

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
Structure and Practices of the Video Relay Service Program	)	CG Docket No. 10-51
	)	
Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate for the July 2013 Through June 2014 Fund Year	)	

**Reply Comments of Sorenson Communications, Inc. and CaptionCall LLC**

Sorenson Communications, Inc. and its wholly owned subsidiary, CaptionCall LLC (collectively “Sorenson”) submit these reply comments in connection with the Public Notice (“PN”) issued on May 17, 2013 by the Consumer and Governmental Affairs Bureau (“CGB” or “Bureau”).

In its opening comments,<sup>1</sup> Sorenson argued that RLSA’s 2013 TRS Rate Filing<sup>2</sup> dramatically overprojects IP CTS demand for the coming year, particularly in light of the

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<sup>1</sup> Comments of Sorenson Communications, Inc., and CaptionCall LLC, CG Docket Nos. 03-123, 10-51 (filed May 31, 2013) (“Sorenson Comments”). Unless otherwise indicated, all Comments referenced in this document were filed in CG Docket Nos. 03-123 and 10-51 on May 31, 2013.

<sup>2</sup> *Rolka Loube Saltzer Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for July 2013 Through June 2014 Fund Year*, Public Notice, CG Docket Nos. 03-123 and 10-51, DA 13-1137 (rel. May 17, 2013). Rolka Loube Saltzer Associates (“RLSA”), the TRS Fund Administrator (“Administrator”), submitted the proposed rates in its May 1, 2013 filing. Rolka Loube Saltzer Associates LLC, *Interstate Telecommunications Relay Service Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123 and 10-51 (filed May 1, 2013) (“2013 TRS Rate Filing”).

changes made by the Commission’s interim rules. While Sorenson does not agree with the interim rules and believes that they were both arbitrary and capricious and improperly promulgated, the rules have had and will continue to have a dramatic impact on the growth of demand for IP CTS services, even if the Commission decides not to promulgate them as final rules. As set forth below, other commenters overwhelmingly agree that the IP CTS projected demand is unrealistically high and, like Sorenson, thus urge the Commission to scale back the estimated amount of IP CTS compensation, which will lower the contribution factor.

With respect to VRS compensation, Sorenson’s opening comments argued that RLSA’s most recent rate proposal—which is nearly identical to that of the Bureau’s October 2012 Public Notice<sup>3</sup>—is flawed and would destroy the kind of functionally equivalent VRS on which users have come to rely. Again, other commenters underscore the flaws highlighted by Sorenson. In addition, however, one commenter—CSDVRS, LLC d/b/a ZVRS (“ZVRS”)—exhumes its defense of a tiered approach to compensation, which has properly been *rejected* by the Commission but remains an element of RLSA’s proposals. As further set forth below, the Commission should again reject tiered compensation and the market distortions that it perpetuates, as well as RLSA’s discredited rate-of-return approach to setting VRS compensation.

Finally, with respect to IP Relay rates, the comments demonstrate that RLSA’s proposal is inconsistent with the Commission’s prior practice and inconsistent with the very idea of a price cap. As commenters underscore, RLSA proposes to slash the “base rate” for IP Relay—the starting point for calculating the rates for subsequent years—by 20 percent merely based on

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<sup>3</sup> See, e.g., *Additional Comment Sought on Structure and Practices of the Video Relay Service (VRS) Program and on Proposed VRS Compensation Rates*, Public Notice, 27 FCC Rcd. 12,959 (rel. Oct. 15, 2012) (“Public Notice 2012”); Reply Comments of Sorenson Communications, Inc. at 5-15, CG Docket Nos. 10-51, 03-123 (filed Nov. 29, 2012) (summarizing criticisms of RLSA’s VRS rate proposal by Consumer Groups, Purple, ZVRS, ASL/Gracias, Convo, NAOBI, and RID).

providers' reportable (but not total) costs. It further proposed to increase the efficiency factor ("X-Factor") from 0.5% to 6.0% based solely on the fact that providers have been able to achieve these efficiencies in the past. But this methodology is entirely inconsistent with a price-cap regime, which is supposed to sever the link between costs and prices in order to encourage efficiency. RLSA's proposal would essentially return to the widely discredited rate-of-return system, dampening efficiency. Moreover, RLSA's proposal also ignores the reality that in a labor-intensive market, aggressive annual efficiency gains cannot be sustained forever. As Purple correctly explains, "There are simply not 'more' efficiencies that providers can find in a market with such dramatically declining call volume."<sup>4</sup> For these reasons, the Commission should use the 2012-2013 rate as the base rate and maintain the 0.5% efficiency factor it has always used.

