

March 30, 2012

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

Re: FCC 11-184 NPRM Reply Comment

Filed electronically via ECFS on Docket 10-51

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

This is more of a ‘grab bag’, where I highlight certain comments made in response to this NPRM by industry participants and stakeholders. Any omission is not intended to be a slight, nor an agreement, for these parties, and I thank them for participating in this important NPRM that promises to reshape the VRS industry dramatically. The crucible shaping the rule-making process can only help strengthen the regulations governing the VRS industry.

#### GENERAL REPLY COMMENT

I read the 4-Joint VRS Providers Petition<sup>1</sup>, and one of its recommendations is for the Commission to have a “Blue Ribbon” Committee<sup>2</sup> to study VRS reform, including compensation models. However, I desire regulatory certainty, and having a series of meetings, however well intentioned, will only stave off certainty in reforming the VRS industry.<sup>3</sup>

That said, I do see the value in having a VRS Reform “Blue Ribbon” Committee in an advisory role to the Commission. My caveat is that if a committee is to be established, it is done with the understanding that the Commission has issued its final rules and regulations concerning VRS reform. This “Blue Ribbon” committee would be tasked with an advisory role in ensuring a smooth transition to a new VRS regulatory framework in a span of 12-18 months.

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<sup>1</sup> Filed March 6<sup>th</sup>, 2012, by CSDVRS, Sorenson, Snap, and Convo.

<sup>2</sup> The Consumer Groups also supported the idea of a “Working Group”. See their Comment, filed 3/9/12, Page 48.

<sup>3</sup> “*Meetings are Toxic*”, Pages 108-110, **Rework** (ISBN:978-0-307-46374-6), by **Jason Fried & David Heinemeier Hansson**. One quote stands out; “Meetings procreate. One meeting leads to another meeting leads to another...”

The key point is that the Commission would have issued its final rules and regulations regarding VRS reform. The industry participants have a choice; follow along and participate in this “Blue Ribbon” committee to help guide a smooth transition process, or opt out and pursue their case against the Commission via litigation. Even then, if these industry participants want to postpone the impact of new regulations, they have to petition the FCC for a limited waiver in the public interest in Docket #10-51.

The VRS industry gets regulatory certainty with specific milestones in a transitory period towards a better market for VRS consumers. The Commission gains the benefit of invaluable insight from the “Blue Ribbon” Committee during the transition, and further fine-tune their approach in reforming the VRS market. The public also benefits, as the process is transparent; aggrieved participants can either opt out and litigate, or issue petitions of waivers in the public interest. Participants in this committee will have to follow ex-parte commenting requirements.

#### HEALINC REPLY COMMENT

I thank Healinc Telecom, LLC for their substantive discussions on the 11-184 NPRM, and for their Reply Comment. I want to highlight a critical comment: “Healinc acknowledges that the provision of relay services is a program and not a competitive market, yet the reality remains that relay service providers are in fact competing against each other.”<sup>4</sup> The TRS Program is a ‘program’ in name only; I would characterize it as a public-private partnership, in which private industry provides actual access to the nation’s telecommunications networks for individuals with disabilities, and the Federal TRS Fund as the sole ‘paying customer’.

Congress, in its discretion, created the TRS industry as a means for individuals with disabilities to access the nation’s telecommunications networks. The FCC is charged with the task of codifying regulations and actual implementation of the TRS industry. The Commission

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<sup>4</sup> Healinc Telecom, LLC Comment, filed March 9<sup>th</sup>, 2012, Page 2.

recognized the importance of free markets in meeting this Congressional mandate, and wisely chose a course involving private industry participants in fulfilling its TRS obligations.

The Commission recognized this dynamic, saying “that our duty is “to protect competition, not competitors.”<sup>5</sup> By using competition and private participants, the Commission is fulfilling its Availability and Functional Equivalency mandates in maintaining the TRS industry.<sup>6</sup> The Commission is now estopped by claiming otherwise, that they are free to tinker with the free market model underlying the TRS industry. The Commission just cannot adopt regulations that turn this competition paradigm on its head, such as the proposed per user compensation regime.

