B. The Record Does not Support the Use of Tiers, and Using Tiers to Drive the Lowest Cost Provider into Bankruptcy While Protecting Higher Cost Providers is Arbitrary and Capricious.

Notwithstanding efforts by Sorenson's competitors to muddy the waters, the record continues to demonstrate unequivocally that it would be irrational for the Commission to retain tiered rates—and doubly irrational to retain tiered rates as a means to drive the lowest-cost provider, Sorenson, into bankruptcy while protecting its higher-cost competitors. As the Commission itself noted in its FNPRM, a tiered rate structure achieves nothing beyond "reduc[ing] the efficiency of the Fund by providing ongoing support for numerous high-cost, subscale providers"[45]—which in turn contravenes the ADA's mandate that VRS be made available "in the most efficient manner."[46] Nothing in the comments on the PN provides any basis for a different conclusion.

1. Claims of Substantial Economies of Scale are Unfounded.

In its comments and reply comments on the FNPRM, Sorenson demonstrated that the Commission's view that tiers should be abandoned was entirely correct[47]—that tiers are

---

[45] *Structure and Practices of the Video Relay Service Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, FCC 11-184, 26 FCC Rcd. 17,367, 17,374 ¶ 8 n.30 (2011) ("2011 VRS Reform FNPRM"); *see also id.* at 17,398 ¶ 64 ("[T]he current tiered rates . . . provide seemingly indefinite support for subscale providers and introduce extra complexity into the management of the program."); *id.* at 17,418 ¶ 141 ("[T]he tiered rate structure supports an unnecessarily inefficient market structure, and apparently provides insufficient incentive for VRS providers to achieve minimal efficient scale.").

[46] 47 U.S.C. § 225(b)(1).

[47] *See* Comments of Sorenson Communications, Inc. at 25-27, CG Docket Nos. 10-51 and 03-123 (filed Mar. 9, 2012) ("Sorenson FNPRM Comments"); Reply Comments of Sorenson Communications, Inc. at 37-39, CG Docket Nos. 10-51 and 03-123 (filed Mar. 30, 2012) ("Sorenson FNPRM Reply Comments").

"inherently wasteful because they reward inefficiency."[48] Sorenson included in the record a declaration and reply declaration from Professor Michael Katz, former FCC Chief Economist, setting forth Professor Katz's conclusion that the use of tiers "distorts competition and reduces consumer welfare."[49] More recently, in addressing the PN's question regarding tiers, Professor Katz again concluded that "the principal effect of declining rate tiers is to support inefficient competitors and distort competition," and that there "is no sound public-interest basis for retaining them."[50] In their comments on the PN, Sorenson's competitors now seek to rehabilitate tiers, and to undermine Professor Katz's analyses. As set forth below, however, their arguments provide no rational justification for the perpetuation of tiered VRS compensation.

The arguments of other providers are based on their claims that Sorenson benefits from substantial economies of scale. There is no merit to those claims: as Professor Katz reaffirms in his Reply Declaration submitted with these reply comments,[51] "any economies of scale in the VRS industry are sufficiently small that multiple providers can operate efficiently."[52] Professor Katz concludes that "[a]n examination of economies of scale demonstrates that declining compensation tiers are not needed to promote quality competition" in the VRS industry.[53]

---

48 Sorenson FNPRM Comments at 25.

49 *An Economic Analysis of VRS Policy Reform*, Declaration of Michael L. Katz, Sorenson FNRPM Comments at Attachment A ¶14 ("Katz FNPRM Declaration").

50 *Response to Additional Request for Comments on VRS Policy*, Declaration of Michael L. Katz, Sorenson PN Comments at Attachment A ¶66 ("Katz PN Declaration").

51 *See* Michael L. Katz, *Reply Comments on VRS Policy*, (Nov. 29, 2012) (copy attached as Attachment A) ("Katz PN Reply Declaration").

52 *Id.* ¶ 31.

53 *Id.* ¶ 7.

Significantly, however, the other providers do not even attempt to explain why the Commission should pay them more than it pays Sorenson to provide a minute of service even if there *were* merit to their claims about scale economies. The TRS Fund ("the Fund") today would save approximately $24 million per year if all providers were paid at the rate Sorenson receives for its Tier 3 minutes—and it is plainly contrary to the statutory duty to provide service in the most efficient manner to continue to pay Purple or ZVRS far more than $5.14 per minute when Sorenson is willing to provide service at that weighted average payment level.

Purple and ZVRS attempt to justify tiers by suggesting that the Commission has decided to prop up new providers by paying them at a higher rate and to subsidize smaller competitors. Neither Purple nor ZVRS is a new competitor, however. Both started providing VRS before Sorenson did. And Sorenson does not believe the Commission has stated, or reasonably could conclude, that it makes sense to subsidize Purple and ZVRS for being less efficient than Sorenson.[54] If the Commission maintains tiers, it must not only find evidence of substantial economies of scale, but also explain why it is choosing to subsidize other providers notwithstanding the resulting burden on contributors to the TRS Fund.

a. Sorenson's Competitors Provide No Evidence Demonstrating Substantial Economies of Scale.

Purple argues that tiers should be maintained for a "transitional" period while "technical standards are under development and implementation."[55] But while Purple persists in

---

[54] Because Sorenson agrees that it is important to maintain consumer choice, Sorenson has not proposed that Purple or ZVRS be subjected to a flash cut, and Sorenson instead proposes that their payment levels should be gradually reduced to Sorenson's level over a period of years. Knowing that it increased its efficiency rate in response to the 2010 rate cut, Sorenson is confident that Purple and ZVRS can survive if their rates are gradually reduced to $5.14 if those providers take steps similar to those Sorenson took in 2010.

