

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: Chief, Consumer and Governmental Affairs Bureau

**COMMENTS OF CONVO COMMUNICATIONS, LLC
IN RESPONSE TO OCTOBER 15, 2012 PUBLIC NOTICE**

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Convo Communications, LLC (“Convo”)¹ hereby responds to the Public Notice (“*Notice*”)² issued by the Federal Communications Commission’s (“Commission”) Consumer and Governmental Affairs Bureau (“CGB”) in the above-captioned dockets. The *Notice* seeks additional comment on the structure of the Video Relay Service (“VRS”) program³ and comment

¹ Convo is a primarily deaf-owned and operated, independent VRS provider. Convo received its conditional certification from the FCC to operate as an independent VRS provider in November 2011. *Notice of Conditional Grant of Application of Convo Communications, LLC for Certification as a Provider of Video Relay Service Eligible for Compensation from Interstate Telecommunications Relay Service Fund*, Public Notice, 26 FCC Rcd 15956 (CGB 2011).

² *Additional Comment Sought on Structure and Practices of the Video Relay Service (VRS) Program and on Proposed VRS Compensation Rates*, Public Notice, CG Docket No. 03-123, CG Docket No. 10-51, DA 12-1644 (CGB Oct. 15, 2012) (“*Notice*”).

³ *Id.* at 3-6. Convo has been an active participant in the Commission’s efforts to reform the VRS industry. *See, e.g.*, Comments of Convo Communications, LLC, CG Docket No. 10-51, CG Docket No. 03-123 (filed Mar. 9, 2012) (“Convo March 9 Comments”); Reply Comments of Convo Communications, LLC, CG Docket No. 10-51, CG Docket No. 03-123 (filed Mar. 30, 2012) (“Convo March 30 Reply Comments”).

on the rates proposed by the Telecommunications Relay Services (“TRS”) Fund administrator (“Administrator”), Rolka Loube Saltzer Associates (“RLSA”).⁴

I. INTRODUCTION AND EXECUTIVE SUMMARY

Convo appreciates and supports the Commission’s efforts to continue to explore alternative means of further reforming its VRS regulatory framework through its issuance of the *Notice*. With appropriate reform, the Commission can foster increased service-quality competition and innovation in the VRS market to the ultimate benefit of VRS users. These objectives, in turn, will ensure that the VRS industry continues to evolve towards the statutory mandate of functional equivalence.⁵ However, service-quality competition and innovation in the VRS industry only can be increased by Commission action that recognizes and addresses the current VRS market structure.

The VRS industry is dominated by a single VRS provider, Sorenson Communications, Inc. (“Sorenson”), which holds a market share that is estimated to be more than four times larger than all other VRS providers combined. As a result, the Commission should focus on avoiding any regulatory action that disadvantages the smaller VRS providers relative to Sorenson and thereby provides Sorenson with a further competitive advantage. In particular, the Commission should refrain from establishing VRS compensation rates that are unrealistic for smaller

⁴ *Notice* at 6-10; *see also* RLSA, Supplemental Filing of the Telecommunications Relay Services Administrator Regarding Reasonable Rates for VRS Service, CG Docket No. 03-123, CG Docket No. 10-51 (filed Oct. 15, 2012) (“RLSA Rate Proposal”).

⁵ *See* 47 U.S.C. § 225(a)(3) (defining “telecommunications relay services” as “services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is *functionally equivalent* to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio.”) (emphasis added).

providers and should not adopt policies that undermine the ability of smaller VRS providers to compete with Sorenson.

For this reason, Convo is troubled by the VRS rates proposed by RLSA. Convo supports basing rates on actual costs rather than projected costs. However, the rates proposed by RLSA undermine the public policy goals underlying the Commission's initial adoption of tiered rates. In fact, RLSA's proposed rates will reduce, rather than increase, service-quality competition among VRS providers and the resultant VRS innovation that such competition has provided. Indeed, RLSA's proposed rates appear to assume that smaller providers can achieve within three years the economies of scale necessary to provide VRS at the same cost currently enjoyed by Sorenson. This is an unrealistic, unreasonable, and arbitrary goal.

The Commission also seeks further comment in the *Notice* on structural reform options, including two specific proposals submitted by CSDVRS, LLC ("CSDVRS") relating to VRS Access Technology and the iTRS database.⁶ Modified versions of these proposals will enable smaller VRS providers to continue to gain scale and provide service-quality competition to Sorenson. Further, the expansion of the role of the iTRS database and its administrator ("iTRS Administrator") also will significantly improve the ability of the Commission and RLSA to police the practices of the VRS industry and thereby further reduce fraud, waste, and abuse. Consequently, Convo previously has expressed support for similar proposals and the proposals should be implemented prior to significant Commission adjustment of VRS compensation rates.⁷

⁶ *Notice* at 3-6.

⁷ *See, e.g.*, Convo March 9 Comments, at 20-26.

