

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

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

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## COMMENTS OF CSDVRS, LLC

CSDVRS, LLC, d/b/a ZVRS, (“ZVRS”) submits its comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) June 10, 2013 Further Notice of Proposed Rulemaking (“FNPRM”).<sup>1</sup> In the FNPRM, the Commission sets forth proposals which would change ratemaking for the provision of Video Relay Services (“VRS”) to include competitively bid prices. In addition the FNPRM makes proposals intended to improve the structure, efficiency and quality of the VRS program.

ZVRS commends the initiatives in the FCC Order which, among other things, will enhance VRS access through interoperability and portability standards, promote a shift to off-the-shelf technology, begin to disaggregate video interpreting and technology services, establish a robust accounting of users through a central Telecommunications Relay Service (“TRS”) database and sets a stable and predictable rate structure over the next several years. ZVRS also praises the FCC initiatives which eliminate waste, fraud and abuse from the VRS program.

ZVRS appreciates the FCC’s solicitous FNPRM inquiry about the impact of any competitive bidding on the functional equivalency mandate of the Americans with Disabilities Act (“ADA”).<sup>2</sup> Given that the FCC Order makes wholesale changes to VRS by establishing several structural and integral programs to be administered by non-provider third parties, ZVRS strongly recommends pausing any competitive bidding initiatives until the new FCC Order programs are implemented and their effect on VRS

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<sup>1</sup> *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51 and 03-123; FCC 13-82, 78 FR 40407, (“FCC Order” or “FNPRM”) (Released: June 10, 2013).

<sup>2</sup> Pub. L. No. 101-336, § 401, 104 Stat. 327, 366-69 (adding Section 225 to the Communications Act of 1934, as amended, 47 U.S.C. § 225).

are apparent and can be concretely assessed. ZVRS has serious concerns about the adverse impact of competitive bidding on the functional equivalency mandate and on its ability to remain a sustainable business in a fluctuating market which has yet to mature and become balanced so it is not dominated by a single provider as it is now.

In addition, ZVRS provides its views in response to other FNPRM inquiries, principally that we:

a) oppose any further reduction in the speed of answer (“SOA”) time as virtually impossible by technology and human service capabilities;

b) support permitting Video Interpreters (“VIs”) to remotely work to ensure their safety in certain circumstances and to promote the availability of VRS;

c) support permitting hearing individuals to obtain paid subscriptions to iTRS telephone numbers to protect against the unnecessary use of VRS by hearing signers and codifying the provision of iTRS numbers to VPs installed by entities in public spaces;

d) support the application of rigorous certification requirements to standalone interpreting providers to ensure the non-recurrence of previous fraud, waste and abuse issues relating to sub-scale entities doing business in VRS;

e) support the requirement of interoperability of video mail;

f) support the recovery of the actual and reasonable costs of complying with the new requirements of the FCC Order;

g) oppose the separation and contracting out of VRS emergency call handling as inefficient and adversely impacting the quality of interpreting these calls;

h) support the prohibition of non-competition agreements in VI employment contracts as inefficient and unlawful in some jurisdictions;

i) support the gradual cessation of “guest users” in VRS as no longer being necessary in light of current verification programs;

j) oppose increasing the number of provider filing requirements to the TRS administrator as excessively administratively burdensome;

k) support the reformulation of the TRS Fund Advisory Council to better support the TRS program; and

l) oppose as unnecessary and infringing on constitutional protections prohibiting the use of Customer Proprietary Network Information (“CPNI”) to communicate political and advocacy content to TRS users.

