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
	)	

COMMENTS OF CSDVRS, LLC

CSDVRS, LLC d/b/a ZVRS ("CSDVRS" or "ZVRS") hereby responds to the May 17, 2013 Federal Communications Commission ("FCC" or "Commission") Public Notice[1] seeking comments on, among other things, the Telecommunication Relay Service ("TRS") Fund administrator Rolka Loube Saltzer Associates' ("RLSA") proposed rates for the compensation of video relay services ("VRS").[2]

ZVRS supports RLSA's continuation of the tiered rate methodology for VRS as the best means for maintaining meaningful competition and dynamic choices for consumers while aligning differently sized provider costs with appropriate compensation. ZVRS supports an extension of the current VRS rates as RLSA has assumed pending further Commission action; it would be premature and disruptive to make significant changes to the compensation rate prior to the implementation and maturation of fundamental structural reform measures. ZVRS supports RLSA's recommendation to integrate the determination of tier sizes in the annual rate-making

[1] *Rolka Loube Saltzer Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the July 2013 through June 2014 Fund Year*, Public Notice, CG Docket Nos. 03-123 and 10-51, DA 13-1137 (May 13, 2013).
[2] *Rolka Loube Saltzer Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate,* CG Docket Nos. 03-123 and 10-51, ("2013 TRS Rate Filing") (May 1, 2013).

process with the understanding that providers will have an opportunity to provide comment on proposed tiers in such proceedings. ZVRS supports the aspect of RLSA's alternative proposal which eliminates Tier I and increases the upper limit of Tier II. ZVRS strongly supports RLSA's recommendation that the Commission reconsider the current rate-based rate-of-return method to accurately reflect VRS providers' labor intensive services instead of treating providers as a capital intensive industry.

ZVRS, however, once again vigorously disagrees with RLSA's renewed recommended VRS rates as not being aligned with its actual operating expenses, proposed without regard to its impact on functional equivalency requirements and because it would undermine the attainment of sufficient market volume and scale by non-dominant providers prior to achieving fundamental changes to the locked-in VRS program.[3]

I. The RLSA Rate Proposal Is Unsustainable

In its 2013 TRS Rate filing, RLSA proffers a weighed cost average of $3.3894 for 2013. RLSA reiterates its proposal made in 2012 that the VRS rates be set based on a three-year phase-in by initially reducing the rates by one-third of the difference between the current rates and the three year average cost to $5.2877 per minute for Tiers I and II (up to 500,000 minutes) and to $4.5099 per minute for Tier III (over 500,000 minutes).[4] The Commission previously sought

[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,* Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51 and 03-123; FCC 11-184, 77 FR 4948, (FCC describes that the lack of interoperability and portability have caused VRS users to become "locked in" to the dominant provider and that the VRS access technology standards are insufficiently developed to facilitate VRS users' access to off-the-shelf technology and ensuring that providers have a "real opportunity to compete.") (December 15, 2011).

[4] RLSA also proposes an alternative rate of $4.9335 for an increased Tier II level of 1.5 million minutes. ZVRS opposes the alternative proposed rate for the same reasons provided in response to its reiterated rate proposal.

comments on those proposed rates in its October 15, 2012 Public Notice.[5] The consensus in response was that the rates proposed by RLSA are unsustainable for any VRS provider.[6]

ZVRS provided detailed breakdowns about the discrepancy between the RLSA 2012 calculated weighted average costs with ZVRS' 2012 projected costs and the inconsistency between RLSA's 2011 calculated costs and ZVRS' actual 2011 costs.[7] ZVRS provided in its comments the following examples of the inconsistencies:

- ZVRS' projected 2012 cost per minute for "Indirect costs" was $1.01 whereas RLSA has calculated a 2012 weighted average of $.58. ZVRS' 2011 actual indirect costs was $1.00 per minute compared to RLSA's 2011 weighted average cost of $.55 per minute.
- ZVRS' projected 2012 cost per minute for "Communication Assistants Related" costs was $2.36 whereas RLSA's 2012 calculated cost was $1.64. ZVRS' 2011 actual cost per minute was $2.16 as compared to $1.35 calculated by RLSA for 2011.
- For "Engineering" and "Research & Development" combined, RLSA calculated for 2012 a weighted average cost of $.19 per minute compared to ZVRS' 2012 projected cost of $.27 per minute. ZVRS' 2011 actual cost was $.27 per minute compared to RLSA's 2011 calculated weighted average cost of $.18 per minute.
- For "*Marketing & Outreach,"* RLSA calculated for 2012 a weighted average cost of $.31, which was significantly lower than ZVRS' 2012 projection of $.95 per minute.