II. SERVICE-QUALITY COMPETITION PROVIDED TO SORENSON BY SMALLER VRS PROVIDERS IS ESSENTIAL TO ENSURE FUNCTIONAL EQUIVALENCE

As Convo has previously asserted, it is not in the Commission's or the public's interest for Sorenson to possess market share that is so large and dominant that Sorenson is "too big to fail."⁸ Additional competition in the VRS market ultimately will serve the Commission and VRS users by fostering disruptive innovation and creating service-quality competition. Both the Commission⁹ and consumer groups¹⁰ have emphasized that such competition ultimately serves VRS consumers. Indeed, ensuring that innovative smaller providers have the opportunity to thrive in the VRS marketplace is the Commission's best approach to fulfilling its statutory mandate under Title IV of the Americans with Disabilities Act—to "encourage ... the use of existing technology and . . . not discourage or impair the development of improved technology."¹¹ By contrast, creating an industry climate that inhibits competition is the surest way to slow innovation and halt the VRS industry's progress towards functional equivalence.

Therefore, consideration of how any proposed structural reforms of the VRS industry will impact the ability of smaller providers to compete with Sorenson should be a fundamental component of the Commission's analysis in this proceeding. The Commission should not adopt

⁸ See, e.g., Convo March 30 Reply Comments, at 8-9.

⁹ See, e.g., *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, 25 FCC Rcd 8622, ¶ 75 (2010) (recognizing the importance of "competition over service quality and features" in UNE-based competition).

¹⁰ See, e.g., *Consumer Groups' TRS Policy Statement – Functional Equivalency of Telecommunications Relay Services: Meeting the Mandate of the Americans with Disabilities Act*, at 9 (attached to Notice of *Ex Parte* of Telecommunications for the Deaf and Hard of Hearing, Inc. et al., CG Docket No. 03-123, CG Docket No. 10-51 (filed Apr. 12, 2011)) ("*Consumer Groups' TRS Policy Statement*") ("[I]ntense competition among a number of qualified vendors in the telecommunications relay services market ... give[s] the TRS user population a range of choices in features and service within any one form of TRS.").

¹¹ 47 U.S.C. § 225(d)(2).

industry reforms, including reforms to VRS rates and rate methodologies, that will have a more adverse impact on smaller providers than on Sorenson. Doing so only will increase Sorenson's already substantial competitive advantage.¹²

III. THE VRS RATES PROPOSED BY RLSA WILL UNDERMINE THE ABILITY OF SMALLER VRS PROVIDERS TO PROVIDE SERVICE-QUALITY COMPETITION TO SORENSON

Although Convo does not oppose limited rate reform, the Commission should not adopt the rates proposed by RLSA. As further explained below, RLSA's proposed rates would have an inequitable and disproportionately adverse effect on smaller providers and therefore would be detrimental to competition. CSDVRS, for example, has suggested that it will fail if RLSA's proposed rates are adopted and asserts that the "suggested rates would be disastrous across the industry...."¹³ Convo agrees with CSDVRS and believes that RLSA's proposed rates would undermine the promise that competition in the VRS industry holds for functional equivalence.

A. The Commission Should Provide a Maximum Percentage by Which VRS Rates May Fall During a Given Time Period

As an overarching, guiding principle applicable to any rate structure adopted by the Commission, the Commission should establish an inflation-adjusted maximum percentage that VRS rates may be reduced during a given time period.¹⁴ As further discussed below, RLSA's proposed, dramatic rate reduction for 2012/13 is harmful, unwarranted, and inappropriate as

¹² Convo also notes that VRS rates have decreased over the long term. For smaller VRS providers like Convo, adapting to each subsequent rate decrease while simultaneously investing in and improving its quality of service and variety of service offerings to attract new users has proven to be a significant challenge.

¹³ Notice of *Ex Parte* of CSDVRS, LLC, CG Docket No. 10-51, CG Docket No. 03-123 (Oct. 25, 2012).

¹⁴ See Convo March 9 Comments, at 28.

applied to smaller VRS providers and therefore Convo opposes RLSA's proposal. However, if the Commission nevertheless ultimately determines to significantly reduce VRS rates, it should do so far more gradually than proposed by RLSA.

No business can withstand sudden and repeated double-digit percentage decreases in their operating revenue. It simply is not possible to reduce costs in an orderly manner quickly enough to offset the type of revenue reductions that would result from RLSA's proposed rates. RLSA's proposed 2012/13 rate represents a 15% reduction from the current per-minute rate for Tier 2 providers and implies a 32% rate reduction in just three years for Tier 2 providers.¹⁵ To avoid severe detrimental impacts to the functional equivalency provided by VRS providers to the deaf and hard-of-hearing communities, providers must have time to manage the restructuring of their operations to remain viable as VRS rates fall.

By contrast to the dramatic drop in rates proposed by RLSA, gradual rate changes allow providers to identify and implement reasonable and palatable cost-cutting measures rather than forcing them to immediately and substantially downsize their businesses, which may impact the functional equivalency of VRS. In addition, if rate reductions take effect in a gradual and predictable manner, providers will have a realistic opportunity to plan for and achieve incremental increases in the scale of their business to offset the rate reductions with increases in volume.