This public-private partnership cut both ways; by engaging in the TRS industry as partners, the participants are also fulfilling this Congressional mandate in ensuring access to the nation’s telecommunications networks. The profit motive in a competitive market pushes these industry participants to innovate in their product and service offerings to the TRS public.

If these industry participants game the TRS Fund with waste, misuse, and fraud, they also subvert their responsibilities to the TRS public. In earning a profit, the participants cannot seek a quick gain by circumventing loopholes in the TRS regulations nor engage in wasteful and fraudulent activities. In doing so, these participants develop unhealthy dependencies on the TRS Fund for their continued existence, at the expense of offering innovative products and services to the TRS public. Moreover, these actions undermine public confidence in the TRS industry.

Both the Commission and industry participants have a vital stake in this public-private partnership in steering the TRS industry forward, with focus on serving the TRS public.

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<sup>5</sup> FCC 11-184, filed 12/15/2011, Page 33, Paragraph 66

<sup>6</sup> Purple Communications Comment, filed March 9th, 2012, Page 5 - “To date, the many private companies who offer relay services have created a multitude of valuable communications options for deaf Americans. Such options go to the core principles of the ADA.”

Competition and profit is the engine that drives the TRS industry in fulfilling the Congressional mandate governing access to the nation's telecommunications networks. The TRS public are the 'customers' these providers need to serve, not the TRS Fund.

#### CONSUMER GROUPS REPLY COMMENT

I thank the Consumer Groups for their substantive discussions on the 11-184 NPRM. The list of contributing organizations is truly impressive, and the Commission only stands to benefit from their collective wisdom on deciding TRS issues. I have two areas of concern regarding their 11-184 comment: Profile-Based Routing and TRSBPP/USF.

The Consumer Groups advocated "the FCC to consider allowing VRS users to opt into a skills-based system that will better match VRS CAs' skills and expertise to callers' communications and stylistic needs."<sup>7</sup> They advocated that VRS consumers be allowed to select their "preferred" CA for their VRS calls.<sup>8</sup> It would be a voluntary, 'opt-in' system for VRS consumers<sup>9</sup>, and would still allow choice for VRS consumers in selecting the first available CA for their calling needs.<sup>10</sup>

This detailed proposal seems to be made in response to Paragraph 86 of FCC's 11-184 NPRM, "Are there other operational standards that should be adopted or modified to ensure high quality VRS for all users?"<sup>11</sup> The Registry of Interpreters joined in support of the Consumer Groups petition on interpreter/caller matches.<sup>12</sup> ZVRS hinted at some support on this issue, "too many deaf and hard of hearing people prematurely terminate their VRS calls because of the

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<sup>7</sup> *Ibid*, Page 9

<sup>8</sup> *Ibid*, Page 10

<sup>9</sup> *Ibid*, Page 10, "The answer times for consumers that utilize a selected or preferred CA should not be subject to answer time calculations for purposes of meeting a minimum answer time service standard."

<sup>10</sup> *Ibid*, Page 10, "consumers would benefit from having a choice in relay services between those that provide the first available CA immediately..."

<sup>11</sup> FCC 11-184 NPRM, filed 12/15/2011, Page 39.

<sup>12</sup> RID Comment, filed 3/9/2012, "Over the years, progress toward achieving *functional equivalence* has been evaluated primarily by speed of answer. RID believes that functional equivalence can only be measured by the success of the calls made."

sense that the level of communication is misrepresentative or inadequate.”<sup>13</sup> Purple also supported this issue, calling it ‘Skills-Based Routing’.<sup>14</sup>

I support the concept of ‘Profile-Based Routing’ as floated by the Consumer Groups, with one exception; I just can’t support the idea of VRS consumers having a list of preferred CA’s. The collusion potential in matching up VRS consumers with preferred CA’s would invite fraudulent and wasteful calling activities and does not promote functional equivalency.

