

Before the
Federal Communications Commission
Washington, D.C. 20554

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

REPLY COMMENTS OF CSDVRS, LLC

There is consensus among commenters and CSDVRS, LLC, d/b/a ZVRS (“ZVRS”) in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice¹ that 1) the rates proposed by Rolka Loube Saltzer Associates (“RLSA”) are unsustainable for any VRS provider and 2) functional equivalency objectives – particularly with regard to competition, access technology and interpreting – require significantly greater action by the Commission as part of reforming the VRS program.

ZVRS agrees that “substantial reforms to the VRS market structure and the practices of providers” is necessary “to ensure that the program continues to support services that offer functional equivalence to all eligible users and becomes as immune as possible from the waste, fraud, and abuse that could threaten its viability.”² Such “substantial reforms” require aggressive initiatives to effectively address long-standing issues while at the same time carefully balancing critical objectives and requirements.

¹*Additional Comment Sought on Structure and Practice of the Video Relay Service (VRS) Program and on Proposed VRS Compensation Rates*, Public Notice, CG Docket Nos. 03-123 and 10-51, DA 12-1644 (“PN”) (October 15, 2012).

² *Id.*, p. 2.

VRS consumers have articulated an overarching functional equivalency principle that they must be offered high quality relay services using interoperable mainstream products and services in a healthy, evolving, yet competitive market.³

In support, ZVRS proposed separating VRS access technology and interpreting services in migrating to commonly available off-the-shelf technology and the addition of a standard but customizable video connectivity software application to ensure that VRS remains available to everyone during the migration.⁴ ZVRS' proposals have garnered earnest consideration and sparked constructive dialogue with complementary ideas such as the establishment of a "reference platform."⁵ We agree with Sorenson that a disaggregation of VRS access technology and interpreting services in a "hybrid" rate structure which separately compensates technology and interpreting has benefits and should be seriously considered.⁶

Nevertheless, ZVRS cautions that the continuing harmful VRS market dysfunction caused in great part by the anti-competitive conduct of Sorenson requires immediate, vigorous, wholesale and non-incremental reform measures along the lines of ZVRS' proposals. We reject Sorenson's contention that standards alone will solve the interoperability and portability issues of VRS access technology.⁷ For example, according

³ See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Comments of Consumer Groups in Response to Public Notice Seeking Additional Comments on Structure and Practice of the Video Relay Service (VRS) Program and on Proposed VRS Compensation Rates, CG Docket Nos. 10-51 and 03-123 ("Comments of Consumer Groups") (November 14, 2012) (referencing their TRS Policy Statement).

⁴ See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Comments of CSDVRS, LLC, CG Docket Nos. 10-51 and 03-123 ("Comments of CSDVRS") (November 14, 2012).

⁵ See e.g. Comments of Consumer Groups, pp. 10-11.

⁶ See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Comments of Sorenson Communications, Inc., CG Docket Nos. 10-51 and 03-123, pp. 17-18 ("Sorenson Comments") (November 14, 2012).

⁷ Id. pp. 54-56.

to Sorenson their nTouch line of products meet standards but in actuality does not interoperate with most pre-existing VRS services and products. Sorenson has continued to anti-competitively use proprietary equipment to deliver service in violation of FCC interoperability orders per call. Notwithstanding Sorenson's support of the development of standards for unique videophone ("VP") functions such as an address book, we previously have unsuccessfully been down this path in the VP portability initiative which was a complete failure due to Sorenson gaming the unavailability of critical VP functions in the event of a port.

The locked-in market is a compelling reason to migrate to off-the-shelf-devices and establish a fully executable and reference software VP application as one tool to support achieving true interoperability and portability. We emphasize our view, consistent with ZVRS being the industry leading developer of VP products for VRS, that the new VRS market must support a variety of certified interoperable hardware and software VP options. At the same time, we must recognize and proactively address in VRS the market shift away from purpose built VPs towards off-the-shelf devices as well as the commonality among almost all VRS providers in using the Mirial video conferencing technology as the platform for their software offerings. Sorenson is the only provider who insists on using their proprietary equipment and maintains software which isn't interoperable although they are fully capable of enabling interoperability and portability of their technology.

We emphatically reject Sorenson's contention that deaf people are technology illiterate and thus they must be maintained in the current environment where their VRS access technology is provider controlled. On the contrary deaf people have been early,

able and independent adopters of new technology such as pagers and have previously independently and successfully transitioned in the use of TTY technology.

