

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) CG Docket No. 03-123
Speech Disabilities)
To: The Commission

**REPLY COMMENTS OF
CONVO COMMUNICATIONS, LLC**

Robin Horwitz
Chief Executive Officer

David J. Bahar
Vice President of Government and
Regulatory Affairs

Convo Communications, LLC
2603 Camino Ramon
Suite 200
San Ramon, California 94583
(510) 731-5012

March 30, 2012

TABLE OF CONTENTS

EXECUTIVE SUMMARY ii

I. INTRODUCTION 1

II. COMMENTERS OVERWHELMINGLY OPPOSE THE PROPOSED PER-USER
COMPENSATION MECHANISM 2

 A. The Commission Should Refrain From Further Considering the Per-User Proposal
 at This Time 2

 B. The Record Demonstrates the Inherent Deficiencies of a Per-User Compensation
 Mechanism 4

 C. The Principle of Cost Causation Warrants Retention of Per-Minute Compensation 5

III. COMMENTERS GENERALLY AGREE THAT THE COMMISSION MUST
ENSURE CONTINUED CONSUMER CHOICE AND PROVIDER COMPETITION
AS IT SEEKS TO REFORM VRS RATES 6

 A. A Two-Tier Per-Minute Rate Structure Best Ensures Consumer Choice and
 Provider Competition in Light of the Current Highly-Concentrated VRS Market
 Structure 7

 B. Any Reform of VRS Per-Minute Rates Should Be Based on a Price-Cap Model
 Rather Than a Rate-of-Return Model 10

IV. THE MAJORITY OF COMMENTERS STRONGLY SUPPORT THE
DEVELOPMENT AND DEPLOYMENT OF A VRS USER DATABASE 11

V. COMMENTERS ARE IN FULL AGREEMENT THAT ACCESS TECHNOLOGY
STANDARDS ARE NEEDED TO IMPROVE THE VRS PROGRAM AND THE
EXPERIENCE OF VRS USERS 12

VI. CONTRARY TO THE SUGGESTIONS OF SOME COMMENTERS, THE
COMMISSION SHOULD REFRAIN FROM ADOPTING CA CERTIFICATION
REQUIREMENTS 15

VII. CONCLUSION 17

EXECUTIVE SUMMARY

The record demonstrates wide-spread support for the Commission’s recent reforms to the video relay service (“VRS”) program and the continued focus on improving the program. As emphasized in Convo’s initial comments, the Commission must maintain a keen focus on the overarching policy objectives of the VRS program as it considers further reform, namely, ensuring functional equivalency, encouraging innovation, and ensuring the efficient provision of service.

Per-User Compensation Proposal. The Commission should refrain from further considering the per-user proposal at this time. VRS providers and consumer groups overwhelmingly oppose the proposed per-user compensation mechanism based in large part on inherent structural deficiencies of a per-user mechanism. It incentivizes VRS providers to focus on enrolling low-volume users, offering the minimum permissible quality of service, and discriminating against the high-volume users that most benefit from VRS. In comparison, a per-minute compensation mechanism is better aligned with the overarching policy objectives of the VRS program and the principle of cost causation.

VRS Rates. Commenters generally agree that the Commission must ensure continued consumer choice and provider competition as it seeks to reform VRS rates. In light of the current highly-concentrated market structure, a two-tier per-minute rate structure better ensures consumer choice and provider competition than a single unified rate based on the lowest cost provider’s actual costs. Any incremental inefficiency resulting from a two-tiered rate structure is more than offset by these public interest benefits. In addition, as it seeks to reform VRS rates, the Commission should adopt a price-cap model rather than a rate-of-return model.

Other Items. Commenters strongly support the development and deployment of a VRS user database and are in full agreement that access technology standards are needed to improve the VRS program and the user experience. Contrary to the suggestions of some commenters, the Commission should refrain from adopting communication assistant (“CA”) certification requirements.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Commission

**REPLY COMMENTS OF
CONVO COMMUNICATIONS, LLC**

Convo Communications, LLC (“Convo”) hereby submits these reply comments in response to the Further Notice of Proposed Rulemaking (“*Further Notice*”) issued by the Federal Communications Commission (“Commission” or “FCC”) in the above-captioned proceedings.¹

I. INTRODUCTION

The record demonstrates wide-spread support for the Commission’s recent reforms to the video relay service (“VRS”) program and the Commission’s continued focus on improving the program.² As emphasized in Convo’s initial comments, the Commission must maintain a keen focus on the overarching policy objectives of the VRS program as it considers further reform, namely, ensuring functional equivalency, encouraging innovation, and ensuring the efficient

¹ *Structure and Practices of the Video Relay Service Program*, Further Notice of Proposed Rulemaking, 26 FCC Rcd 17367 (2011) (“*Further Notice*”).