My main concern lies with the opt-in provision for VRS consumers in accessing certain calling services based on their profile or based on the skills needed to successfully complete a VRS call. If too many VRS consumers elect to opt-in, and wait for a matching CA to handle their call, it would cause queue imbalances in the VRS Provider’s ACD platform. In turn, these queue imbalances eventually affect users who do not care about matching up with an appropriate CA and just want to make a direct VRS call. They may encounter higher ASA speeds, possibly exceeding MMS requirements, even though they did not opt-in for specialized CA assistance!

There are other concerns; what if a consumer profile indicated a strong preference for a CODA interpreter? An African-American interpreter? A female interpreter? An interpreter of a certain religious faith? All of these preferences are protected categories from discrimination under the Equal Process Clause of the U.S. Constitution. Certain preferences may cause hiring, retention, and promotion imbalances in the VRS interpreting workforce, and affect VRS consumers who do not care about such things and just want to complete VRS calls.

With respect to skills-based routing, another concern is using specialized fields of interpreting such as legal and medicine in VRS settings, while admirable, may actually siphon

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<sup>13</sup> CSDVRS, LLC Comment, filed 3/9/2012, Page 14. *See also*, Page 33, “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.” *See generally*, Page 36.

<sup>14</sup> Purple Communications Comment, filed 3/9/12, Page 19.

these scarce resources from community interpreting. The economics driving the VRS industry are unmatched by the private sector, when it comes to hiring and retaining ASL interpreters.

I feel there are many issues involved with ‘Profile-Based Routing’ as floated by the Consumer Groups and should warrant a separate rule-making process. If the Commission wants to decide on this issue, I humbly offer the suggestion of allowing an extra ‘trailing’ minute tacked upon each and every VRS call. Up to 150 words can be conveyed in a single minute between the VRS consumer and the CA in preparing for the call.<sup>15</sup>

While some may regard this one minute ‘padding’ for each and every VRS call to be wasteful, I think it will help enhance call quality as VRS consumers are afforded the chance to give the appropriate context of the call with the CA prior to the VRS call. It is feasible, as ACD platforms can automate this process.<sup>16</sup> It avoids the nettlesome constitutional issues, queue imbalances, collusion between CA’s and callers, and preserves the integrity of the ASA rules. In the long run, the CA’s are handling VRS calls more efficiently, and would deliver significant savings to the TRS Fund.

I still do not favor the TRSBPP, despite having read other commentators on this subject favoring such a program. The Consumer Groups gave some treatment on this issue, especially their insistence that such a program eventually be funded by the Universal Service Fund (USF). The fundamental reason why I do not favor the TRSBPP is rooted in this statement; “the Commission not to create a ‘separate but equal’ system for hearing and speech disabled persons for fear that such a system would in reality become separate and unequal.”<sup>17</sup>

While the Consumer Groups made that quote in context of the Lifeline Program, this quote equally applies to Deaf/HH people who do not use ASL, and the TRSBPP will

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<sup>15</sup> CSDVRS, LLC Comment, filed 3/9/2012, Page 13, Footnote 17.

<sup>16</sup> I think ACD platforms are required to automatically record VRS minutes without CA input and/or intervention.

<sup>17</sup> Consumer Groups Comment, filed 3/9/12, Page 37.

discriminate against these individuals.<sup>18</sup> Broadband subsidies need to be made available to all eligible low-income customers, with or without a disability, under the Lifeline Pilot Program as a part of the National Broadband Plan.

There is wisdom in the Consumer Group's insistence that broadband internet subsidies be made available for all low-income Deaf/HH people under the Lifeline Pilot Program funded by the USF. They spoke of "broadband silos, with the focus of the Lifeline broadband pilot on hearing consumers and the TRSBPP on deaf and hard of hearing consumers."<sup>19</sup> The TRS program, while funded differently, is an essential component of Universal Service as mandated by Congress in The Telecommunications Act of 1996.<sup>20</sup>

The Commission is currently implementing the National Broadband Plan. This would be the touchstone for the Commission in meeting America's telecommunication challenges for the 21<sup>st</sup> Century and beyond. It would be one of the most significant pieces of regulation in the history of the Commission. Reforming the VRS industry needs to be an essential component in implementing the National Broadband Plan, with USF monies providing the much needed impetus in enrolling low-income customers with hearing loss.