**I. Commenters Broadly Agree that RLSA's IP CTS Demand Projections are Dramatically Overstated.**

Sorenson's opening comments argued that RLSA's forecast of IP CTS demand for the upcoming funding year dramatically overprojects IP CTS demand in light of recent FCC rule changes, causing an unnecessary increase in the TRS contribution factor. While the industry projected 181,429,401 minutes for the upcoming funding year (prior to the new IP CTS interim rules),<sup>5</sup> RLSA suggests alternatives of 290,319,247 minutes, 409,268,995 minutes, and in excess of 825,000,000 minutes. RLSA relies primarily on the second figure as a "valid projection of demand for the 2013-14 funding year."<sup>6</sup>

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<sup>4</sup> Comments of Purple Communications, Inc. at 3 ("Purple Comments").

<sup>5</sup> 2013 TRS Rate Filing at 24.

<sup>6</sup> *Id.* at 26-27.

A near-universal theme of the comments, however, is that it simply makes no sense for RLSA to rely on projections that “fail[] to account for the likely impact of the strict new interim IP CTS rules that were adopted earlier this year.”<sup>7</sup> And it is undisputed that RLSA did, in fact, fail to account for the effects of the interim rules:

In fact, RLSA goes so far as to say that “[i]n light of the recently adopted interim measures, RLSA does not expect that any of [its] . . . demand projections will produce an accurate reflection of demand during the 2013-2014 funding year.” Thus, *by RLSA’s own admission*, the projections are at best wild speculation.<sup>8</sup>

As USTelecom concludes, “[i]t would be unreasonable for the Commission to impose a nearly 500 percent IP CTS funding increase given that the Administrator believes that the Commission’s interim rules will ‘dampen the continued rapid increase in IP CTS demand.’”<sup>9</sup>

USTelecom’s comments also correctly argue that the industry projection of IP CTS demand rejected by RLSA “strikes an appropriate balance” between protecting the TRS Fund and protecting the telecom consumers who ultimately pay for TRS from “significant and unnecessary costs.”<sup>10</sup> USTelecom points out that “the industry projection accounts for substantial growth in the IP CTS Fund”<sup>11</sup>—indeed, “a regression analysis which assumes that the growth rate experienced [by IP CTS] between Jan[uary] 2011 through March 2013 will continue into next year” would project only 149 million minutes of IP CTS use, so the industry projection

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<sup>7</sup> Comments of Hamilton Relay, Inc. at 6 (“Hamilton Comments”).

<sup>8</sup> Comments of IDT Telecom, Inc., Intermedia.net, Vocalcity, Inc., and Vonage Holdings Corp. at 4 (emphasis added) (quoting 2013 TRS Rate Filing at 28); *see also* Comments of NobelTel, Inc. at 5 (“Critically, the administrator admits that none of its estimates offer an accurate assessment for the coming year.”).

<sup>9</sup> Comments of United States Telecom Association at 5 (“USTelecom Comments”).

<sup>10</sup> USTelecom Comments at 7-9.

<sup>11</sup> *Id.* at 8.

of 181 million minutes “provides a substantial cushion to ensure the integrity of the fund.”<sup>12</sup> In contrast, USTelecom accurately describes the RLSA’s projection of “nearly 300 percent” growth and its imposition a “500 percent IP CTS funding increase” as “unreasonable” and “inexplicab[e].”<sup>13</sup>

Importantly, even if the Commission wholly discards the interim rules, as it should do, rather than making them permanent, the fact that they have been in place will have a lasting impact on the level of demand. Over the past several months, growth has significantly slowed, and even if growth were immediately to resume at prior levels at the end of the interim rules, the total number of compensable minutes for the July 2013 to June 2014 rate year will remain significantly lower than if the interim rules had never been promulgated. In any event, rather than ignoring the impact of the interim rules, it would make much more sense to adjust the contribution factor in the future in light of the Commission’s changes in rules.

In short, as Hamilton argues, “[i]t is clear that the various [IP CTS] projections that the Administrator puts forward in its report are all based on inaccurate forecasts of ever-increasing minutes of use at unsustainable growth levels” under the Commission’s new rules, and “the industry projection for IP CTS minutes of use” of 181 million “is a more rational, and likely more accurate, projection.”<sup>14</sup> While Sorenson believes that the Commission’s interim IP CTS rules are misguided,<sup>15</sup> even if those rules are eliminated or substantially amended, RLSA’s

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<sup>12</sup> *Id.* at 6-7.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> Hamilton Comments at 7. Of course, Hamilton’s suggestion that past IP CTS growth rates were due to “Sorenson’s inappropriate marketing practices and other abuses” is entirely unfounded. All of CaptionCall’s IP CTS “marketing practices” were consistent with then-existing FCC guidelines. *Id.*

<sup>15</sup> Notably, most of the commenters that *support* the interim rules—including the Independent Telephone and Telecommunications Alliance (“ITTA”) and USTelecom—have little relevant

current demand projections are irrational. And, as Sorenson argued in its opening comments, while the Commission should not repeat last year’s underprojection of IP CTS fund demand, it should also not overcorrect and vastly overestimate IP CTS fund demand this year.