ZVRS is of firm belief that the transition to off-the-shelf technology will lead to more and better equipment options that consumers can independently acquire and determine VRS usage based on interpreter quality not defaulting in their choice of video interpreting solely by reason of being directed by provider supplied equipment. ZVRS has proposed a stipend to ensure that those who cannot afford VPs will still have access to commonly available VRS access technology such as iPads. ZVRS intends to help drive the transition to a consumer-directed and self-determined telecommunication experience in the true spirit of the Americans with Disabilities Act instead of remaining dependent and compliant with the dictates of the dominant provider's financial interests.

Yet the benefits of such substantial reform would be lost in the challenges presented by the proposed VRS rates. ZVRS, which is not given to making immoderate statements, unequivocally asserts that it will be severely challenged to survive under the proposed rates. ZVRS detailed in its comments why these rates, if adopted, would be harmful for VRS consumers by limiting providers' capacity to provide functionally equivalent services. ZVRS explained that the proposed rates would be harmful for Video Interpreters ("VI") by financially driving their overscheduling in order to maintain compliance with minimum requirements such as average speed of answer. ZVRS also commented in detail some of its greater than industry weighted average costs which better serve VRS consumers such as its use of 100% certified VIs.

1. Tiered Rates

Sorenson once again argues against continuation of the tiered rate structure the Commission first adopted for VRS in the 2007 Rate Order.⁸ ZVRS has countered those arguments many times before,⁹ and Sorenson's attempt to scuttle tiered rates should again be rejected. Instead the Commission should widen the tiers as ZVRS proposes to: Tier I: up to 100,000 minutes; Tier II: 100,001 - 1,000,000 minutes; and Tier III: minutes exceeding 1,000,000.¹⁰ ZVRS also proposed rates of Tier I: \$6.30; Tier II: \$6.00; and Tier III: \$4.70 based on a tiered weighted average methodology rather than an industry weighted average methodology as RLSA proposes;¹¹ ZVRS fully concurs with the well-reasoned and practical experience grounded analyses provided by Steven E. Turner of RLSA's flawed weighted average cost formulation.¹²

The tiered rate structure is necessary if there is to be any meaningful competition among VRS providers. Sorenson implication that its dominant market share results from its superior technology and skill at acquiring customers should be rejected. Sorenson amassed its monopoly through its videophone/usage tie-in arrangement that the Commission eventually found in its May 2006 *Interoperability Order* to be unlawful.¹³

⁸ Id. pp. 18-25.

⁹ See *Structure and Practices of the Video Relay Service Program*, Reply Comments of CSDVRS, LLC, CG Docket Nos. 10-51 (September 3, 2010); *Structure and Practices of the Video Relay Service Program*, Reply Comments of CSDVRS, LLC to Sorenson Communications Inc., CG Docket Nos. 10-51 and 03-123 (May 21, 2010).

¹⁰ CSDVRS Comments, p. 17.

¹¹ Id.

¹² *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Comments of Purple Communications, Inc., CG Docket Nos. 10-51 and 03-123, Addendum A (November 14, 2012).

¹³ Sorenson distributed its VP-100 videophone free to deaf consumers with the contractual condition that the consumers could only use Sorenson's VRS. Sorenson also electronically locked the VP-100 videophones down so consumers could not place or receive calls through any provider other than Sorenson. Sorenson also at one time required video phone users to use a minimum number of minutes, but ceased the practice reportedly after having been told to do so by CGB staff. In its *Interoperability Order*, the Commission declared "the practice of restricting the use of VRS to a particular provider -- sometimes

Moreover, since the issuance of the *Interoperability Order*, there continues to be numerous reported instances of Sorenson's continued anti-competitive conduct.¹⁴ Eliminating the tiered rate structure would serve to cement and enhance Sorenson's dominant market position with the ultimate harm to the consumer's free choice of provider.