#### CSDVRS, LLC ("ZVRS") REPLY COMMENT

I thank ZVRS for their substantive discussions on this 11-184 NPRM. I urge the Commission to give serious consideration to some ideas ZVRS floated in their Comment; 'decoupling' the access technology and VRS interpreting services<sup>21</sup>, related hybrid approach on VRS compensation, and Commission authority to fund VRS Access technology<sup>22</sup>.

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<sup>18</sup> The Consumer Groups expressed a similar concern along those lines, saying, "Rather, a low income consumer may want a captioned telephone to make captioned telephone service calls. Thus, the TRSBPP should be expanded as quickly as possible to meet the needs of varying types of iTRS users." *Ibid*, Page 38.

<sup>19</sup> *Ibid*, Page 37.

<sup>20</sup> Sorenson echoed the same sentiment; See Sorenson Comment, filed 3/9/2012, Page 24.

<sup>21</sup> CSDVRS, LLC Comment, filed 3/9/2012, starting on page 16.

<sup>22</sup> *Ibid*, starting on page 27.

I want to focus on the Commission's authority to fund VRS Access technologies, as asked in Paragraph 51 and Section VII in its 11-184 NPRM. ZVRS was the only industry participant who commented directly on this point.<sup>23</sup> The legal analysis as offered by ZVRS is very persuasive and does a tremendous service to the VRS industry. This is because, traditionally speaking, the Commission did not fund VRS access technologies<sup>24</sup>, and provider-subsidized proprietary VRS access technologies have seriously hindered competition in the VRS market.<sup>25</sup>

The key analysis offered by ZVRS was: "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."<sup>26</sup> With that crucial analysis in place, it is plain that the Availability Mandate requires the TRS Fund to fund VRS access technologies, and should replace provider-subsidized videophone solutions.

Next, ZVRS offers the brilliant solution of 'decoupling' VRS access technologies and interpreting services with their hybrid compensation proposal.<sup>27</sup> I urge the Commission to give their proposal some serious consideration. ZVRS has already outlined a strong argument in favor of the Availability Mandate in requiring the TRS Fund to fund VRS access technologies in this hybrid compensation proposal. With VRS access technologies out of the picture, the major barrier to free and full competition in the VRS service marketplace is also removed.

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<sup>23</sup> Oddly enough, Sorenson's economist essentially reached the same conclusion. Sorenson only touched upon these concerns in their main comment. Prof. Katz Declaration, filed 3/9/12, Page 46, Paragraph 73.

<sup>24</sup> FCC 11-184 NPRM, filed 12/15/2011, Paragraph 49, Page 27.

<sup>25</sup> 2006 Interoperability Order (Found in Purple Comment, filed 3/9/2012, Footnote 9.)

<sup>26</sup> CSDVRS, LLC Comment, filed 3/9/2012, Page 30.

<sup>27</sup> *Ibid*, Page 16, "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."

Proprietary provider-subsidized VRS access technologies have effectively locked-in users, resulting in an asymmetrical marketplace dominated by one provider. With ZVRS' hybrid compensation proposal, providers will receive a fixed monthly subsidy for being a default VRS Access Provider. Providers will supply VRS users the VRS access solutions they need, and service the infrastructure needed to facilitate point to point and VRS calls.<sup>28</sup> Providers are all incentivized to make their VRS access solutions fully interoperable.<sup>29</sup>

There is one key point ZVRS did not elaborate on in their petition; portability.<sup>30</sup> This hybrid compensation proposal addresses portability concerns posed by the Commission with respect to the 'locked-in' nature of accessing VRS services and incurring high switching costs in the process.<sup>31</sup> By compensating VRS Access Providers a monthly subsidy, they are also incentivized to keep portability for their users.<sup>32</sup> The end result is a **frictionless model of VRS service**, where users are truly free to use whatever VRS service they need.