## **I. Introduction**

Any examination of VRS must begin with recognition that it has been a life changing experience for individuals who previously could not freely or equally access telecommunications because they primarily communicated in sign language. The Commission showed vision and profound commitment by authorizing VRS as a necessary service to accomplish the objectives of the ADA. The Commission put into place an evolving program structure, rules and a funding mechanism which created a thriving VRS market of dynamic consumer choices through competition, the inclusion of new and underserved populations, constant video technology innovation, and readily available and competent video interpreting. VRS expanded equal opportunity in the workplace and fuller participation in government and places of public accommodation for deaf and hard of hearing users. To be sure, there have been some significant trials and tribulations along the way, however VRS is an overwhelmingly successful story which serves as a model about how a civil right to accessible telecommunications can be

accomplished through incentivizing the private sector to compete and provide far greater diverse returns to persons with disabilities than a monolithic governmentally-run service could. As a result of the VRS program, the quality of lives and opportunities for deaf and hard of hearing signers are at a higher level than ever before.

ZVRS has been an integral part of the success of the VRS program. ZVRS originated from a deaf organization, became the first national provider of VRS and served as a principal catalyst of consumer choice of a variety of video communication devices and programs. ZVRS adapted several off-the-shelf hardware videophones (“VP”) for the VRS market and developed the first software VRS VPs for use on a PC, Mac, iPad, iPhone, Android mobile phone and Android Tablet. ZVRS was able to, after considerable investment in R&D, enable the installation of VPs at numerous businesses and governmental agencies, many of whom previously would not approve access to VRS because of firewall and security concerns. Given that the core of VRS is the effective delivery of human services, ZVRS committed to providing customers only high quality 100% certified VIs. ZVRS has conducted its business based on consumer and interpreter-centered principles, in significant part by including deaf employees and interpreters at all levels of the company, particularly senior management; ZVRS’ service and technology offerings are developed and implemented under the direction of deaf people and interpreters. The choices and competition available under the VRS program has enabled ZVRS to have dramatically and positively impacted the lives of deaf and hard of hearing individuals in providing quality interpreting and innovative technology options.

Regretfully, the tremendous strides and breakthroughs in VRS have been sullied by the fraud and abuse of some individuals and entities. ZVRS is fully supportive of the

Commission's efforts in eradicating waste, fraud and abuse within the VRS program to ensure that it remains sustainable for the long-term and appreciates that the FNPRM represents the Commission's vigilant and vigorous efforts to continue considering such reform measures. At the same time, reform efforts must also take into account the reality that despite its tremendous success for consumers, VRS is still far from fully functionally equivalent telecommunications experience for them. Unacceptably far too often, deaf people are stymied by structural, linguistic, cultural and technology barriers in using VRS, making telecommunications less accessible and effective for them as compared to hearing individuals using their telephones. VRS reform rulemaking such as those proposed in the FNPRM can and will affect the precepts of functional equivalency as applied to relay consumers. ZVRS agrees entirely with the Commission that any VRS initiatives must meet its continuing obligation to ensure the functional equivalence of TRS.<sup>3</sup> This is consistent with the position of stakeholder organizations that the ADA's mandate of functional equivalency must serve as the prevailing standard for assessing any action considered, proposed, or taken with respect to VRS.<sup>4</sup>

## **II. Competitive Bidding Would Adversely Impact the VRS Program**

Choice and competition are bedrock principles of Title IV of the ADA, which obligates each common carrier to make available TRS throughout the area in which it offers telephone services.<sup>5</sup> People with hearing and speech disabilities are vested with a

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<sup>3</sup> See e.g., FCC Order at paras. 5, 13. Although the Commission has taken the position that functional equivalency is met for a particular provider when its service complies with the applicable mandatory minimum standards, see e.g., FCC Order FN 38, the Commission is held to an entirely different standard in that it has the obligation to continually reassess and revise TRS regulations to ensure functional equivalency.

<sup>4</sup> See, Notice of *Ex Parte* Meeting, Consumer Groups' TRS Policy Statement - Functional Equivalency of Telecommunications Relay Services: Meeting the Mandate of the Americans with Disabilities Act, CG Docket Nos. 10-51 and 03-123, at pg. 1 (April 12, 2011).