² *See, e.g.*, Purple Communications, Inc. (“Purple”) at 1; Healinc Telecom, LLC (“Healinc”) at 1; ASL Services Holdings, LLC (“ASL”) at 30–31; CSDVRS, LLC (“CSDVRS”) at 5; Deaf and Hard of Hearing Consumer Advocacy Network et al. (“Consumer Groups”) at 3; Sorenson Communications, Inc. (“Sorenson”) at 1; Video Relay Services Consumer Association (“VRSCA”) at 1. In these reply comments, all comments filed on or about March 9, 2012, in this proceeding are short-cited by name of party.

provision of service.³ Consistent with these overarching policy objectives and as detailed below, commenters overwhelmingly oppose the Commission’s proposal to adopt a per-user compensation mechanism. There is also general consensus that the Commission should (i) implement a two-tiered price-cap rate structure, (ii) develop a VRS user database, and (iii) implement VRS access technology standards. In addition, like other commenters, Convo opposes the implementation of a third-party certification requirement for communications assistants (“CAs”).

II. COMMENTERS OVERWHELMINGLY OPPOSE THE PROPOSED PER-USER COMPENSATION MECHANISM

A. The Commission Should Refrain From Further Considering the Per-User Proposal at This Time

Commenters, including all VRS providers and consumer advocates, overwhelmingly agree that the Commission should refrain from further consideration of the proposed per-user compensation mechanism at this time.⁴ Most agree that the Commission should wait until the

³ See Convo at 2 (describing the overall policy objectives of the VRS program).

⁴ See, e.g., Letter from Sean Belanger, CEO, CSDVRS, LLC, *et al.* to Marlene H. Dortch, Secretary, FCC, at 2 (filed Mar. 6, 2012) (“Joint VRS Providers Letter”); Consumer Groups at iv (“The per-minute compensation methodology with the recent rule changes to combat fraud and abuse remains the best rate compensation methodology at the present time to support the current level of functional equivalence for deaf and hard of hearing consumers and speech impaired consumers.”); ASL at 8–9 (“The Commission’s efforts to develop a more stringent framework to preclude abuses promulgated in 2011, coupled with enhanced enforcement and whistleblower provisions have already proven effective in eliminating abuses. Further, elimination of subcontracted provision or relay services, required automated usage reporting process, and enhanced vigilance of the Fund Administrator have virtually ensured that the legitimate remaining certified providers are incapable of committing fraud, or otherwise lose certification and risk severe penalties. These major reforms should be allowed to remain in effect for more than the eight or so months that they have existed to provide a meaningful assessment of their long-term effectiveness before changes in compensation methodology are considered.”); Healin at 5; Purple at 32; Hancock, Jahn, Lee & Puckett, LLC d/b/a Communications Access Ability Group (“CAAG”) at 1–2; CSDVRS at 5–6.

benefit of recent reforms can be fully evaluated,⁵ and all agree that there are prerequisites that need to be implemented before any per-user compensation system is implemented.⁶ As one commenter succinctly explains:

[T]he FCC has had some ten years' experience with the per-minute methodology. It has responded to fraud under the per-minute methodology with legal action, certification reforms, and additional audit and enforcement activity. . . . [T]he Commission should first evaluate whether these actions are sufficient to keep future fraud to a minimum before embarking on a wholesale programmatic change that may introduce new fraudulent activity that is just as difficult, if not more so, to deter, detect and prevent.⁷

The Commission's recent reforms to VRS – reforms ten years in the making – have had a significant impact on the ability of unscrupulous providers to engage in behaviors leading to waste, fraud, and abuse and have facilitated the Commission's ability to detect such bad acts.

As explained in Convo's initial comments,⁸ the Commission should conduct a thorough evaluation of the *current* VRS industry (*i.e.*, the industry that has evolved from the recent, expansive regulatory initiatives) to develop a record and understanding of any current and ongoing problems prior to adopting a wholesale change to the compensation mechanism.⁹ Any meaningful evaluation as to whether to proceed in adopting a wholesale change to the

⁵ See, e.g., ASL at 9; Consumer Groups at iv.

⁶ See, e.g., CAAG at 2; Sorenson at 58–59.

