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Via ECFS

August 19, 2013

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

RE: *Structure and Practices of the Video Relay Service program, CG Docket No. 10-51:  
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with  
Hearing and Speech Disabilities, CG Docket No. 03-123*

Dear Secretary Dortch:

Attached for submission to the Commission are the *Comments of ASL Services Holdings, LLC* (“ASL/Global VRS”) in response to the Commission’s June 10, 2013 *Report and Order and Further Notice of Proposed Rulemaking* in the above-referenced proceedings, FCC 13-82.

Sincerely,

MILLER ISAR, INC.

Andrew O. Isar

Regulatory Consultants to  
ASL Services Holdings, LLC

Attachment

cc: Karen Strauss (via electronic mail)  
Greg Hlibok (via electronic mail)

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

In the Matter of	)	
	)	
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	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	

COMMENTS OF ASL SERVICES HOLDINGS, LLC

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August 19, 2013

## **SUMMARY**

ASL/Global VRS supports those reforms that move Program-wide functions such as R&D, outreach, standards development, user registration database management, adoption of a neutral video communications service provider as well as the Commission's decision to move Program financial oversight to OMD. The adoption of additional consumer protections through the extension of Section 225 and customer proprietary network information obligations to Program eligible providers are also appropriate and now impose a more direct form of regulation on provider operations. Yet the Commission's interest in adopting "market-based" compensation methodology and auctions stand to undermine, if not eliminate consumer choice, and fully detach compensation from provider direct service costs. There is also a complete absence of consideration of the unique requirements and costs of serving Spanish language users. ASL/Global VRS urges the Commission to compensate providers for their direct reasonable and demonstrable cost of providing service even under a unitary cost structure, promote the development of consumer choice, allow providers the flexibility to compete on the merits of their service and on a more level playing field without the presumption that smaller providers do not seek to reduce costs and become more efficient, and adopt the recommendations on other proposed reforms presented by ASL/Global VRS.

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COMMENTS OF ASL SERVICES HOLDINGS, LLC

The Commission’s June 10, 2013 *Report and Order and Further Notice of Proposed Rulemaking*<sup>1</sup> introduces further significant reforms to the federal telecommunications relay service program (“Program”) that ASL Services Holdings, LLC (“ASL/Global VRS” or “Company”) generally agrees will reduce, “the noted inefficiencies in the [p]rogram, as well as reducing the risk of waste, fraud, and abuse, and ensuring that the program makes full use of advances in commercially-available technology.”<sup>2</sup> ASL/Global VRS is particularly encouraged by the Commission’s increasing focus on technology as an integral component to functional equivalency and its directing neutral third party assumption of critical Program-wide functions that are more appropriately performed independently with stakeholder involvement. Yet several proposed reforms do not to take into account the impact that these reforms may have on companies that serve the full diverse range of our Deaf communities particularly including oral, and low vision/blind, the needs of the growing Spanish language segment of these communities, and the Spanish/American Sign Language (“ASL”) video interpreters that support them. These

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<sup>1</sup> *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 13-82 (June 10, 2013) [2013 VRS Reform FNPRM].

<sup>2</sup> *Id.* at 1.

considerations should not be secondary matters to be reviewed after other reforms are implemented, but should be taken into full consideration now, at the same time the English/ASL needs are addressed. Others appear juxtaposed to Commission proposals that would effectively limit consumer choice. ASL/Global VRS provides the following comments regarding new and proposed reforms introduced in the *2013 VRS Reform FNPRM*.

## I. INTRODUCTION

From inception, ASLS/Global VRS' focus has been to apply its expertise to the English/ASL population and its diverse needs, as well as dealing equally with the specialized services for the Spanish speaking community, utilizing the consumer and interpreter service providers' knowledge base and expertise. ASL/Global VRS has experienced firsthand the challenges and impediments to effectively and responsibly serving the public, that have dominated the Program. These challenges and impediments can be traced in part to the bottleneck control of entrenched legacy providers and provider self-interests, as well as to the evolution of the Program's regulatory framework. The Deaf Community and public have been the ultimate "victims," often precluded from meaningful choice, subject to slanted Program "information," a lack of interoperability, and service that only loosely approximates functional equivalency. Program reforms to date have nonetheless not fully resolved these challenges and impediments. The proposed reforms are now poised to address those issues, but still stand to overlook some critical aspects, which if not addressed in conjunction with current proposed reforms, will still leave critical issues unresolved.

Through the *2013 VRS Reform FNPRM*, the Commission has taken a marked, positive change in direction in resolving these maladies, adopting significant Program reforms that appropriately place responsibility for development of critical Program-wide functions, including research and development, interoperability, consumer outreach, and "VRS access technology reference platform" standards development into the hands of neutral third parties, while giving providers flexibility to differentiate themselves in the video relay service ("VRS") market. ASL/Global VRS enthusiastically supports this new direction.

Some Program reforms and current structure have engendered a quasi-competitive environment where incumbent providers seek to maintain their subscriber base, newer providers struggle to build their own, and where all providers are necessarily oriented to protect their own businesses interests. Though the quasi-competitive elements of the Program in theory should – and in many instances have – benefitted the public, they have also created information sharing “silos” that have undermined standards development, interoperability, outreach and meaningful consumer choice. This tension between operating within a highly structured Program and competitive provider interests has fostered many of the issues that Commission reforms now seek to eliminate. With the assumption of critical Program-wide functions by neutral third parties, the Commission has taken a major step toward elimination of these information silos and inherent competitive self-interests in those critical functions needed to create an effective, functionally equivalent Program.

Nevertheless, stakeholders - the Deaf Community and their representatives, Video Interpreters, and providers - should continue active participation in, and help shape, development of those functions now to be assumed by independent third parties. Stakeholder involvement is critical in order to draw on the history and experience that only comes from being a direct consumer and a front line interpreter and create a fully functional and representative set of standards and processes, while protecting Program integrity and sustainability, as the potential for recasting of the TRS Advisory Council represents.

ASL/Global VRS also supports the incremental approach proposed by the Commission. The magnitude of some reforms, particularly those having significant operational cost and technology implications, will require that providers adjust their operations seamlessly, without impacting subscribers, the public, and the provider’s own operations.

Compensation methodologies are an especially critical component of Commission proposed and adopted reforms, which ultimately impact how the Program's obligations are met. The proposed move to "Market-based" compensation methodologies may have merit, if there is a "market." Some Commission proposals such as provider auctions for high-volume called number appear to run counter to the development of a "market" and consumer choice. In concept, a Program that seeks to severely limit competition through high-called number auctions while seeking to promote it through adoption of a neutral platform provider is destined for dubious success.

Direct provider compensation for reasonable costs of providing service, including unique costs, should also be fully factored into compensation methodology, regardless of approach, and/or providers should be given an opportunity to demonstrate why additional compensation is warranted. Yet the conclusion that simply lowering compensation is a motivator for emerging companies to reach economies of scale or be jettisoned from the Program is unsupported, wrong, and again diametrically from the Commission reforms that would appear geared to promoting consumer choice.

Of particular note to ASL/Global VRS is the absence of any explicit consideration of the impact of its new and proposed reforms on the compensable provision of relay service to Spanish language users from the Commission's discussion. This segment of the Deaf Community engenders additional considerations that carry ramifications throughout many aspects of the Commission's reforms, chief being cost impacts, as discussed throughout the following comments.

ASL/Global VRS is eager to support the Commission’s vision for an effective, sustainable, competitive, and functionally equivalent Program, and looks forward to continue working with the Commission, providers, and other stakeholders in achieving this vision.

**II. NSF’S ENGAGEMENT AS A NEUTRAL RELAY SERVICES RESEARCH AND DEVELOPMENT ORGANIZATION WILL ACHIEVE TECHNOLOGY GOALS WITH ACTIVE SUPPORT FROM A FULLY REPRESENTATIVE ADVISORY COUNCIL**

ASL/Global VRS fully supports Commission efforts to move technology functions impacting interoperability currently assumed by providers to independent entities, in an effort to remove potentially self-serving interests away from providers. The Commission’s decision to promote research and development (“R&D”) functions by engaging the National Science Foundation (“NSF”) to conduct the research with active support from the TRS Advisory Council is entirely appropriate in the increasingly critical technology-reliant arena, as ASL/Global VRS has supported since first proposed.<sup>3</sup>

The need for interoperability, technological innovation, and adaptation of commercially available technology for use in providing relay services demands industry-wide standards, should now be appropriately developed by a neutral third party. Some have expressed concern that third party assumption of such functions would limit innovation.<sup>4</sup> Engagement of a neutral party to pursue R&D functions will not eliminate the need for providers to continually

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<sup>3</sup> See *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Reply Comments of ASL Services Holdings, LLC* (November 29, 2012)(*ASL Services Holdings Reply Comments*) at page 2.

<sup>4</sup> See *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Comments of Sorenson Communications, Inc. and Captioncall, LLC* (May 31, 2013) at page 9. “Finally, it bears re-emphasis that there is no justification in the record (or anywhere else) for limiting returns only to booked capital costs in a low-capital, labor-intensive industry like VRS. That is like saying that the only return an office temp agency may legitimately earn is on its investments in desks and office computers, rather than in its workers. It is simply not possible to run any kind of service-oriented business—one that relies on human beings (video interpreters), not equipment or other capital investment, as the core of the product—on the model underlying RLSA’s proposal.”

innovate in meeting the needs of their subscribers and the public, differentiate themselves from competitors, and remain competitive, as innovation is at the heart of provider's competitive business interests. The focusing of R&D functions and standards development in particular through a neutral third party, will accelerate achievement of full interoperability between providers that has been woefully lacking in the provision of relay services, while eliminating the risk of program waste that might otherwise occur, as the Commission notes.<sup>5</sup>

ASL/Global VRS further supports the Commission's acknowledgment of the important role that a TRS Advisory Council will assume in supporting NSF's R&D functions. The specific needs of VRS users are as varied as the general population. The TRS Advisory Council, which should be comprised of providers, members of the Deaf and Hard of Hearing Community (collectively "Deaf Community") and their representative organizations, and Communications Assistant ("video interpreter") representatives who will rely on new technologies to serve the public among others, will play a key role in identification of specific relay service user needs based on first-hand knowledge and experience in supporting VRS users. The needs of specialized Deaf communities, such as the Spanish-speaking and other Deaf community members, for example, as well as the specialized needs of Video Interpreters and members of the Deaf community who will ultimately use new technology, necessitate additional considerations that must be factored into NSF R&D and standardization development efforts. This knowledge is critical for the R&D and standards functions NSF will undertake and should entail a collaborative effort between NSF and the new TRS Advisory Council to ensure a holistic approach to R&D and standards development to meet the needs of all relay service users and finally achieve *full* provider interoperability.

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<sup>5</sup> 2013 VRS Reform FNPRM at para. 21.