With portability issues addressed in ZVRS' hybrid compensation proposal, users do not need to worry about switching VRS service providers, defeatured videophones, porting issues, winback efforts, aggressive marketing campaigns, etc. They simply have the VRS access they need to utilize VRS services of their choosing, through their VRS Service Provider or on a dial-around basis. Since users do not pay for the service, a frictionless model of competition will help remedy the current asymmetrical structure of the VRS industry, where VRS providers have to compete on VRS service, and not 'lock-in' their users with subsidized equipment offerings.

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<sup>28</sup> *Ibid*, Page 18.

<sup>29</sup> Compare Sorenson's comment, "that a provider should not be responsible for actively supporting CPE that is being used to access another VRS provider's service", filed 3/9/2012, Page 68.

<sup>30</sup> *Ibid*, see page 19, "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."

<sup>31</sup> FCC 11-184 NPRM, Paragraph 17.

<sup>32</sup> Compare Sorenson's comment, "The fact that consumers prefer Sorenson's deaffriendly endpoints is not a reason forcibly to unbundle endpoints and service, and thereby require Sorenson to redesign both its equipment and backend systems so that its hardware-based videophones can be used as a platform for any other VRS provider's service", filed 3/9/2012, Page 71.

VRS providers still have to compete for the VRS Access provider flat rate monthly subsidy with innovative hardware and infrastructure offerings. The dominant provider will still continue their dominance, but other providers will now start purchasing the equipment and infrastructure they need to win such business from the VRS public. Previously, this was not possible, due to the high costs of obtaining such equipment and subsidizing them. VRS consumers will benefit, as the VRS marketplace will be flooded with products needed for VRS access by a variety of providers.<sup>33</sup>

ZVRS went into greater detail about how their hybrid compensation model would work for the VRS industry. I will not be commenting on these details, except to say that they serve as a useful starting point for industry participants to collaborate upon with the Commission. For example, ZVRS proposed tiered compensation models, the per-user monthly figure for VRS access, and a per-minute figure for VRS service. My general suggestion is that the Commission needs to allocate as much fixed costs as possible for the monthly rate, and allocate variable or traffic-sensitive costs to the per-minute rate.<sup>34</sup>

#### SORENSEN REPLY COMMENT

I thank Sorenson Communications for their quite substantial contribution to the 11-184 NPRM, including an economist analysis of the VRS industry and public policy recommendations for reform.. The TRS public and the Commission will benefit from the wisdom and insight as offered by their economics expert and regulatory expertise in shaping VRS reform. I will highlight some key concerns raised by Sorenson; their unqualified support for a per-user compensation system, price-cap approach on profit, use of proprietary VRS access technologies, partnering with the enterprise, and their use of an economist.

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<sup>33</sup> See also Prof. Katz's Declaration, filed 3/9/2012, Page 52, Paragraph 86.

<sup>34</sup> ZVRS Comment, filed 3/9/2012, Page 17, using the Consumer Groups' rationale.

The Commission, in its 11-184 NPRM, proposed rules for a per-user compensation regime to replace the current tiered per-minute rate reimbursement scheme for the VRS industry. Sorenson is the only industry participant to endorse this approach, with universal opposition from every other stakeholder. Some industry participants advocated for some form of a hybrid compensation approach that incorporate some elements of the per-user compensation scheme.

The fact that there is near universal opposition to a proposed rule or regulation does not mean that the regulating agency will abandon and/or modify it. I do not know the level of commitment and resources the Commission may have expended in support of the per-user compensation scheme in lieu of the tiered per-minute rate reimbursement scheme. The Commission may very well go ahead and implement a per-user compensation scheme for the VRS industry, in spite of significant opposition, and choose to rely on the regulatory expertise of the dominant provider in doing so.