**II. RLSA’s VRS Rate Proposals are Fundamentally Flawed and Would Destroy Functionally Equivalent VRS.**

In its opening comments, Sorenson noted that it had already filed detailed comments in response to the Bureau’s October 2012 Public Notice explaining that the Administrator’s rate proposals would essentially eliminate the kind of functionally equivalent VRS upon which VRS users have come to rely. It is unnecessary to repeat all of those arguments here, but it bears emphasis that the only other VRS provider—ZVRS—commenting on RLSA’s VRS compensation proposal in this docket agrees that the proposal would render the provision of functionally equivalent VRS unsustainable.

As a threshold matter, while there is much on which Sorenson and ZVRS do not agree, ZVRS is entirely correct that RLSA’s failure to focus on how “to achieve functional equivalency objectives” is a fundamental flaw that undermines its entire compensation proposal.<sup>16</sup> Indeed, the 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 service.”<sup>17</sup> Of

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knowledge or experience. *See* Comments of ITTA at 2; USTelecom Comments at 10. These groups have no contact with IP CTS customers, and accordingly no knowledge of the very real barriers to the provision of needed IP CTS services imposed by new Commission requirements like default-off. The consumer groups that *oppose* the default-off rules are far more knowledgeable and reliable sources of information for the Commission. *See* Comments of Telecommunications for the Deaf and Hard of Hearing, Inc., *et al.*, at 12-13 CG Docket Nos. 13-24, 03-123 (filed Feb. 26, 2013).

<sup>16</sup> Comments of CSDVRS, LLC at 5 (“ZVRS Comments”).

<sup>17</sup> *Id.* (emphasis added).

course, as Sorenson and other VRS providers have previously argued, the effect that RLSA’s proposed rates would have on functional equivalency is clear:

Adopting a . . . rate substantially lower than \$5.14 at this time . . . will make it impossible for the Commission to honor its statutory obligations. Most fundamentally, the deep rate cuts proposed in the PN would prevent deaf Americans from receiving the functionally equivalent communications services to which they are entitled under the ADA.

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[Besides Sorenson], [o]nly two other VRS providers—ZVRS and Purple—provide any substantial amount of service, and they have filed documents showing that they are in a worse position from a cost perspective than Sorenson. Not only will they be unable to provide “functionally equivalent” service if the rate is lowered to [the level proposed by RLSA] . . . but they are unsure whether they can even stay in business. In short, the record contains *no* evidence—as opposed to unsubstantiated speculation—that *any* VRS provider anywhere can provide service at less than \$5.14.<sup>18</sup>

ZVRS’s current filing underscores the position—noted directly above—that both it and Purple took in response to the Commission’s PN last year regarding the unsustainability of rates proposed by RLSA. Specifically, ZVRS states that “[t]he Commission previously sought comments on those proposed rates in its October 15, 2012 Public Notice,” and “[t]he consensus in response was that the rates proposed by RLSA are unsustainable for *any* VRS provider.”<sup>19</sup>

At a more granular level, ZVRS also echoed Sorenson’s point that RLSA’s “allowable costs” methodology inadequately accounts for the costs that VRS providers encounter in the real world.<sup>20</sup> ZVRS’s comments report real-world costs for fundamental elements of VRS—including costs for interpreters, costs for engineering and research and development, and costs

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<sup>18</sup> See Comments of Sorenson Communications, Inc. at 27, CG Docket Nos. 03-123, 10-51 (filed Nov. 14, 2012).

<sup>19</sup> ZVRS Comments at 2-3 (emphasis added).

<sup>20</sup> See Sorenson Comments at 7.

for marketing—that are far higher than RLSA’s allowable costs.<sup>21</sup> Even more importantly, ZVRS correctly points out that RLSA omits certain real-world costs from its calculations altogether, including “the research and development expense necessary to meet temporarily waived standards, the costs of training consumers in the use of VRS, porting costs, costs to raise and service capital, and costs related to actual taxes.”<sup>22</sup> As Sorenson has consistently maintained, a VRS compensation regime that fails to take account of these real-world costs will ultimately undermine the functionally equivalent VRS mandated by statute.