**III. INDEPENDENT OUTREACH, ITS ADMINISTRATION AND ELIMINATION OF OUTREACH COMPENSATION TO PROVIDERS WHO NO LONGER ASSUME OUTREACH OBLIGATIONS IS APPROPRIATE, SO LONG AS OUTREACH EFFORTS ARE SENSITIVE TO THE SPECIALIZED INFORMATION NEEDS OF ALL SEGMENTS OF THE DEAF COMMUNITY.**

Outreach is another aspect of the TRS Program that ASL/Global VRS now agrees should be conducted by an independent third party. Consolidation of outreach functions will provide competitively-neutral, unified information to fully educate the public and provide needed information, while eliminating reliance on outreach as another marketing opportunity for providers. ASL/Global VRS supports the proposed iTRS National Outreach Program (“iTRS-NOP”) as being the most effective method for providing competitively-neutral information to the public.

As the Program allowed new providers to offer federally-subsidized relay services, the incentives for all providers to compete grew; entrenched providers sought to retain market share and new entrants to build it. Indeed, provider-based outreach has introduced elements of brand marketing in efforts often seemingly intended more to attract subscribers rather than provide public information.<sup>6</sup> From this perspective, the former inclusion of outreach expense in determining provider compensation inadvertently acted to supplement to provider marketing budgets and increase Program costs, while enabling providers to dilute the value of useful information provided to the Deaf Community. ASL/Global VRS agrees that provider compensation is no longer appropriate as outreach functions are assumed by an independent third party.<sup>7</sup>

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<sup>6</sup> *Id* at para. 31.

<sup>7</sup> To be sure, ASL/Global VRS formerly supported direct provider-compensated outreach and R&D (*See, e.g. ASL Reply Comments* at Pages 12 - 15) on the basis that providers would continue to assume such responsibilities and that outreach costs should not be “averaged” across all providers. The Company had stressed, among other things, that larger providers could benefit from economies of scale unavailable to smaller providers and that outreach to Spanish language users would increase the cost of outreach. The assumption of independent third-party outreach functions eliminates these and related concerns, rendering the need for Program provider outreach compensation no

Program information is needed by all members of the public, including many currently underserved Spanish-speaking individuals who should not be overlooked in providing general information, as ASL/Global VRS has stressed in the past.<sup>8</sup> Outreach efforts should at a minimum be made available in American Sign Language, English, and Spanish, and those responsible for the NOP should remain sensitive to the needs of specialized members of the Deaf Community as well. Directing iTRS Outreach Coordinators or those who assume iTRS-NOP responsibilities to consult “with consumer groups, IP Relay and VRS providers, the TRS Fund administrator, other TRS stakeholders, and other iTRS Outreach Coordinator” will be an important underlying function to ensure effective outreach for all members of the public.

**IV. SIP FORUM VRS TASK GROUP STANDARDS DEVELOPMENT WILL ACCELERATE CONSUMER CHOICE, PROMOTE PROVIDER INTEROPERABILITY, AND PROVIDER ADOPTION WITH THE BENEFIT OF PROVIDER INVOLVEMENT.**

The Commission has introduced a number of interoperability and portability requirements and proposals, which ASL/Global VRS enthusiastically supports. ASL/Global VRS has been a vocal supporter of interoperability,<sup>9</sup> consistent with the Commission’s intention to allow VRS users to make and receive calls through any provider, and choose between different default providers consistent with non -Deaf and Hard of Hearing users. Interoperability remains key element to achieve functional equivalence, particularly in a period of rapid technological innovation, including support of personalized, user-specific service features such

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longer necessary. Though providers will continue to innovate and market their services, these functions will be undertaken to better serve the public and remain competitive, and related costs will appropriately be borne by providers as a cost of doing business.

<sup>8</sup> ASL/Global VRS has been a leader in non-branded outreach to the Spanish language community. The Company hosts monthly community events in Deaf Spanish-speaking communities, presenting workshops on a wide variety of subject matter including, workshops on “How to Utilize a Video Interpreter” and “Understanding the Difference Between VRS and VRI.” ASL/Global VRS has allocated, and will continue to allocate, non-Fund compensable resources and funds to ensure that information is presented in an accessible way that accommodates all three languages compensable from the Fund.

<sup>9</sup> See *ASL Reply Comments* at Pages 5, 6.

as address book and speed dial list capabilities, among others. The Commission’s involvement with the SIP Forum through the Commission’s Chief Technology Officer and Chief of OET in consultation with the Consumer and Government Affairs Bureau will accelerate provider interoperability, promote mutual provider cooperation, and most importantly contribute to ensuring meaningful choice of providers by the public.

With the decision to support the SIP Forum VRS Task Group SIP standard development, ASL/Global VRS underscores the importance for platform standards to be open source, as the Commission directs, and multi-tiered so that any eligible VRS provider that chooses to utilize the VRS access technology reference platform can design product interfaces without affecting core functionality.<sup>10</sup> Stakeholder involvement in the standards development process will be equally important in the development of baseline standards for a VRS access technology reference platform that will serve the public while enabling providers to adapt applications to their own unique needs.

Since its inception, ASL/Global VRS has keenly recognized how standards development has a ripple effect on all aspects of provider operations, user experience, Fund administration, and Program cost stability. Full interoperability promotes consumer choice and provider innovation, and engenders a cost stability which facilitates Program administration and offers greater predictability desired by providers to further streamline operations and innovate without fear of disruptive closed technologies that preclude interoperability.<sup>11</sup> Standards development will move toward the critical interoperability that has eluded the Program to date.

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<sup>10</sup> *Id.* at Page 6. “The availability of the VRS access technology reference platform should enable providers to test their own products prior to introducing them into the market or issuing upgrades.” *2013 VRS Reform FNPRM* at para. 58.

<sup>11</sup> The advent of disruptive closed technologies has created captive subscribers, precluded full interoperability, and contributed to Program cost destabilization. ASL/Global VRS remains concerned that even as the SIP VRS Task Group undertakes standards development, provider technology “innovation” could still result in disruptive closed source technology that while meeting standards and being interoperable with a reference platform, would not be

**V. THE TRS USER REGISTRATION DATABASE DEVELOPMENT AND ELIGIBILITY VERIFICATION ARE FUNCTIONS ALSO APPROPRIATELY PERFORMED BY AN INDEPENDENT THIRD PARTY.**

The Commission has directed development of a centralized TRS user registration database (“TRS-URD”) and eligibility verification requirements. Again, ASL/Global VRS enthusiastically supports the Commission’s decision as a long-time proponent of moving these functions away from providers. Reference to “immunity” from waste, fraud, and abuse<sup>12</sup> captures the essence of why the move to an independently administered TRS-URD and eligibility verification is appropriate and necessary, as the Commission details.

ASL/Global VRS does not envision significant subscriber resistance to providing sensitive private information such as the last four digits of the subscriber’s Social Security number and date of birth that was not formerly required, to the extent that providers are clear as to the basis for requiring the information. The Commission’s directives and rules clearly establish the specific requirements for collection of these data and TRS-URD population. Yet ASL Global VRS proposes that additional safeguards are needed to ensure that all eligible subscribers willingly provide such information.

First, ASL/Global VRS proposes that the Commission clarify that at a minimum, providers be required to inform subscribers of the need for additional private information and obtain their consent for its use in Fund-compensable languages, e.g. ASL, English and Spanish,

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fully interoperable with other providers. ASL/Global urges the Commission and now SIP VRS Task Group to adopt additional protections to ensure that providers introducing new technologic applications be required to demonstrate that their own applications are not only interoperable with the reference platform, but that their VRS access technology is interoperable with other providers, and does not preclude “dial around” or casual calling capabilities. Further, other providers should be able to identify instances where they can demonstrate that another provider’s technology is not interoperable. Upon a finding that a provider has engaged in intentional development of non-interoperable technology, the Commission should consider enforcement action including adoption of penalties that reimburse the integrated service provider whose call volume was shown adversely affected. This enforcement aspect of standards, reference platform and interoperability will have a chilling effect on providers who may attempt to “game” the process in an effort to undermine consumer choice.

<sup>12</sup> 2013 VRS Reform FNPRM at 63.

and that to the extent that the provider markets services to non-native English speakers other than English or Spanish, that the consent forms be both in English and the language used to market those services. This is consistent with the approach taken by the Commission<sup>13</sup> and several state regulatory utility commissions regarding telecommunications account verification.<sup>14</sup>

Second, the Commission should support provider efforts to obtain additional sensitive subscriber information by providing additional outreach, whether in the form of a printed material and electronic document and on line information that independently corroborates the provider's obligation to obtain sensitive information. This will facilitate data collection for a public that is already highly sensitized to providing personal information.

The Commission is now explicitly holding providers subject to applicable provisions of the Commission's Customer Proprietary Network Information ("CPNI") rules, 47 C.F.R. §64.2001 *et seq.*, as discussed further below, to protect and secure customer information. ASL/Global VRS supports this crucial protection and the prohibition of using TRS-URD data and other CPNI for marketing purposes and win-back efforts, particularly given the unique functions provided by the TRS-URD that are not otherwise necessary for non-relay telecommunications services.

Implementation of the added TRS-URD-related requirements and subscriber eligibility verification - however critical to Program integrity and sustainability - imposes new administrative burdens on providers. With those burdens come added costs, which should be considered in provider compensation for administrative, policy, process, and support personnel.

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<sup>13</sup> See *e.g.* 47 C.F.R. §64.1120,(c)(3)(iv), "...All third party verifications shall be conducted in the same language that was used in the underlying sales transaction and shall be recorded in their entirety."

<sup>14</sup> See *e.g.* Texas Public Utilities Commission, Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers, [§26.26](#). Foreign Language Requirements. "A certificated telecommunications utility (CTU) shall inform Spanish-speaking applicants and customers how they can get the information...A CTU that advertises, promotes, or markets a service or product in any language other than English or Spanish shall provide the information in subsection (b) of this section related to that service or product in that language, upon the request of an applicant or customer."

Additionally, much of burden is borne directly by each provider's Video Interpreters. To be sure, as the Commission clearly recognizes Video Interpreters play a crucial role as a first line of defense in verifying provider eligibility<sup>15</sup> and in implementing many of the reforms adopted by the Commission. ASL/Global VRS commends the Commission for its recognition of the important functions performed by Video Interpreters and urges the Commission to continue recognizing their critical contributions to the Program in future rulemaking and policies.<sup>16</sup>

**VI. A NEUTRAL VIDEO COMMUNICATIONS SERVICE PROVIDER WILL PROMOTE THE ABILITY OF PROVIDERS TO COMPETE ON THEIR MERITS, SO LONG AS DOMINANT ENTRENCHED PROVIDERS CANNOT ASSERT INFLUENCE TO PROTECT THEIR INTERESTS.**

ASL/Global VRS also enthusiastically supports the creation of a “neutral video communication service provider that will allow consumers to connect to the ‘standalone’ VRS CA service provider of their choice.”<sup>17</sup> Consistent with the Commission's direction in moving functions and capabilities that impact the entire Program to competitively-neutral independent third parties, the establishment of a neutral video communication service provider eliminates the potential for providers to “game” the system consistent with their own self-interests. Importantly, providers will be able to focus on building subscriber loyalty through providing better service and differentiating themselves from competitors as the Commission clearly recognizes, rather than through closed source technology or other tactics that generate a fear of

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<sup>15</sup> *2013 VRS Reform FNPRM* at 81, “VRS providers shall require their CAs to terminate any call that does not involve an individual that uses ASL or that otherwise, pursuant to the provider's policies, procedures, and practices as described in its annual compliance plan, does not appear to be a legitimate VRS call, and VRS providers may not submit such calls for compensation from the Fund. [footnotes in original omitted].”