On 3/23/2012, Sorenson made an ex parte comment casting aspersions on Purple's partnering efforts in the enterprise sector. Purple put up a vigorous reply two days later, defending their practices in partnering with the enterprise and promoting employment of Deaf people. Such outreach initiatives are to be commended, not put under regulatory scrutiny.

I feel the real purpose of Sorenson's ex parte comment lies in this quote, "if permissible Sorenson would pursue opportunities to find call center jobs for more deaf individuals."<sup>35</sup> It serves to alarm the public and the Commission about the imminent potential for an exponential increase in TRS Fund waste and abuse. The remark also emboldens the Commission to stay on the path of per user compensation regime for the VRS industry. I caution the Commission to take a practical and analytical approach on the issues raised by Sorenson's ex parte comment and look at all sides of the issues, including Purple's rebuttal.

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<sup>35</sup> Sorenson Ex Parte Comment, filed 3/23/2012, Page 1

If the Commission saw fit to adopt a per-user compensation regime for the VRS industry, I prefer that the decision to be a final decision, signed by members of the Commission. This ruling promises to wreak havoc on competition in the VRS industry to the benefit of the dominant provider. The ruling promises to restrict consumer choice, and may stifle further innovation in technology and services for the VRS industry. I want the Commission to assume personal responsibility in reforming the VRS market, and face political pressure from the VRS industry, stakeholders, and consumers in whatever decision they will ultimately render.

Generally speaking, I want VRS providers to recoup their costs in providing access to the nation's telecommunications networks and earn a fair profit. Sorenson advocated for a price cap regime in lieu of the rate of return regulation. They used their economist, Professor Michael Katz, to make their arguments strongly supporting a price cap approach on compensation. It is to my understanding that the price cap approach is not novel to VRS, as the Commission has used a variant of it during 2007-10.<sup>36</sup>

It was during that period an explosion of fraud, waste, and misuse occurred. It led to a massive \$735 million debt<sup>37</sup> offering<sup>38</sup> on part of Sorenson. It spawned a slew of 50+ white label providers with shaky business plans and questionable business practices. If the Commission is to revisit the price cap regime, they are welcome to do so, but I urge caution, as the VRS industry will seek to profit at the expense of serving its customers.

Furthermore, Prof. Katz stated, "One concern about price cap regulation in a monopoly setting is that it may not properly incentivize firms to provide the right level of service quality

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<sup>36</sup> Katz Declaration, filed 3/9/2012, Footnote 97, referencing the *2007 Rate Methodology Order*.

<sup>37</sup> <http://www.institutionalinvestor.com/Article/2373416/Sorenson-Sells-735M-Debt.html>

<sup>38</sup> I consider this to be a malinvestment, as the bond offering converted Sorenson's private equity into debt, and was not used to finance day to day operations or into R&D. See Sorenson Comment, filed 3/9/2012, Page 36, "In addition, converting equity into debt—such as by borrowing funds while paying dividends—simply shifts the company's mix of financing from capital to debt."

(for example, a regulated monopoly might reduce quality in order to lower costs).”<sup>39</sup> If the Commission green-lights a per-user compensation scheme, Sorenson may become a monopoly, as other providers drop out, reaping a windfall under the price cap compensation model.

The rate of return regulation could use a bit of retooling, as Prof. Katz and Sorenson has stated an eloquent case for its removal entirely.<sup>40</sup> From what I understand, the Commission has been using it for interim one-year rates for the VRS industry, from 2010-11 year and the current 2011-12 year. Prof. Katz is correct when he states, “Cost-based regulation or compensation leads to misaligned incentives. Specifically, when the regulatory agency adjusts rates on the basis of costs, firms have lessened incentives to become more cost-efficient.”<sup>41</sup> Prof. Katz goes further, “a firm could raise its quality in order to raise costs, knowing that it would receive greater compensation in future years.”<sup>42</sup>

Prof. Katz’s astute observations regarding cost-based regulation only holds true for year-to-year setting of rates, as the Commission has done for two consecutive interim one-year rates for the VRS industry. If the Commission were to set multi-year rates using cost based models and without an efficiency factor, VRS industry participants will be motivated to reduce costs.