For these reasons, any year-over-year percentage rate reduction imposed on VRS providers should be capped at a reasonable fixed percentage, such as 5%, that is based on a realistic expectation of the time that it takes to implement orderly cost-cutting measures, to

¹⁵ These figures are calculated by dividing the difference between the current interim rate and RLSA's proposed 2012/13 rate by the current interim rate. The percentage decrease over three years assumes that the rate will continue to be reduced annually by one-third of the difference between the interim rate and RLSA's "weighted average cost."

increase efficiency, and to gain incremental scale.¹⁶ Further, the rate reduction percentage cap should be reduced by an appropriate measure of inflation to take into account any increase in costs caused by inflation. Any rate reduction that the Commission deems to be warranted and that exceeds this percentage cap should be carried over until the next rate setting period and, if necessary, subsequent rate setting periods until the rate reduction is fully implemented.

B. Convo Supports the Use of Adjusted Historical Actual Costs to Establish Tiered VRS Compensation Rates

Convo does not oppose RLSA's proposal to establish rates based on actual costs, provided that the rates remain tiered and are subject to adjustment for new exogenous costs.¹⁷

As the Commission is aware, projected costs have not proven to be a reliable means of determining the cost of providing VRS.¹⁸ Further, Convo believes that basing VRS rates on the

¹⁶ In 2007, the Commission used an annual 0.05% downward adjustment in the VRS rate for productivity gains in part to "encourage VRS providers to gain efficiencies in providing service." *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 22 FCC Rcd 20140, ¶ 56 (2007) ("2007 TRS Order"). Inherent in the Commission's determination to mandate only a 0.05% downward adjustment is the recognition that productivity gains take time and that providers' cannot materially change their costs overnight. While Convo believes a percentage rate reduction cap of 0.05% is too low here, repeated significant reductions certainly are unreasonable and inconsistent with this implicit recognition in the Commission's 2007 determination.

¹⁷ However, Convo does not believe that this is the only rate setting mechanism that could prove effective. For example, the Commission also should consider utilizing a tiered price-cap mechanism. Price caps have proven to be effective rate-setting mechanisms in other regulatory contexts administered by the Commission. *See, e.g., Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps*, 17 FCC Rcd 10868, ¶ 9 (2002), *aff'd*, *Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, 372 F.3d 454 (D.C. Cir. 2004) ("Price cap regulation encourages incumbent LECs to improve their efficiency by harnessing profit-making incentives to reduce costs, invest efficiently in new plant and facilities, and develop and deploy innovative service offerings, while setting price ceilings at reasonable levels. Individual companies retain an incentive to cut costs and increase productivity because, in the short run, their behavior has no effect on the prices they are permitted to charge, and they are able to keep any additional profits resulting from reduced costs."); *see also 2007 TRS Order*, ¶ 43 (adopting price caps for IP Relay).

¹⁸ *See National Exchange Carrier Association, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket No. 03-123, at 20 (filed Apr. 30,

recent adjusted historical costs of providers is a reasonable way to ensure that VRS providers are compensated in a manner that enables their continued ability to provide quality VRS to users.¹⁹

However, if the Commission determines to switch from projected costs to historical costs for purposes of establishing VRS rates, it should allow providers to seek exogenous cost adjustments to historical actual costs to take into account one-time or ongoing unforeseen or irregular costs beyond the providers' control.²⁰ It is inappropriate to establish a new forward looking rate that covers a time period during which VRS providers' operations and costs are dissimilar to their operations during the period covered by the historical cost data that they submitted to RLSA unless a method is provided to account for such exogenous costs. This is especially important as the Commission continues its review of the VRS industry's regulatory

2010) (“NECA 2010 Filing”) (“[O]ne provider’s projected costs contain unreasonable and unsubstantiated growth in headcount[.]”).

¹⁹ To the extent that the Commission ultimately decides to move from projected costs to actual costs for purposes of VRS rate setting *and* the Commission also determines to eliminate tiered rates over time, which Convo opposes (see *infra* Section II.C), the Commission should implement these two transitions independently. In other words, the Commission should not begin transitioning to a single rate tier until after the Commission has completed its implementation of using actual costs to set rates for two tiers—one that is applicable to Sorenson and one that is applicable to all other VRS providers. Accomplishing both of these rate policy changes simultaneously may cause the percentage rate reduction applicable to Tier 2 providers to be substantially higher than the percentage rate reduction applicable to Sorenson because Sorenson only would be impacted by one of the two policy changes (*i.e.*, the move to actual costs) while all other VRS providers would be impacted by both (*i.e.*, the move to actual costs and the move to a single tier). This is demonstrated by the fact that RLSA’s proposed 2012/13 rate for Tier 2 providers is 15% lower than their current interim rate, whereas RLSA’s proposed rate for Sorenson is 11% lower than the current interim rate applicable to Sorenson. As noted above, the Commission should avoid any VRS policy changes that increase Sorenson’s competitive advantage over the other, much smaller VRS providers.