<sup>16</sup> Since its inception, ASL/Global VRS, has recognized and supported the key role played by professional Video Interpreters through its policies, training, including federal regulatory compliance, and by empowering Video Interpreters act in accordance with Commission regulations, particularly by immediately disconnecting and documenting any call that they deem in their professional judgment to be fraudulent or abusive.

<sup>17</sup> *Id.* at para. 89.

changing providers. This balances the interests of Program integrity and competition, while further promoting interoperability<sup>18</sup> among providers.

ASL/Global VRS has experienced the challenges and development costs associated with developing its own VRS platform. Platform development has been a critical component to the Company's development and evolution though has admittedly detracted resources that could have been used to attract new subscribers and Video Interpreters and used to adapt new technology and accelerate the company's growth. Countless hours and significant financial resources have been focused on working with the Company's platform vendor to develop a fully functional, interoperable, and compliant platform. Although ASL/Global VRS views this investment as absolutely essential to the Company's success, it also recognizes that adoption of a neutral video communication service provider platform could have enabled ASL/Global VRS to direct more of its efforts on better serving subscribers and building a subscriber base.

The neutral video communication service provider approach offers multiple benefits to the public and providers, as the Commission has outlined. Yet the importance of competitive neutrality in implementation cannot be overly stressed. Dominant incumbent providers have a significant investment in their own technologies that they understandably wish to protect. These providers should not be able to overly influence the process for implementation of a neutral video communication service provider and undermine its effectiveness for emerging and new providers and protect their interests.

The Commission has wisely adopted three key elements to ensuring competitive-neutrality of a neutral video communication service provider:<sup>19</sup>

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<sup>18</sup> *Id.* at paras. 91 and 95

<sup>19</sup> *Id.* at para. 118.

- 1) must be a non-governmental entity that is impartial and is not an affiliate of any Internet-based TRS provider;
- (2) may not themselves, or any affiliate, issue a majority of its debt to, nor derive a majority of its revenues from, any Internet-based TRS provider; and
- (3) notwithstanding the neutrality criteria set forth in (1) and (2) above, may be determined by the Commission to be or not to be subject to undue influence by parties with a vested interest in the outcome of TRS-related activities.

Consistent with criterion 3, ASL/Global VRS urges the Commission to allow any provider to alert the Commission to instances where the provider believes – and can demonstrate with corroborating evidence - that undue influence may be exerted, as a supplement to the Commission’s own oversight to ensure competitive neutrality.

**VII. THE BENEFITS OF OMD ASSUMPTION OF TRS PROGRAM FINANCIAL OVERSIGHT STAND TO MIRROR THOSE REALIZED IN ITS FEDERAL UNIVERSAL SERVICE FUND FINANCIAL OVERSIGHT.**

ASL/Global VRS supports the Commission’s decision to separate Program financial and policy responsibilities between the Office of the Managing Director (“OMD”) and the Consumer and Government Affairs Bureau (“CGB”). Despite some distinctions between the federal universal service and TRS funds, from an administrative perspective, the two programs have similar objectives and run in parallel tracks. To the extent that the separation of financial and policy responsibilities has proven beneficial for the universal service fund,<sup>20</sup> the effectiveness of separating these responsibilities for the relay services Program should achieve similar benefits and allow each entity to focus on its specific areas of responsibility.

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<sup>20</sup> *Id.* para 125.

**VIII. ADOPTION OF COMMON CARRIER STATUTORY OBLIGATIONS AND ACKNOWLEDGEMENT OF THE ROLE VIDEO INTERPRETERS ASSUME TO PRECLUDE FRAUD, WASTE AND ABUSE STAND TO BE EFFECTIVE.**

ASL/Global VRS supports the Commission’s decision to apply the provisions of section 202(a) of the Communications Act of 1934 (the “Act”), as amended,<sup>21</sup> to providers in further precluding fraud, waste, and abuse, by creating an explicit legal basis for Commission enforcement. Indeed, there are parallels between regulation of telecommunications common carriers and relay service providers. Where common carriers have been subject to direct regulation, provider regulation has to an extent represented a less direct form of regulation, *e.g.* relay service provider operations have been subject to regulation by virtue of their being eligible to draw from the TRS Fund as opposed to their provision of relay services. Applicability of Section 202(a) for providers now imposes more direct regulation of provider relay service practices that explicitly precludes the very type of abuse that the Commission notes has historically contributed to fraud waste and abuse, consistent with the statutory obligation assumed by telecommunications service providers.<sup>22</sup> This affirmative legal basis for enforcement action creates a legal framework that will further support the Commission’s ability to regulate.

**IX. DEVELOPMENT AND SUBMISSION OF COMPLIANCE PLANS WILL COMPEL PROVIDERS TO FOCUS THEIR OPERATIONS ON COMPLIANCE BEYOND ANNUAL COMPLIANCE REPRESENTATIONS.**

The explicit requirement that each provider develop and submit a compliance plan with its annual report establishes an affirmative obligation for providers to demonstrate actual

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<sup>21</sup> 47 U.S.C. §202(a).

<sup>22</sup> Again, the Commission’s explicit recognition of the role to be played by Video Interpreters to “identify anomalies and trends based on analysis of their call traffic and abuses,” is particularly commendable. ASL/Global VRS has long recognized the critical importance that Video Interpreters maintain as a first line of defense in identifying and preventing waste, fraud, and abuse. That the Commission too so recognizes the video interpreter’s important contributions to supporting Program sustainability will go far in achieving desired results for the entire relay service provider base.

compliance with Commission obligations beyond representations contained in annual reporting. A representation of compliance is far simpler than a demonstration of *how* each provider complies. Development and submission of compliance plans will compel providers to demonstrate that they have affirmatively implemented compliance procedures.

Purple's cited parallel between compliance reports required for federal universal service fund Lifeline-eligible carriers and the need for similar compliance reports by TRS Fund eligible providers is apt,<sup>23</sup> and consistent with the Commission's adoption of elements of common carrier regulation to curb waste, fraud, and abuse, as noted above. Consistent with adoption of Section 202(a) of the Act, the requirement to develop and submit a compliance plan imposes a more direct requirement that goes to the heart of each provider's relay service operations.

ASL/Global VRS believes that the current annual mandatory minimum standards report provides a useful framework for providers to follow in establishing the "how" of their compliance. Provider plans should follow the reporting format and identify the specific provider policies, procedures, and practices to be contained in their plans, consistent with amended section 64.606(g) of the Commission's rules.<sup>24</sup> ASL/Global VRS also urges the Commission to release minimum plan guidelines to ensure that providers meet Commission plan content expectations.

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<sup>23</sup> *Id.* at para. 134 citing to Purple FNPRM Comments at 21-22.

<sup>24</sup> *Id.* at para 134; 47 C.F.R. §64.606(g).

**X. REDUCTION IN THE SPEED OF ANSWER METRIC MOVES RELAY SERVICES CLOSER TO FUNCTIONAL EQUIVALENCY, THOUGH ADDITIONAL CONSIDERATION SHOULD BE GIVEN FOR SPANISH LANGUAGE SERVICE PROVIDER COMPLIANCE.**

It is acknowledged that a reduction in speed of answer (“SOA”) time requirement to an 85 percent response rate within 30 seconds on a daily basis further brings the provision of relay services closer to functional equivalency. The former two minute answer time can feel like a life time to callers who have had to experience long wait times. Technological advancements and provider service enhancements supported by historical calling distribution data have enabled providers to effectively achieve the 30 second answer time, as the Commission notes<sup>25</sup> and dramatically improve caller experience.

ASL/Global VRS appreciates that the reduction in answer time metric is based on provider data. Providers have availed themselves of VRS platform technology enhancements and accurate call distribution data to adjust staffing levels to meet anticipated demand consistent with standard business staffing practices for call centers and customer service operations in other industries.

Though the Commission’s decision is based on industry data generally, it is unclear whether the record supporting the Commission’s conclusion, “that it is appropriate to take steps to more closely align the VRS speed of answer rules with those applicable to other forms of TRS by reducing the permissible wait time for a VRS call” has taken the unique demands of serving special needs users, including the Spanish language callers into consideration. The Commission should recognize the unique challenges associated in serving this segment of the population and consider providing some flexibility in meeting the standard in the potentially instances that companies serving special needs callers might not be able to comply. ASL/Global VRS has

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<sup>25</sup> *Id.* at para. 137.

addressed many of the challenges associated with serving Spanish language callers, chief of which is the ability to hire professional tri-lingual Video Interpreters.<sup>26</sup> The pool for qualified, accredited Video Interpreters is already limited and the universe of qualified, accredited Spanish-speaking Video Interpreters is even smaller. In the past, ASL/Global VRS has been successful in attracting and retaining Spanish language Video Interpreters. Yet the Company faces a continual challenge given the limited number of qualified Video Interpreters, due in part to the ongoing need for associations to fulfill their promises for more training and workshops.<sup>27</sup> Added demands of an increase in Spanish language callers using relay services with the benefit of expanded outreach efforts will also exacerbate challenges of meeting staffing needs. Although ASL/Global VRS anticipates that it will continue to attract and develop high quality tri-lingual interpreters, the Company is concerned that its ability to meet the new answer time metric could potentially be compromised if additional tri-lingual Video Interpreters become unavailable for employment, despite the Company's current efforts to attract and develop additional qualified individuals to the field and anticipate future demand.<sup>28</sup>

ASL/Global VRS urges the Commission to allow providers of Spanish language relay services, and all providers, to demonstrate to the Commission why the answer time requirement

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<sup>26</sup> See *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Comments of ASL Services Holdings* (March 9, 2012) at page 28 "These costs [of providing Spanish VRS] are further exacerbated in light of the exceptionally limited pool of native Spanish CAs." More than 9000 individuals are known to be RID certified video interpreters as compared to some less than 20 Texas BEI-certified tri-lingual Video Interpreters.

<sup>27</sup> Video Interpreter training starts with accredited institutions, government, and provider collaboration to the promote video interpreter profession and education.

