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Via ECFS

November 29, 2012

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mr. Gregory Hlibok
Chief Disability Rights Office
Bureau of Consumer and Government Affairs
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 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 Secretary Dortch and Mr. Hlibok:

Attached for submission to the Commission are the *Reply Comments of ASL Services Holdings, LLC* ("ASL/Gracias VRS") in response to the Commission's October 15, 2012 request for additional comment in the above-referenced proceedings, DA 12-1644.

Sincerely,

MILLER ISAR, INC.

Andrew O. Isar

Regulatory Consultants to
ASL Services Holdings, LLC

Attachment

**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
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REPLY COMMENTS OF ASL SERVICES HOLDINGS, LLC

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REPLY COMMENTS OF ASL SERVICES HOLDINGS, LLC

In response to other party comments regarding the Commission’s request for additional comment regarding a further restructuring of the video relay service (“VRS”) Program and proposed compensation structure,¹ ASL Services Holdings, LLC (“ASL/Gracias VRS”) replies as follows. The proposed significant departure from the Telecommunications Relay Service Program’s (“Program”) *status quo* has engendered extensive, thoughtful comment, particularly from those most impacted by such proposals, the Deaf, Hard of Hearing, and speech-disabled Community (jointly the “Deaf Community”), and from front-line interpreters.² Their comments, numbering in the hundreds, resoundingly stress the need for functional equivalency and consumer choice, objectives which remain elusive.³ Technical standardization will support interoperability, further preclude fraud, waste, and abuse, and bring us closer to full functional equivalency *only* to the extent that providers also retain the flexibility to innovate, differentiate,

¹ See, *Additional Comment Sought on Structure and Practices of the Video Relay Service (VRS) Program and on Proposed VRS Compensation Rates*, CG Docket Nos. 03-123 and 10-51, DA 12-1644 (October 15, 2012) [*Request for Additional Comment*].

² Video Interpreters/Communications Assistants (“VI/CA”).

³ The sheer number of individual comments reflects the deep level of Deaf Community and Communications Assistant interest in Commission governance of the Program. As part of the Commission’s ongoing outreach efforts, the Commission might consider translation of orders, notices of proposed rulemakings, public notices and other requests for comments, or at a minimum summaries thereof into American Sign Language to further engender Deaf Community participation.

and provide the Deaf Community with meaningful alternatives they want, as commenters underscore. Efforts to preclude waste, fraud, and abuse should not overshadow the fundamental communications needs of those the Telecommunications Relay Service Program is intended to serve, particularly in light of the radical changes that have already been implemented and purge of providers. A delicate balance between proposed structural reforms that limit fraud, waste, and abuse, and those that will support innovation, enhanced service quality, and professional development are imperative. Until a technical standardization framework is established and the financial impact of other structural reforms can be quantified, any Program compensation restructuring is premature.

I. PROVIDERS MUST RETAIN THE FLEXIBILITY TO INNOVATE AND MEET PUBLIC DEMAND FOR ALTERNATIVE CHOICE UNDER ESTABLISHED AND ENFORCED INTEROPERABILITY STANDARDS.

Commenting individuals,⁴ Deaf Community representatives,⁵ and providers⁶ resoundingly support maintaining competitive choice as a tenet for achieving functional equivalency. This desire for alternative service options has been expressed consistently in this proceeding and before.⁷ Competitive choice is entirely consistent with the goal of functional equivalency and must be retained. The ability of providers to innovate and attract subscribers is every bit as much a part of functional equivalency as is interoperability and Program sustainability. ASL/Gracias VRS maintains that a *balance* between these objectives is crucial.

⁴ “I want to continue to be able to choose my own VRS company. And I don't want other VRS companies to go out of business due to the FCC's proposals.” *See, e.g. Heather Schoemig.*

⁵ “Another core functional equivalency principle is that consumers should have the ability to choose from multiple, qualified VRS providers and their various products/applications. Competition drives innovation, improves service quality, and is key to functional equivalency.” *See, Telecommunications for the Deaf and Hard of Hearing, Inc. et al. (“Consumer Groups”)* at 1; *ASL/Gracias VRS* beginning at 6.