²⁰ An exogenous cost allowance is consistent with the past practice. See *2007 TRS Order*, ¶ 56 (“We also will . . . permit the providers to seek exogenous cost adjustments if new costs are imposed that are beyond the providers’ control.”). With respect to rates based on historical actual costs, the exogenous cost allowance should also be applied to reasonable costs within a provider’s control, but that are nonetheless dissimilar to costs in preceding years.

framework because VRS providers may continue to be required to implement operational changes necessary to comply with new Commission rules.

C. The Commission Should Retain Two VRS Rate Tiers

The 2012/13 rates proposed by RLSA do not appear to be based on the respective actual costs of Tier 1 and Tier 2 providers,²¹ and RLSA appears to propose that the Commission replace tiered rates with a single unified VRS rate over time. When it first established tiered rates for VRS in 2007, the Commission found that “using three tiers is appropriate to ensure both that, in furtherance of promoting competition, the newer providers will cover their costs, and the larger more established providers are not overcompensated due to economies of scale.”²² The benefits of, and need for, tiered rates that existed in 2007 still exist today. Sorenson’s economies of scale are substantial because its market share is estimated to be more than four times larger than all other providers combined. Consequently, without tiered rates, smaller VRS providers will be unable to compete with Sorenson. Any inefficiency in the expenditure of TRS Funds caused by providing smaller providers with a higher tiered VRS compensation rate will be more than offset by the service-quality competition that these smaller providers will continue to provide to Sorenson.

If adopted by the Commission, RLSA’s rate-setting approach will have an increasingly adverse impact on smaller VRS providers and ultimately will substantially reduce or eliminate

²¹ RLSA proposes to make the Tier 1 and Tier 2 rates equal, thereby eliminating one of the Commission’s three rate tiers. *See* RLSA Rate Proposal, at 6. Convo does not oppose this proposal. *See* Convo March 9 Comments, at 32; Convo March 30 Reply Comments, at 7-10. For purposes of simplicity, Convo will refer herein to this unified rate tier as the Tier 2 rate.

²² *2007 TRS Order*, ¶ 53. In adopting tiered rates, the Commission implicitly recognized two important realities. First, it understood that competition, even at the expense of a small financial inefficiency, yields benefits to the public interest and VRS users. Second, the Commission recognized that smaller providers lack the economies of scale to provide VRS at the same cost as the dominant provider.

the service-quality competition that smaller VRS providers provide to Sorenson. This service-quality competition not only provides alternatives to Sorenson for VRS users,²³ but also forces Sorenson to maintain the quality of its VRS despite its market dominance. Further, an important part of service-quality competition is disruptive innovation. Smaller providers are the primary source of the innovation in the VRS market that improves the VRS consumer experience. For example, despite Sorenson's insurmountable advantage in research and development capital, smaller providers were the first to deploy the mobile VRS applications on which many VRS users now regularly rely. In addition, they were the first to provide customers with a variety of new, innovative hardware, such as all-in-one videophones, Wi-Fi enabled videophones, and touch-screen enabled videophones.²⁴ Similarly, Convo developed the only web-based VRS product that uses Flash technology, which provides immediate access to VRS to deaf people who may not have access to any other VRS technology at public places. These benefits derived from competition by smaller VRS providers should be preserved by the Commission when setting rates and making rate methodology decisions.

Given the current lack of transparency regarding VRS providers' cost information, Convo and other interested parties have a limited ability to understand how RLSA derived the

²³ Even putting aside the benefits of service-quality competition provided by smaller VRS providers, the presence of alternatives to the dominant VRS provider is necessary to achieve functional equivalence. Like the hearing community, the deaf and hard-of-hearing community should have access to multiple communications providers and should not be required to solely utilize Sorenson's services. *See Consumer Groups' TRS Policy Statement*, at 2 ("TRS users must have a wide selection of choices regarding equipment and software interfaces as well as hardware options, TRS program services and methods of making or receiving calls."); *id.* at 9 (The Commission should "ensure[] intense competition ... to give the TRS user population a range of choices in features and services within any one form of TRS.").

²⁴ In fact, Sorenson for years adopted a "one size fits all" approach to the provision of VRS. It offered only one product to its customers until competition from smaller VRS providers forced Sorenson to develop new products.

“weighted average cost” that RLSA used to determine its single-tier target VRS rate.²⁵ It appears, however, that this weighted average cost is merely an industry-wide average cost weighted by year. As a result, RLSA’s weighted average cost appears to be driven almost entirely by the dominant provider’s actual costs, which are certain to be significantly lower than the other VRS providers’ actual costs due to Sorenson’s scale.