<sup>28</sup> Access to qualified Spanish-speaking interpreters and related staffing issues directly contributes to answer time calling capabilities for providers serving this market. It has been ASL/Global VRS' experience that the Spanish language market has long been underserved. Only now is the Deaf Community beginning to fully appreciate the needs of Spanish language users and beginning to close the gap that has existed in serving this market segment, to include attracting and training qualified video interpreters. As noted above, there is a significant difference between to universe of video interpreters and qualified Spanish language interpreters. This has a direct impact on providers like ASL/Global VRS that also serve Spanish language users, and why a unilateral reduction in SOA may have dire consequences in the ability of special needs providers to meet reduced SOA.

was missed in the unanticipated event that the requirement is missed, as is currently done with unanticipated service outage notification requirements, without the threat of lost Fund eligibility. Alternatively, the Commission should consider a longer Spanish language call answer time metric if the need for a longer answer time is supported by evidence. A separate Spanish language SOA could be implemented for an established period of time until the record demonstrates that tri-lingual video interpreter availability supports the SOA established for other providers.

**XI. APPLYING CHANGE IN PRIMARY PROVIDER AND CPNI RULES TO PROVIDER OPERATIONS GIVES NEEDED ADDITIONAL CONSUMERS SAFEGUARDS.**

The parallels between provision of telecommunications services and relay services also support Commission adoption of account verification and transfer requirements resident in Section 64.1100 *et seq.* of the Commission's rules. Again, ASL/Global VRS supports the adoption of applicable telecommunications service statute and regulation to protect relay service consumers as they protect telecommunications service consumers. As the parallels between the provision of competitive telecommunications and relay services have developed, the Commission's effort to extend relevant telecommunications regulation to protect relay consumers is entirely appropriate, is certainly consistent with the tenant of functional equivalency, and will ensure that the success achieved in protecting the general public are now extended to relay service consumers.

ASL/Global VRS also supports the Commission's rejection of default provider freezes. Despite the parallels between the provision of telecommunications and relay services, the effectiveness of preferred carrier freezes - that allow subscribers to preclude changes in authorized providers - in protecting from unauthorized account transfers in a hyper competitive

telecommunications industry do not have the same affect in a highly concentrated relay services market dominated by a single provider. The Commission is commended for recognizing the debilitating effect that preferred carrier freezes could have on competing relay service providers. Similarly, ASL/Global VRS agrees that use of customer proprietary network information for win back purposes would again benefit only dominant incumbent carriers, and appreciates the Commission's rejection of CPNI for this purpose, as well as adoption of CPNI protections applicable to telecommunication providers generally.

**XII. NIC VIDEO INTERPRETER CERTIFICATION IS AN EXCELLENT, BUT NOT SOLE, STANDARD.**

ASL/Global fully supports the Commission's decision to not change the mandatory minimum standard for Video Interpreter qualification. As an interpreter-owned and operated provider of VRS ASL/Global supports the RID-NAD National Interpreter Certification ("NIC") as *one* – but not the only - Video Interpreter qualification standard. The NIC, while an excellent national standard, should not dictate whether a provider has met the mandatory minimum standard of utilizing qualified interpreters as the Commission notes, but does emphasize the need for providers to have internal diagnostics to set qualifications standards that can be readily audited by the Commission.<sup>29</sup> Nevertheless, providers should urge their Video Interpreters to pursue NIC as part of their ongoing professional development.

Whatever internal standard adopted by a provider, the standard must be shown to be consistent with standard set by other widely-used state and national tests (i.e. RID NIC, the Texas state BEI, or the RID excepted EIPA for K-12 interpreters), must be shown to be used

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<sup>29</sup> The NIC standard is overdue for review and has not yet met the standards for national certification accreditation, as reported at the 2013 National conference.

consistently across the providers organization, and accurately documented for each video interpreter as proof of compliance with the mandatory minimum standard of qualification.<sup>30</sup>

### **XIII. SKILLS-BASED ROUTING SHOULD BE ALLOWED FOR SPANISH-SPEAKING SUBSCRIBERS EVEN IF NOT EXPLICITLY STATED.**

ASL/Global VRS recognizes the Commission's reluctance to require or allow skill-based CA routing and the Commission's particular concerns over the potential for misapplication of skills-based routing for compensable in-person interpretation services and articulation of its policy. Nevertheless, language skills-based routing, which would allow callers to select preferred Video Interpreters in instances where compensable Spanish language interpretation becomes a factor, remains a necessity to serve Spanish language callers. Unlike specialized skill sets such as medicine, law, and technology highlighted by the Commission, access to qualified Spanish language interpretation is a fundamental requirement in light of the compensability of Spanish language relay services. Certainly, a Video Interpreter who does not speak Spanish or is barely proficient in Spanish cannot adequately translate a call in Spanish.

It is unclear whether language skills-based routing is a distinction without a meaning. If a Spanish speaking caller accesses a non-Spanish speaking Video Interpreter, it should be understood that the caller must, by necessity be transferred to a Spanish speaking Video Interpreter, else the call cannot be completed and the provider will be deemed failing to meet its regulatory obligations. The alternative is to clearly establish separate access to Spanish speaking interpreters through a separate queue, as ASL/Global VRS does through its VRS access technology and automatic call distribution platform. Spanish speaking callers gain access to Spanish speaking Video interpreters without engendering routing to specialized Video

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<sup>30</sup> ASL/Global VRS has supported apprenticeships for new video interpreters to build an appreciation for standards, ongoing training, and certification, among other professional development considerations in a live environment, akin to medical profession residency programs.

Interpreters. Otherwise, providers such as ASL/Global VRS could find themselves in a Hobson's choice - in violation of Commission rules skills-based routing prohibitions on one hand, and in violation of not meeting mandatory minimum standards for processing Spanish speaking calls on the other.

If this can be avoided by interpretation of the skills-based routing prohibition as not affecting the ability to establish separate queues for Spanish language callers to be able to process compensable Spanish language calls – as has been done historically – the prohibition is acceptable. Otherwise ASL/Global VRS urges the Commission to consider how this prohibition will not impede Spanish language service providers from serving this segment of the Deaf Community altogether.

**XIV. THE COMMISSION IS MISTAKEN IN ITS UNSUBSTANTIATED BELIEF THAT SMALLER PROVIDERS ARE ONLY INCENTED TO BECOME MORE EFFICIENT FOLLOWING ELIMINATION OF TIER COMPENSATION.**

Despite the Commission's consideration of the impact on its compensation methodology on smaller and newer companies who have not – and pending the implementation of the reforms being adopted by the Commission – could not achieve economies of scale, the fact remains that in eliminating the tiered compensation, smaller companies will continue to face challenges until Commission reforms are fully implemented and all companies are able to compete on an equal footing. The Commission's conclusion that the only consequence of resetting the Tier II/III boundary at a level higher than the current level of 500,000 monthly minutes will be that "smaller, less efficient competitors will remain in the VRS market longer than would otherwise be the case, resulting in somewhat higher expenditures from the Fund"<sup>31</sup> grossly contradicts Commission recognition of the challenges faced by smaller companies. This statement, on its face, implies a mistaken belief that small providers are already competing on an

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<sup>31</sup> 2013 VRS Reform FNPRM at 204.

equal footing with entrenched carriers, are inherently inefficient, and should not be allowed to remain in the market. This is an absolute falsehood and appears to perpetuate the belief held by some that an oligopoly of providers is the most efficient approach to Fund administration. This is clearly not the case in for universal service fund telecommunications providers, and should not be held as an eventuality that small providers are inefficient and should be eased out of the market.

The stated belief that only by elimination of compensation tiers will smaller provider gain some new form of incentive for improving efficiency is patently false. There is nothing the Commission cites to that supports this position. Any provider or business in any market that is not continually seeking ways to increase efficiency does not belong in business. This is an inherent tenant of a business. That smaller providers run a business where revenues are derived from federal funds in no way creates any disincentive to improve operations, become more efficient and drive down costs.

ASL/Global VRS has already expressed its support of removal of R&D and outreach expense from Commission compensation structures. Yet removal of these elements does not change the difference in economies of scale between entrenched providers and newer companies, contrary to the Commission's own conclusions.<sup>32</sup> On the one hand, the Commission acknowledges the benefits of competitive entry: "the FCC's implementation of section 225 of the Act has relied heavily on competition in order to allow VRS users to choose among providers who compete on factors such as quality of service, customer service, and technological

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<sup>32</sup> To be sure, smaller, emerging companies must do more marketing in order to attract subscribers who are not aware of the provider or its services, if these providers have any chance of convincing entrenched provider customers of changing provider. The onus is squarely on smaller providers to overcome a reluctance to change provider.

development.”<sup>33</sup> Yet on the other, the Commission addresses the shortcomings of this approach citing a lack of price competition, inefficiency of compensation structure and the conclusion that this structure, “inefficiently supports providers that have failed to achieve economies of scale.”<sup>34</sup> What this conclusion erroneously implies is that smaller companies have failed to reach economies because of the way they have run their businesses. The Commission here ignores the very issues that have precipitated its reforms, which have allowed dominant incumbent providers to maintain their market shares, and undermine the growth of new entrants. This paints the picture of smaller newer providers such as ASL/Global VRS as complicit in their business operations, relying on a subsidized cost structure to remain in business. Nothing could be further from the truth.

Providers should be appropriately compensated for the actual cost of the services they provide. The provision of fund eligible VRS inherently requires a provider to offer services under a fixed compensation methodology and continue to find ways to make operations more efficient by reducing costs and increasing productivity. As ASL/Global VRS has often addressed, the provision of services to underserved Spanish language callers imposes unique costs in attracting and training qualified video interpreters, in performing its own Spanish outreach and in operational costs that have not been historically considered by the Commission. The choice to serve the Spanish speaking market is an affirmative business decision that the Company has made, understanding that it may not be fully compensated for all related costs.<sup>35</sup> Nevertheless, the implication that smaller companies like ASL/Global VRS should not be allowed to operate if not immediately achieving economies of scale when they have been unable

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<sup>33</sup> *Id.* at 5 citing to the *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17382-83, ¶¶ 24-25.

<sup>34</sup> *Id.*

<sup>35</sup> Including training, technology, among others unique to serving those with special needs and Spanish language callers, as ASL/Global VRS has addressed

to do so under what has been a significantly changed Program structure – however necessary this has been - is unrealistic and unsupported. Such a position does a great disservice particularly to those who seek to serve special needs markets, to the users of their service, and to prospective new entrants which some Commission proposals suggest should be allowed to become Program eligible providers.

The Commission’s intent to transition to a unitary rate structure is clear and its basis understood. That this is being accomplished through a transitional “glide path” is commendable and gives *all* companies the ability to adjust operations accordingly, further this moves the compensation structure to a more stable and predictable one, which also allows providers to adjust and further improve their operations, as ASL/Global VRS and others have noted.<sup>36</sup> <sup>37</sup> Nevertheless, the erroneous belief that smaller companies that do not somehow achieve economies of scale quickly and should be jettisoned is entirely misplaced and should have no bearing on the rate setting process.

