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

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

REPLY COMMENTS OF CSDVRS, LLC

For a myriad of compelling reasons, commenters and CSDVRS, LLC, d/b/a ZVRS ("ZVRS") uniformly rejected the per-user methodology as proposed in the Federal Communications Commission's ("FCC" or "Commission") December 15, 2011 Further Notice of Proposed Rulemaking ("FNPRM").[1] Instead, commenters called upon the Commission to first focus on implementing fundamental changes to VRS regarding enhanced consumer data, a program to connect eligible individuals to broadband and VRS, the creation of VRS access technology standards and consumer oriented initiatives which would bring consumers' VRS experience closer to functional equivalency. Commenters opined that these changes must occur prior to any substantial modification of the rate setting methodology. Commenters expressed the need for VRS rates to remain stable to continue to support the capacity of VRS providers to enhance access technology and interpreting services. Finally, commenters called upon the Commission to preserve and promote competition and consumer choice in VRS.

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

Commenters also recommended establishing an advisory committee as an informed, expert and consensus-based approach to assisting the Commission to develop a framework which accomplishes mutual objectives for the VRS program. ZVRS supports the formation of such an advisory committee. It should consist of stakeholders, providers and subject matter experts with specifically delegated tasks and should make its recommendations within a defined timeline.

With respect to potential alternative compensation methodologies designed to safeguard a dynamic and robust VRS program over the long term, ZVRS detailed a hybrid approach which would compensate providers with a fixed monthly fee per eligible customer for the provision of technology and related VRS access services and a tiered per-minute payment to providers for the provision of interpreting services.[2] This approach would focus providers on serving their customers, motivate the provision of quality and innovative services and products, support consumer choice and enhance the efficiency of TRS Fund expenditures.

ZVRS urged that iTRS access technology standards enable fully functional consumer premises equipment ("CPE") with all features kept intact regardless of the consumer's choice of default provider. ZVRS strongly supported the Commission's proposal to fully transition to off-the-shelf CPE. ZVRS also proposed that a provider must first obtain a signed written letter of agency prior to the porting in of a customer's number and that the ported-out provider be prohibited from disabling or de-featuring the consumer's CPE until the firm order commitment date occurs.

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[2] *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Comments of CSDVRS, LLC., CG Docket Nos. 10-51 and 03-123 (March 9, 2012).

We address the proposals of specific commenters below.

A. Sorenson's Comments

1. Rate of Return

Sorenson's comments contain an extended discussion attacking the Commission's current method of applying the rate of return price regulation to VRS.[3] ZVRS disagrees that the rate of return methodology should be scrapped altogether as Sorenson suggests. Rather, necessary refinements to the methodology to better comport with the realities of the VRS industry and the Commission's rules for calculating the cost of capital would allow the Commission to derive fair and reasonable rates.

We concur, however, with Sorenson's point that the Commission's current rate of return regime makes no provision for return on providers' investment in labor. The rate of return methodology, established more than 20 years ago for a facilities intensive industry, must be updated to reflect the investment required in a labor intensive industry. At a minimum, providers need to be compensated with a return on their investment in amassing the labor necessary to deliver VRS.

Sorenson also points out that the Commission has omitted to factor in substantial costs necessary to provide VRS, including research and development expense necessary to meet temporarily waived standards, the costs of training consumers in use of VRS, porting costs, costs to raise and service capital, and costs related to actual taxes.[4] These

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[3] *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Comments of Sorenson Communications, Inc., at 37-45, CG Docket Nos. 10-51 and 03-123 ("Sorenson Comments") (March 9, 2012). *See also Id.* Declaration of Michael L. Katz at para. 84.

[4] Sorenson also argues that the Commission's application of rate of return regulation to VRS omits to consider the costs to develop, manufacture, install and test CPE for use by deaf and hard of hearing consumers. Sorenson Comments at 40-41. ZVRS notes that under the current VRS regime, where VRS CPE lacks uniform standards and thus off the shelf equipment fails to fully function with all providers'

are the real costs of providing VRS which all providers incur. A failure in computing rates to include the actual and full range of costs of VRS will result in a consequential underpayment for the provision of VRS.