<sup>5</sup> 47 U.S.C. § 225(c).

right under the ADA to access the range of telecommunications choices which people without those disabilities have. The ADA establishes that such choices encompass the variety of local exchange carriers which compete for the public's business. The principles of choice and competition embody the ADA objectives of providing people with disabilities equal opportunity to access the range of services and activities available to the public rather than segregated or governmentally-operated support. Thus under Title IV of the ADA, people with disabilities have the right to shop around for telecommunications service from a variety of providers just as they can access and shop at a variety of restaurants, hotels, stores and other retail establishments under Title III of the ADA or just as they can become employed at any business under Title I of the ADA rather than only being able to shop or obtain employment at a segregated facility "specially" provided for people with disabilities.

In implementing VRS, the Commission has been guided by its ADA mandate to ensure that the relay service is "available, to the extent possible and in the most efficient manner."<sup>6</sup> The Commission has robustly applied the ADA's mandate by providing VRS consumers the ability to choose from multiple qualified providers and their various product offerings. In doing so, the Commission has devised a structure which enables sustainable competition among VRS providers to drive innovation and service quality in order to fulfill another ADA mandate of ensuring that VRS is a functionally equivalent, nationwide access to telecommunications.<sup>7</sup> Any changes to the VRS program must progress toward the ADA requirement of functional equivalency even though the Commission factors in other, and sometimes not seamless, complementary goals and

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<sup>6</sup> 47 U.S.C. § 225(b)(1).

<sup>7</sup> 47 U.S.C. § 225(a)(3).

regulatory needs. ZVRS appreciates that the FNPRM is part of the Commission's effort to collect information about the impact of proposed changes on functional equivalency; however the Commission has an absolute obligation to determine whether the proposed change promotes functional equivalency before any decision is made to adopt it. The Commission must be mindful that any changes to the VRS program which effectively limit VRS consumers to one or two providers or to a predominantly government provided service will fail to meet the ADA mandate that consumers have access to functionally equivalent telecommunications.

**A. Competitive Pricing is Dangerously Premature**

The Commission in its FCC Order establishes several substantial new programs which will have fundamental effects on the form and manner that VRS is made available and used. These programs will take time to plan, develop and implement. Some involve administration under contract by non-provider third parties, which will require careful agency deliberations in collaboration with relay stakeholders to ensure that their design is appropriate and fully inclusive of them. Absolutely no one at this point or any time soon can accurately describe the impact that those new programs will have on the delivery and consumer experience of VRS.

Providers are consumed with implementing the myriad new compliance requirements of the FCC Order. While there is a modicum of rate stability for the next few years in the new compensation regime (taking into account the FCC caveat that those rates could change based on future information), any provider prediction at this point or anytime soon about how the new VRS programs will affect its business or the industry is, at best, their guesstimate and not yet nearly a reliable foundation for informed

policymaking. Providers are scrambling to prepare themselves to compete in the new VRS market once the programs are set into place. Undoubtedly, providers' business will be profoundly affected in unforeseeable ways once the changes to the VRS market caused by the new programs become apparent. Based on the trend of VRS reforms to date, it is likely that more providers will exit the business rather than any new entrants. The challenge of competing in the new VRS market will have consequential impact on innovation and quality of services. It is a serious error to believe that the necessary service and technology enhancements to close functional equivalency gaps can be sufficiently generated through government run initiatives without continuing adequate resources or incentives for providers to continue their VRS innovations and evolving quality of services.

Most critically, no one can at this point or anytime soon provide solid and reliable information about how these new programs will affect the functional equivalency of VRS. The Commission is certain in its FCC Order that the new programs will advance the functional equivalency goal and views these programs as incremental measures, however only the actual consumer experience in the new VRS market will provide the accurate data and metrics necessary to make informed VRS policy changes which are known to be consistent with and progress towards that goal. It is absolutely imperative that we do not risk significant harm to the VRS program by unnecessarily and prematurely considering competitive pricing in an unknown environment. ZVRS urges that we refrain from considering any competitive bidding initiatives until the effects of the new programs on the market are apparent and understood – all which will occur within a reasonable timeframe. Such pause, at minimum, will give providers the