**XV. MARKET-BASED COMPENSATION IS NOT WELL SUITED FOR THE UNIQUE CONDITIONS DRIVING PROGRAM ELIGIBLE PROVIDER DIRECT COSTS.**

The Commission requests comment on moving the Program compensation structure to a market-based compensation mechanism. Such a mechanism, the Commission opines will drive compensation down closer to actual costs, eliminating “a contentious,

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<sup>36</sup> As the Commission continues to formulate compensation methodology, ASL/Global VRS urges the Commission to consider a “total volume rate structure” as an alternative interim structure to the historical tiered rate structure. Under such a rate structure providers would be compensated at a single rate based on their total volume. Instead of a tiered structure rates that decrease in upper tier, once a provider reached a certain volume, all of the minutes for which the provider sought compensation would be set to a single rate.) This would allow for the Commission to take into consideration historical data that clearly shows that smaller providers have higher costs than the dominant provider, apart from R&D and Outreach, yet still appropriate to provider’s size. This approach would also provide the needed function of leveling dominant providers at a single rate for their total volume and would have immediate savings to the Fund and support Fund sustainability.

<sup>37</sup> And, as has been discussed previously, significant changes in Program compensation should not be undertaken until the financial impact of the significant reforms that have been, and are being adopted be fully considered.

complicated, and imprecise process.”<sup>38</sup> The Commission proposes competitively-established pricing entailing contract pricing set through a competitive bidding process,<sup>39</sup> benchmarked to a neutral video communication service.<sup>40</sup> Although the proposed compensation structure has desirable elements, implementation is premature until the full impact of its reforms has been realized and providers may compete on a more equal footing, as ASL/Global VRS has maintained.<sup>41</sup>

Importantly, the move toward market-based compensation and competitive bidding, actually moves away from driving compensation to actual costs by effectively disconnecting compensation from direct provider costs. Further, elements of the proposed compensation structure such as reliance on a competitive bidding process appear designed to inherently give larger incumbent carriers an advantage, and could serve as a first step in eliminating competition from the provision of relay services altogether in the stated effort of lowering compensation rates, protecting consumers and supporting Fund sustainability.

- A. Adoption of a Neutral Video Communications Service Provider Contract as a Benchmark Will Provide the Commission With a “Realm of Reasonableness” But Will not be Reflective Each Provider’s Unique Cost Structures.

In concept, adoption of a neutral video communication service provider contract, now after excluding the “soft” costs of R&D and marketing, has merit in providing the Commission with a “realm of reasonableness” of provider costs; a benchmark. Nevertheless, a benchmark is just that, a standard or point of reference for comparison and assessment. It is not necessarily a representation of each provider’s direct costs.

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<sup>38</sup> *Id.* at 217.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Id.* at 219.

<sup>41</sup> See generally, *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Comments of ASL Services Holdings* (November 14, 2012)

Reliance on the contracted neutral video communications service provider cost structure will create a “government rate” to acquire a neutral third-party service contract, but would still only loosely approximate a comparable private industry cost for the development or leasing of a video communication service platform, attracting and retaining qualified Video Interpreters, and other operational costs. Such a relative approximation would render reliance on the calculated benchmark cost a rough approximation. If the Commission proposes that the neutral video communications service be used as a definitive benchmark then how would the Commission propose to verify that the neutral provider’s costs would mirror the direct costs that integrated providers currently assume? The Commission states “the neutral video communication service platform will necessarily carry few minutes of use at the initiation of its operations.”<sup>42</sup> While the Commission does indicate that the neutral video communications service would have to be scalable, the overhead cost of the amount of network support required to process high call volume processed through current provider platforms would not be fully comparable. Private industry costs and scalability must be factored if the neutral video communication service provider’s cost structure is to even approximate provider direct costs and serve as a realistic benchmark.

Indeed, as the Commission notes, compensation is appropriately tied to a provider’s *reasonable* costs of providing relay services.<sup>43</sup> Not all providers are created equal, as has been often address throughout this proceeding. Until interoperability and other reforms are fully implemented, incumbent providers retain economies of scale unavailable to smaller and newer providers; Depending on each provider’s location, employment and real estate costs differ by geographic area, creating cost of living differences and affecting labor costs – labor costs in Salt

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<sup>42</sup> 2013 VRS Reform FNPRM at 101

<sup>43</sup> *Id.* at 222 citing to 47 CFR § 64.604(c)(5)(iii)(E), emphasis supplied.

Lake City are significantly lower than those in Miami;<sup>44</sup> Although providers will now be able to avail themselves in the future of a standard platform, there will still be unique programming and support functions that will not be uniform among all providers, resulting in cost differences between providers; and those providers serving certain segments of the Deaf Community, such as Spanish speakers, will assume additional costs not assumed by other providers. ASL/Global VRS recognizes the Commission's intent to move to a unitary rate structure and recognizes its desire to establish a base line for costs. To that end, adoption of a benchmark cost structure based on a neutral video communication service provider contract may be beneficial as a reference, but the Commission should use this as a tool and not a definitive cost structure for evaluating all provider costs *or* their efforts to drive their own internal costs down.

- B. Use of Auctions to Establish a Per Minute Rate Limits Competitive Choice and Undermines Functional Equivalency, While Suffering from the Same Infirmities as Reliance on Contract-Based Cost Benchmark.

Despite the Commission's seeming openness to competition for the provision of relay services, its proposal to institute an auction for serving highly called numbers is diametrically opposed to fostering a competitive environment, while suffering from the same maladies of using a benchmarked compensation structure as a definitive base line for all provider direct service costs. An auction-based methodology for establishing per minute rates is innovative but one that will undermine the competitive choice demanded by the Deaf Community, which the Commission has appeared to support, while creating the same type of

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<sup>44</sup> See, e.g. [Numbeo](#): "Consumer Prices in Miami, FL are 15.45% higher than in Salt Lake City, UT, Consumer Prices Including Rent in Miami, FL are 39.45% higher than in Salt Lake City, UT; Rent Prices in Miami, FL are 104.03% higher than in Salt Lake City, UT; Restaurant Prices in Miami, FL are 41.58% higher than in Salt Lake City, UT; Groceries Prices in Miami, FL are 14.56% higher than in Salt Lake City, UT' Local Purchasing Power in Miami, FL is 26.82% lower than in Salt Lake City, UT

provider-specific cost distortions that would result from a strict reliance on a benchmarked cost structure noted above.

Implementation of an auction approach for highly-called numbers is the antithesis of competition and moreover, of functional equivalency. This approach is akin to the Commission directing telecommunications service users to use a specific carrier's network over those of other competing carriers when calling certain numbers, *e.g.* those individuals who call Comcast must use the T-Mobile network to reach Comcast even if presubscribed to AT&T. In other words, callers would be forced to dial around their presubscribed carrier as a matter of public policy. Not only would consumer choice be limited for highly called numbers, but at a time where the Commission has made great strides in mirroring telecommunications presubscription in an effort to achieve functional equivalency, it would now ignore the desires of the public in being served by their provider of choice. It is entirely unclear how this would better serve consumers or ultimately the Program.

It has been ASL/Global VRS' experience that the Deaf Community chooses a default provider based, not only on technology and level of service, but that often the choice is based on social conscience. A consumer may choose a default provider that they view as supportive of the Deaf/Hard of Hearing Community while on the other hand they may strictly avoid another provider who they feel does not support Deaf/Hard of Hearing Community values. To dictate that a VRS consumer use a specific provider simply because of the number called, when the consumer may be fundamentally opposed to utilizing a specific provider is to strip the VRS consumer of choice *and* functional equivalence.

Further, an auction would also not serve as an accurate benchmark of actual per minute rates. An auction price would have no meaningful tie to direct provider service costs.

Instead, auction pricing would simply reflect how low a winning bidder in this case, would be willing to go to win the bid. The winning bidder would have to project whether the revenue generated by a high volume of calls could cover the provider's cost of service, even if the provider's rate could potentially be below cost with the hope of making up for losses by volume. And, as the case with reliance on a neutral video communication service provider's cost structure as an inflexible benchmark of all provider costs, such an approach for developing actual per minute rates would be entirely detached from each provider's individual direct cost structure.

Adoption of an auction also represents a slippery slope. Ostensibly the Commission is considering auctioning the right to serve the top 100 numbers. But if ultimately adopted, there is no reason that the Commission could not then expand its auction to the top 500 numbers, the top 1,000 numbers and so on, until the Commission creates a *de facto* oligopoly and removes any vestige of consumer choice. This is not consistent with functional equivalency, consumer choice, or the public interest.

C. In Order for a Market-Based Compensation Benchmark to Work There Must be a Market.

The Commission rightly asks, "...are any of the suppliers other than the largest incumbent able to serve all the demand?" ASL/Global VRS maintains that the answer is "no." Presuming that each of the six currently eligible providers shared the top 12% of all call volume, only the dominant provider would have the potential to absorb 12% of each the other five providers' total call volumes and it is unlikely that any of the other five providers would be currently equipped to absorb 12% of the dominant provider's total minute volume. ASL/Global VRS is unaware of any single provider other than the dominant provider, who could serve the top 100 called numbers. The Commission then asks, "Would any large incumbent be willing to participate since driving down the price in the auction would reduce its prices on the rest of its

business?”<sup>45</sup> Facts will substantiate that since the dominant provider would be the only one in a position to absorb a substantial amount of auctioned call volume, that the dominant provider would retain its dominance and would lose any incentive to reduce costs and innovate facing no competitive pressure to improve service and lower rates in a market that the provider already dominates. If anything, such an approach would undermine the very objective the Commission seeks to achieve through this process: to lower compensation rates.

Even if the Commission were to allow for multiple winners based on a percentage of specific numbers or types of calls, there is no guarantee that a succession of winning bidders would result in an equal or equitable percentage of call volume, given the vast differences in call duration depending on whether a bank, cable company, telecommunications company, or other highly called institution is called. A multiple winner approach would also limit the number of bidders if bidders do not realize material benefits. For example, limiting bids to a fixed quantity of minutes bidders would be willing to provide and rolling over additional minutes to a default provider<sup>46</sup> or providing random assigned priorities<sup>47</sup> leaves too many variables open for a bidder to have certainty in the value of winning a bid and on its return and would be a significant disincentive to bid.

The Commission also asks, “Would any such disincentive for large incumbents to participate tend to encourage participation by small incumbents and new entrants?”<sup>48</sup> As noted, only the dominant provider would be able to absorb the anticipated auctioned call volume.

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<sup>45</sup> *Ibid.*

<sup>46</sup> *Id.* at 230. If the Commission were to roll over minutes to a default provider, this would wreak havoc on the default provider’s ability to predict and forecast demand. Default providers could suddenly be flooded with unexpected call volume when the winning provider minute caps were met, with a total inability to anticipate when, or if, this would occur, let alone plan for staffing to handle spikes in demand. This would make default providers’ ability to meet SOAs entirely dependent on winning bidders and on call volumes, and lead to a default provider’s inability to meet mandatory minimum standards through no fault of their own. This raises concern over a default provider unfairly losing eligibility for reasons beyond their control.

<sup>47</sup> *Id.* at 229

<sup>48</sup> *Id.* at 235

Smaller emerging companies would not be capable of ramping up to serve such high volumes immediately, and would be foolish to bid, risking ruination of their business and moreover placing callers and the called institutions at risk of catastrophic call completion failures. Further, it has already been historically established that smaller providers inherently assume higher cost structures while they grow. ASL/Global VRS cannot envision any fiscally responsible provider having incentive to participate in an auction that will reduce their compensation even further at the risk of significant operational risks up to and including loss of Fund eligibility.