[55] Purple PN Comments at 15.

maintaining that tiers may be justified on the basis of "efficiencies" for "providers operating with higher volume"[56]—and it has now recruited an expert with an MBA and a background in engineering to submit an unsworn "Report" claiming that VRS is characterized by economies of scale[57]—it fails to offer any evidence that the claimed economies of scale actually exist. ZVRS, for its part, just flatly invents absurdly low per-minute costs for Sorenson, which it uses to argue that ZVRS should be paid $2.52 a minute *more* than Sorenson to provide the same service. (In fact, ZVRS's proposal would result in a blended per-minute rate for ZVRS that is higher than the current tiered system provides.) In short, however, neither Purple nor ZVRS offers *any* actual evidence of economies of scale beyond the minimal efficiencies already identified in Professor Katz's initial Declaration.

Purple's "expert" begins by arguing that the "Commission's previous orders have shown that VRS costs are volume sensitive."[58] This portion of the Turner Report simply repeats Commission statements to the effect that VRS "providers with greater volumes tend to have the lowest unit costs."[59] As an empirical matter, this is undeniably true—Sorenson is the VRS provider with the greatest volume, and it is also the lowest-cost provider of VRS by a substantial margin. The real question, though, is not *whether* Sorenson has lower per-minute costs than its competitors—it does—but *why* that is so. Sorenson has consistently demonstrated that its costs

---

[56] *Id.* at 14.

[57] *See* Purple PN Comments, Addendum A, Report of Steven E. Turner ("Turner Report"). Notably, the Commission has made clear that while it accepts "unsworn declarations under penalty of perjury in lieu of affidavits," "informal submissions that are not certified under penalty of perjury do not quality under [its] rules." *Charter Communications, Petitions for Determination of Effective Competition in Mount Vernon, Okawville, Salem, and Richmond, Illinois*, Memorandum Opinion and Order, DA 06-750, 21 FCC Rcd. 3400, 3404 ¶ 11 (2006).

[58] Turner Report at p. 6.

[59] *Id.* ¶ 12.

are lower than its competitors' almost entirely because it runs its operations more efficiently than its competitors run theirs—especially in the areas of hiring, training, retaining, and managing video interpreters, which are the most expensive aspects of providing VRS. And the sworn declarations that Professor Katz submitted during the comment cycle on the FNPRM support Sorenson's position. In particular, Professor Katz demonstrated that interpreter economies of scale are "exhausted at a low percentage of industry output,"[60] and that call center costs, outreach and marketing costs, and other fixed costs give rise to only "very small" economies of scale.[61] Accordingly, Professor Katz cautioned that the "Commission should not confuse the effects of superior management and learning with economies of scale:"[62]

> [While] the most successful firms may well have the lowest costs…this does not imply that their costs are lower because the firms are large. Indeed, there is reason to believe that causality runs in the reverse direction: those firms that are most successful in attaining low costs can be expected to gain market share…[because they can] attract new customers by offering attractive services.[63]

Mr. Turner's citations of past Commission findings that Sorenson has lower costs than its competitors thus add nothing to the evidence on the record—Sorenson does have lower costs, but the record reflects that economies of scale account for very little of the difference.

Mr. Turner also relies extensively on RLSA's data, which he believes show that "both Purple and CSDVRS have costs approximately 70% higher than Sorenson."[64] Significantly, though, while Mr. Turner repeatedly *states* that Sorenson's lower costs result from "economies

---

[60] Katz FNPRM Declaration ¶¶ 27-35.

[61] *Id.* ¶¶ 41-49.

[62] *Id.* at p. 33.

[63] *Id.* ¶ 46.

[64] Turner Report ¶ 17.

of scale,"[65] he provides no *evidence* whatsoever for his conclusion. Once again, then, Mr. Turner merely assumes causation. But the Commission cannot, of course, rely on an assumption that has been proved false through rigorous economic analysis on the record to justify maintaining tiers.

Finally, having failed to demonstrate that Sorenson's lower costs are *caused* by higher call volumes, Mr. Turner resorts to attempting (at length) to poke holes in Professor Katz's analysis.[66] These criticisms are unfounded, as set forth in the attached Katz PN Reply Declaration. First, Professor Katz rebuts Mr. Turner's various "technical criticisms" of Professor Katz's use—in his initial declaration on the FNPRM[67]—of "an Erlang C model to demonstrate that economies of scale in the provision of interpreters are exhausted at a low percentage of industry output."[68] At a general level, Professor Katz points out that "Mr. Turner does not attempt to demonstrate that any of his criticisms are empirically important or that the basic conclusion that economies of scale in the provision of interpreters are exhausted at a low percentage of industry output is incorrect."[69] Professor Katz then goes on to present specific sensitivity analyses empirically demonstrating that his "conclusions are robust" to Mr. Turner's critiques.[70] Second, Professor Katz shows that Mr. Turner's own assumptions about economies of scale for indirect costs "cannot possibly be correct" because "it is inconsistent with the numbers that [Mr. Turner himself] cites."[71] And, finally, Professor Katz demonstrates that Mr.

---

[65] *See id.* ¶¶ 20-24

[66] *See id.* ¶¶ 25-61.

[67] *See* Katz FNPRM Declaration at Section II.B.1.

[68] Katz PN Reply Declaration ¶14.

[69] *Id.*

[70] *Id.* ¶¶ 17-21.

[71] *Id.* ¶ 22.