opportunity to focus on the substantial adjustment of their business and consumers better accounted for and assimilated in the new regulatory environment. Different and better market dynamics such as greater interoperability and portability of VRS access technology or more providers reaching scale will be at play as a result of new FCC Order initiatives and subsequently allow for more accurate comment about different approaches to pricing. At this stage, the VRS program is well protected against fraud, abuse and waste by a reasonable and efficient multi-year rate structure, significant regulatory measures, more frequent auditing and heightened monitoring and enforcement. Thus there is no immediate compelling need to risk the stability of the VRS program by rushing into a radical change in utilizing competitive bidding prior to the new FCC Order rules and programs taking effect. ZVRS wholly agrees with former FCC Chief Economist Jonathan Baker and Office of Strategic Policy & Planning Director Paul de Sa's observation in the context of Broadband reform that "[a] regulator, like a firm that makes an investment decision under uncertainty, obtains an option value from delaying its decision. Waiting until uncertainty about the world is clarified avoids the possibility of locking-in what could turn out to be a suboptimal regulatory strategy, and thus avoids inducing firms to make sunk investments conditional on that strategy."<sup>8</sup> ZVRS urges the Commission to delay consideration of competitive bidding until uncertainty about the new VRS market is clarified.

**B. State TRS is Instructive about Competitive Bidding Drawbacks**

ZVRS previously stated in its response to the Commission's Notice of Inquiry<sup>9</sup>

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<sup>8</sup> The Year in Economics at the FCC: A National Plan for Broadband, Jonathan B. Baker and Paul de Sa, pgs. 6-7 (October 13, 2010).

<sup>9</sup> Notice of Inquiry ("NOI"), CG Docket 10-51, FCC 10-111, (June 28, 2010).

that is patently opposed to the implementation of a competitive-bidding approach to the provision of VRS.<sup>10</sup> ZVRS asserted in its NOI comments that an auction would have several possible effects: “(1) poor service due to less qualified interpreters (to whom they will pay reduced wages), who will typically be working to a higher capacity, increasing hold times and probably increasing call length (and consumer frustration) due to a lack of skill; (2) predatory pricing to eliminate long-term competition; or (3) provider collapse owing to ignorance of the total costs of running a VRS organization ..., and an inability to obtain additional capital.”<sup>11</sup> ZVRS commented that “a bidding system would stifle growth and innovation in the marketplace and obliterate smaller VRS providers that have a higher cost basis for their services.”<sup>12</sup> ZVRS also commented that “a bidding process would decimate consumer choice and undermine competition which currently works to drive costs down and alleviate fiscal strains to the Fund.”<sup>13</sup> ZVRS concluded that the “ultimate result [of the use of an auction] would essentially be akin to the FCC turning its back on the deaf and hard of hearing community after many years of progress.”<sup>14</sup>

ZVRS staunchly stands by its position in opposition of a competitive bidding/auction scheme as an absolute disincentive to the chosen providers to innovate and develop new technologies and services for the deaf and hard of hearing community, in contravention to the ADA mandates.<sup>15</sup> As described in greater detail below, competitive bidding would drive other VRS providers out of business in favor of the dominant provider and cause much poorer service which would seriously undermine

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<sup>10</sup> Comments of CSDVRS (“ZVRS NOI Comments”), LLC, CG Docket 10-51, at 48 (August 18, 2010).

<sup>11</sup> Id. at 49.

<sup>12</sup> Id. at 48.

<sup>13</sup> Id.

<sup>14</sup> Id. at 49.

<sup>15</sup> 47 U.S.C. § 225(a)(3) (functional equivalency); 47 U.S.C. § 225(d)(2) (prohibition against discouraging or impairing the development of improved technology in relay services).

functional equivalency. ZVRS has no doubt that competitive bidding would engender a “race to the bottom” in choosing cost savings over VRS technology and service.