This is because in a multi-year rate compensation regime, VRS providers will plan their costs and seek lower costs through productivity and other gains. Since there is no efficiency factor, VRS providers will earn additional profits in years 2, 3, 4, and 5. They cannot sacrifice quality in lowering their costs, as they would lose business to their competition. The TRS Fund will benefit from lowered costs at the end of the multi-year compensation regime, and use that to set up a new multi-year compensation model, and the rate-setting process repeats.

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<sup>39</sup> Katz Declaration, filed 3/9/2012, Paragraph 63.

<sup>40</sup> Sorenson Comment, filed 3/9/2012, Pages 37-45.

<sup>41</sup> Katz Declaration, filed 3/9/2012, Paragraph 58.

<sup>42</sup> *Ibid*, Paragraph 60.

Regardless of whatever compensation model the Commission ultimately adopts, I urge them to expand the allowable costs as advocated by industry participants in calculating VRS provider compensation. I urge the Commission to set multi-year rates. I urge the Commission to set a fair profit for VRS providers, accounting for efficiency and productivity gains. Profit and competition is the very engine that drives the VRS industry, with innovative product and service offerings. The Commission needs to facilitate this dynamic with its VRS industry partners.

Sorenson discussed their proprietary VRS access technologies; “By contrast, Sorenson has optimized its equipment for deaf, hard-of-hearing and speech-disabled individuals. For instance, Sorenson prioritizes video quality over audio quality; uses a wide camera angle to capture more than just “talking heads”; invented LightRing™ call signaling; and developed equipment that transmits video effectively at comparatively low bandwidths. None of these attributes would likely be present in a technology platform designed for the hearing.”<sup>43</sup>

I generally agree with their assertion that VRS providers be allowed to offer proprietary VRS access technologies for their customers, as off the shelf technologies may not fully address the needs of VRS consumers.<sup>44</sup> However, the current status quo regarding proprietary VRS access technologies is unsustainable, as interoperability issues persist between these technologies and the off the shelf technologies used by competing VRS providers. Even Sorenson admits that their leading proprietary VRS access product, the VP-200, is deficient in addressing the VRS technological framework proposed by the 11-184 NPRM.<sup>45</sup>

I urge the Commission to allow VRS Providers to create proprietary VRS access points for their customers, but they must be interoperable and customer data must be portable. It means

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<sup>43</sup> Sorenson Comment, filed 3/9/2012, Page 79.

<sup>44</sup> See also Prof. Katz Declaration, filed 3/9/2012, Page 54, Paragraph 90.

<sup>45</sup> *Ibid*, Page 29, “which today does not support SIP and lacks the memory capacity to house and perform many of the standardized functionalities that the FNPRM outlines.”

that VRS Providers will need to use cloud computing solutions to solve interoperability and portability issues. Cloud computing has unlimited memory, CPU cycles, and storage to facilitate interoperability and portability concerns of the ordinary VRS consumer. VRS Providers can require commitment contracts for 1 or 2 years to ensure that they receive a return on investment in proprietary equipment offerings that are interoperable and portable from day one.

I don't know if this is a feasible proposal; VRS providers that create proprietary VRS access points must also make them available for sale on the open market. It would mean that competing VRS providers can purchase them along with off the shelf equipment and use them in capturing the VRS access provider business. I'm not sure how this would work; how can a competing VRS provider support the proprietary VRS access point for their customers? Firmware upgrades? Security vulnerabilities? Warranty concerns? Hearing people can purchase such equipment as well. At any rate, price discovery for proprietary VRS access points need to be held, so that the Commission may set proper costs in their rate-setting methodology.

