

**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
)	
To: The Commission		

**REPLY COMMENTS OF SNAP TELECOMMUNICATIONS, INC.
FURTHER NOTICE OF PROPOSED RULEMAKING ON THE STRUCTURE AND PRACTICES OF THE VIDEO RELAY SERVICES PROGRAM**

Nancy J. Bloch
Chief Regulatory and Compliance Officer
Snap Telecommunications, Inc.
Two Blue Hill Plaza, Third Floor
Pearl River, New York 10965

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FURTHER NOTICE OF PROPOSED RULEMAKING ON THE STRUCTURE AND PRACTICES OF THE VIDEO RELAY SERVICES PROGRAM**

Snap Telecommunications, Inc. (“Snap!VRS”) hereby files its response to the Consumer and Governmental Affairs Bureau’s Further Notice of Proposed Rulemaking seeking comment on structural issues with the current VRS program including proposed structural reforms.¹

Specifically, the Commission in this *Further Notice* continues “the process of reexamining the fundamentals of the Commission’s VRS rules to ensure that the VRS program fulfills the goals set for the Commission under the Americans with Disabilities Act (“ADA”) and section 225 of the Communications Act (the “Act”).² Further, the Commission “sets forth a series of options and proposals to improve the structure and efficiency of the program, to ensure that it is available to all eligible users and offers functional equivalence – particularly given advances in commercially available technology – and is as immune as possible from the waste, fraud and abuse that threaten the long term viability of the program as it currently operates” and “ensure that this vital program is effective, efficient and sustainable for the future.”³

¹ In the Matter of 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 (“FNPRM”), CG Docket Nos. 10-51 and 03-123, FCC 11-184 (December 15, 2011).

² Public Law. No. 101-336, 104 Stat. 327, 42 U.S.C. § 12101 *et seq.*, July 26, 1990. Codified at 47 U.S.C. § 225 of the Communications Act of 1934, as amended (“Act”).

³ FNPRM at ¶ 1.

Snap!VRS wishes to take this opportunity to applaud the Commission on the significant and far-reaching VRS reform efforts it has undertaken to date, particularly during the past year. These sweeping reforms have significantly diminished waste, fraud and abuse, strengthened the VRS program including rules for eligibility and participation, and ensured the integrity of the TRS Fund.

With respect to this *Further* Notice, Snap!VRS is of the view that further Commission structural reforms of the VRS program must give greater focus to the functional equivalency mandate of the landmark Americans with Disabilities Act of 1990 as amended (“ADA”) and section 225 of the Act.

Accordingly, Snap!VRS strongly believes that VRS structural reforms undertaken by the Commission should logically focus first on gathering data on VRS users, their expectations and barriers to usage, and usage levels. Such data, once analyzed, would then advance Commission efforts aimed at increasing the availability of broadband and VRS services to underserved populations. Parallel to these efforts would be development and implementation of technical standards for iTRS access, interoperability and portability. Snap!VRS believes that the current tiered compensation structure should be retained with modifications over the next three years, with transition toward an unitary scale rate.

I. INTRODUCTION

A. Recent Reforms Adopted by the Commission Have Advanced the Policy Goals of the VRS Program

Snap!VRS wishes to take this opportunity to again commend the Commission on the significant and far-reaching VRS reforms undertaken to date. These recent reforms have, without question, advanced the policy goals of the VRS program. Concerted efforts by the Commission to improve the efficiency and performance of the VRS program have been aimed at implementing targeted actions to reduce waste, fraud and abuse and to ensure long-term sustainability.

In addition to continuing efforts undertaken by the Commission’s Inspector General in collaboration with the U.S. Department of Justice, the Commission has issued several substantial orders to strengthen non-waived TRS mandatory minimum standards, protect the TRS Fund from fraudulent and abusive practices and institute a more stringent provider certification process to ensure that iTRS

providers, including VRS providers, are qualified and in ongoing compliance with the Commission's rules.⁴ Further, these orders enhanced the Commission's oversight of such providers, and this is the area where the Commission has the opportunity to make the greatest strides toward prevention of waste, fraud and abuse. These reforms have also resulted in cost savings to and protected the integrity of the TRS Fund.

B. Overarching Goals of the VRS Program Must Be Central to Any Further Reform

The Commission states that its overarching goal in this proceeding is to improve the VRS program so that it promotes the goals Congress established in section 225 of the Act. Specifically, the Commission seeks to ensure that VRS is available to all eligible users, is provided efficiently, offers functional equivalence, and is as immune as possible to the waste, fraud and abuse that threaten its long term viability. The Commission also goes on to note that this is largely consistent with the goals outlined in the recent Consumer Groups' *TRS Policy Statement – Functional Equivalency of Telecommunications Relay Services: Meeting the Mandate of the Americans with Disabilities Act* ("Policy Statement")⁵ and that it seeks to reform VRS in accordance with these goals to the extent possible. The Commission goes on to identify structural issues as follows: (i) broadband affordability may be restricting the availability of VRS, (ii) VRS access technology standards may be insufficiently developed, frustrating the program's technology goals, and potentially resulting in inappropriate lock-in of VRS users, (iii) the current VRS compensation mechanism is unpredictable and potentially inefficient, (iv) the structure of the VRS industry is potentially suboptimal and inconsistent with the goals of the Act, and (v) the current VRS compensation mechanism has proven vulnerable to waste, fraud and abuse.⁶

Snap!VRS is in agreement with and will explain its position with respect to the first two structural issues further below. The third, fourth and fifth structural issues point more to Commission's obvious negligent oversight of the VRS program during the prior Administration. In essence, the Commission failed to put into place internal mechanisms for appropriate oversight, and again misses the mark in this

⁴ FNPRM at ¶ 6.