⁷ Consumer Groups at 40.

⁸ See Convo at 8–9.

⁹ See, e.g., VRSCA at 3.

compensation mechanism can only occur after the industry has operated under the Commission's recent reforms for, at minimum, a full calendar year.¹⁰

B. The Record Demonstrates the Inherent Deficiencies of a Per-User Compensation Mechanism

Commenters correctly highlight the negative incentives created by a per-user compensation mechanism, including the incentive to discriminate against high-volume users, to diminish rather than improve VRS quality, and to seek out and enroll large numbers of new, low-volume users.¹¹ The Consumer Groups explained this succinctly – under a per-user mechanism, “VRS providers would want to see every consumer use as little of their service as possible” and “will have strong incentives to seek out low volume consumers to maximize profit.”¹² These negative incentives are only further exacerbated by the practical need to lock in each user to one provider under a per-user compensation mechanism.¹³ To ensure functional equivalence, “[d]eaf and hard of hearing consumers need the ability to change service providers if service quality

¹⁰ In light of the fact that the Commission only receives a complete snapshot of the VRS industry on an annual basis, a full calendar year, at minimum, is necessary to ensure the Commission has a complete and accurate picture of the industry generally, and each provider's operations in particular, under the recent, extensive VRS reforms. *See, e.g.*, 47 C.F.R. § 64.606(g).

¹¹ *See, e.g.*, Consumer Groups at 47; The Students in COM 390 – Accessible Communication Technologies at Gallaudet University and Christian Vogler, Associate Professor, Gallaudet University (“Gallaudet”) at 3; Purple at 30, 34; ASL at 14; Healinc at 5; Sorenson at 47, 82.

¹² Consumer Groups at 44.

¹³ *See, e.g.*, Cerebral Palsy and Deaf Organization (“CPADO”) at 3; Gallaudet at 3; CAAG at 2–3; *see also* Sorenson at 56-57 (recognizing that under a one-provider-per-user rule, VRS users must retain the right to switch providers whenever they choose).

deteriorates, just as hearing users have the ability to switch telephone providers (*e.g.*, wireline to cable).”¹⁴

C. The Principle of Cost Causation Warrants Retention of Per-Minute Compensation

The record is replete with support for the per-minute compensation mechanism.¹⁵

Commenters, including consumer advocates and VRS providers, emphasize that, relative to a per-user compensation mechanism, a per-minute system better incents the provision of high-quality and innovative VRS,¹⁶ facilitates greater consumer choice,¹⁷ and encourages outreach by VRS providers to high-volume customers that most benefit from VRS.¹⁸

In addition, a per-minute compensation mechanism better matches VRS providers’ cost recovery to their cost causation.¹⁹ “Cost-causation principles . . . counsel that regulators should

¹⁴ Consumer Groups at 42. *See also* CAAG at 2–3 (“A consumer’s ability to obtain VRS from more than one provider creates an incentive to deliver excellence in customer service and to invest in innovation and enhancements. In contrast, tying a user to a single provider creates issues if a particular provider, for example, is slower to answer calls because of a temporary surge in call volume.”).

¹⁵ *See, e.g.*, Consumer Groups at 48 (“[T]he per-minute compensation methodology with the recent rule changes to combat fraud and abuse remains the best rate compensation methodology at the present time to support the current level of functional equivalence for deaf and hard of hearing consumers and speech impaired consumers.”); Gallaudet at 4; ASL at 10–12; Purple at 30; CSDVRS at 7–8.

¹⁶ *See, e.g.*, Gallaudet at 3; ASL at 12; CSDVRS at 6.

¹⁷ *See, e.g.*, Gallaudet at 3; CSDVRS at 6.

¹⁸ *See, e.g.*, Purple at 30; CSDVRS at 6.

¹⁹ *See* CSDVRS at 8 (“It is a fundamental principal of rate making to match cost recovery to cost causation. By attempting to arrive at a per user rate, unrelated to actual usage, the FNPRM promises to create a host of discontinuities which will adversely impact functional equivalency and the VRS user community.”); CAAG at 2 (“From a cost recovery perspective, the number of customers – versus the time required to meet their collective needs – is not the primary driver of incurred expense.”).

seek to align the recovery of costs with the way they are incurred.”²⁰ The *Further Notice* attempts to rationalize a per-user mechanism based on averaging the most substantial cost (*i.e.*, the usage-based CA cost)²¹ and underestimating the substantial portion of other costs that are also usage sensitive.²² In fact, the majority of costs related to providing VRS vary, either directly or indirectly, with the number of minutes relayed.²³ Rather than forcing an ill-fitting per-user mechanism, the Commission should retain a per-minute compensation mechanism, which more closely aligns cost recovery with how VRS costs are incurred.