Although RLSA tacitly recommends maintaining a Tier 2 rate on an interim basis, RLSA proposes to adjust this Tier 2 rate downwards towards a single-tier unified rate.²⁶ Specifically, RLSA proposes to reduce the current Tier 2 rate by one-third of the difference between this rate and RLSA’s weighted average cost, which implies a three-year glide path towards a single rate.²⁷ Consequently, RLSA’s proposed 2012/13 Tier 2 VRS rate cannot be credibly characterized as being based on the costs of Tier 2 VRS providers. Instead, RLSA’s proposed Tier 2 rate accounts for the higher costs of smaller providers *only incidentally* because it constitutes a reduction from the current interim Tier 2 rate (which, in fact, is based on the costs of Tier 2 providers) as the rate is driven downwards to a single-tier, unified rate. Thus, rather than proposing a legitimate two-tier rate-setting methodology that will take into account the higher rate structure of smaller VRS providers on a going forward basis, RLSA proposed a Tier 2 rate that is the first step toward eliminating the rate tier applicable to smaller providers and replacing it with a single rate tier based overwhelmingly on Sorenson’s costs structure.

²⁵ RLSA Rate Proposal, at 5. RLSA’s 2012/13 proposed rates were calculated by adjusting the current interim rates downwards towards a single weighted average cost by reducing the current interim rates by one-third of the difference between the current interim rates and the weighted average cost.

²⁶ RLSA Rate Proposal, at 2.

²⁷ RLSA does not explain or describe why the replacement of tiered rates by a single-tier industry-wide rate is appropriate or justified. It also does not explain why it believes that decreasing the Tier 2 rate to this single-tier rate in three years is an appropriate time period for such drastic rate reduction.

By contrast, in its 2010 filing, the Administrator prior to RLSA, the National Exchange Carrier Association (“NECA”), appropriately proposed that the Tier 1 rate be based “solely on the projected costs of the providers whose projected average monthly demand would not exceed [the 50,000 minute] level during the upcoming year.”²⁸ For Tier 2, it recommended to include the cost and demand data of all providers except the largest provider, *i.e.*, Sorenson.²⁹ Indeed, the Commission adopted tiers in large part because the dominant provider’s projected minutes and costs “largely determin[e] the rate.”³⁰

The elimination of rate tiers irrespective of the concomitant impacts on the overall VRS market ultimately is a policy decision that must be made by the Commission and should not be made by the Administrator. As the Administrator, RLSA’s role should be limited to an accounting review of cost data provided by VRS providers using the method prescribed by the Commission. At most, RLSA should provide several proposed rates taking into account the various alternative rate-setting methods that the Commission may choose given the Commission’s policy goals.³¹

D. The Commission Should Direct RLSA to Make Certain Adjustments to Provider Allowances

The Commission also should direct RLSA to make adjustments to its allowance on invested capital. The allowance of an 11.25% return on invested capital with an allowance for taxes is a fair and reasonable allocation.³² However, RLSA has applied the 11.25% rate of return

²⁸ NECA 2010 Filing, at 21.

²⁹ *Id.*

³⁰ 2007 TRS Order, ¶ 52.

³¹ Indeed, this was the practice of NECA. *See, e.g.*, NECA 2010 Filing, at 19-25 (providing VRS rate alternatives).

³² RLSA Rate Proposal, at 4.

only to capital equipment, not to invested capital. Capital equipment is only part of the capital investment required to operate a VRS business and excludes the most significant part of the capital required for providers such as Convo—working capital.³³ Certain VRS costs, such as payroll and telecommunications services, are paid when incurred, but providers are not reimbursed for these costs until two months after they are incurred. This reimbursement lag introduces a significant need for capital, and the cost of this working capital is not reflected in the return allowance calculated by RLSA. In addition, VRS providers need to borrow capital to fund in the short term certain other expenses, including the cost of complying with new regulatory requirements.³⁴ Therefore, a rate of return on invested capital, not solely capital equipment costs, should be included in the VRS reimbursement to more accurately reflect the actual cost of providing VRS to the public.

E. The Commission Should Mandate Increased Cost Transparency

The Commission should require increased transparency regarding the relative costs to VRS providers of providing service. The VRS industry is fully subsidized via the TRS Fund—a governmental program funded by the general public through a regulatory surcharge on common carrier services.³⁵ As a result, the public has a right to understand precisely what it is funding,

³³ See also Reply Comments of CSDVRS, LLC, CG Docket No. 10-51, CG Docket No. 03-123, at 4 n. 6 (Mar. 30, 2012) (“We also note that the 1.6 percent working capital adjustment used in the current rate of return methodology assumes a 30 day payment delay. However, since payment from the administrator takes more than twice that period, the working capital adjustment factor is low by more than 50 percent.”).

³⁴ Convo, for example, invested \$500,000 in capital to satisfy new regulatory requirements and to develop and implement an independent automatic call distribution platform and billing system. Other providers have invested in customer-premises equipment development, manufacturing and provision.

³⁵ See *Contributions to the Telecommunications Relay Services Fund*, 26 FCC Rcd 14532, ¶ 1 (2011) (“[T]he Commission has recognized and permits compensation for various forms of TRS, including ... video relay service....”).

and therefore the providers' participation in the VRS program should be entirely transparent.³⁶ Accordingly, all cost information submitted by VRS providers to the Commission and the Administrator should be made public and the compensation payments to VRS providers from the TRS Fund also should be publicly disclosed.