### **III. The Commission Should Again Reject ZVRS’s Renewed Call for Tiered Compensation.**

As noted above, ZVRS’s comments here renew its call for the Commission to retain a tiered rate structure for VRS. Sorenson has already commented on this issue at length in response to the Commission’s October 2012 Public Notice. Oddly, that PN inquired whether the Commission should “retain, modify, or eliminate” the tiered rate structure,<sup>23</sup> without any recognition of the Commission’s previous conclusion in the VRS Reform FNPRM that “the tiered rate structure supports an unnecessarily inefficient market structure, and apparently provides insufficient incentive for VRS providers to achieve minimal [*sic*] efficient scale.”<sup>24</sup> The Commission’s conclusion in the FNPRM was correct, and neither ZVRS’s current comments nor anything else in the record justifies retaining tiered rates.

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<sup>21</sup> ZVRS Comments at 3-4.

<sup>22</sup> *Id.* at 4-5.

<sup>23</sup> Public Notice 2012, 27 F.C.C. Rcd. at 12,967 ¶ 3.

<sup>24</sup> *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, 26 FCC Rcd. 17,367, 17,418 ¶ 141 (2011); *see also id.* at 17,374 ¶ 8 n. 30 (rate tiers should be eliminated because they reduce “the efficiency of the Fund by providing ongoing support for numerous high-cost, subscale providers”).

In its comments and reply comments on the FNPRM, Sorenson provided expert declarations from Professor Michael Katz demonstrating that tiers serve no valid economic purpose, but instead reward “firms that have been less successful at offering services that VRS users find attractive.”<sup>25</sup> The other VRS providers have never offered expert testimony or evidence to rebut either the Commission’s conclusion in the FNPRM or Professor Katz’s analysis, and ZVRS offers no such testimony or evidence now.

Instead, ZVRS reiterates its oft-repeated, but never substantiated claim that tiers are needed due to purported “economies of scale.”<sup>26</sup> That is simply untrue. The best actual *evidence* in the record relating to this issue is from Professor Katz’s declarations: In addition to showing that tiers serve no valid purpose, Professor Katz demonstrated through rigorous and unrebutted data analysis that any economies of scale relating to “queuing efficiencies”—that is, efficiencies flowing from serving a larger number of customers with a pool of interpreters—are relatively small, “largely exhausted by the time a VRS provider’s traffic volume reaches 250,000 minutes per month,” and “just one percent once providers reach the scale achieved by Purple and ZVRS.”<sup>27</sup> ZVRS has never seriously disputed Professor Katz’s economic analysis—which was submitted on March 9, 2012—with a declaration from another expert.

#### **IV. For IP Relay, the Commission Should Reject RLSA’s Proposal to Convert the Price-Cap Methodology Into a Rate of Return With a Lag.**

Finally, the comments demonstrate that the Commission should reject RLSA’s proposal to slash the base rate for IP Relay and increase the X-Factor more than ten times. As Purple

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<sup>25</sup> See Michael L. Katz, *An Economic Analysis of VRS Policy Reform* at ¶ 15 (Mar. 9, 2012) (attached as Appendix A to Comments of Sorenson Communications, Inc., CG Docket Nos. 03-123, 10-51 (Mar. 9, 2012)) (“Katz FNPRM Declaration”).

<sup>26</sup> ZVRS Comments at 6.

<sup>27</sup> Katz FNPRM Declaration ¶¶ 28, 35.

rightly explains,<sup>28</sup> the Commission should reject RLSA’s proposal because RLSA has essentially abandoned the Commission’s price-cap methodology in favor of a new approach that might be characterized as rate of return with a lag.

Under a price-cap regime, the Commission begins with a base rate, which is then adjusted yearly to account for inflation, efficiency, and increased costs beyond providers’ control (“exogenous costs”). These adjustments are applied each year without regard to a provider’s actual costs in order to incentivize providers to operate as efficiently as possible. The idea is that if providers are able to keep the results of increased efficiencies, they will have the incentive to operate as efficiently as possible, which ultimately benefits society as a whole—in contrast to a rate-of-return system, where providers have an incentive to increase costs and investment in order to maximize compensation.

RLSA’s proposal would largely destroy the efficiency-enhancing benefits of price-cap regulation. Rather than follow the usual price-cap methodology, RLSA proposes to readjust the “base rate” every three years to reflect the “average cost of all providers” adjusted upward (through an undisclosed and wholly non-transparent process, which itself would be arbitrary and capricious) to allow “the efficient providers to earn positive profits on a prospective basis.”<sup>29</sup> This violates one of the central tenants of price-cap regulations—that “the regulatory authority commits not to adjust the prices of the regulated firm’s services on the basis of its actual earnings or costs.”<sup>30</sup> By adjusting base rates to reflect reported costs, RLSA proposes to jettison

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<sup>28</sup> Purple Comments at 2.