III. COMMENTERS GENERALLY AGREE THAT THE COMMISSION MUST ENSURE CONTINUED CONSUMER CHOICE AND PROVIDER COMPETITION AS IT SEEKS TO REFORM VRS RATES

The functional equivalence requirement of Section 225 of the Communications Act²⁴ requires that VRS users have the same level of consumer choice as consumers of non-

²⁰ *Structure and Practices of the Video Relay Service Program*, Notice of Inquiry, 25 FCC Rcd 8597, 8614–8615 ¶ 60 (2010).

²¹ *See, e.g., Further Notice* at 17394–95 ¶ 55 & n.147 (recognizing that the single largest expense, CA costs, varies with the number of VRS minutes relayed, but nonetheless, assuming that “the average number of VRS minutes per user is constant” to justify a per-user mechanism).

²² *See, e.g., id.* at 17395 ¶ 56 (noting that “there are no other significant cost items that scale on a per minute basis”).

²³ *See, e.g., CSDVRS* at 7 (“[F]or all providers, big or small, as usage increases, more interpreters have to be hired, more equipment has to be bought, additional call centers have to be opened, and more human resources personnel and management must be hired. Additional effort must be put into ensuring regulatory compliance, more customer service personnel must be hired, more finance and accounting personnel must be retained, and more engineering personnel are required to maintain the provider’s network up and operational. More telephone trunks must be ordered and larger internet access lines must be in place. The key driver of all of these costs is traffic, the actual minutes of VRS use.”); *see also* Letter from David J. Bahar, Director of Government and Regulatory Affairs, Convo, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 10-51, attach. (filed Jan. 28, 2011) (confidential) (describing Convo’s operating costs).

²⁴ 47 U.S.C. § 225.

telecommunications relay services.²⁵ The need to ensure consumer choice in the provision of VRS is also consistent with the Commission’s sound policy preference for increased competition.²⁶ In light of the current highly-concentrated VRS industry, the record generally supports Commission efforts to foster increased consumer choice and provider competition.²⁷

A. A Two-Tier Per-Minute Rate Structure Best Ensures Consumer Choice and Provider Competition in Light of the Current Highly-Concentrated VRS Market Structure

As detailed in Convo’s initial comments,²⁸ the Commission should retain a reformed two-tier per-minute rate structure²⁹ to ensure continued consumer choice and provider competition in light of the current market structure that is overwhelmingly dominated by a single provider (*i.e.*, Sorenson).³⁰ A single rate based on the dominant provider’s cost structure has the real potential

²⁵ *See, e.g.*, Consumer Groups at 6 (“Each consumer who needs VRS should have provider and equipment choices, and such choices should be functionally equivalent to the choices that consumers in the non-TRS telecommunications industry enjoy.”).

²⁶ *See, e.g.*, ASL at 7 (“There is no need to pursue a discussion regarding the well-documented benefits of competition and consumer choice.”).

²⁷ *See, e.g.*, ASL at 7 (“We need only look to the Bell System divestiture and more recently the failed AT&T – T-Mobile merger to recognize the dangers of extreme market concentration under the guise of improved efficiency.”); Healinc at 3 (“In the wireless industry, the Commission’s recent position on the failed AT&T T-Mobile merger revealed concerns over market concentration. Yet in the relay services segment, the dominant carrier retains a market share that would in no other competitive industry be deemed appropriate save those with franchised monopolies. The fact that relay services operate under a federal Program does not change the fact that other companies simply cannot effectively offer alternatives unless meaningful reforms are made that preclude anti-competitive behavior and dominance.”).

²⁸ *See* Convo at 31–33.

²⁹ *See* CSDVRS at 24 (“If the per-minute tiers are kept at the same level as they are today, ZVRS proposes two tiers for VRS Access Providers”); *see also* CAAG at 3 (“The tiers do not discourage the desire of providers to achieve scale, but do recognize the reality that efficiencies are gained at higher volumes.”).

³⁰ *See* Purple at 4 (“Sorenson handles more than 80 percent of the market share of the VRS industry.”).

of harming the public interest generally, and VRS users in particular, by inhibiting the ability of smaller providers to effectively compete with the dominant provider. Ultimately, this could result in a single-provider VRS industry because the cost reductions that Sorenson can achieve via economies of scale are far beyond what any other VRS provider can achieve today or will be able to achieve in the near term.