Turner's claim that Sorenson's lower costs flow from economies of scale rather than superior management "are unfounded"—Mr. Turner simply "provides no evidence to support this assertion."[72]

ZVRS's arguments in support of tiers are even more fanciful than those of Purple and its expert. Specifically, ZVRS claims that it is able to determine "[b]ased on the information provided by RLSA" that Sorenson's average costs are "$2.91 per minute compared to $5.338 per minute for the other providers," or $2.833 and $5.261 respectively excluding "ROI [and] adjusted for federal tax liability."[73] ZVRS does not explain how it "estimate[d]" these figures, but of course Sorenson's own data that it has provided to the Commission shows ZVRS's figures not to be an "estimate" at all, but rather a wildly imaginative exercise.[74] Perhaps even more bizarrely, ZVRS uses its imaginary cost data to argue that it should be paid nearly as much *more* ($2.52) per minute than what ZVRS imagines to be Sorenson's entire cost of providing service ($2.91). Now those would be some truly impressive economies of scale!—if there were any evidence at all to support them, which of course there is not.[75] As Professor Katz sets forth in his attached PN Reply Declaration, the fact is that—properly understood—ZVRS's own "claims regarding the magnitude of economies of scale" actually "support the conclusion that a single-tiered system would promote competition and consumer welfare" in the VRS industry.[76]

---

[72] *Id.* ¶ 27.

[73] ZVRS PN Comments at 9-10.

[74] *See* Sorenson July 11 Letter, Attachment 2 at 10.

[75] *See* Sorenson PN Comments at 20-25 (explaining that ZVRS's purported cost data is no more than rank—and thoroughly inaccurate—speculation).

[76] Katz PN Reply Declaration ¶ 9.

Finally, ZVRS's argument "[b]ased on the information provided by RLSA" regarding Sorenson's costs flatly ignores ZVRS's *own* extended rebuttal of RLSA's cost data.[77] As discussed above, ZVRS argues at length that RLSA's "2012 calculated weighted average costs" dramatically undercounted ZVRS's actual operating costs, including indirect costs such as "operations support, finance, research & development, engineering, legal, risk management, other corporate overhead and a modest executive team," as well as costs for "marketing & outreach."[78] It makes no sense for ZVRS to rely on RLSA's cost data to demonstrate that *Sorenson* has low costs when ZVRS itself argues that RLSA's accounting methodology "dramatically undercount[s]" *ZVRS's* costs.

2. The Commission Cannot Rationally Justify Using Tiers to Drive the Lowest-Cost Provider into Bankruptcy While Protecting Higher-Cost Providers.

The arguments that Sorenson's competitors advance in favor of tiers are, at root, thinly veiled invitations to the Commission to drive Sorenson into bankruptcy, while preserving its less efficient competitors. This is both inconsistent with the statute and flatly irrational.

The specifics of the tier proposals offered by Sorenson's competitors differ, but one feature is impressively constant: Each proposes that tiers be preserved and expanded to ensure that essentially all of *its* minutes are compensated at a much higher rate than Sorenson receives. Specifically, ZVRS proposes—after presenting all manner of substanceless charts and "analysis"—that the FCC should "expand the tiers" to more "adequately account" for what ZVRS calls "real economies of scale."[79] As if by magic, ZVRS's proposed tiers expand to fit

---

[77] ZVRS PN Comments at 9.

[78] *Id.* at 4-6.

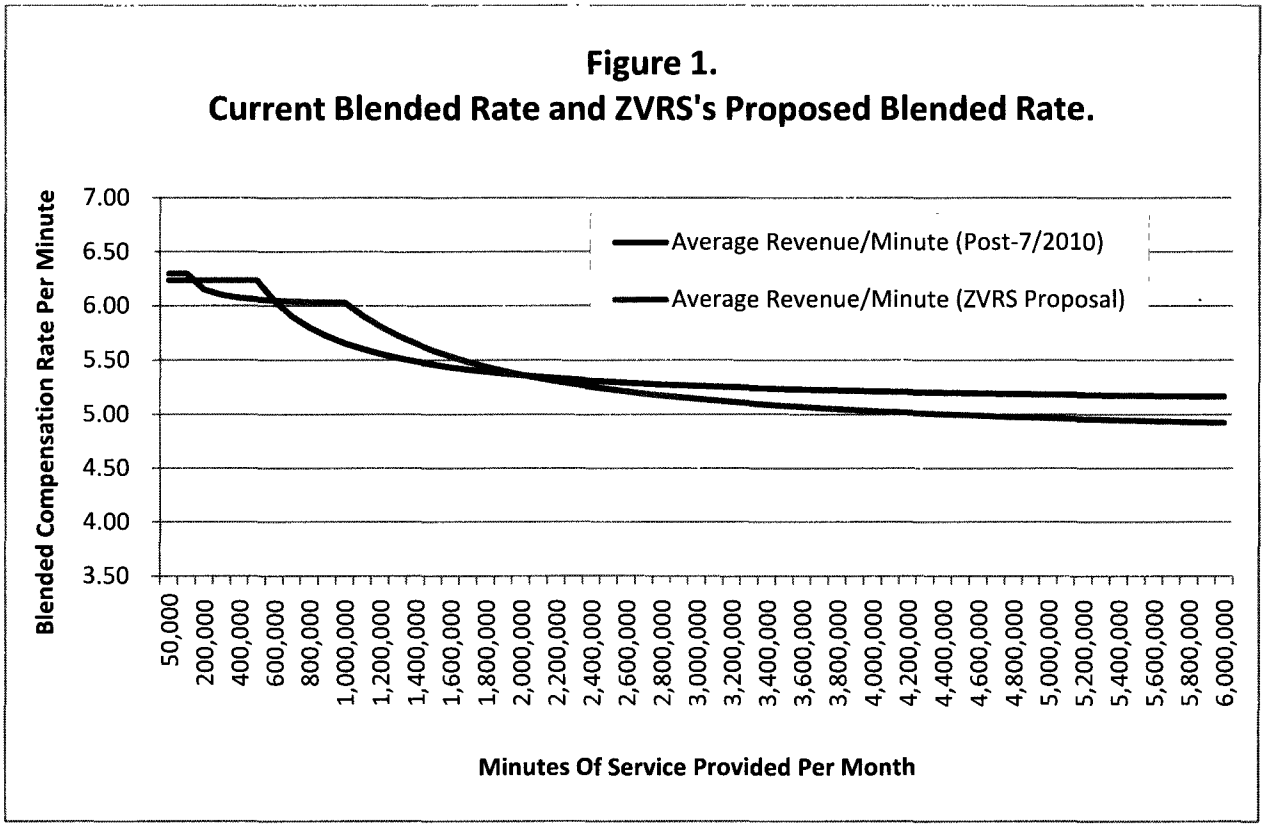
[79] *Id.* at 34.