ZVRS does not make its arguments against competitive bidding in the abstract, but grounds them in the actual and unambiguous experience of the severe limitations of state TRS programs which have uniformly utilized competitive bidding.<sup>16</sup> States select TRS vendors through an auction process which principally awards the contract to the lowest cost bidder. Competitive bidding in state TRS programs have resulted in little real competition, minimal relay service features and offerings, low-paid and poorly trained TRS communication assistants, virtually zero innovation or progress in service and related products and inadequate outreach to include their citizens, both deaf and hearing, in relay. Traditional TRS was a critical beginning step to connecting deaf people with telecommunications by providing basic service. However, more complex communications were largely stymied with traditional TRS even for those with good mastery of the English language due to an inadequate level of contracted service, which generally led to less clear, shorter and incomplete calls for users. Traditional TRS is instructive in that adequate quality services cannot be mandated through minimum standards alone, but absolutely must be driven by a robust variety of provider choices and their technology innovations. The resulting shortcomings of competitively selected providers caused a great number of deaf and hard of hearing people to cease using or transition away from traditional TRS even before VRS became a favored option due to the failure of traditional TRS to provide adequate quality services and products commensurate with necessary rather than minimal telecommunications uses and needs.

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<sup>16</sup> While the bulk of ZVRS’ comments about state TRS programs are based on TTY Relay (“traditional TRS”), they are largely also applicable to CapTel Relay.

In virtually every instance, the “winner(s)” of state TRS auctions locked into place technology and minimal level quality services for the duration of the contract since there is little incentive to innovate or provide higher quality service until the next cycle of requests for proposals (“RFP”) occurs. A few states make available additional allocations for outreach or optional incremental enhancements, but even that extra funding has not made a real difference in the TRS consumer experience and comes nowhere close to the dynamic technology innovations and service enhancements which have occurred in the VRS market. It is not the lack of ability to use sign language which makes traditional TRS significantly less than functionally equivalent, it is the inefficiencies of the service caused by the competitive bidding system. This is true for any form of intrastate relay service, not just those which relay TTY communications. In large part as a result of the ineffectiveness of competitively priced outcomes, the use of traditional TRS has sharply declined over time.

The experience of California as the only state which provides TRS through multi-vendors selected through an auction process is instructive in the argument about obtaining multiple winners in a competitive bidding process. In California, the selected large telecommunications vendor underbid at a low cost level which caused other competitors to withdraw from further participation. The California Public Utilities Commission had to resort to substantial staff efforts and resource expenditures to revise its TRS program to incent other providers to participate at a higher cost. California struggled to balance its TRS program on the scale and cost differences between a dominant and smaller provider. Nevertheless California consumers expressed great complaint about the inadequacy of choices and the erratic level of services. In subsequent

years, TRS providers either continued not to bid for California TRS or dropped out of the program altogether because the competitively set rate was unsustainable.

In the case of state TRS programs, it is significant that in the recent past no new providers have come forth to offer service. Competitive bidding for intrastate TRS has served to entrench a handful of providers and served as an effective bar for new entrants. This is the case even though the technology, the capital investment, and the labor pool are all much simpler for handling intrastate TRS than for VRS. The costs and logistics to equip and staff a national VRS service are monumentally greater than for intrastate TRS providers and therefore that much harder to achieve just to become a possible player in an uncertain competitive bidding for the VRS market. The competitive bidding experience in state TRS programs serves as inconvertible proof of ZVRS' NOI comment that such an approach "would decimate consumer choice and undermine competition."

**C. Competitive Bidding will Lock In a Monopoly**

ZVRS additionally commented in response to the Commission NOI that while it could be posited that competitive bidding would loosen the market dominance of Sorenson Communications Inc. ("Sorenson"), the reverse effect would be the dominant provider with an absolute cost advantage driven by its superior economies of scale underbidding the other providers with less scale and greater operating costs and thereby further entrenching its monopoly status.<sup>17</sup> With approximately 80% of the VRS market share, Sorenson is able to drive efficiencies and reduce costs in a manner not available to smaller providers, and is positioned to systematically submit the most competitive bid in a manner that no other provider could. An auction driven market imbalance would

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<sup>17</sup> ZVRS NOI Comments at 48.

ultimately inure to detriment of consumers, and undermine accessibility and choice of services.