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[5] *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 (October 15, 2012).

[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,* Reply Comments of CSDVRS, LLC, CG Docket Nos. 10-51 and 03-123 ("*CSDVRS Reply Comments*") (November 29, 2012); *See also Letter from Competitive Providers*, CG Docket Nos. 10-51 & 03-123 ("*Letter from Competitive Providers"*) (Apr. 19, 2013).

[7] *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 ("*CSDVRS Comments*") (November 14, 2012).

ZVRS' 2011 actual cost was $.95 per minute compared to RLSA's 2011 calculated weighted average cost of $.30 per minute.

ZVRS' costs must be considered accurate and necessary in light of the FCC's Office of the Inspector General ("OIG") determination that ZVRS was properly compensated based on its "reasonable costs of providing VRS."[8] OIG's audit is evidence that ZVRS is not being overcompensated at the current rates. A reduction of the compensation for providers of ZVRS' size (Tier II) as proposed by RLSA is not only unjustified, it would severely challenge ZVRS' ability to cover its "reasonable costs of providing VRS" let alone its capacity to compete.

ZVRS explained in its comments that RLSA was using an industry weighted average cost methodology – as contrasted to a tiered weighted average – which disproportionately skews the RLSA figure towards the drastically lower costs of the largest provider.[9] ZVRS also explained that RLSA did not include other significant and necessary costs in its rate calculations such as E911 and numbering – calculated in detail as $0.0591 for a Tier II company. ZVRS disagrees with RLSA's calculation of $0.10 per minute for consumer premise equipment ("CPEs"); its comments show that the true costs of providing CPEs in a locked-in VRS market caused by the anti-competitive CPE tactics of the dominant provider is approximately $.25-.30 per minute. ZVRS disagrees that the cost of CPEs should not be part of the rate; as things now stand, VRS simply would not be appropriately available without the provision of subsidized VPs.[10] ZVRS also pointed out in its comments the omission from the calculation of rates other real and substantial costs necessary to provide VRS, including the research and development expense

[8] *Letter from Jeff Rosen, General Counsel, CSDVRS, LLC, to Marlene H. Dortch, Secretary, FCC,* CG Docket Nos. 03-123 and 10-51, at 3 ("The 2012 preliminary audit report conducted on behalf of the Commission's Office of Inspector General indicates that ZVRS was not overcompensated for VRS services provided in 2011, concluding that 'TRS funds received by CSDVRS for VRS were for the reasonable costs of providing VRS.'") (Dec. 17, 2012).
[9] *CSDVRS Comments* at 9-11.
[10] ZVRS provided a detailed approach in its *CSDVRS Comments* for transitioning to off-the-shelf technology as a means to enhance consumer choices, provide greater focus on quality of services and decrease the costs of VRS access technology and correspondingly the VRS rates.

necessary to meet temporarily waived standards, the costs of training consumers in use of VRS, porting costs, costs to raise and service capital, and costs related to actual taxes.

ZVRS explained in its comments that some of its costs were higher than RLSA's – e.g., certified Video Interpreters – in order to achieve functional equivalency objectives.[11] ZVRS commented that VRS is still far from where it must be as a functionally equivalent service. Thus ZVRS finds it troubling that RLSA 2013 TRS Rate Filing contains no substantive assessment of the proposed rates' impact on functional equivalency, or even for that matter to maintain the current level of services and technological innovation; on the other hand RLSA provided as a rationale for its lower rate proposal was "to accommodate a further reduction in the revenue requirement of the TRS Fund…." Equally concerning is RLSA's comment in its 2013 rate filing about "the low correlation between projected CA related increases and subsequent historical performance" which presumably reflects a determination by RLSA reached without considering the costs of providing functionally equivalent interpreting services.[12]

We appreciate RLSA's point about accounting for corporate income tax as an increase on the return on investment ("ROI"). We strongly agree with RLSA's recommendation that the Commission consider whether refinements to the rate of return methodology are necessary to better comport with the labor intensive realities of the VRS industry. ZVRS commented that, at a minimum, providers must be compensated with a return on their investment in amassing the labor necessary to deliver VRS.[13] In addition, ZVRS urged the Commission in its comments to assess the rate of return based on the true capital required to provide VRS. This necessitates that the Rate of Return be calculated <u>post real tax</u> rate utilizing the same three components for VRS

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[11] *CSDVRS Comments* at 7-9.

