighted average of providers' actual costs, as suggested in the *Further Notice*,<sup>84</sup> is not likely to create meaningful savings for the TRS Fund relative to a two-tiered approach where the first tier is a rate based on the dominant provider's actual costs and the second tier is a weighted average of the smaller providers' actual costs.

Given the dominant provider's market position, its costs, including the benefits that it receives due to its industry-leading economies of scale, effectively will dictate any single-tier rate. As a result, a single-tier rate likely will be below the cost of smaller providers. Although realizing the cost efficiencies generated by scale is an appropriate objective of the Commission, it simply is not realistic to think that any of the smaller VRS providers will be able to grow their market share to be competitive with the dominant provider in the foreseeable future. Accordingly, a single-minded focus on forcing TRS Fund cost reductions by moving to a single-tier rate is likely to result in a competitive disadvantage to the smaller VRS providers, which will further strengthen the dominant provider's cost advantages and already dominant market position. The additional costs to the TRS Fund of continuing to offer a two-tiered rate

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<sup>83</sup> See *supra* note 77.

<sup>84</sup> *Id.* ¶ 141 (proposing to “utilize a single rate based on the weighted average of providers' actual costs”).

structure<sup>85</sup> is an appropriate investment in fostering competition within the VRS industry and avoiding the further growth of a single dominant provider.<sup>86</sup>

Second, the Commission should compensate all of a provider's VRS minutes at the same rate. There is no practical reason for the first "X" minutes of use to be compensated at one level and the next "Y" minutes of use to be compensated at another level given the current structure of the VRS market. Any risk of regulatory gaming that this approach might have enabled in a VRS industry marked by multiple competitors of roughly equal size is not present in the current VRS market. Assuming that the tier division is established to split the gap between the average number of VRS minutes relayed monthly by Sorenson and the average number of VRS minutes relayed by the other, smaller VRS providers,<sup>87</sup> it is unlikely that any VRS provider will approach the dividing line in the foreseeable future.<sup>88</sup>

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<sup>85</sup> Note that a single-tiered rate structure also will involve some level of inefficiency that effectively will result in a windfall to Sorenson. The higher cost structures of smaller providers will cause the single-tier rate to be higher than Sorenson's costs. As a result, Sorenson will receive a windfall under a single-tier rate. It seems inappropriate to provide a financial windfall to an already dominant provider and thereby further entrench its market dominance.

<sup>86</sup> Consistent with the above collar discussion, if the Commission ultimately determines to use a single tier, it should be implemented gradually over several years to provide smaller providers with a chance to adjust their operations to take the new rate into account or to discontinue operations in an orderly manner. A gradual phased-in approach is consistent with the Commission's proposed growth phase under its per user compensation proposal. *See id.* ¶ 127.

<sup>87</sup> Based on Table 1 of the *Further Notice*, there are more than 7 million minutes per month compensated at the Tier III rate. *Further Notice* ¶ 24, Tbl. 1. Assuming Sorenson provides the vast majority of VRS minutes, it logically follows that Sorenson provides well over 7 million minutes per month and the other providers combined provide just over 1 million minutes per month. *Id.* Therefore, the Commission could readily set the threshold separating the proposed two tiers at approximately 2 million minutes with little fear that providers would be able to game the system at any time in the foreseeable future.

<sup>88</sup> By paying the largest provider the lower Tier III rate for its first 500,000 minutes, rather than higher Tier I and Tier II rates, this proposal alone would save the TRS Fund approximately \$7 million annually. The annual estimated savings is based on a savings of \$1.16

## VIII. CONCLUSION

As set forth herein, the Commission's recent efforts to improve and reform the VRS program have been effective and are laudable. The Commission should now provide an opportunity for the benefits of these reforms to be fully realized before attempting to fundamentally restructure the compensation mechanism that is at the core of the VRS program. Further, additional improvements to the VRS program are warranted, such as the development of a VRS User Database, the adoption of access standards, and the establishment of a VRS advisory committee, and these initiatives should be fully implemented before further consideration by the Commission of the per-user compensation proposal set forth in the *Further Notice*.

Respectfully submitted,

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per minute (*i.e.*, the difference between the Tier II (\$6.23) and Tier III (\$5.07) rates) multiplied by 500,000 minutes per month multiplied by 12 months.