⁵ Letter from Tamar E. Finn and Brett P. Ferenchak, Counsel to TDI, to Marlene H. Dortch, Secretary, CG Docket Nos. 03-123 and 10-51 (April 12, 2011).

⁶ *Id.*, at ¶ 11.

Further Notice by making erroneous assumptions and proposing rule changes without full attention to refining its own oversight and enforcement responsibilities. These structural issues, too, will be addressed further in this document.

It is the opinion of Snap!VRS that the Commission during the last several VRS rate setting proceedings has consciously permitted the monopoly of the dominant provider within the VRS industry to continue to this day. It would then make sense for the Commission to examine its own motives in pushing forth the last three structural issues as justification for their proposed per-user compensation scheme and preference for a single VRS provider. Surely such motives would not be in keeping with the goals that Congress established and the functional equivalency intent of section 225 of the Act.

C. Keeping the Focus on Functional Equivalency

Snap!VRS wishes to take this opportunity to reiterate the importance of keeping the focus on the original intent of Title IV of the ADA and its functional equivalency mandate as the Commission contemplates further VRS reform efforts. This mandate must serve as the leading standard for assessing any action considered, proposed or taken with respect to the VRS program. Consumer Groups astutely point out in their comments that functional equivalency standards must be set to bring TRS into the 21st century⁷. Snap!VRS views the TRS program as a federal initiative committed to upholding the civil rights of deaf and hard of hearing individuals as promulgated by the ADA and section 225 of the Act.

Further, Snap!VRS is sensitive to and has communicated to the Commission the reality of VRS users in that their experience remains far short of what hearing people have long been accustomed to and expect in their daily use of telecommunications, and that this reality has not sufficiently been captured or addressed at the policy level.⁸ While significant and far-reaching VRS reform efforts have been adopted to date, Snap!VRS is concerned that the Commission remains uninformed about the daily reality and expectations of VRS users. This is undeniably evident throughout the *Further Notice* with its central focus on the proposed per-user compensation scheme, put forth akin to a speeding train headed toward a

⁷ Comments by Consumer Groups at pp. 3-6

⁸ Comments of Snap Telecommunications, Inc., in response to the Commission's Further Notice of Proposed Rulemaking (VRS rates and compensation system), CG Docket Nos. 03-123 and 10-51, p. 5 (May 16, 2011).

collision course and crafted without regard to consumer choice and the functional equivalency needs and expectations of VRS users.

Snap!VRS has expressed its view that the Commission is obligated to assess, in close collaboration with relay stakeholders, requirements for achieving functional equivalency in telecommunications above and beyond TRS mandatory minimum standards (including actions necessary to close the gap) and adjust compensation rates accordingly.

II. THE COMMISSION'S PER-USER COMPENSATION PROPOSAL IS PRECIPITOUS

A. Recent VRS Reforms Adopted Should Be Allowed to Fully Take Root

Consistent with other providers, Snap!VRS strongly believes that the significant and far-reaching VRS reform efforts that the Commission has undertaken over the past two years – namely, strengthening of provider qualification and compliance requirements and increase in Commission oversight with the goal of reducing waste, fraud and abuse – should be allowed to fully take root prior to entertainment of any and all proposed alternatives to the current tiered VRS compensation structure.

Further, Snap!VRS and other providers jointly urged the Commission to first focus on key reform areas – VRS user database, VRS access technology standards, VRS consumer safeguards, and a VRS advisory committee – prior to undertaking wholesale changes to the compensation structure.⁹

B. Key Structural Reforms Should Be Implemented Prior to Undertaking Compensation Structural Changes

1. VRS User Database

Snap!VRS agrees that the Commission and the VRS industry would benefit from a centralized database to improve accountability and provide greater transparency by enabling quantification of users served by the program,¹⁰ with assurance of consumer protections and safeguards in line with existing Commission customer proprietary network information (CPNI) rules. Snap!VRS agrees with Convo on

⁹ Joint Letter by CSDVRS, Snap Telecommunications, Sorenson Communications and Convo Communications, CG Docket Nos. 10-51 and 03-123, p. 1 (March 6, 2012).

¹⁰ FNPRM at ¶ 68.

the potential benefits of the VRS user database and how such can impact and support the development of VRS standards for access, interoperability and portability.¹¹

Snap!VRS agrees with Purple in that the database should be independently managed by a third party under separate contract to unify registration and verification standards across providers. Further, Snap!VRS agrees with Purple on use of unique identifiers for instantaneous identity verification and that such efforts should include re-enrollment of existing users, with provider compensation for costs associated with this database, registration and verification processes, and re-enrollment transition.¹² Further, Snap!VRS believes that such for each VRS user, the unique identifier should make note of each user's multiple 10-digit numbers and the IP addresses associated with these numbers. This would also ensure the legitimacy of all dial-around VRS users. Convo's suggestion that the VRS database administrator handle registration and verification processes has merit, although in the opinion of Snap!VRS such would be better handled by providers in line with Commission rules to be formulated for this purpose.¹³

Establishment of the proposed VRS database, in the view of Snap!VRS, would ultimately be of partial use in affording the Commission and providers alike with user metrics regarding the nature of the VRS market. Snap!VRS, however, disagrees with the Commission on primary functions of the database to facilitate the following: (i) ensuring that each VRS user has at least one default provider and (ii) allowing the identification of new-to-category users. Snap!VRS does agree with the Commission on (iii) supporting the operation of the proposed TRS Broadband Pilot Program with modifications, and (iv) ensuring efficient VRS program administration.¹⁴

With respect to default providers, Snap!VRS strongly believes in the right of VRS consumers to have choices among various VRS providers based on their specific needs at specific times. In the view of Snap!VRS, identification of new-to-category users within the VRS infrastructure serves no practical

¹¹ Convo Comments at pp. 16-17

¹² Purple Comments at pp. 11-12.