The public interest benefits of increased consumer choice and service-quality competition will outweigh any marginal reductions in the overall financial efficiency of the Commission's VRS program attributable to policies intended to increase the ability of smaller providers to compete with Sorenson.³¹ For example, to meet the statutory objective of promoting competition in wireless services,³² the Commission has regularly used bidding credits to avoid excessive license concentration and enable small entities to successfully participate in spectrum auctions, even though such bidding credits come at a cost to financial efficiency.³³ Similarly, to achieve "functional equivalency,"³⁴ VRS users must have the same meaningful consumer choice and provider competition enjoyed by users of telecommunications services for the hearing community. It seems likely that the Commission would take regulatory action, even if such

³¹ See, e.g., Purple at 2 ("The Commission's desired outcome will only result from a truly competitive marketplace with multiple certified providers operating at scale and competing fairly on the basis of quality, innovation and cost."); ASL at 7.

³² See 47 U.S.C. § 309(j)(3)(B).

³³ See, e.g., *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8064, 8166 ¶ 284 (2007) ("Section 309(j)(3)(B) of the Act provides that in establishing eligibility criteria and bidding methodologies, the Commission shall promote 'economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.' One of the means by which the Commission fulfills this mandate is through the award of bidding credits to small businesses." (citations omitted)).

³⁴ See 47 U.S.C. § 225.

action introduces some amount of inefficiency into the market, if the wireless industry was dominated by a single provider with a market share in excess of 80%.³⁵

In particular, Sorenson's suggestion that the Commission eliminate rate tiers and implement a single unified rate based on the lowest-cost provider's (*i.e.*, Sorenson's) actual costs³⁶ is plainly self-serving and fails to recognize the public interest benefits of ensuring meaningful consumer choice and provider competition. The suggested single unified rate would only function to further entrench (and likely expand) Sorenson's current market share by eliminating smaller providers and new entrants.³⁷ Indeed, Sorenson's suggestion of a single unified rate would likely result in a substantial financial windfall for Sorenson while imposing a significant and deeply harmful rate cut on the remainder of the industry. As the Commission correctly recognized, "providers with a relatively small number of minutes generally have higher costs."³⁸ To avoid crippling the ability of existing providers (as well as potential new entrants) to compete with Sorenson through improved service quality and innovative VRS product offerings, the Commission must enable smaller providers to recoup their higher costs. The alternative, a single unified rate based on the lowest-cost provider's actual costs, will reduce, and may eliminate, meaningful consumer choice in the provision of VRS.³⁹ Therefore, as proposed

³⁵ See Purple at 4 ("Sorenson handles more than 80 percent of the market share of the VRS industry.").

³⁶ See Sorenson at 25–27.

³⁷ For example, Sorenson asserts that economies of scale are "largely exhausted" at 250,000 VRS minutes per month. *Id.* at 27. Even assuming this is accurate, a single tier based on Sorenson's costs would prevent any new entry and all but eliminate consumer choice.

³⁸ *Further Notice* at 17418 ¶ 141.

³⁹ The Commission should, however, continually evaluate any changes in the VRS market structure to determine the optimal rate structure that appropriately balances financial efficiency with meaningful consumer choice and provider competition.

by Convo in its initial comments, the Commission should retain a reformed two-tier per-minute rate structure – one rate for Sorenson and a second higher rate for all other VRS providers.

B. Any Reform of VRS Per-Minute Rates Should Be Based on a Price-Cap Model Rather Than a Rate-of-Return Model

To further incentivize increased consumer choice and greater provider competition, the Commission should adopt a price-cap methodology as it seeks to reform per-minute VRS rates. Fundamentally, a price-cap model more closely aligns VRS provider incentives with the overarching policy goals of the VRS program than a rate-of-return model. In particular, a price-cap model generates strong incentives for providers to become more efficient by allowing providers to retain a portion of the gains from achieving cost efficiencies.⁴⁰ To be clear, the benefits created by price caps complement, but in no way replace the need for, the tiered rate structure discussed above. In comparison, a rate-of-return model rewards firms by applying a fixed percentage return to the costs included in rate-setting process, thus creating little, if any, incentive for VRS providers to improve efficiency and lower costs.⁴¹

A price-cap model would also ensure greater certainty and predictability in VRS rates, enabling providers to more confidently invest in innovative VRS features and increased service quality.⁴² As Convo explained in its initial comments,⁴³ a lack of predictable VRS rates has had a chilling effect on VRS providers' access to capital⁴⁴ and therefore may impact their ability to

⁴⁰ See Sorenson at 38.