ZVRS's current size, with minutes up to 1 million compensated at $6.30 for the first 100,000 and then at $6.00, with a sharp dip to $4.70 *above* 1 million, which of course ZVRS does not reach. The net result—as indicated in Figure 1, below—is that ZVRS's proposal actually *increases* revenues (compared to the status quo) for providers between about 600,000 and 2 million minutes—*i.e.*, *****BEGIN HIGHLY CONFIDENTIAL*****

*****END HIGHLY CONFIDENTIAL***** In other words, ZVRS does not propose anything like a reduction in current compensation for anyone other than Sorenson; to the contrary,

*****BEGIN HIGHLY CONFIDENTIAL*****

*****END HIGHLY CONFIDENTIAL*****



Purple's tier proposal is equally brazen and self-serving. Because Purple has grown still bigger than ZVRS, Purple suggests that Tier 2 should grow with it so as to apply to a provider's first *two million* minutes. Like ZVRS, Purple thus bravely volunteers Sorenson alone to bear RLSA's unsurvivable cut.[80] As Purple notes, its proposal most certainly would "allow smaller VRS providers the ability to innovate and compete,"[81] but it would do so at a high cost. Notably, under Purple's proposal, a provider with 2 million minutes per month would receive a blended average of $5.10 per minute—barely below what Sorenson receives today and down less than 5 percent from the $5.36 per minute such a provider would receive under today's tiers—while a provider with more than 6 million minutes per month would receive a weighted average of below $4.43 per minute—a reduction of at least 13.8 percent from Sorenson's current average compensation rate.[82] Under Purple's proposal, the annual premium that the Commission would be paying to a "2 million minute per month" provider over what it would pay to a "6 million minute per month" provider would be over $16 million.[83] That premium would expand to over $27 million if the industry hypothetically were comprised of a 6 million minute provider, a 2

---

[80] *See* Purple PN Comments 16.

[81] *Id.*

[82] At 1 million minutes per month, a provider today would receive an average of $5.65 per minute, and under Purple's proposed tiers would receive $5.37 per minute—which is also a reduction of less than 5 percent.

[83] The calculation leading to this conclusion is straightforward. It is simply the difference between 1) the blended-rate compensation that the "2 million minute per month" provider would receive for two million minutes per month over the course of a year [$5.10/minute x 2 million minutes/month x 12 months = $122.4 million], and 2) the blended-rate compensation that the "6 million minute per month" provider would receive for two million minutes per month over the course of a year [$4.43/minute x 2 million minutes/month x 12 months = $106.32 million]. This results in a difference of $16,080,000 per year.

million minute provider, and a 1 million minute provider. Purple comes nowhere close to justifying subsidizing inefficiency at these levels.[84]

The tier regimes proposed by ZVRS and Purple thus appear precisely calculated to render Sorenson insolvent while preserving smaller, less efficient competitors. As discussed in Section II.A.2.b, *supra*, the Commission should be aware that a Sorenson bankruptcy would greatly harm both VRS consumers and video interpreters. Equally important, accepting competitors' invitation to destroy Sorenson while preserving less efficient providers is flatly inconsistent with Section 225. First, the harms to VRS consumers and video interpreters discussed above would certainly extend to elimination of any pretense of functionally equivalent VRS service. And second, even if Sorenson's competitors could somehow meet demand for VRS during or after a Sorenson bankruptcy (which is, in fact, an abject impossibility), paying competitors dramatically *more* for the same service that Sorenson had been providing would clearly contravene the ADA's mandate that VRS be made available "in the most efficient manner."[85]

Finally, the approach urged by Sorenson's competitors would not pass muster under the Administrative Procedure Act. The Commission could not possibly offer the requisite reasonable explanation for a tiered system with the net result of replacing Sorenson with far *higher* cost providers. There is simply nothing on this record that could justify requiring TRS Fund contributors to pay *more* in the future for substantially worse VRS service than Sorenson is already offering.

---

[84] The annual premium paid to the "1 million minute per month" provider would be $11.28 million (($5.65/minute - $4.43/minute) x 1 million minutes/month x 12 months = $11,280,000).

[85] 47 U.S.C. § 225(b)(1).

C. Transitioning to a Unified Rate Set at the Lower of 1) the Level that a Two-Winner Competitive Bid Would Produce; or 2) the Current $5.14 Blended Rate that Sorenson Receives is the Only Economically Feasible and Rational Alternative on the Record that Preserves Functional Equivalence.