⁶ “Functional equivalence will not be met by selecting a single, or government, sponsored provider that ultimately will provision lower quality service and equipment than a competitive marketplace.” *See Purple Communications, Inc.* at 1.

⁷ *See generally* Comments during the Commission's December 17, 2009 Video Relay Service Reform workshop.

Too much – if not unilateral -emphasis on one aspect or the proposed reforms stands to adversely affect other critical considerations.

A single provider-managed technology undermines the principal of innovation and consumer choice. A single standardized end-to-end “one size fits all” platform, as proposed, will stifle such innovation, according providers virtually no meaningful operational flexibility to meet customer demand and differentiate themselves from others.^{8 9} And a single end-to-end standardized platform will not resolve interoperability issues that continue to plague providers and users in the absence of Commission oversight and enforcement.¹⁰

Unilateral provider control over platform technical development would slow new application development at best, and lead to technological stagnation at worst, in the absence of clear incentives to meet customer demand.¹¹ Moreover, the Public would stand to lose or delay access to features and functionalities that they clearly desire and need. Virtually all providers and TAP, among others, believe that a single unified software-based platform will have adverse effects.¹² ASL concurs.

Commenting parties have stressed that the public should be able to use any video relay service (“VRS”) equipment with any provider’s service without degradation of technology

⁸ For this reason ASL/Gracias VRS proposed three-tiered client-server architecture will support creation of strict technical standards needed to support full interoperability without undermining the innovation that the public and providers resoundingly seeks. *See, e.g. ASL Services Holdings, LLC Comments* at 6. This proposal is consistent with the reference platform recommendations proposed by the *Rehabilitation Engineering Research Center on Telecommunications Access (“TAP”)* and *Consumer Groups*.

⁹ “In this sense, consumers are fortunate that the technical competition among VRS providers exists, which gives them a better chance at finding the provider that meets their needs. Forcing the VRS providers to use a common app would eliminate much of this competition and carry the risk of stagnation with respect to features that consumers need.” *See TAP* at 6.

¹⁰ *Id.* at Summary; discussion at 3.

¹¹ “...it is not clear what incentive there would be for the developer of a single, standardized VRS app to pursue the research and development of a large number of new features, nor is it clear whether a single developer would possess the resources to do so. *Id.* 4, 5.

¹² *See e.g. Sorenson* at 46, stressing *inter alia* that central platform planning mandates would degrade consumer experiences, stifle competition, generate complexity, impose new Program costs.

service quality.¹³ Standardization of “core” technical tiers should be pro-competitive without being pro-competitor.¹⁴ A technology Internet protocol (“IP”) standard for interoperability must be established, updated when needed, overseen by a qualified independent administrator – consistent with current Program administration¹⁵ - *and* strictly and affirmatively enforced by the Commission.¹⁶

II. PROPOSALS FOR DEPLOYMENT OF A REFERENCE PLATFORM HAVE MERIT.

TAP and the Consumer Groups propose a phased deployment of a standardized “reference platform.”¹⁷ Indeed, development of a standard platform would serve as a base line test for platform and application interoperability. Failure of existing platforms to meet reference platform standards would provide the Commission with an additional tool for enforcement action against non-compliant providers.¹⁸ Phased deployment would allow needed time to engage in extensive outreach and education for the public.¹⁹

Pending full deployment, providers that elect to deploy new platforms or make significant changes to their platforms should be required to demonstrate to the Commission that their platforms will continue to meet existing standards subject to non-compensability of calls.²⁰

¹³ *See, inter alia*, individual *Comments*; TAP at 14; National Alliance of Black Interpreters, Inc. (“NAOBI”);

¹⁴ “...no matter what method is used to select a single VRS application, eliminating competition in favor of a government-sanctioned monopoly application would, of course, destroy any incentive for further innovation and improvement of the application. *Sorenson* at 74.

¹⁵ For example, Gallaudet University in consultation with technical groups such as the SIP Forum and/or a reorganized and broadly represented Interstate Fund Advisory Counsel . *See* ASL/Gracias VRS at 8, 10, TAP at 10; *Convo* at 17.