⁴¹ See *id.* at 37–38.

⁴² See, e.g., *id.* at 38.

⁴³ See Convo at 27.

⁴⁴ See Sorenson at 38 (“[T]he dramatic rate swings largely closed public equity markets for VRS providers and ratcheted up the cost of debt.”).

invest in the infrastructure and staffing necessary to achieve economies of scale and provide innovative and high-quality VRS. Initially, the Commission should set the two-tier price-cap rates consistent with the existing interim tiered rates,⁴⁵ until more appropriate rates are developed based on a complete and accurate picture of *current* provider costs in light of operational changes by providers to comply with the Commission’s recent, extensive VRS reforms. Consistent with a price-cap model, any decrease from these initial rates should be implemented gradually and predictably to help ensure providers have the opportunity to adjust and adapt to lower rates.

IV. THE MAJORITY OF COMMENTERS STRONGLY SUPPORT THE DEVELOPMENT AND DEPLOYMENT OF A VRS USER DATABASE

Commenters largely agree that the implementation of an effective VRS user database is a prerequisite to any further consideration of a per-user compensation mechanism because there simply is insufficient information currently available about the VRS user base to adequately develop and evaluate an effective per-user compensation system.⁴⁶ Moreover, irrespective of the mechanism used to compensate VRS providers, a VRS user database will provide the

⁴⁵ Specifically, under a two-tier per-minute compensation mechanism, the initial price-cap rates should be set at the current Tier II (\$6.23 per minute) and Tier III (\$5.07 per minute) rates. *Further Notice* at 17383 ¶ 24, tbl.1.

⁴⁶ *See, e.g.*, Joint VRS Providers Letter at 2 (“In particular, as the Commission recognizes in the FNPRM, implementation of a VRS User Database is a necessary prerequisite to the adoption of a per-user compensation model. It simply is not possible to calculate accurate per-user compensation amounts without first knowing the number and nature of VRS users.”); Purple at 12 n.21 (“Under a potential per user model, a centralized information-sharing based system among all providers is critical to the proper administration of the program and should be implemented from the beginning.”); Kimberly Surrency at 4 (“The per-user model can be considered after the Commission gains more insight into the VRS user landscape through the VRS User Database”); Sorenson at 30 (“Sorenson also concurs that the Commission should take steps to establish a VRS User Database and launch the TRS Broadband Pilot Program during the implementation phase,” which “will include a variety of tasks that should be completed before the crux of the reform takes effect.”); CSDVRS at 22 (recognizing the a VRS User Database is a prerequisite to further consideration of a per-user model).

Commission with greater visibility into the operation of the VRS program.⁴⁷ Thus, the Commission should expand the iTRS database to include registration and user verification information to enable the identification of unique VRS users.⁴⁸ Greater information on VRS users will enable the Commission to identify and root out any remaining waste, fraud, and abuse.⁴⁹ In addition, a VRS User Database has the potential to facilitate improved customer porting and centralized user registration and verification.⁵⁰

V. COMMENTERS ARE IN FULL AGREEMENT THAT ACCESS TECHNOLOGY STANDARDS ARE NEEDED TO IMPROVE THE VRS PROGRAM AND THE EXPERIENCE OF VRS USERS

The record demonstrates wide spread support for the adoption of VRS access technology standards to help ensure compliance with the interoperability and portability requirements.⁵¹ As

⁴⁷ See, e.g., Purple at 12 n.21 (“Purple also proposes that a centralized system be deployed even if the Commission adopts a modified per minute or other form of compensation model.”).

⁴⁸ See, e.g., *id.* at 12 n.18 (“This centralized registration and verification database should most likely be integrated with the iTRS database to minimize redundancy and technical complexity.”); Neustar, Inc. (“Neustar”) at 2 (observing that the types of data contemplated for inclusion in the VRS User Database could easily be added to the current iTRS Directory).

⁴⁹ See Joint VRS Providers Letter at 1 (“The development of a [VRS User Database] to calculate the number of VRS users is an important objective and will provide greater transparency regarding the actual nature of the VRS market.”); Sorenson at 60 (“In addition to streamlining core administrative functions, a VRS User Database would also combat waste, fraud, and abuse of the TRS Fund, particularly under a new per-user compensation regime.”).