¹³ *Id.*, p. 25

¹⁴ FNPRM at ¶ 68.

purpose and would cause undue burden. Furthermore, broadband outreach efforts to prospective VRS users by an entity such as the Universal Service Fund supported Lifeline program (covered in the broadband section below) would facilitate the transition of new-to-category users into the VRS marketplace.

Snap!VRS has earlier stated that the Commission should expand the data it gathers and assesses, so that it can present a fuller picture of the state of the VRS industry, including the benefits being provided to consumers.¹⁵ Nearly four years ago, Snap!VRS joined other providers in urging the Commission to measure the annual change in VRS penetration as a way to show that VRS is serving more deaf and hard of hearing individuals.¹⁶

While the reality is that neither the Commission nor VRS providers know exactly how many active VRS users there are at any given timeframe, their individual VRS usage on average among one or more providers, and whether there are inequities in usage levels by active users, it must also be recognized that the Commission does not know the same type of data for VOIP and PSTN users. In short, quantitative analysis of VRS users and individual user levels would at best yield helpful however insufficient data for VRS reform efforts.

Snap!VRS therefore believes there is a serious disconnect between Commission perceptions of the VRS user community – that is, VRS user-defined needs, expectations and barriers – and the proposed structural reforms that the Commission has delineated in this *Further Notice*. The next section addresses these concerns. Snap!VRS is of the belief that the Commission should incorporate metrics based on VRS user-defined needs, expectations and barriers so that it can more fully evaluate the effectiveness of the VRS program within the framework of functional equivalency. Such metrics would help meet consumers' desire to see TRS expand services to better meet their needs, also expressed by Consumer Groups in their *Policy Statement*.

¹⁵ Comments of Snap Telecommunications, Inc., in response to the Commission's Notice of Proposed Rulemaking (VRS rates and compensation system), CG Docket No. 03-123, p. 16 (June 15, 2009).

¹⁶ Joint Letter by Sprint Nextel, Snap Telecommunications and Sorenson Communications, CG Docket No. 03-123, p. 4 (June 27, 2007).

Perhaps the most difficult barrier that VRS users must surmount entails the Commission itself, given the fact that the *Further Notice* does not effectively address the actual needs, expectations and barriers of VRS users and the real obstacles they must deal with on a daily basis. This *Further Notice* contains a number of structurally complex proposals, with assumptions and rationales for each, and it is painfully obvious that many of these are not based on the same reality that VRS users experience. That the Commission deigned to put out a series of superficial American Sign Language (“ASL”) video summaries of this *Further Notice*, without provision of the same detail in ASL format is astounding at best. Nor has the Commission made the same effort to engage VRS users in dialogue via town hall meetings or related forums on a national scale, as it has with other matters before the Commission. One must therefore draw the conclusion that the Commission, having just one employee directly involved with the VRS program and who uses VRS on a daily basis, by far and large does not have the benefit of knowing exactly what VRS users experience in their day-to-day lives. This *Further Notice* rulemaking effort deserves greater involvement by and dialogue with VRS users across the nation.

Snap!VRS is also concerned that with advances in technology that now require re-thinking as to exactly what constitutes convergent video-voice-data communications, the Commission has not sought out nor welcomed the very consumers – VRS users – who can contribute the most to visualizing this effort and its potential. Instead, this *Further Notice* focuses on interoperability and portability matters that could relegate the VRS program to its current niche. This *Further Notice* could have more fully explored and solicited from stakeholders the possible ways that development of interoperable, mainstream video-voice-data standards could encourage the use of multimedia applications and mobile communications devices that would ultimately benefit VRS users and the mainstream public alike. Ideally, such applications would run on a variety of end-user devices designed to support such standards. Snap!VRS will more fully explain its views in this regard within the interoperability and portability section below.

Again, Snap!VRS strongly believes that VRS users deserve to be at the table as part of these proceedings, that is, the Commission’s speeding train under this *Further Notice* must be slowed down to solicit and welcome the input of VRS users so that their specific needs, expectations and barriers with

respect to the increasingly complex subject of VRS reform can also be included as part of the Commission's analysis efforts. Snap!VRS again encourages the Commission to collaborate with VRS users by carrying out a series of workshops and field hearings (town hall meetings) across the nation to explore in depth the TRS program in relation to the ADA. Such outreach and data collection efforts, in the view of Snap!VRS, should be coordinated in conjunction with Consumer Groups.

2. Broadband Lifeline for Potential VRS Users

Snap!VRS fully supports the creation of a program to subsidize or otherwise make available residential broadband Internet access to Americans who are unable to access VRS because they cannot afford broadband access.¹⁷ Such a program would be consistent with the recommendations of the National Broadband Plan, the Commission's broader efforts to meet the 21st century communications needs of low-income consumers, and the Act.¹⁸

The *Further Notice* states that the National Broadband Plan identified broadband affordability as a major barrier to broadband adoption, and the Commission rightfully surmises that this would be particularly acute for the deaf, hard of hearing, deaf-blind and speech disabled individuals. While the Commission lacks systemic data, it recognizes the need to find out if there is a relay services gap between potential demand and actual subscribership attributable to the expense of broadband access. Underlying reasons must also be discovered for the shrinking but continued usage base of legacy TTY devices which, while outdated, remains an essential communications option for deaf and hard of hearing consumers who are otherwise unable to afford residential broadband services and associated equipment (e.g., desktop and laptop computers, tablets and smartphones).