Ultimately, for any market-based compensation to be effective there must be a market. An auction-based approach represents the first step to elimination of a market, moving to limit competition without a definite, proven countervailing incentive for winning bidders to reduce costs. This is particularly likely if competitive pressure is eliminated given the exceptionally limited number of Fund-eligible providers and unique Program structure. Unlike spectrum auctions where spectrum is being auctioned for use by wireless providers in *competing* to sell service, an auction for call volume offers no competitive advantage to market participants, and may precipitate the demise of the relay service “market” altogether. ASL/Global VRS maintains that a market-based compensation structure which relies on auctions is not viable or conducive to a market that remains dominated by a single dominant provider.

- D. If the Commission is Intent on Implementing Auctions, Only Fund Eligible Providers Should be Allowed to Bid, Winning Bidders Should Have a Minimum Ramp Up Period to Begin Providing Contracted Service, and a Probationary Period Should be Established for Winning Bidders.

To the extent that the Commission implements an auction process for high volume called numbers despite its undermining competition, ASL/Global VRS urges the Commission to mitigate the potentially serious adverse impacts on competition by adopting the following safeguards:

*Bidder Qualifications.* Only eligible providers should be permitted to bid in an auction. This provides the Commission and public with assurance and confidence that all bidders have at a minimum met the minimum qualifications for providing Fund compensable VRS. All bidders should submit a detailed action plan that demonstrates their ability and plans for handling call volume and scalability, should they be granted the contract. Detailed bidder action plans would demonstrate that a provider would be capable of taking on call volume demand without placing the public at risk if incapable of meeting demand. This would also give the Commission an ability to further evaluate the bidder's capabilities.

*Ramp Up Period.* ASL/Global VRS proposes that auction winners be given a "ramp up" period of no less than six months to begin providing won services. When a provider is selected, this period will give the provider an ability to scale its operations as necessary in accordance to its action plan and make the necessary operational investments, without necessarily investing significant resources if necessary unless it has been assured to be the auction winner.

*Probationary Period.* Additionally, ASL/Global VRS proposes that winning bidders be placed on a two year probationary period to establish a record of successfully processing call volumes in accordance with mandatory minimum standards. If the winning bidder is incapable of meeting its obligations, the Commission should either give the provider a limited time to meet its obligations or award the contract to the next closest winning bidder. If within that time frame the winning bidder unable to maintain mandatory minimum standards related to the acquired minute volume then ASL/Global VRS proposes that the auction be rerun.

*Limited Service Periods.* Upon successful completion of the probationary period, the grant should also be of limited term of no more than two years to allow for a subsequent

bidding process by other providers rather than having high volume numbers remain captive to the winning bidder.

Nowhere in the *2013 VRS Reform FNPRM* does the Commission address the provision of VRS to Spanish language individuals and the unique costs that providers assume when serving this segment of the Deaf Community. Should the Commission adopt a market-based compensation structure based under a competitive bidding process for high volume numbers then ASL/Global VRS urges the Commission to adopt a separate bid category in consideration of the additional characteristics unique to serving this portion of the VRS market.

E. Market-Based Compensation Structures Should Be Directly Tied to Competing Provider Costs and Labor Costs in Particular.

The Commission aptly notes,

Section 225 creates a cost recovery regime whereby TRS providers are compensated for *their reasonable costs* of providing service in compliance with the TRS regulations. The Commission has explained that “for purposes of determining the ‘reasonable’ costs that may be recovered . . . , the costs must relate to the provision of service in compliance with the applicable non-waived [TRS] mandatory minimum standards.”<sup>49</sup>

Yet aspects of the Commission’s market-based compensation structure appear to move toward a manufactured - and arguably more complex - compensation structure that eliminates attempts to fix all providers’ costs to a neutral video provider costs and auctioned per minute rate without considering individual provider costs; a departure from the plain language of Section 225 obligations to compensate providers for their costs, “in the most efficient manner.”<sup>50</sup> The Commission’s auction process would create an entirely new administrative structure for accepting and evaluating bids, as noted, remove the competitive pressure from winning bidders for the most lucrative call volumes, and effectively detach compensation from the providers’

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<sup>49</sup> *Id.* at 239 citing to *2004 TRS Order*, 19 FCC Rcd at 12551–52, ¶ 199; *2006 TRS Reconsideration Order*, 21 FCC Rcd at 8057, ¶¶ 15–16.

<sup>50</sup> 47 U.S.C. 225(b)(1).

actual costs of service, chief of which being labor costs. Far from a market-based (competitive) process, this would result in a less efficient approach largely detached from providers' direct service costs, and have the unintended effect of creating a disincentive for individuals to become Video Interpreters.

Sorenson, among others, has frequently and correctly noted that VRS is a labor intensive industry. Since the majority of VRS provider costs is associated with Video Interpreter labor costs, it should follow that market-based compensation be driven, not by a bidding process based on the top 100 numbers or specific categories of types of calls, but rather by the current Video Interpreter labor market as an important input. This market is driven by supply and demand and varies by location and, and by skill set. ASL/Global VRS has maintained that its Spanish language Video Interpreter labor costs exceed those of other Video Interpreters because of the specialized Spanish language skill set and limited number of tri-lingual interpreters. The proposed auction process ignores these distinct cost contributors, while actually serving to drive down the costs, limit what providers can compensate, and ultimately creating a disincentive for individuals to become Video Interpreters when other higher paying options are available.

As an interpreter-owned and operated provider, ASL/Global VRS is keenly interested in protecting Video Interpreter professional standards and incentives for qualified individuals to become Video Interpreters. Aspects of the proposed market-based compensation methodology may have merit in concept, but if ultimately implemented, should take VRS provider labor costs in this labor intensive industry directly into account and avoid a cost structure that actually moves compensation away from actual provider costs.

**XVI. PROVIDERS SHOULD BE GIVEN THE OPPORTUNITY TO DEMONSTRATE THAT THEIR ADDITIONAL COSTS ARE REASONABLE, CANNOT BE AVOIDED, AND SHOULD BE COMPENSATED.**

The Commission asks, “Is it therefore reasonable to assume that the sum of a benchmark rate for video communication service and a market rate for VRS CA service established by auction would be sufficient to compensate integrated VRS providers for the services they deliver?”<sup>51</sup> ASL/Global VRS concludes that the answer is “no,” has been discussed above. Any compensation structure that does not take into account the direct costs of providers and seeks to use cost approximations for the entire universe of providers, including those like ASL/Global VRS that serve specialized markets, will not meet the statutory standard of compensating providers for *their* reasonable cost of providing compensable service.

To the Commission’s credit, the Commission next poses a series of questions suggesting that other cost factors might be considered, “What costs, if any, would it be appropriate to consider for additional recovery? How long would providers be entitled to seek recovery of such costs? By what standard should the Commission and the Fund administrator review any submitted costs to ensure that the costs are both allowable and reasonable?”<sup>52</sup> These questions suggest that the Commission might be open to the possibility of using a market-based compensation methodology benchmark as a starting point for considering other costs directly assumed by providers that are not factored into the benchmark.

As ASL/Global VRS has repeatedly stated, labor costs, and the cost of attracting and retaining Spanish language interpreters in particular, as well as customer service, interoperability and portability, and regulatory compliance costs would likely never be fully incorporated in the Commission’s market-based compensation methodology, if ever, as

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<sup>51</sup>2013 VRS Reform FNPRM at 236.

<sup>52</sup> *Id.* at 240.

proposed. These costs are true direct and quantifiable costs of providing service to the underserved Spanish language Deaf Community and are costs that should be considered for additional compensation.

Still, there are other future service costs that cannot yet be known but may be compensable. Since SIP standards for the VRS have yet to be determined, at this point would be impossible to predict potential unforeseen implementation costs. There may also be other unforeseen costs that cannot be determined at this time but will become apparent during the process of the restructure. ASL/Global VRS therefore proposed that the Commission leave this matter open until such determinations are made and providers are able to calculate actual costs to becoming compliant with interoperability standards and that such costs be factored into market-based compensation structures, if adopted, or that providers be able to show the impact of implementation on their own cost structures.

To the extent that providers are allowed submit verifiable cost studies demonstrating the direct correlation between the direct costs not otherwise included in benchmarked compensation methodology and the provision of service, these costs should remain compensable so long as the provider assumes those costs in the provision of its service. The standard for approval of such costs for compensation would include: 1) whether the provider could provide service without assumption of those costs; 2) whether there would be alternative methods of providing service that would not engender such costs, *e.g.* whether the costs are avoidable; and 3) whether the costs for which additional compensation is requested would not otherwise already be included in the benchmarked rate.

If a provider can clearly factually demonstrate to the Commission that additional costs that are not already compensated are necessarily assumed and cannot be otherwise avoided

in the provision of relay services, they should be allowed and compensated, consistent with the reasonable compensation standard set in Section 225.

**XVII. THE COMMISSION SHOULD ADOPT THE FUND ADMINISTRATOR'S PRACTICE OF REQUIRING INTEGRATED PROVIDERS TO DEMONSTRATE THAT VRI IS NOT BEING SUBSIDIZED BY VRS.**

Although ASL/Global VRS does not offer other forms of iTRS, American Sign Language Services, Inc., a separate affiliate offers Video Remote Interpreting ("VRI") services. ASL/Global VRS has taken extraordinary measures to ensure that VRS cost are clearly delineated from all other services provided including VRI. The Fund Administrator recently requested a detailed breakdown of how VRI costs were allocated with supporting documentation. The data and documentation requested by the Fund Administrator already provides an effective administrative basis for verification that providers are strictly segregating and reporting compensable service costs.

Nevertheless, the Fund administrator and Commission should be particularly interested in shared costs – Video Interpreters, capital expenditures other areas where resources between VRS and VRI could be shared between disciplines. In such instances, providers should be required to demonstrate the methodology used to account for shared assets.

**XVIII. THE COMMISSION'S PROPOSED R&D BUDGET IS REASONABLE, BUT SHOULD BE TEMPERED IN THE FUTURE BY ADVISORY COUNCIL RECOMMENDATIONS.**

ASL/Global VRS has addressed the benefits of reliance on a stakeholder advisory council for those functions now to be performed by independent third parties, including R&D. ASL/Global VRS generally supports the Commission's proposed \$3M budget based on 40 percent of the expenditures reported by VRS providers for Fund year 2012 on compensable

R&D. This seems appropriate starting point considering that the initial R&D into VRS has already been accomplished by providers and that the NSF will be focused on R&D functions.

ASL/Global VRS proposes that subsequent R&D budgets be tempered by recommendations of the revised TRS Fund Advisory Council throughout the year. NSF should consider Advisory Council recommendations, identify needed projects to be undertaken to implement its recommendations, and develop a corresponding budget with detailed recommendations and justification to the Commission and Fund administrator for approval. Any additional budget resulting from this process should then be factored into the Program budget and available for the following fiscal year. Should the NSF fail to meet criteria for changes in its budget, ASL/Global proposes that the NSF ultimately be held responsible by the Commission and stakeholders who would be impacted by the NSF's actions.