⁵⁰ See, e.g., Purple at 11 (“Purple believes a centralized registration and verification database, similar to the iTRS database with which all providers interact, would provide the optimal way to establish a homogenous system of registration and verification of customers for providers.”); Sorenson at 59 (“[A] VRS User Database would help ensure that a consumer can port from one provider to another but cannot be served by more than one provider at a time.”).

⁵¹ See, e.g., VRSCA at 3–4; Purple at 14; Joint VRS Providers Letter at 1; CSDVRS at 39; Consumer Groups at 12–13, 14; Rehabilitation Engineering Research Center on Telecommunications (“Telecom RERC”) at 11–17; Sorenson at 62–63.

an initial matter, the Commission in collaboration with a VRS advisory committee⁵² should engage in an open process to develop a comprehensive set of enforceable use cases and performance objectives for both interoperability and portability in addition to the functional requirements proposed in the *Further Notice*.⁵³ These use cases and performance objectives would complement the Commission’s proposed functional requirements by expanding upon the *Further Notice*’s proposed definitions of “interoperability”⁵⁴ and “portability.”⁵⁵ This would provide concrete and testable objectives for each requirement, which, in turn, will enable the Commission to ensure that the VRS access standards developed by an industry standards setting organization and eventually adopted by the Commission truly support these requirements. In addition, the adoption of a comprehensive set of use cases and performance objectives should minimize the need for detailed functional requirements without undermining interoperability and portability.⁵⁶ The resulting flexibility will enable a strong preference for the incorporation of

⁵² See, e.g., CSDVRS at 30–31 (“[W]e recommend that the Commission establish a ‘blue ribbon’ advisory committee comprised of industry and consumer stakeholder representatives, such as the Video Programming and Emergency Access Advisory Committee . . . and the Emergency Advisory Committee . . . to engage the multiple and complex issues and to provide recommendations for how we should move forward with the mutual objectives of the VRS program.”).

⁵³ See *Further Notice*, app. B at 17446–48 ¶¶ 25–30.

⁵⁴ See *id.*, app. B at 17440 ¶ 3 (“By interoperability we mean the ability of a VRS user to (1) freely connect to and communicate through any of several VRS providers, and (2) directly connect to and communicate with other individuals using various forms of VRS access technology.”).

⁵⁵ See *id.*, app. B at 17440 ¶ 4 (“By portability we mean the ability of a VRS user to continue to use their existing VRS access technology, their assigned ten-digit phone number, and certain enhanced features when switching from their current VRS Provider to a different VRS Provider.”).

⁵⁶ See, e.g., Sorenson at 66 (“To ensure continuing innovation, VRS providers, [commercial off-the-shelf hardware and software] manufacturers and providers, and consumer groups should work together to develop workable, flexible standards, which the Commission

new and innovative off-the-shelf commercial technologies into any VRS access standard that is adopted. This flexibility will also enable the standard to more readily evolve with advancements in off-the-shelf technologies.

As the use cases, performance objectives, and functional requirements are being finalized, the Commission should identify and select an appropriate expert organization to develop and maintain the VRS access technology standards.⁵⁷ In addition, the Commission should identify a neutral third party to help ensure full compliance with the VRS access standards, for instance, through a third-party certification and testing process.⁵⁸

could generally reference in its rules.”); CSDVRS at 39 (“ZVRS is concerned that a standard for VRS access technology has been proposed which is not in concert with where the leaders in the video industry are headed.”); *see also* Telecom RERC at 16 (“The list of standards provided in Appendix B can only be a set of minimum requirements that VRS providers need to follow. To allow room for innovation, the VRS provider and the videophone must be able and allowed to support protocols and standards in addition to the ones listed as the minimum.”).

⁵⁷ *See, e.g., Further Notice*, app. B at 17445 ¶ 21 (“Given the limited size of the industry and the nature of these tasks, we believe that this work would best be undertaken by VRS providers and equipment suppliers under the umbrella of an existing organization open to such members and dedicated to interoperability, in which a Working Group focused on VRS can be established.”).

Sorenson suggests the use of the “SIP Forum” as the appropriate vehicle for access standards development, Sorenson at 66, but “[t]he SIP Forum is explicitly not a standards-setting body.” SIP Forum, About the Sip Forum, <http://www.sipforum.org/content/view/13/34/> (last visited Mar. 28, 2011). As a result, the SIP Forum may not have the necessary procedures and protections in place to ensure proper disclosure of participant intellectual property rights that may be required to implement any standard that is developed and eventually adopted by the Commission. *See, e.g.,* IEEE STANDARDS ASS’N, Understanding Patent Issues During IEEE Standards Development, <http://standards.ieee.org/faqs/patents.pdf> (last visited Mar. 28, 2011). Any organization selected by the Commission should have a demonstrated track record of successful standards development and the necessary procedures in place to ensure an open and transparent standards setting process.