Snap!VRS therefore believes that the Commission can undertake identification of residential broadband adoption impediments and related inequities through analysis of data gleaned through the proposed VRS database, coupled with efforts to better understand VRS user needs, expectations and barriers as described in the preceding section, and the reasons for continued use of legacy TTY devices.

¹⁷ FNPRM Appendix A at ¶ 1.

¹⁸ See FCC National Broadband Plan at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf.

Analysis of such data would lend naturally to efforts aimed at promoting residential broadband adoption by prospective VRS users.

Snap!VRS believes that since deaf and hard of hearing users of all forms of TRS already contribute to the Universal Service Fund (“USF”) through their telephone and broadband service subscriptions – residential and otherwise, that the proposed TRS Broadband Pilot Program (“TRSBPP”) logically should be housed within, funded and administered by the Universal Service Fund’s Lifeline program. The Commission’s current Lifeline program reform and modernization efforts have been a lengthy proceeding for which consumer stakeholders groups are being defined.¹⁹ The National Broadband Plan recognized that although increasing numbers of Americans have broadband at home, some segments of the population – particularly low-income households, racial and ethnic minorities, seniors, rural residents, residents of Tribal lands and people with disabilities – disproportionately do not.²⁰ Snap!VRS supports the recommendation by Consumer Groups for the Commission to reach out to and gather data on un-served and under-served deaf, hard of hearing, deaf-blind and speech disabled individuals who have not discovered relay services in its various forms.²¹

Snap!VRS therefore believes that the Lifeline program, including the TRSBPP, would effectively address residential broadband inequities faced by deaf and hard of hearing consumers as well as by consumers with disabilities. Snap!VRS believes that the Commission’s proposed funding of incentives for introduction of consumers to the VRS marketplace would be better supported by the Lifeline effort, which ideally should be carried out through funding arrangements with Consumer Groups and related nonprofit organizations directly serving these consumers.

Further, the Commission’s proposed new-to-category label for deaf, hard of hearing, deaf-blind and speech disabled consumers would make sense within the Lifeline program, however, once such

¹⁹ See FCC Lifeline Program at <http://www.fcc.gov/guides/lifeline-and-link-affordable-telephone-service-income-eligible-consumers>

²⁰ See Connecting America: The National Broadband Plan at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf, pp. 152 and 167

²¹ Comments of Consumer Groups at pp. 32-36.

customers are transitioned to the VRS marketplace they should be counted as part of usual and customary VRS registration channels.

3. VRS Access Technologies

The Commission proposes amend the term “CPE” to describe customer premises equipment under sections 64.605 and 64.611 by replacing it with the term “iTRS access technology” which would denote any equipment, software, or other technology issued, leased or provided by an Internet-based TRS provider that can be used to make or receive an Internet-based TRS call. Further, the Commission proposes specific references to “VRS access technology” and “IP Relay access technology”.²²

Within the telecommunications industry, CPE refers to a broad range of communications hardware, the manufacture of which must comply with the Commission’s licensure requirements and specifications. Snap!VRS therefore recommends the continued retention of CPE as currently defined within the TRS context, consistent with telecommunications industry definitions.

Snap!VRS is also concerned that the use of “access” within the three terms proposed above may be narrow and misleading in its intent. Nor does Snap!VRS believe that the Commission wishes to detract from its desire to foster greater usage of off-the-shelf technologies so that VRS and IP Relay ultimately achieve mainstream acceptance and usage. Snap!VRS therefore suggests the Commission instead consider the all-encompassing term, “end-point technologies” (or “end-point technology”) and its application within the context of the iTRS program, to differentiate between CPE as currently defined and technologies adapted for VRS and IP Relay purposes, with differentiation between the latter two.

Snap!VRS agrees with ZVRS on the evolution to “off-the-shelf” or mainstream CPE available to the general market at a fair price, that VRS providers should not be in the equipment design or manufacturing business, and that such CPE with standards based call routing should be fully functional within the VRS industry.²³ This is discussed further in the section below on off-the-shelf technology.

²² FNPRM at ¶ 41.

²³ ZVRS Comments at pp. 34 and 37.

4. Standards for iTRS Access Technology

Snap!VRS supports the evolution of video communications that associated technology and services become fully mainstream, are accessible to all, and are interoperable so consumers can freely connect with one another and access their choice of services.²⁴ Snap!VRS agrees with Purple and ZVRS that an open, standards-based approach to video relay will promote use of off-the-shelf equipment and expand choices available to VRS users. Snap!VRS believes there should be a set base protocol that promotes increased usage of standards-based video CPE and off-the-shelf technologies, and that providers should continue to field and be compensated for calls that use CPE and/or software lacking the base protocol. Consistent with other providers, Snap!VRS believes that the technical standards, if correctly addressed, will result in greater functional equivalency for VRS users.²⁵ Clearly, the proposed standards must be equitable and forward-looking, without favoring Sorenson as the dominant VRS provider.