Among other things, increased transparency will enable the public, including VRS providers and consumer advocacy groups, to independently understand, analyze, and provide input regarding the industry's cost data, including the differences between Sorenson's and smaller VRS providers' costs. This, in turn, would enable a thorough public evaluation of RLSA's 2012/13 rate proposal and any future rate proposals.³⁷

For example, the benefits of increased transparency are amply highlighted by the difficulty that Convo and other interested parties had in analyzing the weighted average cost utilized by RLSA to develop its rate proposal.³⁸ If the VRS costs of each of the smaller providers were available for public review, it would be possible to determine the difference between the actual historical costs of smaller providers and RLSA's weighted average cost figure, which appears primarily to be based on Sorenson's historical costs. However, this key piece of information, which is highly germane to any discussion of VRS rates, currently is unavailable.

³⁶ This is particularly true with respect to the VRS industry, which, as the Commission is well aware, was subject to significant waste, fraud, and abuse prior to recent Commission reforms. *See generally Structure and Practices of the Video Relay Service Program*, 26 FCC Rcd 5545, ¶ 4 (2011).

³⁷ Consistent with this position, Convo has attached to these comments the cost information that it submitted to RLSA in February, and Convo encourages other VRS providers to similarly publicly disclose their cost information.

³⁸ *See infra* Section III.B.

IV. THE COMMISSION SHOULD ADOPT AND ENFORCE INTEROPERABILITY REFERENCE STANDARDS

Convo supports efforts to standardize VRS access technologies to ensure industry-wide interoperability of end-user VRS products.³⁹ Every VRS user should be able to utilize the interpreting services of any VRS provider irrespective of the VRS product used by the end user. In addition to being a general public interest benefit, such interoperability also may reduce the market dominance of the largest VRS provider by reducing the network effects that, at least in part, cause certain VRS users to rely on Sorenson.⁴⁰ Specifically, VRS interoperability minimizes user lock-in and thereby enhances service-quality competition by enabling VRS users to freely switch between VRS providers based on the quality of the VRS services that they provide.

A. The Commission Should Facilitate the Adoption of Interoperability Reference Standards by VRS Providers

The adoption of industry-consensus interoperability reference standards will enable VRS industry-wide interoperability without jeopardizing the ability of VRS technologies to evolve.⁴¹ At the same time, adoption of reference standards still allows VRS providers to customize and continue to improve their VRS offerings. By contrast, the unilateral mandate by the Commission

³⁹ See Convo March 9 Comments, at 20-23; Convo March 30 Reply Comments, at 12-15.

⁴⁰ See Comments of Purple Communications, CG Docket No. 10-51, CG Docket No. 03-123, at 6 (filed Mar. 8, 2012) (quoting Comments of Alfred Sonnestrahl, WC Docket No. 10-51 (filed Mar. 23, 2010)); see also Convo March 9 Comments, at 30. As discussed above, a reduction in Sorenson's market dominance ultimately serves VRS users. See *supra* Section II.

⁴¹ Reference standards are technical standards that ensure that each provider's VRS hardware and applications can exchange information with the hardware and applications of all other providers. Reference standards, however, would not require the use of a single technology.

of a single VRS technology, as proposed by CSDVRS,⁴² effectively will freeze VRS technology and prevent individual VRS providers from developing new and better VRS products.

As Convo previously has proposed,⁴³ the Commission should establish a technical working group for the negotiation of VRS interoperability reference standards by VRS providers. The working group should be composed of all certified VRS providers and should be chaired by an appropriate neutral technical organization, such as the Gallaudet University Technology Access Program (“TAP”) or the Institute of Electronics and Electrical Engineers (“IEEE”). To ensure that standards are adopted promptly, the Commission should provide a firm deadline by which the working group must submit consensus interoperability reference standards to the Commission. To the extent that the VRS providers are unable to agree on appropriate reference standards by the Commission-established deadline, then the Commission should charge the neutral technical organization with submitting a report to the Commission proposing reference standards that the technical organization believes are appropriate based on its participation in the VRS providers’ negotiation. Upon its approval of the working group’s consensus proposal (or, in the absence of a consensus proposal, of the technical organization’s proposal), the Commission should then codify the reference standards in its rules.

Moreover, the working group that initially establishes the reference standard should continue to meet periodically, such as every two years, to consider revisions to the reference standards consistent with the evolution of the underlying technology. All such revisions should

⁴² See Notice of *Ex Parte* of CSDVRS, LLC, CG Docket No. 10-51, CG Docket No. 03-123 (filed July 10, 2012), Attach: Transition to Software Based VRS, at 7 (asserting advantages of standard VRS software).

⁴³ See, e.g., Convo March 9 Comments, at 21.

be adopted in the same manner as the initial reference standard—*i.e.*, by industry consensus or via a proposal of the neutral technical organization that chairs the working group.