It is clear from the comments on the PN that neither RLSA's proposed rates nor the self-serving tiered rate proposals of Sorenson's competitors provide a viable path to functionally equivalent VRS service at an industry-wide blended per-minute rate below the status quo. Significantly, however, Sorenson has offered exactly that: a viable, sustainable way to reduce VRS costs in both the short and long runs.

Specifically, Sorenson has proposed that the Commission begin by eliminating tiers. Rate tiers are inherently wasteful because they reward inefficiency.[86] The current system thus subsidizes inefficiency by paying less efficient VRS providers more on average per minute than more efficient providers. But there is a simple fix—if all VRS minutes were compensated at the Tier III rate already applicable to approximately 80 percent of all VRS traffic, the TRS Fund would save more than $24 million per year.[87] Sorenson therefore supports the elimination of tiers that the Commission proposed in the FNPRM. Sorenson, of course, would prefer the immediate elimination of tiered rates, which both burden ratepayers and put Sorenson at a competitive disadvantage. But Sorenson recognizes that, as a practical matter, a transition period would be necessary for other providers to improve their efficiency. Sorenson has therefore proposed a multi-year transition period for the elimination of tiers.[88]

Unlike RLSA or other VRS providers, Sorenson has also set forth an economically rational means to establish rates going forward. As discussed in our opening comments on the

---

[86] *See* 2011 VRS Reform FNPRM, at 17,382-84 ¶¶ 24-26.

[87] *See id.* ¶ 24.

[88] *See* Sorenson PN Comments at 45.

PN, the Commission's goal should be to "replicate" the "efficiency incentives found in competitive markets."[89] The best way to do that would be to re-initialize rates at a level consistent with competition, and then to institute price caps to reduce that rate over time. As Professor Katz has explained, the most economically rational approach to re-initializing rates would be for the Commission to use a reverse auction. Professor Katz argued that if the Commission were to desire to maintain "N" competitors in the VRS market, the "market rate" should be set equal to the cost of the "N+1" lowest-cost potential service provider.[90] Assuming that the Commission would like at least two VRS providers, then rates would properly be initialized based on the costs (including all actual costs, not an arbitrary subset of them) of the third-lowest-cost provider.

And, again, the cost data on the record indicates that the costs of the third-lowest-cost provider are not likely to be substantially below $5.14 per minute. At present scale, Sorenson is clearly the industry's lowest-cost provider, *****BEGIN HIGHLY CONFIDENTIAL*****

*****END HIGHLY CONFIDENTIAL*****.[91] Purple and ZVRS claim that, if they provided as many minutes of service as Sorenson, they could provide service at $4.27 and $4.50 per minute, respectively.[92] Even if one accepts as true their

---

[89] *See, e.g., Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and LinkUp*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, 26 FCC Rcd. 4554, 4572 ¶ 49 (2011).

[90] Katz FNRPM Declaration ¶70.

[91] *See* Sorenson July 11 Letter, Attachment 2 at 10.

[92] *See* Reply Comments of Purple Communications, Inc. at 9, CG Docket Nos. 10-51 and 03-123 (filed Mar. 30, 2012) ("Purple FNPRM Reply Comments").; Letter from Jeff Rosen, General Counsel, CSDVRS, LLC, to Marlene Dortch, Secretary, Federal Communications Commission, at Attachment 1 at 8, CG Docket Nos. 10-51 and 03-123 (filed July 10, 2012).

claims that a provider of Sorenson's size could provide service at $4.27 or $4.50 per minute—and, as discussed above, there is substantial reason to doubt their validity[93]—and also assumes that they somehow reach the scale they claim necessary to achieve those low cost levels, *****BEGIN HIGHLY CONFIDENTIAL*****

*****END HIGHLY CONFIDENTIAL*****. Thus, $5.14 per minute is likely to be near the very low end of the range of results that would be anticipated from a two-winner competitive bid.

Because the Commission seems committed to avoiding a rate increase at all costs, Sorenson believes that it would be reasonable to set rates at the lower of the anticipated results of a two-winner competitive bid or at $5.14. Of course, after a period of time under a stable rate regime, further rate reductions should be possible as that would allow providers time to adjust and reduce costs further. As explained previously and further discussed below, Sorenson's debt costs are in-line with those of many other communications companies.[94] Sorenson would be able to reduce its debt costs over time, but only if the Commission were to implement a price-cap regime and maintain it for a period of years without regularly threatening draconian rate cuts. (On the other hand, the cost of borrowing money will only increase—likely to prohibitive levels—if the Commission continually threatens to slash rates and periodically does so.) In short, implementation of a stable rate regime could lead to cost reductions that would permit reasonable rate reductions.

---

[93] *See* Section II.B, *supra*.

[94] *See* Sorenson July 11 Letter at Attachment 1.

D. If the Commission Adopts any Rate Level Substantially Below the Current Tier III Rate, It Must Provide an Appropriate Transition Period.

One point on which all VRS providers agree is that the Commission should not attempt to implement a flash-cut to rate levels substantially below those currently in effect. Again, Sorenson has argued that the Commission should focus first on eliminating wasteful and inefficient tiers from whatever rate structure it adopts. But even Sorenson has acknowledged that other providers cannot instantly match all of the efficiencies that Sorenson has incorporated into its VRS operations—thus, all providers agree that a transition period would be necessary to eliminate tiers. Specifically, Sorenson suggested a transition of five years after its proposed implementation phase of VRS reforms is complete.[95] Purple agreed that tiers should be eliminated, and argued for a four-year transition.[96] Other VRS providers opposed the elimination of tiers, but also urged that if the Commission does "determine[] to use a single tier, it should be implemented gradually over several years."[97]

The same factors that call for a transition period for smaller providers during the elimination of tiers also call for a transition period for any substantial reductions to Tier III rates. As a matter of both economics and common sense, efficiencies become more and more difficult to find as a provider's per-minute costs to provide service go down. And Sorenson's per-minute costs—which are *****BEGIN HIGHLY CONFIDENTIAL*****

*****END HIGHLY CONFIDENTIAL***** —lead the industry by a wide margin. Sorenson understands that the Commission would like to see those

---

[95] *See* Sorenson FNPRM Comments at 32.