VRS standards, in the view of Snap!VRS, can also be leveraged by mainstream users of video technologies. Evidence of this is progress toward development of NG911 standards that call for use of point-to-point video communications (including split and multiple screen capabilities) for mainstream as well as VRS usage. Further, Consumer Groups point to the need for split and multiple screen conversation capabilities, which Snap!VRS believes the Commission should support.²⁶ Standards are further addressed in the next section, below.

5. Off-The-Shelf iTRS Access Technology

Snap!VRS in 2007 deployed the Ojo videophone, the first interoperable alternative to Sorenson's video devices and the first interoperable videophone using Session Initiated Protocol ("SIP"). At that time Snap!VRS was driven by a philosophy of providing relay consumers with more choices of telecommunications products. Sorenson, as the dominant VRS provider with its legacy devices based on H.323 protocol, has long been an enormous obstacle to the adoption of newer, superior and cheaper off-

²⁴ Comments of Snap Telecommunications, Inc., in response to the Commission's Further Notice of Proposed Rulemaking (VRS rates and compensation system), CG Docket Nos. 03-123 and 10-51, p. 5 (May 16, 2011).

²⁵ Purple Comments at p.13; ZVRS Comments at p. 40.

²⁶ Comments of Consumer Groups at p. 15.

the-shelf products designed for video telecommunications. To Sorenson's credit, they are now making use of SIP protocol. However, SIP should not be viewed as the "end be all" or "one size fits all" protocol. Within SIP there are further definitions (e.g., h.263 and h.264 video codecs). Further, the Commission notes that legacy devices are reaching the end of their natural lives²⁷ – it is worth mentioning that the SIP protocol is now more than 12 years old and has limited acceptance. Other protocols such as XMPP/Jingle and WebRTC signaling and codecs like WEBm are gaining greater usage and are more forward-looking. Such should be taken into account when developing VRS access standards. Snap!VRS supports ZVRS's contention that the VRS market must enable access to new technologies, including those developed by Apple, Google and Microsoft, and that point-to-point communications using new technologies must be preserved.²⁸ Most of the VRS industry is on the H.323 protocol, so moving to SIP protocol (while mainstream mobile manufacturers are moving away from SIP) is counterproductive and adds unnecessary costs. It would similarly not make sense to retrofit existing VRS technologies based on the SIP protocol for H.323 backward compatibility.

Given that the VRS industry increasingly makes use of off-the-shelf technologies, Snap!VRS therefore believes that the Commission should consider making video CPE manufacturers responsible for interoperability (having no ties to the VRS industry or any VRS provider, thereby preventing lock-in), which can then be adapted by VRS providers for specialized usage. As ZVRS points out, such CPE would use any signaling and media path mechanisms that are innovative at the time, allow standards based point-point calls, as well as VRS dial-around capabilities. [ZVRS at p. 42] Going further, application-specific technologies are being regularly placed into service, e.g., video via Apple Facetime, Google Talk/Video, AOL IM/Apple iChat and so forth, which allows for easy download to smartphones and usage of such; these, too, are not interoperable but are being adapted for VRS usage.²⁹

Even so, each of these newer technologies has different opportunities and challenges. Some of them are specifically designed to operate at lower bandwidths through the use of proprietary codecs. As such there

²⁷ FNPRM at ¶ 45, footnote 129.

²⁸ ZVRS Comments at pp. 39-40.

²⁹ *Id.*, at pp. 38-39.

cannot be any reasonable specification of required bandwidth or transmission parameters across the board due to the specific differences in the way that each are implemented. They are often supported as mobile offerings, and as such, designed to operate under varying network conditions and availability. VRS providers have made these interoperable with the PSTN, as mandated by the ADA and Commission rules, however, some of these are built on proprietary communication protocols and therefore do not have the ability to support point-to-point calls with different types of devices. Still, more are being built from open standards with wider interoperability as a stated goal. So, in the view of Snap!VRS, the adoption of emerging technologies by VRS providers, and their recognition by the Commission, affords VRS users the same flexibility and choice available to hearing people. Any device or protocol standard established by the Commission that mandates a standardization on a single communications protocol will stifle innovation in the VRS industry and frustrate users who will find themselves unable to use emerging technologies.

Snap!VRS, however, disagrees with Purple and ZVRS that once these VRS interoperability and portability standards are established, the Commission should contract with a third party to outsource testing and certification of technology submitted by providers.³⁰ If the Commission determines that the burden for video interoperability rests with CPE manufacturers, then such testing would not be needed.

6. Funding iTRS Access Technology

Snap!VRS is of the belief that VRS provider expenses associated with purchase of standards-based video CPE or software to replace legacy VRS devices must be built into the rate structure and should be a onetime cost reimbursement from the Fund.

³⁰ Purple Comments at p. 3; ZVRS Comments at p. 44.

III. THE CURRENT TIERED COMPENSATION STRUCTURE SHOULD BE RETAINED WITH MODIFICATIONS

B. Proposed Per-User Scheme Is Unworkable

Snap!VRS recognizes that the Commission seeks “to create stability and long-term predictability in the compensation mechanism to the benefit of the providers, contributing carriers and all consumers”.³¹

Like several other providers, Snap!VRS is of the belief that the Commission’s proposed per-user scheme³² is overly convoluted and burdensome for all parties involved – providers, users and the Commission. The proposed model is not based on the realities experienced by VRS users in their day-to-day activities including their needs, expectations and barriers with respect to functional equivalency, consumer choice and emergency safety concerns. As pointed out by several providers, the proposed model also does not delineate steps whereby the Commission would correct existing market share imbalances with Sorenson as the dominant provider. The proposed model does not prevent the TRS Fund from being vulnerable to waste, fraud and abuse. Snap!VRS supports the thoughtful comments of Consumer Groups and providers who addressed the serious and inherent deficiencies of the per-user model, which do warrant pause by the Commission.