Sorenson raised valid concerns about VRS Providers and their enterprise activities, and in particular, about facilitating mainstream employment opportunities for Deaf/HH people in call-intensive jobs such as call centers, reservations, etc.<sup>46</sup> Functional Equivalency is a Congressional mandate; but so are the rest of the Americans with Disabilities Act (ADA). The ADA has created a host of civil rights for all persons with disabilities, and with it, possesses dormant powers.

One proposal to fight abuse and waste is to frame the functional equivalency mandate into a functional equivalency 'lens', where there are practical limits to this mandate as imposed by other Titles of the ADA. I will offer a webinar example; a company offers a one-hour long webinar and is accessible by phone. This webinar is not affiliated with any VRS provider.

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<sup>46</sup> *Ibid*, Page 90, "whether and in what circumstances a provider may collaborate actively with a call center operation (e.g., for an insurance company, or for a hotel reservation center) to place VRS users as call center staff."

Under the Functional Equivalency Mandate, the TRS Fund would compensate the VRS provider for this webinar call. Under the Functional Equivalency “Lens”, the VRS provider will not be allowed to submit the webinar call for compensation from the TRS Fund. This is because the webinar provider is considered a ‘place of public accommodation’, subject to Title III of the ADA. The webinar provider will have to accommodate the Deaf individual, usually via the asynchronous chat line and captioning the live streaming video. Basically, using a lens analogy, if Titles I, II, and III have an overlapping responsibility, the phone call in question becomes ‘out of focus’, and ineligible for compensation by the TRS Fund as a VRS call.

Another quick example- a Teaching job. Handling the phone is one of many incidental responsibilities of the job; it isn’t an essential requirement. Applying the Functional Equivalency “Lens”, a teacher would be able to use VRS services in the course of the job, as it would be ‘in focus’ and compensable by the TRS Fund. Yes, Title I of the ADA is applicable, but since handling the telephone is only an incidental responsibility of the job, Title IV can take ‘focus’.

This is a novel concept, and one I reluctantly submit for consideration by the Commission. I am of the belief that the Functional Equivalency concept is truly a mandate, a civil right afforded for all Deaf/HH Americans. However, it is not without limits. If waste and abuses continue to threaten the viability of the TRS Fund, the Commission may have to consider more austere measures to restore public confidence in TRS.

I want to thank Professor Michael Katz for his economic analysis underlying the VRS industry. However, I am not an economist, and even after reading it twice, I still do not fully understand it. I suspect that a lot of other stakeholders did not either. No other industry participant put out an economic analysis on VRS reform. Sorenson’s use of an economist is like

trying to extend their industry dominance to regulatory dominance of the VRS industry. That said, I suspect Prof. Katz's economic analysis will prove invaluable to the Commission.

I know the Commission has economic analysts on staff to properly evaluate and synthesize Prof. Katz's contributions to the debate underlying VRS reform. However, it distorts the rule-making process, where highly specialized knowledge is driving policy decisions made between the regulatory agency and a dominant participant. Rather, regulatory fiat prevails at the expense of the TRS public and stakeholders' collective voices. I want the Commission to release their economic analysis<sup>47</sup> of Prof. Katz's Declaration and its impact on TRS public policy prior to any final decisions made in this rule-making process. To the best of their ability, the TRS public, industry participants, and stakeholders all can compare and contrast these competing economic views of the TRS industry and effectively participate further in the rule-making process reforming the VRS industry.

#### CONCLUSION

I thank the Commission in this important undertaking, reforming the VRS industry. I also want to thank all other industry participants, stakeholder, and VRS Consumers like me who also contributed to this rulemaking process. Thank you for your time in reading this comment, and the opportunity to participate. Sincerely,

Todd Elliott  
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<sup>47</sup> Convo Communications, Inc. made a similar request, saying, "Further, the Commission should provide such an advisory committee with the necessary resources, including funding to retain independent economists [...] to study the VRS program and produce a detailed, balanced and credible report of its findings.", filed 3/9/12, Page