<sup>29</sup> 2013 TRS Rate Filing at 16. RLSA also adjusted its rate upward to account for “the cost differentials among the efficient providers of IP-Relay service.” *Id.*

<sup>30</sup> Dennis L. Weisman, “Is there ‘*Hope*’ for price cap regulation?” *Information Economics and Policy*, Vol. 14(3), September 2002, pp. 349-370, <http://www.k-state.edu/economics/staff/websites/weisman/publications/hope.pdf>, at 8 (cited pages refer to the PDF version) (“Weisman”).

this basic tenant of price-cap regulation, returning every three years to a rate-of-return regime that would “re-establish the very link between allowed earnings and prices that [price-cap regulation] attempts to break.”<sup>31</sup> Not only is such a move inconsistent with the price-cap regime established by the Commission, but it would undermine providers incentives to operate efficiently. That is why in past years the Commission has used the *current* rate as the base rate.<sup>32</sup>

Purple’s comments also rightly take issue with RLSA’s method for computing the efficiency factor, which also proposes to punish providers for past efficiencies. RLSA estimates that providers have increased efficiency by an average of six percent since 2007 and therefore proposes to require them to continue to improve efficiency at that rate for the next three years. But this methodology makes no sense for at least two reasons. First, economists have long recognized that “changing the X-factor on the basis of the actual earnings of the regulated firm will tend to dampen incentives for cost-reducing innovation, *ceteris paribus*.”<sup>33</sup> The reason is simple: if firms know that rates will be adjusted downward to account for any new efficiencies generated, they will have little incentive to create new efficiencies. In a three-year cycle such as the one proposed by RLSA, this will be particularly true in the third year of every cycle, when

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<sup>31</sup> *Id.*

<sup>32</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing & Speech Disabilities*, Order, 27 FCC Rcd. 7150, ¶ 10 (2012) (“In the 2007 TRS Rate Methodology Order, the Commission adopted a price cap formula for IP Relay for a three-year period, ending June 30, 2010, and stated that the initial three-year cycle would be followed by another three-year rate cycle for IP Relay. Therefore, the \$1.2985 rate adopted by the Commission for IP Relay for the 2010-11 Fund year serves as the base rate for the current three-year cycle for IP Relay, which will expire June 30, 2013.”).

<sup>33</sup> Weisman at 9. Although Weisman posits that adjusting the X-Factor based on industry-wide changes in cost may not always have the same problem, this is true only if the regulated firm’s costs are excluded from the industry average or if the regulated firm has a very small market share, neither of which is true here. *Id.* at 9 n. 23.

rates would adjust downward almost immediately to account for new efficiencies. This dampens providers' incentives to innovate and undermines the very purpose of the price-cap regime.

Second, as Purple also notes, there is no reason to believe that providers will continue to be able to improve efficiency at the same rates they have historically. Because the major cost of providing IP Relay service is labor, the main way to generate new efficiencies is by reducing labor costs, and there is a limit to how low these costs can go. For example, Communications Assistants cannot relay messages faster than users send messages (or speak). Furthermore, each call requires a certain amount of call set up and take down time; CAs must be allowed to take breaks in order to comply with OSHA requirements and to maintain CA effective performance; CAs (at least at Sorenson) double-team all 911 calls; CAs undergo training, get sick and take vacations, all of which is time for which they are paid but during which they are not answering calls; and staffing can never precisely correspond to when customers place calls so that CAs will almost always have some idle time. These real-world considerations set a ceiling on the amount by which operation can become more efficient, which RLSA's proposal does not take into account.

In short, the Commission should reject RLSA's proposal to slash the base rate for IP Relay and to increase the X-Factor more than ten times. Because there is no reason to depart from past practice that is resulting in steadily declining prices to the fund, the Commission should maintain the status quo, using the 2012-2013 rate as the base rate and reducing that rate by 0.5% each year.<sup>34</sup>

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<sup>34</sup> The Commission should reject Sprint's invitation to move to a tiered IP Relay rate system for the reasons stated in Part III.

## V. CONCLUSION

The Commission should be realistic in estimating TRS fund demand and in setting the contribution factor. That requires avoiding the substantial overcollection proposed by RLSA. In addition, the Commission should reject RLSA's unworkable VRS compensation proposal, and certainly should not perpetuate the inefficiencies that result from a tiered compensation regime.

Respectfully submitted,

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