This is especially important given that Sorenson has amassed a dominant market share as a result of systematic anticompetitive behavior. While the public record is replete with details about Sorenson's ongoing anticompetitive practices, the following excerpt of a letter to the Commission by Alfred Sonnenstrahl, former Executive Director of Telecommunications for the Deaf, Incorporated ("TDI"), provides a succinct history:

When Sorenson Communications learned about the VRS and the FCC's federally managed reimbursement program, they created the company's own VRS network and loaned their videophones, which were originally designed for telemedicine, to deaf and hard of hearing people at no cost with the understanding that these individuals were to use their services at least 30 minutes each month. These videophones were programmed to be operable only with Sorenson VRS, meaning that they were nonoperable with any other video relay services including the federal relay services. Also, they isolated their Internet network to create segregation from the videophones developed by competing companies, which thereby resulted in a monopoly.<sup>18</sup>

In 2006, the Commission finally acted to prohibit Sorenson's anticompetitive and anti-public safety practices by mandating an open network system and interoperability of VRS service and equipment.<sup>19</sup> However the damage was done and Sorenson asserted its dominance of the VRS market. The VPs utilized for VRS today are overwhelmingly Sorenson's proprietary VP200 hardware products. Sorenson utilizes the proprietary features and functions of its VP200s to promote a closed VRS network through its VP/service tie-in arrangement. Sorenson has continued a panoply of anticompetitive conduct to retain its monopoly, including rolling out new VP technology – nTouch – which has been documented as not being fully interoperable with pre-existing VRS

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<sup>18</sup> Comments of Alfred Sonnenstrahl, CG Docket No. 10-51 (Mar. 23, 2010).

<sup>19</sup> Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, ¶¶ 28-41 ("FCC's 2006 Interoperability Declaratory Ruling") (May 9, 2006).

access technology, including those which leverage off-the-shelf technology.<sup>20</sup> As a result, the Commission concluded that the lack of interoperability and portability have caused VRS users to become “locked in” and that the VRS access technology standards are insufficiently developed to facilitate VRS users’ access to off-the-shelf technology and ensuring that providers have a “real opportunity to compete.”<sup>21</sup> Although the Commission commendably addresses in its FCC Order the continuing interoperability issues of VRS access technology, the initial steps are voluntary, uncertain and without a definitive timeframe; undoubtedly the market imbalance caused by Sorenson’s closed network, non-interoperability and non-portability will continue for some time. The Commission cannot reward Sorenson by allowing it such unfair advantage in any competitive pricing scheme. More importantly, the Commission cannot penalize customers in an unbalanced market where a company which illegitimately attained a monopoly can use its advantages in an auction to squeeze competition and degrade choices.

Sorenson has suggested that it is imperative that any auction or bidding process include several “winners” and that in no event should any winners be guaranteed a specified share of the market. However, an open market in an auction or bidding scenario (i.e. no guarantee of market share) will only further entrench Sorenson as the dominant (and possibly eventually sole) VRS provider. As the imbalanced VRS market now stands, the *only* way an auction or bidding process could be successful is if there were a guaranteed allotment of market share to the winning bidders. However, such guaranteed shares will cause severe inefficiencies and disincentives in creating choke collars on

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<sup>20</sup> *Ex Parte* of CSDVRS, LLC., CG Docket No. 10-51 (“ZVRS December 2011 *Ex Parte*”) (December 5, 2011); Letter of Gallaudet University’s Technology Access Program on Video Relay Service interoperability, CG Docket Nos. 03-123 and 10-51, Attachments (August 9, 2012).