**XIX. OTHER COMMISSION PROPOSALS ARE SUPPORTABLE WITH SOME ADDITIONAL CONSIDERATIONS.**

ASL/Global VRS generally supports the Commission's additional Program reform proposals, with the following additional considerations.

A. TRS Fund Contribution Calculations and Reporting

ASL/Global VRS supports the Commission's proposed quarterly contribution calculation reporting. As a newer provider with limited historical operational data coupled with its rate of growth, it becomes more challenging to develop longer term projections on an annualized basis. Further, development of quarterly data will yield more accurate results in support of quarterly contribution factors consistent with the federal Universal Service Fund ("USF") process. As has been discussed, the parallels between operation of the federal USF and TRS Fund are significant, and many of the administrative procedures demonstrated effective in USF management should prove equally effective in TRS Fund administration, including

quarterly reporting, development of contribution factors, and ultimately the possibility for development of quarterly compensation rates.

B. Allowing Hearing Individuals to Purchase Access to the Neutral Video Communication Service Provider for Point-to-Point Calls.

ASL/Global VRS supports allowing hearing individuals to purchase ten digit numbers from the neutral video communications service provider or integrated service providers - including VRS access technology - for point-to-point calls as addressed by the Consumer Groups. And, as the Commission suggests, these assigned numbers should be flagged as “hearing” or “non-compensable” in the URD. The assignment of numbers for point-to-point calls should be predicated on an automated process that precludes these callers from accessing eligible VRS providers. ASL/Global believes that the cost to purchase the number and VRS access technology should at a minimum cover the provider’s underlying costs. This move would be a further step in avoiding wasteful use of the Fund by allowing hearing individuals to have direct access to communication by using Sign language through video rather than being unnecessarily forced conduct the same conversation through relay services.

C. TRS Fund Advisory Council.

As has been discussed, ASL/Global VRS supports the Commission’s proposed recasting of the TRS Advisory Council and expand the scope of its focus at a minimum to the six broad areas proposed by the Commission: technology; efficiency; outreach; user experience, eligibility, registration, and verification;<sup>53</sup> and porting and slamming. ASL/Global VRS proposes that the Advisory Council also serve as a consulting body for Commission regulation, and urges the Commission to allow the Council to be representative of all stakeholders.

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<sup>53</sup> See, e.g., *supra* section II.D; see also Convo FNPRM Comments at 19; CSDVRS FNPRM Comments at 30-32 (supporting advisory committee role in designing and implementing the TRS-URD).

Despite the formalized rulemaking process as a venue to address Commission regulation, the Commission should also allow the Advisory Council to address issues regarding Commission regulation including interpretive matters, current regulatory concerns, and informal recommendations for regulatory changes or new regulation to the Commission for consideration through the formalized rulemaking process. To that end, the Advisory Council should also be allowed to consult with the Commission, who should also be represented on the Council, in addition to the Fund administrator, the NSF, the iTRS Outreach Coordinator(s), the VRS access technology reference platform administrator, the TRS-URD administrator, and/or the neutral video communication service provider as the Commission proposes.

The Commission correctly notes that the Council should be comprised of qualified stakeholders and experts, presumably including members of the Deaf Community, its advocate organizations, providers, Video Interpreters, service vendors, and special needs advocates,<sup>54</sup> such as representatives of the Spanish speaking Deaf Community. Commission reservations over potential conflicts of interest between provider representation on the Council is understood. However, the Council would benefit greatly by including knowledgeable provider representatives as members to provide historical context, experience, and practical expertise in the provision and administration of relay services, so long all providers have equal representation.<sup>55</sup> Should the Commission conclude that no provider be represented on the

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<sup>54</sup> ASL/Global VRS recognizes that the role of the Advisory Council is not to advocate but to consult. “Advocate” as used here is intended to convey a level of knowledge and expertise in the way a “patient advocate” is used in health care parlance.

<sup>55</sup> ASL/Global VRS has expressed its reservations over dominant providers attempting to assert undue influence in the development of standards, R&D, and in other arenas, as addressed above. To preclude such undue influence from manifesting itself in an Advisory Counsel, ASL/Global VRS urges the Commission to allow equal representation from each provider rather the according larger carriers greater representation. Providers should not be precluded from inviting their own subject matter experts to address specific matters, although ultimate representation should be equal between providers.

Council, all providers should be allowed to attend in Council meetings as participants, even if on an *ad hoc* basis by invitation.

ASL/Global VRS also strongly urges the Commission to include Video Interpreters and special needs advocate representatives in the Advisory Council. Video Interpreters have diverse perspectives, many as Deaf Community and/or CODA members, and as experienced users of technology and the provision of relay services to the public. Video interpreters are uniquely qualified to advise on technology applications and user experience. Video Interpreter representatives would further provider first-hand experience regarding safeguards to preclude fraud, waste, and abuse, and could advise the Council on the impact of new initiatives on the historically under represented field of Sign language interpreters. ASL/Global proposes that the Video Interpreter members possess had at least ten years of Sign language interpreting experience and five years of experience in the VRS field with more than one provider. Video Interpreter members should be nationally certified members of RID in good standing.

ASL/Global VRS also proposes that there be Advisory Council representative that is a stakeholder representing special needs of the Deaf Community such as a Spanish speaking advocate. This member would be able to consult from perspective of the historically under represented Spanish VRS community. This representative should either a consumer of Spanish VRS services or belong to a Spanish community organization<sup>56</sup> and be able to knowledgably address specific needs and challenges of the Spanish VRS Market.

#### D. Consistent Regulation of All Forms of TRS

Commission efforts to harmonize its regulation among all forms of relay services is commendable and stand to streamline the regulatory process and Fund administration.

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<sup>56</sup> The National Council of Hispano Deaf and Hard of Hearing or Mano a Mano, for example.

ASL/Global VRS supports the Commission’s proposals with the following specific additional recommendations.

*Registration and the TRS-URD.* ASL/Global VRS proposes that each eligible consumer be limited to one form of iTRS per account, while preserving the consumer’s right to choose the type of language modality to be used on any given call, *e.g.* the equivalent of dial around calling. For purposes of counting unique active users the data can simply be queried in the URD; when a registered user’s name and last four numbers of a consumer’s social security number match up then the consumer is would be counted as a single iTRS user.

*Certification and Verification Requirements.* Though ASL/Global VRS supports the harmonization of certification and verification requirements across iTRS programs, the Company maintains that the existing “detailed eligibility certification and verification requirements” adopted by the Commission are sufficient and should not be further broadened to verify user eligibility. If additional data is required, the Commission of Fund Administrator could request such data on an *ad hoc* basis as part of an investigation.

#### E. Disaggregation of Emergency Calls to 911

ASL/Global VRS fully supports the move toward integration of next generation 911 services and the proposals outlined by the Emergency Access Advisory Committee (“EAAC”).<sup>57</sup> Sections XI-XII in particular address training protocols and performance criteria to ensure that Video Interpreters are fully trained and capable in handling emergency 911 calls. Well trained Video Interpreters should be fully capable of processing 911 calls,<sup>58</sup> and it is

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<sup>57</sup> Emergency Access Advisory Committee (EAAC) Working Group 3 Recommendations on Current 9-1-1 and Next Generation 9-1-1: Media Communication Line Services Used to Ensure Effective Communication with Callers with Disabilities (March 1, 2013) [[“EAAC 911 Report”](#)].

<sup>58</sup> For its part, the Company requires all Video Interpreters to take specialized emergency response training in the form of a workshop presented by a registered emergency responder who is also a nationally certified Sign language interpreter, as an integral part of its VRS training program.

unclear that the record dictates the need to have emergency 911 calls processed through a separate provider.

Should the Commission nevertheless conclude that disaggregation of emergency 911 calls through a competitive bidding process be implemented, ASL/Global VRS urges the Commission to require that – as would be the case in implementing high volume call auctions - bidders in this instance demonstrate their ability to comply with the EAAC’s proposals. Additionally, ASL/Global VRS again underscores the need for the Spanish speaking VRS market to be considered. Either the winning provider must demonstrate that it can offer the same specialized service in Spanish or the Spanish portion of emergency calls should be auctioned separately.

F. Speed of Answer (“SOA”).

ASL/Global VRS proposes that the Commission adopt the alternative proposed calculation (Calls answered in 30 seconds or less) / (All calls answered by a CA + Calls abandoned after more than 30 seconds).<sup>59</sup> As the Commission states, under this formula the provider’s measured speed-of-answer performance would be unaffected by callers that do not give the Video Interpreter sufficient time to answer the call within the threshold time period.

Despite ASL/Global VRS’ support of harmonizing requirements between VRS and other forms of TRS, the Company is concerned that reducing the VRS SOA to 85 percent of calls being answered within ten seconds represents a marked shortening of answer time that would impose demand additional staff to support, and raise service costs, accordingly. The desire to reduce SOA is shared by all providers. Nevertheless an SOA reduction cannot be done in a vacuum without impacting provider operations; the demand for more Video Interpreters could

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<sup>59</sup> 2013 VRS Reform FNPRM at 262.

well outstrip supply.<sup>60</sup> Further, the significant reduction in SOA would impose additional labor costs on providers that if not compensable could financially harm providers if there were no recourse for providers to recoup their additional service costs.

Should the Commission maintain that a harmonization of SOA between relay services is critical, ASL/Global VRS proposes that this be done in pre-established phases that would enable companies to adjust their operations and anticipate financial impacts. The effect on providers of service to Spanish language users must also be considered in efforts to reduce SOA. ASL/Global VRS throughout its comments highlighted the impact of Commission reforms on providers of service to the Spanish language community and a significant reduction of SOA is no exception. A significant reduction in SOA and the resulting increase in staffing demands would have an acute impact on providers who serve Spanish language users and who rely on an exceptionally small universe of qualified tri-lingual Video Interpreters. The Commission should either consider waivers if providers who serve Spanish language users can demonstrate their challenges in finding qualified staff, or alternatively allow providers to request additional compensation to recoup the costs of compensating highly specialized interpreters to meet staffing obligations to include recruitment and overtime expenses.

#### G. Administrative, Oversight, and Certification Rules

ASL/Global VRS maintains that no additional authority is needed by the Fund Administrator to dispatch its responsibilities to the Commission. As many of the significant reforms that have been and are being implemented help stabilize program administration, it is unclear that additional rules are necessary. What remains needed is a greater degree of transparency between the Commission and providers through the Fund administrator in the form of clear communication of policies and interpretation. Though Program regulation and

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<sup>60</sup> ASL/Global VRS estimates that there are less than 10,000 RID certified Video Interpreters.

administration has become far less volatile than in the past, and many of the abuses which precipitated those abuses have been rectified, there remains vestiges of a lack of clarity in how certain provisions are to be interpreted or what Commission policy may apply. Though the formal process for seeking Commission determination is established and effective in addressing significant compliance issues, this process fails in attempting to obtain an understanding of interpretation or policy on less critical issues. At times “policy” has been seemingly evolved informally and has not always been clearly disseminated. The Fund Administrator should be given additional flexibility to discuss Commission interpretation and policy on a given issue,<sup>61</sup> without directing providers to pour through Commission orders and statements. A simple discussion will enable providers to act in accordance with clear requirements rather than engage in a frequent hit and miss effort to understand what is expected of them.