[96] *See* Comments of Purple Communications, Inc., at 3, 23-24, Exhibit 1, CG Docket Nos. 10-51 and 03-123 (filed Mar. 8, 2012) ("Purple FNPRM Comments")

[97] *See, e.g.,* Comments of Convo Communications, LLC at 33 n.86, CG Docket Nos. 10-51 and 03-123 (filed Mar. 9, 2012); *see also* Purple FNPRM Comments, at 3.

costs go lower still, but there is no magic that can make that happen overnight. As discussed above, there is simply no "fat" in Sorenson's operations to cut; Sorenson has increased the efficiency of its operations far beyond those of its competitors, and further gains will necessarily be slow. As also noted above, some reduction of costs will be possible if Sorenson is able to reduce its debt over time to levels below those typical of communications companies. Other gains may be possible over time as technology continues to improve and Sorenson continues to eke out operational efficiencies.

There is, however, simply no way that Sorenson can quickly reduce its costs to provide service at the Tier III rate of $4.51 proposed by RLSA as a first step in its three-year transition. Indeed, it would likely be impossible for Sorenson to provide VRS at that level as a *last* step in a three-year transition to unified rates. As noted above, Purple and ZVRS claim that, if they provided as many minutes of service as Sorenson, they could eventually provide service at that level of compensation or slightly below—but even crediting their claims, they hazard no guesses as to how far in the future "eventually" might be. Presumably, however, it would be a substantial number of years *after* the four years that Purple suggests for the elimination of tiers.

In sum, a one-year drop in Tier III compensation of the magnitude suggested by RLSA would be extremely damaging, likely placing the future of the VRS industry at grave risk. Even a three-year drop to $4.51 is unrealistic—Sorenson estimates that a transition of at least twice that length would be necessary to reduce costs to the point where a $4.51 Tier II rate would not threaten the viability of VRS.

III. ZVRS'S SINGLE-APPLICATION PROPOSAL IS DESIGNED SOLELY TO GRAB MARKET SHARE AT THE EXPENSE OF INNOVATION AND CONSUMER CHOICE, AND COMMENTERS HAVE OVERWHELMINGLY OPPOSED IT.

ZVRS's proposal to impose a unified soft endpoint on all VRS providers and users would destroy incentives to innovate, introduce vast complexity, and eviscerate consumer choice—results that would represent a dramatic step backward to the VRS industry. In its comments, however, ZVRS reveals the true basis for its proposal: to eliminate Sorenson's competitive advantage that results from offering consumers superior service and equipment that they overwhelmingly prefer over the alternatives.[98]

Like its networking-operations proposal (discussed further below), ZVRS's single-application proposal is designed myopically to eliminate the innovative offerings that have allowed Sorenson to succeed. ZVRS seems not to notice (or to willfully ignore) the harm that its proposal would cause consumers, as evidenced by the thousands of comments that consumers have filed in strong opposition to ZVRS's plan. ZVRS's goal is to harm Sorenson's competitive interests at all costs, even if it means debasing the service that has transformed consumers' lives.

The independent Rehabilitation Engineering Research Center on Telecommunications Access ("RERC-TA"), however, concludes that a single application would be a disaster for consumers: "RERC-TA believes that forcing VRS providers to adopt a single common software platform would not resolve the interoperability problems, and do more harm than good to VRS users, due to reduced competition and incentives for research and development."[99] Moreover,

---

[98] *See* ZVRS PN Comments at 2 ("[T]he current structure must be changed in light of Sorenson's anti-competitive use of a Video Phone ('VP') which is not available off-the-shelf") ("[A] standard software VP application would...even out market share").

[99] Comments of the Rehabilitation Engineering Research Center on Telecommunications Access at 7, CG Docket Nos. 10-51 and 03-123 (filed Nov. 14, 2012) ("RERC-TA PN Comments").

though ZVRS has tried in vain to convince the FCC that the consumer groups are on its side, it is particularly noteworthy that the Consumer Groups completely reject the overwhelming majority of the proposals presented in the PN, as discussed in more detail below.

Because ZVRS can find no real-world support for its anticompetitive and destructive proposal, it resorts to a ridiculous and shameless fictional vignette decrying a parade of horribles that Sorenson's innovative equipment has inflicted on "John Q."[100] ZVRS's laughably self-serving *ad hominem* attack levels baseless accusations at Sorenson but bears no relation to reality. In the real world, the industry—as well as consumers (the real-world counterparts to ZVRS's mythical John Q.) who are horrified by the idea of losing the equipment of their choice—have mounted widespread and vocal opposition to ZVRS's proposal. In addition to clear opposition to the proposal from the Consumer Groups and the independent RERC-TA, over 22,000 comments have been filed by consumers and video interpreters in strong opposition to ZVRS's proposal—in direct contrast to the make-believe views of John Q.

Indeed, commenters have roundly rejected all aspects of ZVRS's proposal: they have vigorously opposed the elimination of consumer choice, rejected a move from proprietary to off-the-shelf equipment, and expressed widespread support for interoperability standards over the imposition of central-planning on the VRS industry. Based on this record, a reasoned decision-making process leads inexorably toward complete rejection of ZVRS's single-application proposal.

---

[100] ZVRS PN Comments at 23.