The tremendous innovation seen in VRS has been made possible by the tiered rate structure as a stable and predictable funding mechanism which best balances the objectives of progressing towards an ADA-compliant level of relay services and ensuring that providers have the opportunity to realize a reasonable return in providing that level of relay services during a period that substantive changes are being made to the VRS program. Over the last 4 years ZVRS has out innovated every provider in the market, starting with first mobile videophone from Creative products, to the first Business Class VP the Tandberg 150 and evolving to the Cisco E20 for consumers and businesses as well as the Worldgate Ojo. ZVRS has led innovation in software with the first iPhone VP, the first Mac VP, the first Android phone VP, the first Android Tablet VP and the first iPad VP. ZVRS accomplished all of these innovations because of the support provided by the tiered rate structure. Without the tiered rate structure ZVRS would not

termed 'call blocking' – inconsistent with the TRS regime as intended by Congress.” *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing Disabilities*, CG Docket No. 03-123, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, 5454-59 (2006) (“*Interoperability Order*”). The Commission also found that the practice raised serious public safety concerns. Id. at 5456.

¹⁴ See e.g. *Structure and Practices of the Video Relay Service Program, Ex Parte* of CSDVRS, LLC, CG Docket No. 10-51 (detailing, among other anti-competitive practices, the non-interoperability of Sorenson's nTouch products) (March 6, 2012); *Structure and Practices of the Video Relay Service Program, Ex Parte* of CSDVRS, LLC., CG Docket No. 10-51 (December 5, 2011); See also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Letter of Gallaudet University's Technology Access Program on Video Relay Service interoperability, CG Docket Nos. 03-123 and 10-51, Attachments (August 9, 2012).

have developed any of these breakthroughs. In addition ZVRS' development of these VP products forced Sorenson to compete and finally develop a new product offering.

Sorenson's suggestion that substantial economies of scale do not exist in the VRS market sufficient to justify tiered rates is refuted by the data RLSA has provided the Commission. As ZVRS posited in its comments, the appropriate rate break should be at 1 million minutes a month. At that breakpoint, we believe a provider has substantially reached scale. A properly constructed tiered rate structure will not place an undue burden on the TRS Fund and does not promote inefficiency. In fact, it better aligns costs with compensation, promotes meaningful competition, and thus better serves consumers. The continuation of the tiered rate structure is necessary to level the VRS playing field.

2. Rate of Return

As described by ZVRS, necessary refinements to the rate of return methodology are necessary to better comport with the realities of the VRS industry and the Commission's rules for calculating the cost of capital would allow the Commission to derive fair and reasonable rates.¹⁵ We concur with commenters that the Commission's current rate of return regime makes no provision for return on providers' investment in labor. The rate of return methodology, established more than 20 years ago for a facilities intensive industry, must be updated to reflect the investment required in a labor intensive industry. At a minimum, providers need to be compensated with a return on their investment in amassing the labor necessary to deliver VRS.

ZVRS also pointed out in its comments that the Commission has omitted to factor in substantial costs necessary to provide VRS, including research and development expense necessary to meet temporarily waived standards, consumer premise equipment,

¹⁵ CSDVRS Comments, Part I. C.

E911 and numbering costs, the costs of training consumers in use of VRS, porting costs, costs to raise and service capital, and costs related to actual taxes.¹⁶ These are the real costs of providing VRS which all providers incur. A failure in computing rates to include the actual and full range of costs of VRS will result in a consequential underpayment for the provision of VRS.

In addition, the Commission is urged to revisit the cost of capital for VRS entities. The 11.25 percent rate of Return on Investment figure the Commission derived from the methodology used for Local Exchange Carriers (“LEC”) - and has now applied to VRS - is correctly calculated under the rules only after examining the weighted average of return on debt, cost of preferred stock and the cost of equity.¹⁷ However as ZVRS has previously explained, that rate of Return on Investment methodology has not been followed for VRS, but instead has been calculated (originally by NECA) based on a return on Net Book Value of Depreciable Assets, a completely different methodology. The Commission must assess the rate of return based on the true cost of capital to provide VRS. This requires that the Rate of Return be calculated post real tax rate utilizing the same three components for VRS providers that was derived for the LECs.

Conclusion

The Commission must continue the tiered rate structure at a rate which fairly and accurately compensates VRS providers over multi-years to maintain the necessary level of competition, quality services and availability of a choice of access products. The Commission is urged to enact substantial reform such as those proposed by ZVRS in

¹⁶ Id, Parts I. C, E, F and G.

¹⁷ See *Structure and Practices of the Video Relay Service Program*, Comments of CSDVRS, LLC, CG Docket Nos. 10-51 and 03-123, at 5-7 (May 10, 2010).

enhancing access technology and interpreting services to preserve and promote competition, independence and consumer choice in VRS.

Respectfully Submitted,

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