



WILTSHIRE  
& GRANNIS LLP

September 17, 2012

**Via ECFS**

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

Re: *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

Dear Ms. Dortch:

In meetings with FCC staff on August 23, 2012, and then again in the corresponding ex parte letter filed on August 27, 2012, executives from CSDVRS, LLC (“ZVRS”) urged the Commission to drastically restrict consumers’ access to communications technology in a manner that would undermine consumer choice, eliminate incentives to innovate, and thwart the statutory imperative of pursuing functional equivalence. In short, ZVRS proposed a rule under which video relay service (“VRS”) providers like ZVRS and Sorenson Communications, Inc. (“Sorenson”) could distribute “purpose built” videophones to consumers, but could not provide consumers with “multi-function” products like iPads.<sup>1</sup> ZVRS’s proposal—which it admits is designed to blunt Sorenson’s competitive edge in attracting consumers—would require the Commission to improperly grant favor to one technology (single-purpose videophones) over another (multi-function devices) and to take away VRS users’ ability to make the same kind of technology choices that are available to hearing consumers.

ZVRS’s proposal is misguided, deeply consumer-unfriendly, and counterproductive for a variety of reasons. Perhaps most fundamentally, it would completely undermine functional equivalency. In the marketplace for hearing communications devices, providers routinely give their customers sophisticated multi-function handsets for free or at substantial discounts off of their retail prices. On Apple’s website, for instance, a consumer can purchase an iPhone 4 *without* a service plan for \$450; or the consumer can get the device at no charge if he or she signs up for a service plan from a wireless provider at the same time. Similarly, Verizon Wireless’s website identifies a variety of phones and smartphones (including multi-function devices) that

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<sup>1</sup> See Letter from Jeff Rosen to Marlene Dortch at 1-2 (filed Aug. 27, 2012).

are available free of charge to those who use Verizon Wireless's service. Likewise, while a Galaxy Tab 7.0 Plus tablet computer retails for about \$430, consumers can receive one from T-Mobile for about \$300 if they commit to a service plan. A consumer can buy a ZTE Optik tablet at retail for about \$350 or, with a service commitment with Sprint, for just \$99. By making these multi-function devices available for no cost or at reduced prices in exchange for service commitments, wireless providers in the hearing world give consumers access to high-value, expensive, cutting-edge communications devices at affordable prices.

VRS providers—including both ZVRS and Sorenson—use a comparable approach. They provide high-end equipment to consumers at no charge (or low charge), but they reserve the right to levy a fee if a customer ports away after a short amount of time and wants to keep the equipment the original provider supplied. Again, this is functionally equivalent to practices in the hearing world that help put cutting-edge technologies in consumers' hands. Translated into the traditional hearing world, ZVRS's proposal is equivalent to permitting standard communications providers to distribute wall-mounted home phones at no cost or reduced prices, but making consumers pay full freight for everything else. The impact of such a rule in the hearing world is not hard to predict, as comparatively few consumers would pay \$450 or more for their smartphones. But ZVRS is proposing exactly this kind of rule for VRS, and the impact would be the same: many fewer deaf and hard-of-hearing consumers would have access to affordable cutting-edge communications technologies. While designed by ZVRS primarily to stifle competition from Sorenson, this is a regressive proposal that would have a profoundly consumer-unfriendly impact.

ZVRS's proposal would also blunt innovation with respect to dedicated videophones. If applied literally, ZVRS's rule would bar providers from enabling some features that consumers value highly. For instance, ZVRS's rule could make it impermissible to distribute a purpose-built videophone that enables consumers to access the internet (even to look up phone numbers), send email or text messages, or enjoy any other features that are not directly connected to making and receiving VRS calls. This kind of restriction will discourage providers from innovating; if they implement features that stray near the line ZVRS has attempted to draw, they would run the risk of supplying something that is arguably "multi-functional" and therefore not permitted.

ZVRS's proposed rule is also strikingly at odds with its own advocacy related to equipment distribution. In its comments filed in response to the Commission's VRS Reform FNPRM, ZVRS voiced its strong support for "requiring all VRS CPE equipment to be 'off-the-shelf' and/or mainstream products including both hardware and software applications."<sup>2</sup> Combining the position ZVRS took in its comments with the arguments ZVRS made in the more recent *ex parte* reveals the full scope of ZVRS's proposal: it is urging the Commission to bar providers from distributing free (or discounted) proprietary videophones (the argument in its comments) and multi-function devices (the argument in its *ex parte*). While ZVRS apparently thinks this double-barreled

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<sup>2</sup> Comments of CSDVRS, LLC at 43 (filed March 9, 2012); *see also* Reply Comments of CSDVRS, LLC at 2 (filed March 30, 2012).

attack on consumers' access to technology will advance its competitive position, it's easy to identify the losers: deaf and hard-of-hearing consumers, who will lose affordable access to the devices and technologies necessary to move toward functional equivalence.

As Sorenson explained in its own comments in response to the VRS Reform FNPRM, the Commission should not prohibit or limit consumer access to any kinds of VRS endpoints, as doing so would predictably result in degraded service and the elimination of innovation targeted at deaf and hard-of-hearing users.<sup>3</sup> Rather than bar provision of certain kinds of equipment, Sorenson explained, the Commission should instead help implement interoperability standards, so that consumers can choose the technology that best suits their needs and still communicate with one another regardless of the endpoint they select. Dr. Michael Katz, who offered an opinion as Sorenson's outside independent economist in the VRS Reform proceeding, explained that mandating the use of off-the-shelf equipment would "directly . . . limit and distort competition."<sup>4</sup> "If off-the-shelf equipment is lower cost or more attractive to users," Dr. Katz explained, "then VRS providers will have incentives to offer that equipment to VRS users in order to obtain competitive advantage. If a VRS provider can offer greater benefits to consumers using proprietary product designs that meet the interoperability requirements, then doing so will benefit consumers and make the program more efficient."<sup>5</sup>

Finally, ZVRS is in a particularly awkward position to make this consumer-unfriendly proposal because its predecessor entity and partial owner—Communication Service for the Deaf, Inc.—administers the Project Endeavor program with funding from the National Telecommunications and Information Administration. As the Project Endeavor website explains, the program is designed to provide "deaf and hard of hearing Americans with access to broadband or high speed internet through discounted internet service plans and internet devices"—including cutting edge multi-function devices like iPads and iPhones.<sup>6</sup> ZVRS's eagerness to propose its regressive rule, notwithstanding the conflict it poses with respect to its corporate parent, reveals the hypocrisy of ZVRS's position and reinforces the conclusion that the proposal is designed only to undermine ZVRS's competitors, regardless of its impact on deaf and hard-of-hearing consumers.

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<sup>3</sup> See Comments of Sorenson Communications, Inc. at 75 (filed March 9, 2012).

<sup>4</sup> *Id.* App. A ¶ 90.

<sup>5</sup> *Id.*

<sup>6</sup> See, e.g., Project Endeavor Website, "What is Project Endeavor?", available at <http://www.projectendeavor.com/AboutUs/ProjectEndeavor.aspx>; Project Endeavor Website, "Products", available at <http://www.projectendeavor.com/Products.aspx>.

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For all of these reasons, Sorenson urges the Commission to reject ZVRS's proposal, which would needlessly restrict consumer choice, prevent many consumers from having affordable access to functionally equivalent cutting edge service, and blunt providers' incentives to innovate and enhance their services.

Sincerely,

/s/

Chad Breckinridge  
*Counsel to Sorenson Communications, Inc.*

cc: Jonathan Chambers  
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