⁵⁸ *See, e.g., Further Notice*, app. B at 17445–46 ¶ 23; *see also* Purple Comments at 15–16 (recommending “the establishment of a separate third-party ‘certification’ process for VRS Access Technology”); CSDVRS at 44 (“A third party test and certification system must be established for VRS providers to work with to have the CPE (hardware and software) and gateways tested and certified as interoperable.”).

Once the initial access standards are adopted, the Commission must provide an appropriate phased-in timeframe for compliance. Although the exact implementation period will depend in large part on the technical challenges involved in migrating today’s legacy technologies to the adopted access standards, commenters largely agree that between 18 to 36 months will be needed for the phase-out of non-compliant offerings and the full adoption of the mandated standards.⁵⁹

VI. CONTRARY TO THE SUGGESTIONS OF SOME COMMENTERS, THE COMMISSION SHOULD REFRAIN FROM ADOPTING CA CERTIFICATION REQUIREMENTS

Certain commenters suggest that “a national certification system, independent of VRS providers, should be established and phased in over time so ultimately all CAs are certified.”⁶⁰ Convo believes that service quality competition among VRS providers is a preferable means of ensuring the quality of CAs, and that a national CA certification system has the potential to do more harm than good.⁶¹ VRS providers have both the appropriate incentives and the first-hand knowledge needed to ensure that they employ qualified CAs and train them for VRS interpreting.⁶² Convo, for example, rigorously evaluates all of its CA applicants using an

⁵⁹ See Sorenson at 74 (“The Commission should also allow sufficient time for a SIP transition. . . . Sorenson estimates that this transition will take 18 to 36 months”); CSDVRS at 44 (“A defined timeline, which we suggest as two years, should be set which allows for a complete transition to the VRS Access technology standard.”).

⁶⁰ Consumer Groups at 11.

⁶¹ See, e.g., Sorenson at 80–81 (“Sorenson does not believe, however, that the Commission should establish specific training qualifications for VRS communications assistants (“CAs”) that differ from or expand the requirements currently set forth in section 64.604(a)(1) of the Commission’s rules.”).

⁶² The Commission already requires VRS providers to provide training to their CAs. See 47 C.F.R. § 64.604(a)(1)(i) (requiring that CAs “be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities”).

internal and highly subjective process that Convo has developed over time in light of its customers' needs and preferences, and provides CAs with significant training before the CAs take their first VRS call. In fact, many CA applicants that have been certified through organizations like the Registry of Interpreters for the Deaf ("RID") do not satisfy Convo's requirements and Convo often rejects RID-certified CA applicants. Based on this experience, Convo believes that there are many non-certified ASL interpreters that are well suited for employment as CAs and that certification programs are not an effective means of determining an interpreter's ability to provide high-quality interpreting in a VRS setting, which is much different and often more challenging than interpreting in other settings. As the Commission knows, the VRS industry has placed great demand on the nationwide ASL interpreter pool, and in many cases it is difficult for providers to find qualified interpreters. By requiring CAs to become certified under some specified procedure, the Commission may inadvertently cause an artificial shortage of eligible CAs, thereby driving up VRS providers' CA costs and ultimately increasing the burden on the TRS fund.

VII. CONCLUSION

As set forth herein, commenters, including both VRS industry and consumer representatives, overwhelmingly agree that the Commission should not further consider the proposed per-user compensation mechanism at this time. Further, in light of the current highly-concentrated market structure, the Commission should adopt a two-tiered price-cap rate structure to avoid providing the dominant VRS provider with a further advantage over its much smaller competitors and thereby ensure continued consumer choice and provider competition. In addition, a VRS user database and technology access standards should be developed and implemented to further improve the provision of VRS. Lastly, the Commission should reject any suggestion to mandate CA certification requirements.

Respectfully submitted,

CONVO COMMUNICATIONS, LLC

By: /s/ Robin Horwitz

Robin Horwitz
Chief Executive Officer

David J. Bahar
Vice President of Government and
Regulatory Affairs

Convo Communications, LLC
2603 Camino Ramon
Suite 200
San Ramon, California 94583
(510) 731-5012

March 30, 2012