B. The Commission Should Require Third-Party Equipment and Call Routing Process Certification

Third-party certification is the best way—and perhaps the only way—to ensure that equipment and routing processes are actually interoperable and that providers do not take actions, or refrain from taking actions, that prevent the full interoperability of their VRS products and call routing processes. Therefore, in addition to adopting reference standards, the Commission should require all VRS providers to obtain certification by a neutral third-party certification body, such as TAP or Neustar (the current iTRS Administrator), that each of their VRS end-user products are compliant with the codified interoperability reference standards.⁴⁴ The third-party certification bodies should be licensed by the Commission in much the same way as telecommunications certification bodies are approved under the Commission’s equipment authorization rules.⁴⁵ In addition, the Commission should require that each VRS providers’ call centers be capable of relaying calls that are initiated using, or terminated to, any certified VRS end-user product irrespective of which VRS provider distributes the product. To enforce these requirements, the Commission should prohibit compensation from the TRS Fund to be paid to a VRS provider for relaying a call that is not made with, or terminated to, a certified VRS product.⁴⁶

⁴⁴ Consistent with the Commission’s equipment certification processes, the Commission should require re-certification for any material change in a provider’s VRS products. *See* 47 C.F.R. § 2.1043.

⁴⁵ *See id.* §§ 2.960-2.962, 68.160-68.162.

⁴⁶ As with any regulatory regime adopted by the Commission, strict enforcement by the Commission is an important component of the success of the new regulations in achieving their objective. The approach to VRS product certification set forth herein is sufficiently concrete to enable the Commission to swiftly and strictly enforce interoperability requirements against any

The Commission should adopt a phased-in approach to this certification requirement. Specifically, the Commission should require all VRS products to be certified within twenty-four months of the codification of the reference standards by the Commission. This will provide VRS providers with sufficient time to make any necessary changes to their VRS products and call routing processes to ensure interoperability with the reference standards. It also will enable the Commission to license an adequate number of certification bodies.

V. THE COMMISSION SHOULD EXPAND THE ROLE OF THE ITRS DATABASE

The iTRS database should be expanded to collect additional information about the public's use of VRS, and the iTRS Administrator should be tasked with registering and verifying all VRS users.⁴⁷ These actions will provide the Commission with unprecedented data about the nature of the community of VRS users and the manner in which they use VRS.⁴⁸ It also will provide the Commission with an effective new tool to prevent waste, fraud, and abuse.⁴⁹

non-compliant VRS providers. By contrast, the Commission's existing VRS interoperability policy is sufficiently vague that it has proven difficult for the Commission to timely enforce. This, in turn, has led to numerous anecdotal complaints alleging interoperability violations to be posted by VRS users on deaf message boards and on Facebook.

⁴⁷ The Commission should not, however, develop and deploy a centralized ACD platform to initially receive and then distribute to VRS providers all VRS calls as was proposed by CSDVRS. *See Notice*, at 5. Centralizing all ACD routing functions industry-wide under a single government-controlled system would limit the ability of providers to innovate and offer additional and customized services to their customers, which would reduce service-quality competition.

⁴⁸ A centralized VRS user database can also serve public interest goals such as assisting the Commission and industry to identify and market VRS to underserved populations.

⁴⁹ For example, voice inbound calls to inactive ten-digit telephone numbers ("TDNs") often result in stranded video mail messages, and the costs of relaying these stranded video mail messages currently are reimbursed by the TRS Fund. Thus, the implementation of a centralized VRS user database could yield significant cost-savings for the TRS Fund.

The Commission should make the iTRS database administrator responsible for verification and registration of all VRS users and the issuance of a ten-digit telephone number (“TDN”) to each user.⁵⁰ Most importantly, the resulting VRS user database would provide the Commission with a definitive count of the number of active VRS users and active TDNs, as well as provide the Commission with useful information about typical VRS usage patterns and the types of VRS users.⁵¹ Currently, VRS users often separately register with each VRS provider and, due to the Commission’s lenient registration rules, can register multiple times and therefore receive multiple TDNs from a single VRS provider.⁵² As a result, the number of unique, active VRS users is currently unknown. Further, the VRS industry uses TDNs, a scarce resource, highly inefficiently.⁵³

Tasking the iTRS Administrator with verification and registration yields other important benefits beyond limiting the number of TDNs assigned per VRS user. First, for example, the VRS program and its users would benefit from consistent verification and registration standards and protocols. This will ensure that all users meet the same verification standards and thereby reduce any consumer confusion caused by the disparate registration methods currently utilized by VRS providers. Second, cost efficiencies can be gained by assigning registration and verification responsibilities to a single entity. Currently, each individual VRS provider must

⁵⁰ Each VRS user should be permitted to have one TDN for home use and one TDN for work use.

⁵¹ With aggregated data from all of the VRS providers, the iTRS Administrator will be able to better identify usage patterns that indicate fraud and abuse. The aggregated data that will be compiled by the iTRS Administrator also offers the potential to reduce the need for audits of VRS providers, which are burdensome for the Commission, the TRS Fund, and the industry.

⁵² As a result of this, VRS providers are forced to maintain substantial pools of largely inactive TDNs, which is an unnecessary and inefficient cost that ultimately is born by the public.