¹⁶ *See, e.g. Purple* at 6, 9, 15.

¹⁷ TAP at 7, *Consumer Groups* at 6. What ASL/Gracias VRS has termed the “Data Tier.” *See* ASL/Gracias VRS at 8.

¹⁸ *Consumer Groups* at 11

¹⁹ *Sorenson* at 90.

²⁰ *See, TAP* at 10; *Purple* at 7.

III. A CENTRALLY-ADMINISTERED, STANDARDIZED iTRS DATABASE REMAINS A CRUCIAL ELEMENT TOWARD ACHIEVING PROGRAM STANDARDIZATION.

ASL/Gracias VRS and industry commenters generally support a centrally-administered, standardized iTRS database, providing a single registration and data retention process serving all providers. This is particularly critical for standardized emergency 911 access.²¹ Consistent with current Program administration and proposed standard platform design and deployment oversight, the iTRS database should remain independently administered by Neustar or other qualified entities. Further, centralized control is key toward ensuring strict protection of confidential customer information, while controlling number assignment administration to conserve numbers and preclude contributing to number hoarding and exhaustion.²² And a centrally-administered iTRS database gives the Commission greater control to analyze registered user data as an additional tool for prevention of fraud, waste and abuse.²³

Additionally, a centrally-administered iTRS database, has the added advantage of inherently giving subscribers greater control over the registration process. Subscribers should appropriately self-certify qualification for relay services. Further subscribers should have the ability to preset calling preferences such as VI/CA gender, VI/CA certification and skill set, and language preference, making provider call processing more efficient, consistent with Commission rules.²⁴ These capabilities would benefit the public while remaining fully competitive-neutrality.

²¹ See, *TAP* at 8.

²² See, *Convo* at 19.

²³ *Id.* at 3.

²⁴ See *Consumer Groups* at 19.

V. COMMENTING PARTIES UNIFORMLY AGREE THAT PROGRAM COMPENSATION RESTRUCTURING IS PREMATURE PENDING THE OUTCOME OF STRUCTURAL PROGRAM REFORMS.

ASL/Gracias VRS²⁵ and virtually all commenting parties, maintain that Program compensation reforms in the absence of quantifiable data on the impact of technical and other structural reforms being proposed is premature. The RLSA proposal is largely based on existing reported cost structures. Yet the move toward technical standardization has significant financial implications that are not – and cannot be – now known. The RLSA proposal also relies on certain flawed presumptions that should be reevaluated.²⁶ Until the Commission, Fund administrator, and industry can quantify the costs of proposed reform, any move to implement significant changes in compensation methodology would be based on cost structures with questionable applicability.

Premature reductions in compensation structure that do not account for the costs assumed by providers for structural reforms will result in dire consequences particularly for emerging providers, as ASL/Gracias VRS has noted.²⁷ Among them, reduced service quality and limited resources needed to implement, let alone develop, innovative applications.²⁸ Emerging providers, in particular, face steep challenges in achieving profitability that the entrenched, dominant carriers simply do not face. The compensation structure should provide incentives

²⁵ See ASL/Gracias VRS at 11.

²⁶ Including the appropriateness of using rate of return calculations for a quasi-competitive industry and the appropriateness of a 11.25 rate of return. See *Sorenson* at 33; reliance on archaic Erlang-C productivity calculations which do not lend themselves for forecasting labor intensive relay service operations, particularly for smaller providers See *Purple* Addendum A at 15.

²⁷ ASL/Gracias VRS at 3, 4.

²⁸ *Id.* at 13, *Purple* at 2.. Indeed, ASL/Gracias VRS maintains that currently uncompensated marketing, outreach, and research and development costs should be compensable, enabling newer providers to more quickly achieve economies of scale that support a lower rate structure.

force companies to innovate, service subscribers, improve provider performance and operations, and cut costs.²⁹

VI. PROFESSIONAL DEVELOPMENT COSTS MUST BE FACTORED INTO COMPENSATION STRUCTURE.

Several parties, including ASL/Gracias VRS³⁰ and individual commenters³¹ have stressed the importance of professional development as an integral part of the service obligations certified providers assume.³² Professional interpretation requires specialized skills that must be continually developed if a qualified pool of professional interpreters is to be maintained. Providers must support VI/CA pre-certified professional development and certification as part of their service to the Deaf Community by expanding the pool of qualified professional interpreters available beyond meeting the needs of their own subscribers. Providers assume costs for supporting professional development that should be compensable.