A. Commenters Recognize the Substantial Benefits of VRS-Endpoint Competition and Reject the Idea of a Single Application.

Consumers derive substantial benefits from VRS-endpoint innovation, which is driven by providers who compete to acquire and retain customers. As Sorenson discussed in its comments, the 2002 release of Sorenson's VP-100® revolutionized the industry.[101] And today, despite a wide variety of available off-the-shelf equipment, the vast majority of Sorenson's consumers opt to use Sorenson's videophone hardware equipment. Without the existence of competition, Sorenson's revolutionary equipment would never have hit the market, and consumers would have been deprived of the devices they overwhelmingly prefer today. RERC-TA and the Consumer Groups agree, stating, "To date, competition in the VRS market has resulted in highly differentiated technology offerings among the VRS providers,"[102] and, thus, "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."[103]

Consistent with these principles, commenters, ranging from the Consumer Groups to interpreters to VRS providers, have lined up to support consumers' ability to choose their own VRS endpoint. For example, the Consumer Groups plainly state that "consumers should have the ability to choose from multiple, qualified VRS providers and their various products and applications."[104] The National Alliance of Black Interpreters, Inc. ("NAOBI") declares that "VRS consumers should have a right to choice—choice in VRS equipment and VRS service."[105]

---

[101] Sorenson PN Comments at 50.

[102] RERC-TA PN Comments at ii.

[103] *Id.* at 6.

[104] Consumer Groups PN Comments at 5.

[105] NAOBI PN Comments at 1.

ASL/Gracias advocates for "a wide range of communications devices, service options, and expertise that can only be met through different access technology and service providers"[106] Even Purple states, "Put simply, consumer choice requires provider differentiation through characteristics like interpreter quality, products and software."[107]

Given the benefits consumers derive from choice, eliminating endpoint competition would "mark the end of the consumer-friendly, feature-rich VRS experience that has literally transformed the lives of deaf and hard-of-hearing users in recent years."[108] Indeed, RERC-TA acknowledges that "[r]estricting the choice of consumers to a single custom VRS platform is likely to slow down the pace of innovation."[109] Moreover, Purple states that a standard application would cause providers to "lose incentive to compete on quality and innovation thereby stifling the competitive marketplace that best facilitates consumer choice."[110] Purple further asserts that a "standard application ultimately sacrifices consumer choice and free-market competition in favor of a one-size-fits-all government-issued baseline service."[111]

As a result of this strong preference for innovative options driven by consumer choice, commenters have overwhelmingly opposed ZVRS's regressive single-application proposal. For example, NAOBI firmly states that "the current proposal will have a devastating impact on the Deaf Community," and that the proposal "would be taking a huge step backwards," before

---

[106] ASL/Gracias PN Comments at 7.

[107] Purple PN Comments at 2.

[108] Sorenson PN Comments at 47.

[109] RERC-TA PN Comments at ii.

[110] Purple PN Comments at 5.

[111] *Id.*

pleading with the Commission to "[k]eep VRS innovative and progressive."[112] Convo warns that "[t]he unilateral mandate by the Commission of a single VRS technology, as proposed by CSDVRS, effectively will freeze VRS technology and prevent individual VRS providers from developing new and better VRS products."[113] The independent RERC-TA points out that "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."[114] As a result, "[f]orcing 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."[115]

As Sorenson noted in its comments, eliminating consumer choice in favor of a plain-vanilla, government-mandated application would be the equivalent of migrating the entire hearing population back to rotary phones designed and licensed by a single manufacturer.[116] RERC-TA sounds a similar alarm, stating that ZVRS's proposal "would be akin to forcing everyone in the hearing population [to] go back to the AT&T monopoly for all their calling needs, rather than the plethora of landline, VoIP, and mobile calling options that exist today."[117]

Moreover, as Sorenson also noted in its comments, ZVRS's single-application proposal would, much like RLSA's rate proposal, detach VRS from the moorings of functional

---

[112] NAOBI PN Comments at 1-2.

[113] Convo PN Comments at 15-16.

[114] RERC-TA PN Comments at 4-5.

[115] *Id.* at 6.

[116] Sorenson PN Comments at 47.

[117] RERC-TA PN Comments at 7.

equivalence.[118] As one commenter noted, "[h]earing callers have access to a plethora of devices, equipment, and technology to place calls."[119] The functional-equivalence principle requires that the deaf and hard-of-hearing community likewise enjoy such a "plethora" of technological options, and competition ensures progress toward that goal. The Consumer Groups recognize, however, that "rather than moving VRS toward functional equivalency, mandating a single application is likely a step backwards."[120] Likewise, NAOBI explains that ZVRS's proposal "would create an environment in which deaf people would not be able achieve functional equivalent communication,"[121] and RERC-TA states that "mandating a single application would be a bad idea and move us further away from the goal of functional equivalence."[122] Other commenters have brought forth similar criticism.[123]

Accordingly, the record is replete with exhortations on behalf of VRS-endpoint competition and innovation, as well as forceful, well-reasoned opposition to ZVRS's anticompetitive and regressive single-application proposal that would represent a complete

---

[118] Sorenson PN Comments at 48-49.

[119] ASL/Gracias PN Comments at 7. *See also* Consumer Groups PN Comments at 5 ("Because hearing consumers are not restricted to one choice of communications service provider, the Commission should not adopt rules that effectively limit VRS users to one option.").

[120] Consumer Groups PN Comments at 5.

[121] NAOBI PN Comments at 1.

[122] RERC-TA PN Comments at 12.