[12] *See e.g. 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, 13-15 (describing a multitude of remaining linguistic, cultural and technology barriers in VRS) (March 9, 2012).

[13] *Id.* at 12-16.

providers that was derived for Local Exchange Carriers ("LEC"), the weighted average of return on debt, the cost of preferred stock and the cost of equity.

II. Tiered Rates Promote Choice and Competition

The Commission has recognized the need to sustain consumer choice and competition in setting tiered VRS rates, stating 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."[14] It is essential that the Commission retains a tiered rate structure to ensure the survival of non-dominant providers and the promotion of meaningful competition in the VRS industry. ZVRS and competitive providers have commented about the tremendous innovations and service enhancements which have been made possible by the tiered rate structure.[15]

. A properly constructed tiered rate structure does not promote inefficiency, but aligns costs with compensation and promotes meaningful competition, and thus better serves consumers. ZVRS has proposed that Tier II should be widened to 1,000,000 minutes to reflect the breakpoint for a provider reaching scale. ZVRS also proposed rates of $6.00 per minute for Tier II and $4.70 per minute for Tier III based on a tiered weighted average methodology rather than an industry weighted average methodology as calculated by RLSA. ZVRS, as with other VRS providers, has steadfastly maintained the need for a multi-year rate structure to enable stability and predictability in its business plan and has endorsed along with competitive providers a five-year timeframe.[16]

The Commission recently implemented substantial structural reforms aimed at promoting integrity and competition in the VRS market and is likely to adopt further sweeping regulatory

[14] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 ¶ 53 (2007).
[15] *See e.g., CSDVRS Reply Comments* at 6-7; *Letter from Competitive Providers* at 3-4.
[16] *Letter from Competitive Providers* at 6.

changes.[17] The Commission should not alter the tiered rate structure nor significantly reduce the tiered rate for non-dominant providers (Tier II) until the initiatives designed to unlock and balance the VRS market are accomplished.[18] Non-dominant providers are particularly challenged in absorbing the costs of structural and regulatory expenditures required by the Commission mandates, which in turn seriously undercut their ability to compete and provide choices to consumers. It is harmful to non-dominant providers to simultaneously increase their regulatory compliance costs while reducing their compensation, particularly when there is no evidence that they are being overcompensated under the current tiered rates. ZVRS reiterates the request by non-dominant providers to postpone reductions to their applicable rates until after the VRS market is reformed and the costs of complying with the regulatory requirements are established.[19]

III. Conclusion

VRS has changed lives by opening the door to functionally equivalent telecommunications. We should not risk this progress by adopting an insufficient rate as proposed by RLSA which would cause a drastic step back in the access and opportunities for individuals who rely on VRS. ZVRS believes that the FCC should not only maintain tiers in a multi-year rate structure, but also expand the tiers to more adequately account for the real economies of scale, using the weighted average costs within each tier as opposed to a weighted average for the entire industry. All costs required to provide the services and to be in compliance with the FCC regulations should be part of the rate-setting process, including marketing,

[17] *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545 (2011); *Structure and Practices of the Video Relay Service Program*, Second Report and Order and Order, 26 FCC Rcd 10898 (2011); *Additional Comment Sought on Structure and Practice of the Video Relay Service (VRS)Program and on Proposed VRS Compensation Rates*, Public Notice, 27 FCC Rcd 12959 (CGB 2012).

[18] In addition to the need to transition to off-the-shelf technology, ZVRS strongly believes that a new default provider selection period is necessary to ameliorate the effects of a market where the dominant provider engaged in the anti-competitive use of equipment to attain a monopoly of consumers and their usage, *see CSDVRS Comments* at Section II. A; *Ex Parte of CSDVRS, LLC*, CG Docket Nos. 10-51 and 03-123, (May 3, 2013).

[19] *Letter from Competitive Providers* at 5-7.

outreach, research & development, video phones, E911 and ten-digit numbering costs. In addition, the Commission should implement a ROI methodology which is applicable to the VRS industry - specifically considering the CA costs - to ensure that investors receive a fair and reasonable return so that the VRS industry will continue to grow and provide better services for their intended customers. The Commission must keep intact the tiered rate structure with a level rate for non-dominant providers to maintain robust competition and choices until the regulatory framework changes establish integrity and balance in the VRS market.

Respectfully Submitted,

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