The professional standing of VI/CAs is not often recognized.³³ Less so is the exceptional role that highly-specialized VI/CAs such as multi-cultural VI/CAs – including trilingual English, ASL, Spanish interpreters who are specialist and should be compensated as such, those with legal or medical interpreting or other specialized interpreting skills play in serving the Deaf community and supporting functional equivalency. Advancements in technology impose further demands on VI/CA skill sets that require constant updating. Providers are uniquely positioned to support VI/CA certification and continual skill set enhancement, but are limited in their ability to do so unless reasonable training costs are also compensable.

²⁹ See *Consumer Groups* at 24.

³⁰ *ASL/Gracias VRS* at 17.

³¹ “I am also afraid that if your proposals go into effect, it will degrade the quality of service I provide, thereby affecting the level of functional equivalence deaf people experience and have come to rely on. If the FCC wants change and wants to provide functional equivalency - and wants us interpreters in the middle to assist, this is not the way to do it.” See, e.g. *Sara Wedgeworth*

³² See e.g. *NAOBI*; and *Registry of Interpreters for the Deaf (“RID”)* at 1.

³³ See *RID* at 1.

VI/CAs must be properly compensated for their capabilities and expertise as commenters note. VI/CAs must also be furnished with professional, efficient work environments, which are also costly to provide. Failure to properly account for skilled VI/CA compensation and severe limitations on provider costs will drive away the most capable VI/CAs and undermine service quality for the Deaf Community and force providers to hire less qualified providers.³⁴ This is inconsistent with the U.S. Congress' and the Commission's functional equivalency objectives.

Here again, the need for balance between maintaining a sustainable Program, while promoting functional equivalency must exist. Proposed compensation structures that ignore these critical considerations stand to undermine the very Program goals the Commission and providers seek to achieve.

VII. CONCLUSION.

An overwhelming number of Deaf individuals, VI/CAs, and providers have stressed the desire and need for meaningful service alternatives. Focusing on standardized single-provider managed structural reforms that do not allow for innovation and provider differentiation will *forever* preclude the Deaf Community from having access to service alternatives they want, and quash incentives to innovate, improve service, lower operating costs, and achieve functional equivalency. Independent, competitively-neutral oversight of standards, uniform technical applications, and an iTRS data base implemented through a manageable transition will achieve the structural reforms the Commission seeks while maintaining innovation and incentives to improve service and meet the public's expectations for reliable service. Major compensation

³⁴ "Cutting the rates paid to VRS providers as low as the FCC proposes will only reduce the service quality I currently depend on. How will these companies hire and keep skilled ASL interpreters on staff when the government is proposing dramatic cuts to their compensation" *See e.g. Victorre Caraballo Comments*. Dr. Dennis Cockley of Northeastern University now estimates the national average hourly rate of a certified sign language interpreter to be \$38.00 per hour. ("Sign Language Interpreters-Complicit in a Devil's Bargain", www.streetleverage.com paragraph 4) ASL/Gracias VRS data suggests that many provider compensation rates *already* fall significantly below the national average.

reforms that ignore provider costs under the proposed structural reforms will counter to the Commission's intended goals by failing to fairly compensate providers, precluding providers from supporting VI/CA certification and professional development or compensating skilled CAs properly, and will ultimately remove all incentive for innovation and efficiency. A delicate balance must be maintained that carefully considers Program objectives with the desires of the public and needs of the providers to provide quality, functionally equivalent relay services.³⁵

Respectfully submitted this 29th day of November, 2012,

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³⁵ “if the Commission claims authority to balance away the right of deaf and hard-of-hearing people to functionally equivalent communications service that is ‘available . . . to the extent possible,’ it needs to specify the source and scope of that alleged balancing authority.” *Sorenson* at 32.