ASL/Global VRS supports the proposal to eliminate rules for standalone providers as their responsibilities would be assumed by the neutral video communications service provider and separate regulations would be unnecessary. To ensure high standards on standalone providers, applicable regulations should, however continue to apply *uniformly* to all providers. Alternatively the Commission should maintain its current regulatory framework, while acknowledging the inapplicability of certain regulations to standalone providers, thereby preserving uniform applicability without the need for a separate set of regulations. This is loosely analogous to non-facilities-based “reseller” telecommunications providers being subject to the same regulatory framework that applies to all telecommunications carriers unless a certain regulation that would apply solely to facilities-based carriers is deemed inapplicable to resellers.

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<sup>61</sup> A discussion of interpretation and policy would be limited to explanations and not constitute legal counsel or opinion.

ASL/Global VRS does not oppose added financial criteria for evaluating new Fund eligibility certification applicants and would go as far as proposing that non-standalone applicants be subject to more stringent financial requirements than standalone providers. Again, such is the case in the telecommunications industry where applicants for state certificates of public convenience and necessity are subject to making financial showings.

Though ASL/Global VRS does not believe that minimum standards for experience and proficiency of the applicants Video Interpreters are absolute prerequisites for Fund eligibility, though these factors should be considered by the Commission. Yet the underlying issue that the Commission must consider before making any amendments to its certification process is whether the Commission seeks to make certification *inclusive or exclusive* of new providers. Clearly, the more onerous certification requirements, the less prospective applicants. On one hand, given the unique regulatory framework and requirements for Fund eligible providers to serve the Deaf Community, Fund eligibility should not be open to anyone making an application and affirmative, unsupported representations. On the other hand, to make eligibility requirements so onerous that virtually no applicant could become a Fund eligible provider would undermine the competitive choice that the Deaf Community desires and a competitive market that approximates functional equivalency.

Notwithstanding potential amendments to certification requirements, the Commission should be counted on to process applications on a timely basis. An applicant who seeks to serve the Deaf Community through provision of Fund eligible service and has made investments to do so, should expect that its application will be acted on in a timely manner, e.g. that its application does not go into a black hole pending policy deliberation. If the Commission is not in a position to act on applications expeditiously for any reason, this fact should be made

know to prospective applicants who contact the Commission or at the time of the applicant's submission if the applicant has not previously contacted the Commission. Applicants should be given a reasonable expectation of when – or if – the Commission will act.

H. Restructuring Section 64.604.

ASL/Global VRS agrees that a certain amount of restructuring of section 64.604 is appropriate and should be segregated by type of relay service to the extent that rules apply to specific types of service. Otherwise rules common to all forms of relay services should be grouped. Not only would such a restructure be far more convenient and clearly understood, such a restructuring could also be readily used, without filtering through regulations inapplicable to a specific form of TRS that a given provider may not offer, especially for employee training. Further, it would be beneficial to a clearer understanding of the rules to delineate the differences unique to one form of TRS as opposed to another with specified nomenclature applicable to each specific service.<sup>62</sup>

I. Use of Customer Information

ASL/Global VRS supports the Consumer Group's proposal that CPNI not be used for public policy advocacy. While ASL/Global VRS agrees with the Consumer Group's conclusions regarding prohibiting use of CPNI unless a subscriber affirmatively opts-in to be contacted, ASL/Global believes distinction is necessary. Indeed, a hearing telecommunications user may place calls without the threat of contact by the presubscribed carrier. VRS consumers should also not be compelled to withstand any contact from providers as a prerequisite for placing a call. Yet hearing telecommunications consumers *can be* contacted by their

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<sup>62</sup> For example, the term "Communications Assistant" ("CA") is broadly used across all TRS programs but does not accurately represent the unique role that sign language interpreters perform in VRS. Should the Commission restructure the rules to be separated by each service then more accurate nomenclature could be used. In this case CA could be replaced with "Sign language interpreter" or the more commonly used industry term, "Video Interpreter."

presubscribed carrier, to use CPNI in marketing service across service categories to which the subscriber subscribes,<sup>63</sup> consistent with existing CPNI rules. This may include changes in service affecting regulations and policies. To be sure, Section 64.5105 of the Commission's rules, Use of customer proprietary network information without customer approval, accords this same flexibility to relay service providers.<sup>64</sup>

#### J. Temporary Registration

ASL/Global VRS agrees that the need for immediate access to service originally allowed as part of the Commission's transition to ten-digit numbering has run its course and may be phased out. Still, the Company is concerned that without some limited-time temporary registration, a new VRS consumer may be precluded from placing telephone calls in a functionally equivalent manner pending verification and TRS-URD registration. Their hearing telecommunications consumer counterparts simply have to purchase a phone, sign a contract, and are able to make and receive phone calls immediately. In instances of porting numbers, ports must be completed in 24 hours, though the user may still use the former presubscribed carrier's service.

Far from being functionally equivalent, some VRS providers may take days or even weeks before verifying a potential VRS consumer, a disservice to consumers. ASL/Global VRS suggests that the Commission allow for the provisioning of ten-digit numbers on an exceptionally limited temporary basis, - no more than seven days for example - until verification is completed. Should the prospective VRS consumer be verified within the allotted time frame

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<sup>63</sup> See, e.g. 47 C.F.R. § 64.2005 Use of customer proprietary network information without customer approval, "(a) Any telecommunications carrier may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service ( i.e. , local, interexchange, and CMRS) to which the customer already subscribes from the same carrier, without customer approval."

<sup>64</sup> 47 C.F.R. §64.5105. "(a) A TRS provider may use, disclose, or permit access to CPNI for the purpose of providing or lawfully marketing service offerings among the categories of service ( i.e., type of TRS) for which the TRS provider is currently the default provider for that customer, without customer approval."

then their ten digit number becomes permanent. If the prospect cannot be verified within the allotted time frame then their account is cancelled and the ten-digit number is returned to the number administrator. This already practice has already been adopted by some VRS providers including ASL/Global VRS and is just one more way in which providers may favorably differentiate themselves from competitors.

K. Non-Competition Agreements in VRS CA Employment Contracts

ASL/Global VRS agrees with the Coalition Petition and Purple that non-compete clauses are harmful to individuals, and to the public and urges that the Commission affirmatively prohibit such provisions. ASL/Global VRS also agrees that non-disclosure provisions are necessary and sufficient to guard against a former employee revealing proprietary information. But because of the exceptionally limited universe of qualified Video Interpreter and specialized employees, non-compete provisions are ruinous to individuals and effectively create captive employees, depriving them of opportunity and mobility. A Video interpreter should not be restricted in any way from working for a competing provider, though rightly should be bound by non-disclosure obligations.

L. CAs Working from Home Environments During Overnight Hours

In light of the major reforms instituted by the Commission and elimination of disreputable providers from the provision of compensable relay services, the time is ripe to reconsider the entire issue of Video Interpreters working from home. Commission sensitivity to work at home interpreters is well recognized and its prohibition of this practice proved appropriate at the time it was implemented. The relay service industry and Program's regulatory framework has changed vastly since the work at home prohibition was instituted. At this juncture, if a provider is able to demonstrate through a formalized application process, that

Commission rules governing privacy standards, use of battery backups, 911 access, service quality assurance and oversight, among other things, is met, and that the work at home candidate is a trusted, long standing employee, possibly including submission of a separate compliance plan outlining provider oversight and compliance with Commission regulations, that the Commission should consider allowing Video Interpreters to work from home.

In granting work at home applications, the Commission could further limit the number of Video Interpreters that work from home based on the eligible provider call volume, or as a percentage of provider staff, *i.e.* one interpreter allowed to work from home per X number of minutes generated or a limitation of no more than perhaps five or ten percent of a provider's work force could be allowed to work at home. The Commission could also consider work at home applications on a case-by-case basis such as in instances where commuting to a provider's offices or moving would be overly burdensome, in instances where a Video Interpreter was suffering from health problems, or necessitated schedule flexibility to take care of a family member or simply as a matter of personal safety – avoiding working late night shifts at the provider's offices as CSDVRS correctly notes.<sup>65</sup> This would allow providers to attract and employ individuals who might otherwise be geographically unemployable or unemployable by other circumstances, and expand the universe of qualified interpreters in a highly limited Video Interpreter market. When the Commission prohibited Video Interpreters from working at home, provider lost access to a number of highly qualified Video Interpreters that have since been unable to reenter the VRS industry without relocation.

ASL/Global VRS maintains that under the significant reforms implemented by the Commission and current environment, allowing Video Interpreters to work at home, under the

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<sup>65</sup> 2013 VRS Reform FNPRM at 281 citing to CSDVRS, LLC Petition for Temporary Waiver at 1 (filed August 12, 2011)..

considerations proposed above, will result in greater benefits than risks to providers and ultimately to the public. ASL/Global VRS urges the Commission to consider waivers to its working from home prohibitions as proposed.

## **XX. CONCLUSION.**

The additional implemented and proposed Commission reforms have been developed to continue elimination of fraud, waste, and abuse, and contribute to the Program efficiency and sustainability. ASL/Global VRS is supports those reforms that move Program-wide functions such as R&D, outreach, standards development, user registration database management, adoption of a neutral video communications service provider as well as the Commission's decision to move Program financial oversight to OMD. ASL/Global VRS is also encouraged by the Commission's adoption of addition consumer protections through the extension of Section 225 and CPNI obligations to Program eligible providers. Where the Commission's proposed reforms are lacking is in the Commission's desire to adopt "market-based" compensation methodology and auctions, which stand to undermine, if not eliminate consumer choice, and fully detach compensation from provider direct service costs. Further, there is a complete absence of consideration of the unique requirements, including SOA metrics and costs of serving Spanish language users, which ASL/Global VRS has addressed. For the reasons stated herein, ASL/Global VRS urges the Commission to compensate providers for their direct reasonable and demonstrable cost of providing service even under a unitary cost structure, promote the development of consumer choice and allow providers the flexibility to compete on the merits of their service and on a more level playing field without the presumption that smaller providers do not seek to reduce costs and become more efficient, and adopt the recommendations on other proposed reforms presented by ASL/Global VRS.

ASL/Global VRS commends the Commission for its Herculean efforts to reform the Program and looks forward to its continued support of these reforms and working with the Commission.

Respectfully submitted this 19<sup>th</sup> day of August, 2013,

ASL Services Holdings, LLC

By:

A handwritten signature in black ink, appearing to read "Angela Roth", is written over a horizontal line.

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