Snap!VRS therefore strongly opposes the Commission’s proposed per-user model. It too does not reflect the true and complete costs of providing VRS consistent with the mandates of Title IV of the ADA. Under the proposed model, Snap!VRS as well as the other providers, perhaps with the possible exception of Sorenson, would be challenged to provide ADA-compliant levels of service and would put into serious question the feasibility of continuing to do business in the provision of VRS.

Certified VRS providers, as for-profit businesses, must operate within a regulatory environment they can rely upon to support the provision of quality products and services, as well as to assure a

³¹ FNPRM at ¶ 22.

³² *Id.*, at ¶ 24.

sustainable market environment which fosters innovation, competition, fair play – that is, an environment that is aligned with the interests of consumers as determined by consumers themselves.³³

Snap!VRS believes that the proposed per-user model carries a risk of harm to VRS users and may drastically stifle the various ways they make use of VRS. Consumers should be allowed to freely choose among multiple VRS providers based on their various needs and devices at various times, with continuance of dial around services.

Further, Snap!VRS believes that the Commission does not appear to accurately take into account nor understand why VRS users choose specific providers and end user devices based on their specific needs at any given moment. For example, deaf and hard of hearing consumers who take on multiple work opportunities may require multiple VRS accounts for work purposes. Also, mobile use of VRS is becoming more ubiquitous with the use of multiple devices and platforms; there is no one relay provider that is capable of providing the latter.

Until access, interoperability and portability standards are developed, put into use, better understood and refined based on the beneficial and detrimental experiences of VRS users, they should be able to continue to exercise freedom of choice to have multiple accounts for home, work and mobile purposes, mixed among the various VRS providers.

Snap!VRS believes that the Commission has not exhaustively analyzed all possible alternative rate and compensation approaches. Rather, it has relied by far and large on legal and regulatory personnel, most of whom have no knowledge of the daily experiences and frustrations of VRS users, to advocate a particular rate model and compensation mechanism which they believe better serves the Commission's desire to create exponential cost savings to the TRS Fund, the net effect of which likely ensures only the current dominant VRS provider remains in business whereas smaller providers would be forced out of business. This is certainly one option for starting over, and may in fact be the Commission's desired approach given its apparent overwhelming focus on reducing the size of the TRS Fund; though this

³³ Comments of Snap Telecommunications, Inc., in response to the Commission's Further Notice of Proposed Rulemaking (VRS rates and compensation system), CG Docket Nos. 03-123 and 10-51, p. 3 (May 16, 2011).

approach is not in line with free market principles, nor the desired expectations of VRS users who call for increased competition and innovation. Instead of focusing on waste and leveling the playing field with respect to the dominant provider, the Commission could easily be misunderstood as having seemingly decided to take the perceived path of least resistance and focus squarely on everyone else. Surely the Commission does not wish to be viewed as “killing off” yet more VRS providers, including those recently granted certification.

B. Retention of the Current Tiered System with Modifications

Snap!VRS believes the current tiered compensation structure should remain in place, however, as we have stated in the past, the current rates for tiers I and II need to be widened to take into consideration the increased costs of doing VRS business, coupled with the fact that the cost of delivering VRS is now largely fixed rather than variable, inclusive of Communication Assistant (“CA”) costs as downward adjustments to capacity happen only in reaction to actual call volumes *after* they materialize. Given the natural volatility of VRS call volumes, if a provider has more CA resources allocated to that month’s schedule in anticipation of a certain level of volume and that volume doesn’t materialize, the provider’s costs are not in alignment. It is difficult for providers to course-correct in near real-time; therefore CA costs for the period are fixed to a significant degree and the provider’s bottom line impacted accordingly.

ZVRS correctly points out that the current tiered system is a proven methodology for sustaining the enormous progress made to date toward functional equivalency and that the Commission should not imperil this progress with a new and untried rate structure at this critical juncture in VRS reform.³⁴

Under Purple’s modified tiered proposal, the opportunity for smaller providers to gain additional market share would have limited duration and a known end date by which all providers would ultimately be paid an unitary scale rate per minute. Snap!VRS supports this proposal and agrees that such an unitary scale rate would give the Commission certainty for ending sub-scale provider subsidies and at the same

³⁴ ZVRS Comments at p. 27.

time afford providers the clarity they need to grow organically, explore strategic business combinations, and adjust business operations accordingly.³⁵

Snap!VRS also believes the tiered system should remain in place with modifications until (a) technical standards for iTRS access, interoperability and portability have been fully developed, agreed upon and implemented, and (b) the VRS user database is fully deployed with parallel collection of additional VRS user metrics, as described above. It would appear counterintuitive to seemingly put sub-scale providers in a far less competitive position through radical changes to the tiered rate structure and basis for reimbursement prior to implementation of technical standards for iTRS, interoperability, and gathering of VRS user metrics intended ultimately to enable a more competitive process.