⁵³ Reducing the number of inactive TDNs further the Commission’s goal of curbing numbering exhaust. *See, e.g., IP-Enabled Services*, 19 FCC Rcd 4863, ¶ 76 (2004).

devote independent, and likely redundant, resources to registering and verifying users. By contrast, if the iTRS Administrator verifies and registers all users, the overall costs of user verification and registration paid by the TRS Fund should be substantially lower.⁵⁴

VI. CONCLUSION

To ensure functional equivalence through effective service-quality competition, the Commission should refrain from adopting the rates proposed by RLSA. RLSA's proposed rates are intended to be a first step towards eliminating a tiered rate system and, as such, provide smaller VRS providers with a further competitive disadvantage relative to Sorenson. Instead, the Commission should direct RLSA to recalculate its proposed rate for Tier 2 providers using a method that solely relies on the actual costs of such providers.

⁵⁴ The Commission has received a number of letters from VRS users that express concern that a user database would eliminate their choice to use any VRS provider. *See, e.g.*, Comment of Witold Poplawski, CG Docket No. 10-51, CG Docket No. 03-123, at 1 (filed Nov. 14, 2012). Convo is not proposing any loss of consumer choice through the expansion of the iTRS database and would oppose implementation of a centralized database that limited the ability of users to choose their provider or end-point VRS hardware/software product.

In addition, the Commission should adopt a consensus-based approach to developing interoperability reference standards and require third-party certification that all VRS products comply with the reference standard. Finally, the Commission should expand the role of the iTRS Administrator to include registration and verification of VRS users. These steps have the potential to promote service-quality competition, increase the efficiency of the VRS program, and reduce fraud, waste, and abuse.

Respectfully submitted,

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November 14, 2012

Comments of Convo Communications, LLC - November 14, 2012

Exhibit 1: 2012 Cost Data Submitted to RLSA

<i>I. Total Video Relay Services Expense Data</i>	<i>2010 Actuals</i>	<i>2011 Actuals</i>	<i>2012 Projections</i>	<i>2013 Projections</i>
A. Annual Recurring Fixed Expenses				
1. Rent	101,853	176,816	240,792	476,520
2. Utilities	826	2,144	3,000	4,000
3. Building Maintenance				
4. Property Tax				
5. Furniture (if leased)				
6. Office Equipment (if leased)				
Subtotal	102,679	178,960	243,792	480,520
B. Annual Recurring Variable Expenses				
1. Salaries & Benefits (Relay Center: Non - Management)	817,364	1,537,760	2,346,526	3,380,454
2. Salaries & Benefits (Relay Center: Management)	65,249	169,369	320,966	664,108
3. Salaries & Benefits (Relay Center Staff)	21,678	63,086	107,096	158,821
4. Telecommunications Expenses	8,475	8,931	11,600	15,000
5. Billing Expenses	266,295	418,178	-	-
6. Relay Center Expenses	921,780	1,138,614	370,643	212,658
Subtotal	2,100,842	3,335,938	3,156,831	4,431,041
C. Annual Administrative Expenses				
1. Finance/Accounting	89,904	95,140	148,199	209,137
2. Legal/Regulatory	156,785	459,440	370,513	417,082
3. Engineering	44,247	49,836	159,413	252,838
4. Research and Development - platform	-	-	-	-
4. Research and Development - software	94,374	270,787	407,051	593,920
4. Research and Development - CPE				
5. Operations Support				
6. Human Resources	4,906	9,546	41,092	55,056
7. Billing				
8. Contract Management				
9. Risk Management	-	9,071	15,000	20,000

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10. Other Corporate Overheads	48,283	95,711	175,949	236,196
Subtotal	438,498	989,532	1,317,217	1,784,228
D. Annual Depreciation Associated with Capital Investment				
1. Furniture & Fixtures				
2. Telecommunications Equipment	14,730	63,850	128,024	190,534
3. Leasehold				
4. Software				
5. Other Capitalized	1,356	14,251	20,251	26,251
Subtotal	16,086	78,101	148,275	216,786
E. Other TRS Expenses				
1. Marketing/Advertising Expenses	112,968	150,807	388,524	836,741
2. Outreach Expenses	21,994	12,025	25,000	42,000
3. Sub Contractor Expenses	-	-	-	-
4. Software	-	-	-	-
5. Customer Distributed Equipment	-	-	-	-
6. Other	-	-	-	-
Subtotal	134,962	162,832	413,524	878,741
Total Video Relay Services Expenses (Sections A - E only)	2,793,068	4,745,364	5,279,637	7,791,317
F. Capital Investments				
1. Furniture & Fixtures				
2. Telecommunications Equipment	84,235	294,125	270,000	210,000
3. Leasehold				
4. Software				
5. Other Capitalized	34,714	14,981	18,000	18,000
Total Video Relay Services Capital Investments (Section F)	118,949	309,106	288,000	228,000
G. Costs associated with E911 & numbering Internet-B	26,602	106,005	181,362	288,882

Minutes	462,423	462,423	956,700	1,451,235
Cost per minute	6.07	10.26	5.52	5.37