In addition, the Commission is urged to revisit the cost of capital for VRS entities. The 11.25 percent rate of Return on Investment figure the Commission derived from the methodology used for Local Exchange Carriers ("LEC") - and has now applied to VRS - is correctly calculated under the rules only after examining the weighted average of return on debt, cost of preferred stock and the cost of equity.[5] However as ZVRS has previously explained, that rate of Return on Investment methodology has not been followed for VRS, but instead has been calculated (originally by NECA) based on a return on Net Book Value of Depreciable Assets, a completely different methodology. The Commission must assess the rate of return based on the true cost of capital to provide VRS. This requires that the Rate of Return be calculated <u>post real tax</u> rate utilizing the same three components for VRS providers that was derived for the LECs.[6]

<u>2. Tiered Rates</u>

As it has in the past,[7] Sorenson argues against continuation of the tiered rate structure the Commission first adopted for VRS in the 2007 Rate Order.[8] ZVRS has

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networks, it is necessary for a default VRS provider to distribute customized CPE. In that circumstance, ZVRS agrees with Sorenson that the cost of CPE is a necessary component of VRS.

[5] *See Structure and Practices of the Video Relay Service Program*, Comments of CSDVRS, LLC, CG Docket Nos. 10-51 and 03-123, at 5-7 (May 10, 2010).

[6] We also note that the 1.6 percent working capital adjustment used in the current rate of return methodology assumes a 30 day payment delay. However, since payment from the administrator takes more than twice that period, the working capital adjustment factor is low by more than 50 percent. It should be doubled to 3.2 percent. *See* Notice of Ex Parte Communication of CSDVRS, Docket 03-123, at slide 6 (May 27, 2010).

[7] *See Sorenson Communications, Inc. v. FCC*, 659 F.3d 1035 (10th Cir. 2011).

countered those arguments many times before,[9] and Sorenson's attempt to scuttle tiered rates should again be rejected. Instead the Commission should refine the rate structure to two tiers as ZVRS proposes.

The tiered rate structure is necessary if there is to be any meaningful competition among VRS providers. Sorenson's discussion of this issue is noteworthy for its failure to address the VRS market's concentration, where Sorenson enjoys a market share of approximately 80 percent. Sorenson implies this market share results from its superior skill at acquiring customers. As the record shows and ZVRS and other providers have amply pointed out, however, that position does not comport with history. Sorenson amassed its dominant market share through its videophone/usage tie-in arrangement that the Commission eventually found in its May 2006 *Interoperability Order* to be unlawful.[10] Moreover, since the issuance of the *Interoperability Order*, there continues to be numerous reported instances of Sorenson's continued anti-competitive conduct.[11]

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[8] *See* Sorenson Comments at 25-27.

[9] *See Structure and Practices of the Video Relay Service Program*, Reply Comments of CSDVRS, LLC, CG Docket Nos. 10-51 (September 3, 2010); *Structure and Practices of the Video Relay Service Program,* Reply Comments of CSDVRS, LLC to Sorenson Communications Inc., CG Docket Nos. 10-51 and 03-123 (May 21, 2010).

[10] Sorenson distributed its VP-100 videophone free to deaf consumers with the contractual condition that the consumers could only use Sorenson's VRS. Sorenson also electronically locked the VP-100 videophones down so consumers could not place or receive calls through any provider other than Sorenson. Sorenson also at one time required video phone users to use a minimum number of minutes, but ceased the practice reportedly after having been told to do so by CGB staff. In its *Interoperability Order,* the Commission declared "the practice of restricting the use of VRS to a particular provider -- sometimes termed 'call blocking' – inconsistent with the TRS regime as intended by Congress." *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing Disabilities*, CG Docket No. 03-123, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, 5454-59 (2006) ("*Interoperability Order").* The Commission also found that the practice raised serious public safety concerns. *Id.* at 5456.

[11] *See e.g. Structure and Practices of the Video Relay Service Program, Ex Parte* of CSDVRS, LLC, CG Docket No. 10-51 (detailing, among other anti-competitive practices, the non-interoperability of Sorenson's nTouch products) (March 6, 2012).

Eliminating the tiered rate structure would serve to cement and enhance Sorenson's dominant market position with the ultimate harm to the consumer's free choice of provider. Although the Commission's desire to reduce the overall cost of VRS to the TRS Fund is understandable, that cost reduction should not come at the price of eliminating consumer choice and competition in the VRS market. And as we show below, a tiered rate structure need not be a drain on the TRS Fund.