Snap!VRS supports Purple's proposal that modifications to current tiered rate structure take place over a fixed period of time (in Snap!VRS's case, this period being no less than three years), with the timing of Phase II (realistic competition for growth) commencing once technical standards and the user database are fully implemented. Snap!VRS, however, believes that the modified tiered rate structure should remain in place through the end of the growth phase, i.e., for sub-scale providers to achieve "minimum efficient scale" and be capable of operating profitably solely on the multi-year unitary per minute rate that is reflective of such scale.³⁶

Snap!VRS also agrees that the proposed new-to-category users should not result in any additional one-time incentive payments for providers. Rather, providers should be motivated to expand their markets and achieve profitability through the economics of the per-minute reimbursement model in modified form. Snap!VRS does not agree with any suggestion that there is "insufficient incentive for VRS providers to achieve minimal efficient scale". Regardless of provider or political rhetoric, compensation rates do not reflect the accurate and reasonable costs of providing VRS. Compensation rates are a subsidized contribution toward overall VRS operational costs. Therefore, scale in call volume is providers' only opportunity to cover their full (and efficient) costs, never mind make a profit. Without such scale, even if

³⁵ Purple Comments at pp. 23-24.

³⁶ Purple Comments at p. 3.

operating efficiently, providers are relegated to eating non-productively through their capital - assuming they have capital, or operating at an ever-growing loss until they are no longer sustainable. The necessity to scale as one means of building a lasting company, a basic tenet of establishing a business in the first place, therefore should be incentive enough in itself. However, this requires a VRS consumer market that is growing, which is not the case today. The market is Sorenson. It is also the view of Snap!VRS that the broadband initiative will not materially change this state of affairs. It is this fact that is proving to be the disincentive for providers; thus everyone's focus on interoperability as one means of "opening up the market". In the meantime, providers are expected to deliver VRS services with lower and lower subsidy support, and continue to invest in technology and innovation when there is no reasonable means of recovering that investment or achieving a reasonable profit for having done so. Assuming that technical standards for access, interoperability and portability are not successful in opening up the market and leveling the playing field, the Commission gets what it is looking for anyway, that is the bulk of the market operating on a single platform (that being Sorenson's) which, given the scale flowing through it, represents the lowest cost of delivering VRS with the competition going under in keeping with declining rates. Snap!VRS agrees with other providers that this outcome would appear to run counter to the VRS reform efforts sought by the Commission and is therefore avoidable.

Snap!VRS believes the current tiered compensation rate structure in modified form must be at minimum maintained until such time an appropriate detailed, side-by-side analyses of the per-minute rate against the Commission-proposed per-user rate and all other alternatives are completed, and the implications and consequences associated with each rate basis are well understood. A sustainable and long-term (three years as proposed by Snap!VRS) tiered compensation system with modifications will ensure that providers maintain an incentive to continue to build for the future and progress closer to achieving the mandates set forth by Title IV of the ADA. Stability and long-term predictability is of utmost importance in being able to sustain and expand a business like Snap!VRS, which has proven to be efficient in its provision of VRS and videophones.

Further, Snap!VRS is of the view that neither the current (and previous) TRS Fund administrator nor the Commission has published information about how “allowable” costs specifically relate to achieving the ADA’s TRS mandate and/or the implementation of Commission rules, orders, and guidance. Commission proceedings to date have been void of any metrics to indicate where the TRS program is in terms of compliance with the Title IV mandate of the ADA and implementation of TRS rules. Indeed, there is general absence in any Administrator or Commission document of any discussion about “functional equivalency”, including the level of funding necessary to remedy any deficiencies. This points also to the need for data on user metrics with respect to VRS needs, expectations and barriers.

Snap!VRS therefore believes that the Commission is obligated to assess, in close collaboration with relay stakeholders, the requirements for achieving functional equivalency in telecommunications above and beyond the mandatory minimum standards so that the Commission can adjust compensation rates accordingly. This would of course require extensive study and common understanding among VRS providers, VRS users and the Commission with respect to the practical implications and impact of each proposal, so that appropriate metrics can be established.

The current tiered compensation structure with modifications, in the view of Snap!VRS, represents the best balance between a VRS program that enables forward progress in efficient delivery of services and products and at the same time preserves a sustainable TRS Fund. The Commission established tiered rates that were carefully calibrated to match the higher costs of emerging and smaller providers lacking the scale and scope economics and efficiencies of larger, dominant providers, avoiding overcompensation of the dominant provider while enabling greater competition and consumer choice. While it may be argued that the precise width of the tiers were not set pursuant to some rigorous economic standard, there is no question that the current rate methodology has been a tremendous success story resulting in significant advances in technology, equipment, services and features available to a large number of relay consumers. It must be kept in mind that these advances were spurred in large part by emerging and non-dominant providers able to compete and invest in services and products in response to VRS user requests for functionally equivalent relay services.

The Commission asks whether moving to a bidding process whereby only one or a limited number of VRS providers are selected would facilitate more robust competition.³⁷ Snap!VRS is in support of Purple’s proposal for a multi-winner bidding model with market share caps which would allow providers to compete fairly and effectively based on their capacity to support a pre-determined VRS volume over a given period of time. Such a move would have a long-term beneficial impact on the VRS program by making it more competitive, efficient and accessible – that is, the program would serve more VRS users through provision of consumer choice, innovative technologies and high quality services in a manner that also ensures the sustainability of the TRS Fund.³⁸

B. Marketing and Outreach

Snap!VRS believes, in line with Consumer Groups, that brand name marketing is necessary and enables providers to compete and distinguish themselves by informing VRS users about their products and services, which in turn drives greater functional equivalency through innovation, adoption of emerging technologies, and improvements to the VRS program as a whole. Such efforts, including research and development, should be built into VRS rates and compensation system.