[123] *See* ASL/Gracias PN Comments at 7 ("Strict service access standardization...will not provide Deaf and HoH individuals with communications options designed to meet their individual needs, much less promote functional equivalency"); *See also* Purple PN Comments at 3 ("Now is not the time for the Commission to abandon the progress it has made towards an industry model that promotes competition, unless it is prepared to abandon its commitment to consumer choice and functional equivalence, a cornerstone of the ADA...Complete or significant disaggregation amounts to reform that will impair competition, restrict consumer choice, and threaten functional equivalence.").

abdication of the functional-equivalence mandate. Should the Commission nevertheless choose to adopt ZVRS's proposal, it would face a tall order, based on the current record, in explaining how such a conclusion resulted from reasoned decision making.

B. Commenters Confirm That an Off-Shelf-Equipment Mandate Would Not Advance Interoperability and Would Only Deprive Consumers of Specialized Features Upon Which They Have Come to Depend.

As Sorenson discussed in its comments, there simply is no basis for a mandate that forces consumers to use garden-variety, multi-use, off-the-shelf equipment instead of the specially-designed, feature-rich equipment they overwhelmingly prefer today. ZVRS's proposal finds support from a single industry participant, the Communication Axess Ability Group ("CAAG")—which stands to benefit markedly from a "leveling down" approach to VRS provision.[124]

On the other hand, the voices of numerous other commenters drown out CAAG's support for an off-the-shelf mandate—a requirement that would obliterate consumer choice and ignore the critical need for equipment designed specifically for deaf and hard-of-hearing individuals. As Sorenson has explained, mass-market devices are designed for the hearing world and prioritize demands accordingly.[125] By contrast, equipment specially designed for deaf and hard-of-hearing

---

[124] *See* Comments of Hancock, Jahn, Lee & Puckett, LLC d/b/a Communications Axess Ability Group ("CAAG") at 2, CG Docket Nos. 10-51 and 03-123 (filed Nov. 14, 2012) ("CAAG PN Comments") ("Acceptance of the principle that legacy equipment should be phased out because those devices are incompatible with interoperability is an essential first step.... Commitment to the development of access and delivery software applications to operate in conjunction with 'off the shelf' devices likewise is essential. Support for a common platform with a single operator, eliminating the need for each provider to develop and maintain its own platform, has definite advantages and may be the single most promising proposal to drive down the cost of providing VRS.").

[125] Sorenson PN Comments at 58.

consumers includes features such as high frame rates, visual ringing, integrated 911 address provisioning, "offline" access to 911, amplified audio, and a number of other features.[126]

Multiple commenters also recognize the benefits consumers derive from specially-designed equipment. As the Consumer Groups assert, deaf and hard-of-hearing consumers currently enjoy access to equipment that, unlike multi-use off-the-shelf equipment, "includes unique properties such as flashing lights and high-quality video technology that is focused on capturing 'flying hands.'"[127] And as RERC-TA further explains, "[t]he trade-offs required with respect to video quality and frame rate are very different for the mainstream and sign language users; the mainstream tends to emphasize resolution, whereas sign language users need to emphasize frame rate."[128] An off-the-shelf mandate would force VRS users onto "mainstream" equipment that simply does not prioritize their unique needs in the way that existing proprietary equipment does. This degradation in quality is why Sorenson's users overwhelmingly choose Sorenson's equipment over any available off-the-shelf equipment.

Moreover, as CAAG itself recognizes, an off-the-shelf mandate would require equipment acquisition from mass-electronics producers, potentially requiring "that consumers absorb the cost."[129] But the Consumer Groups point out that deaf consumers "may have difficulty purchasing off-the-shelf equipment themselves."[130] Indeed, as a whole, the deaf community tends to have lower average incomes than the general population—and "off-the-shelf" video conferencing equipment is orders of magnitude more expensive than a basic voice telephone. It

---

[126] *Id.* at 58-59.

[127] Consumer Groups PN Comments at 12.

[128] RERC-TA PN Comments at 3-4.

[129] *See* CAAG PN Comments at 2.

[130] Consumer Groups PN Comments at 13.

would be a mockery to the concept of functional equivalence to require deaf, hard-of-hearing, and speech-disabled persons to pay out-of-pocket for expensive high-tech, multi-use equipment—that doesn't even adequately meet their needs—simply to engage in basic telecommunications. And, especially if RLSA's rate proposals are adopted, there is likely nowhere else to turn other than to deaf users to cover equipment costs: providers would simply be unable to foot the bill given their razor thin (or nonexistent) margins.

This fundamental reality notwithstanding, ZVRS still pedals an off-the-shelf mandate. ZVRS's advocacy here is especially disingenuous, as it claims the support of "consumer groups."[131] However, the Consumer Groups here expressly state that "VRS providers should not be prohibited from distributing equipment (proprietary and off-the-shelf)."[132] In addition, RERC-TA highlights the "need for customized VRS equipment and software to provide an optimal communication experience for deaf and hard-of-hearing users, and to meet the needs of people with additional disabilities, such as the deaf-blind and people with motor disabilities."[133] With both consumers and engineers supporting distribution of proprietary equipment, the only explanation for ZVRS's decidedly consumer-unfriendly position is, once again, ZVRS's own economic interest: to eliminate the consumer-friendly features and innovations that have caused hundreds of thousands of consumers to choose Sorenson as their default provider.

Though ZVRS and CAAG cite "interoperability" to support their positions, a single-application world would not actually resolve all interoperability problems.[134] As discussed

---

[131] ZVRS PN Comments at 25.

[132] Consumer Groups PN Comments at 13.

[133] RERC-TA PN Comments at ii.

[134] *See* ZVRS PN Comments at 31; *see also* CAAG PN Comments at 3.