Sorenson's suggestion that substantial economies of scale do not exist in the VRS market sufficient to justify tiered rates is refuted by its own data. At best, Sorenson can say that after 500,000 minutes of VRS per month, operators achieve most of the benefits of scale. That means that below 500,000 minutes a month, providers are still striving to achieve scale. Sorenson's own data then support a tiered approach – which better matches costs to compensation. As ZVRS posited in its FNPRM comments, the appropriate rate break should be at 750,000 minutes a month. At that breakpoint, we believe a provider has substantially reached scale.

Sorenson's assertion that a tiered rate structure imposes excessive costs on the TRS Fund, a view possibly reflected also in the FNPRM,[12] does not add up. Properly constructed, a tiered rate structure should be neutral or very close to neutral. Consider the following example: 9 million minutes of VRS are processed by six providers, A-F. Market distribution and average cost is as follows:

[12] FNPRM at para. 24.

Provider	Monthly Minutes	Cost per minute
A.	7,000,000	$4.50 per minute
B.	800,000	$5.50 per minute
C.	600,000	$6.00 per minute
D.	300,000	$6.25 per minute
E.	200,000	$6.75 per minute
F.	100,000	$7.50 per minute

The following chart shows the total cost to the TRS Fund under a unitary rate, calculated from the weighted average costs of the providers, of $4.831.[13]

Provider	Monthly Minutes	Cost per Minute	Total Cost	Weighted Avg. all providers	Compensation	over / (under) compensated	percent over / (under) compensated
A	7,000,000	$ 4.50	$31,500,000	$ 4.831	$ 33,813,889	$ 2,313,889	7%
B	800,000	$ 5.50	$ 4,400,000	$ 4.831	$ 3,864,444	$ (535,556)	-12%
C	600,000	$ 6.00	$ 3,600,000	$ 4.831	$ 2,898,333	$ (701,667)	-19%
D	300,000	$ 6.25	$ 1,875,000	$ 4.831	$ 1,449,167	$ (425,833)	-23%
E	200,000	$ 6.75	$ 1,350,000	$ 4.831	$ 966,111	$ (383,889)	-28%
F	100,000	$ 7.50	$ 750,000	$ 4.831	$ 483,056	$ (266,944)	-36%
Total	**9,000,000**		**$43,475,000**	**$ 4.831**	**$ 43,475,000**		

Under this approach, we can see that the dominant provider is overcompensated by approximately 7 percent, and all other providers are undercompensated from approximately 12 to 36 percent. Using a two tier model, if we calculate the Tier 1 rate at the weighted average of the five non-dominant providers, we get a Tier 1 rate of 5.988. If we calculate the Tier 2 rate at the average cost of the dominant provider, we get a Tier 2 rate of $4.50. Plugging these rates into a tiered model, where Tier 1 compensation is paid for minutes up to 750,000 and Tier 2 compensation is paid for minutes in excess of

[13] The numbers selected for this example are selected for convenience and do not purport to represent actual costs. In addition, we do not necessarily endorse the use of the weighted average cost method for determining VRS rates. We note Sorenson would calculate a unitary rate at the current VRS expenditure level of the TRS Fund. Sorenson Comments at 53, n.115. That would undoubtedly benefit Sorenson, whose actual costs appear well below even the current Tier 3 rate, but it would achieve no cost savings to the TRS Fund. Apparently Sorenson's concern for saving the TRS Fund from excessive costs did not factor into its thinking on this subject, likely because all the excess would flow to Sorenson.

750,000, the chart below show the total cost to the fund is only approximately 2.4 percent higher than the weighted average model.