C. Advisory Council

Snap!VRS agrees with Convo’s recommendation to reconstitute the existing Interstate TRS Advisory Council or, alternatively, establish a separate VRS advisory committee to provide critical evaluation of the current state of the VRS industry, reform efforts in progress, and the likely impact of any proposed reform.³⁹

VRS providers in a joint statement also pointed to ample precedent for the Commission’s use of advisory committees to provide the Commission with additional and valuable input on complex policy matters, such as the Video Programming Access Advisory Committee (“VPAAC”), the Technology Advisory Council (“TAC”) and the Emergency Access Advisory Committee (“EAAC”).⁴⁰

³⁷ FNPRM at ¶ 18, 21.

³⁸ Purple Comments at pp. 25-27.

³⁹ Convo Comments at pp. 17-18.

⁴⁰ Joint Letter by CSDVRS, Snap Telecommunications, Sorenson Communications and Convo Communications, CG Docket Nos. 10-51 and 03-123, p. 2 (March 6, 2012).

IV. ADDITIONAL STRUCTURAL REFORMS

A. Subpart F Should Be Restructured

Snap!VRS supports Commission restructuring to section 64.404 through 64.413 so that content is first global, then transmission-specific (i.e., PSTN based TRS vs. iTRS) and finally service-specific (i.e., VRS, IP Relay, speech-to-speech) within the two transmission-specific areas.

B. Public Access to Information

Snap!VRS supports Purple's recommendation that the Commission undertake a campaign series of Public Service Announcements ("PSAs") aimed at "educating the nation about the availability of iTRS services and reminding the public about the importance of not hanging up on relay calls".⁴¹ This proposal also dovetails with Consumer Groups' recommendation that that Commission collaborate with other federal agencies and related groups to build trust and confidence in relay usage among business entities.⁴²

C. Slamming and Porting Abuses

Snap!VRS, jointly with other providers, have expressed that consumer protection standards are necessary to safeguard VRS users against reductions in VRS access and quality, as well as slamming and other porting abuses.⁴³ Snap!VRS supports the comments of Consumer Groups in detailing safeguards in this regard, also taking into account number portability and CPNI protections.⁴⁴

D. Skills-Based Routing

Snap!VRS believes that the Commission must adopt rules to support the functional equivalency needs of consumers who have long expressed the desire for skill-based routing to access: (a) VRS interpreters with specialized skills, e.g., medical, legal, financial and technical, (b) specified or preferred VRS interpreters, and (c) specially trained VRS interpreters experienced in handling emergency calls. Such routing features would go beyond currently offered profile options (e.g., gender, Spanish language

⁴¹ Purple Comments at p. 21.

⁴² Comments of Consumer Groups at pp. 32-36.

⁴³ Joint Letter by CSDVRS, Snap Telecommunications, Sorenson Communications and Convo Communications, CG Docket Nos. 10-51 and 03-123, p. 1 (March 6, 2012).

⁴⁴ Consumer Groups at pp.16-27.

and HCO/VCO). Snap!VRS agrees with the opinion of Consumer Groups, RID and other providers who have expressed support.⁴⁵

E. Certification and Team Interpreting

Snap!VRS agrees with Consumer Groups and RID in that CAs in the VRS setting should be held to the minimum standard of NAD-RID national certification for hiring qualification and consideration.⁴⁶

Snap!VRS also supports RID on the need for rules that allow team interpreting within the VRS setting – specifically, hiring and utilization of certified deaf interpreters (“CDIs”) – as a TRS Fund-reimbursable expense for providers.⁴⁷

F. Point-to-Point Calls

The Commission notes the importance of point-to-point calls within the VRS infrastructure, currently limited to deaf, hard of hearing, deaf-blind and speech disabled VRS users.⁴⁸ Currently, registration and provisioning of ten-digit numbers is limited to TRS users, as defined by Commission rules. Snap!VRS urges the Commission to support the request of Consumer Groups by expanding this definition so that hearing ASL users can communicate directly with VRS users on a point-to-point basis, e.g., family members, work colleagues and supervisors, service providers.⁴⁹ Such a move is technologically feasible and would reduce unnecessary costs to the TRS Fund.

V. CONCLUSION

Snap!VRS wishes to take this opportunity to again commend the Commission on VRS reforms undertaken to date, and urges the Commission to keep its focus on the original intent of the ADA and its functional equivalency mandate. Consumer choice and the ability to dial around remain of paramount importance, linked to the development and adoption of VRS standards for access, interoperability and portability. Snap!VRS also encourages the Commission to promote broadband affordability and VRS

⁴⁵ *Id.*, at pp. 9-10, RID at pp. 2 and 4.

⁴⁶ *Id.*, at p. 11, RID at p. 3.

⁴⁷ RID Comments at p. 4.

⁴⁸ FNPRM at p. 13, footnote 60.

⁴⁹ Comments of Consumer Groups at pp. 27-29.

participation through the Lifeline program, develop and implement the VRS user database, conduct a study on the needs and expectations of VRS users and the barriers they encounter.

With focus on the above reforms, Snap!VRS respectfully requests that the Commission make necessary adjustments to the current interim tiered rates and compensation structure with consideration given to market share caps built in for the 2012-2015 Fund years.

Snap!VRS also requests that the Commission reconfigure the TRS Advisory Council and with their involvement, enter into wide-ranging dialogue with VRS stakeholders – consumers and providers alike – in conducting a careful and systematic assessment of the VRS program in order to plan effectively for the future.

Respectfully Submitted,

/s/

Nancy J. Bloch
Chief Regulatory and Compliance Officer
Snap Telecommunications, Inc.
Two Blue Hill Plaza, Third Floor
Pearl River, New York 10965

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