Provider	Monthly Minutes	Cost per Minute	Total Cost	First Tier Rate	First Tier Minutes	First Tier Payment	Second Tier Minutes	Second Tier Rate	Second Tier Payment	Total Compensation	over/ (under) compensated	% over / (under) compensated
A	7,000,000	$ 4.50	$31,500,000	$5.988	750,000	$ 4,490,625	6,250,000	$ 4.50	$28,125,000	$ 32,615,625	$ 1,115,625	3.5%
B	800,000	$ 5.50	$ 4,400,000	$5.988	750,000	$ 4,490,625	50,000	$ 4.50	$ 225,000	$ 4,715,625	$ 315,625	7.2%
C	600,000	$ 6.00	$ 3,600,000	$5.988	600,000	$ 3,592,500	-	$ 4.50	$ -	$ 3,592,500	$ (7,500)	-0.2%
D	300,000	$ 6.25	$ 1,875,000	$5.988	300,000	$ 1,796,250	-	$ 4.50	$ -	$ 1,796,250	$ (78,750)	-4.2%
E	200,000	$ 6.75	$ 1,350,000	$5.988	200,000	$ 1,197,500	-	$ 4.50	$ -	$ 1,197,500	$ (152,500)	-11.3%
F	100,000	$ 7.50	$ 750,000	$5.988	100,000	$ 598,750	-	$ 4.50	$ -	$ 598,750	$ (151,250)	-20.2%
	9,000,000		**$43,475,000**	**$5.988**		**$16,166,250**			**$28,350,000**	**$ 44,516,250**		
Total cost Unitary Rate			**$43,475,000**									
Total cost Two Rate Tiers			**$44,516,250**									

Based on this two tier model, the dominant provider is still overcompensated by approximately 3.5 percent. However, now two other providers are practically fully compensated and thus better able to compete with the dominant provider; and those providers who are still undercompensated are undercompensated to a much lesser extent than under a unitary rate. Through hard work and superior customer service they may be able to reach a breakeven point.

A properly constructed tiered rate structure, therefore, will not place an undue burden on the TRS Fund and does not promote inefficiency. In fact, it better aligns costs with compensation, promotes meaningful competition, and thus better serves consumers. Continuation of the tiered rate structure is necessary to level the VRS playing field.

B. Purple's Comments

We agree with Purple that the Commission should address VRS market imbalances caused by the anti-competitive practices of the dominant provider.[14]

[14] *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Comments to FNPRM on

However, we oppose Purple's bidding proposal with share caps because it will cause severe inefficiencies and disincentives in creating choke collars on competition and allowing for consumer choices for some but not all eligible relay users. In our view that is not the appropriate way to resolve the concentrated VRS market structure.

C. Consumer Group's Comments

We commend the Consumer Group's wide ranging proposals to achieve functional equivalency. On balance, their consideration should be an essential component of this proceeding.[15] We agree that the VRS rates must take into account research and development costs, cover brand name marketing, and not effectively act as a cap on necessary improvements to the quality and efficiency of VRS. With respect to their discussion of a hybrid rate structure, we caution that a per-minute rate to recoup traffic sensitive costs cannot "only recover CA costs" since the lack of any profit in providing interpreting services would render it meaningless to offer such services. In addition, interpreting costs involve much more than merely the salaries and benefits of interpreters but as extensively discussed by ZVRS in its FNPRM comments and elsewhere, also involve call center and direct management costs which must be likewise factored into compensation for interpreting.

Structure and Practices of the Video Relay System, Purple Communications, Inc., CG Docket Nos. 10-51 and 03-123 (March 8, 2012).

[15] *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Comments to Further Notice of Proposed Rulemaking, Deaf and Hard of Hearing Consumer Advocacy Network, Telecommunications for the Deaf and Hard of Hearing, National Association of the Deaf, Association of Late-Deafened Adults, Inc., California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc., American Speech-Language Hearing Association, Registry of Interpreters for the Deaf, Deaf Seniors of America, National Black Deaf Advocates, Inc., Alexander Graham Bell Association for the Deaf and Hard of Hearing, CG Docket Nos. 10-51 and 03-123 (March 9, 2012).

D. Neustar's Comments

We are pleased that our comments regarding the expansion of the iTRS database to include the additional data necessary to facilitate reforms to the VRS program are aligned with Neustar's views.[16] We also fully support Neustar's suggestion that the Commission modify its rules to permit the use of gateways for the routing of traffic ("server routing") to facilitate iTRS access technology.

Conclusion

The Commission has received consensus input about the necessary steps it must first implement to ensure that reform measures achieve objectives without compromising the access and quality of VRS. The Commission has also gotten consistent input that more activity by the way of stakeholder input is necessary to develop the correct refinements to the VRS program. In the interim, the Commission must maintain the current tiered rate structure at a rate which fairly and accurately compensates VRS providers for the necessary level of quality services and availability of access products.

Respectfully Submitted,

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[16] *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Comments of Neustar, Inc., PS Docket Nos. 10-51 and 03-123 (March 9, 2012).