<sup>21</sup> Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51 and 03-123; FCC 11-184, 77 FR 4948, at Part III B (“FCC 2011 FNPRM”) (December 15, 2011).

competition and restricting consumer choices unpredictably and beyond their control. If a minimum number of minutes or a maximum amount of traffic set be somehow set by the Commission, such an approach would repeatedly deny consumers a choice from a range of providers and thus deny all relay stakeholders the benefits of service competition. As previously mentioned, the adverse experience with such traffic management in California's TRS program is instructive in this regard.

Sorenson has acknowledged that a reverse auction will result in a price equal to or slightly below the cost of the second lowest cost provider or cluster of providers. ZVRS submits that such a reduction of the overall rate to that of the "second most efficient provider" would not only serve to drive other providers out of business, but also provide Sorenson a substantial profit over its actual operating costs. Smaller VRS providers who could not provide services at the "second most efficient rate" would be forced to close their doors, and eventually the actual second most efficient provider itself would be forced out of the industry as it would be unable to make a profit comparable to Sorenson. In either event, a competitive bidding or reverse auction process would aggravate overcompensation to Sorenson unlike under the current well-tailored tiered rate structure.

If the Commission were to institute an auction approach, there is no possible way it could make it competitive for non-dominant providers and simultaneously reduce TRS Fund expenditures. The Commission must account for the cost differences between providers to retain competition and choices in any segment of the VRS market. The Commission would be required to increase compensation to sub-scale providers which must be retained in a competitive VRS market regardless of any carve out to be auctioned, such as those who provide uniquely superior technology and/or service

expertise, those who focus on linguistic minorities, those who are owned and operated by minorities, and those with specialized technology or services (e.g., for deaf-blind individuals). Providers will compete in an auction to the point of underbidding for a significant portion of the VRS market in order to stay viable as a provider. Once a handful of providers are entrenched through an auction system, they will drive up the costs of VRS as each provider would be incented to raise their bids in subsequent auction processes. Otherwise their business will fail or they will trap customers with minimal level service during the term of the contract by cutting costs in every respect. No rational business would be tempted to attempt entering such an entrenched market, permanently removing the cost and benefit advantages of any new competition. Again the permanent pool of TRS providers competing for state TRS programs is instructive. ZVRS believes that the Commission would ultimately be forced to abandon competitive bidding processes in favor of a structure akin to the current tiered rates in order to preserve consumers' ADA right to choice and competition.

Indeed it was not so long ago that Sorenson was adamantly opposed to selecting providers through an auction process stating that it would “destroy the competition that has allowed VRS to grow and would have disastrous consequences for VRS users.”<sup>22</sup> Sorenson reasoned that “[t]his perverse result would, like any monopoly grant, produce higher costs rather than efficiency. Moreover, with the monopoly in hand, the winning bidder would not have any incentive to spend money on providing a high quality of service, but instead would have incentives to shortchange users.”<sup>23</sup> Sorenson has provided no explanation why it abandoned its position and has become the sole

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<sup>22</sup> Comments of Sorenson Communications, Inc., CG Docket No. 03-123, at 57 (Oct. 30, 2006).

<sup>23</sup> Id.

proponent among relay stakeholders for an auction approach.<sup>24</sup>

The Commission cannot continue to allow the locked-in VRS market otherwise Sorenson would continue to reap the illegitimate fruit of its anti-competitive conduct in manipulating the VRS market primarily through its proprietary VPs. The Commission should not perpetuate or even reinforce this market dysfunction through an auction process. Instead the Commission should create a default provider selection as was ordered several years ago but the rule currently waived regarding the portability of VPs.<sup>25</sup> This time the Commission should augment that Order by requiring VRS providers to sustain all features and functions of VPs (especially the address book/contact list feature) even when the number associated with the VP is ported or the call routed to a different provider. Consumers have demanded the ability to independently use VPs without any loss of functionality merely because they choose a different provider. This approach will save millions of dollars and create a dramatically more competitive VRS market. It would be a boon for consumer as this shifts focus on quality interpreting compared to the currently locked-in VRS market as a result of providers controlling consumers through the use of proprietary VPs and their features.

#### **D. Competitive Bidding will Degrade Functional Equivalency**

A primary reason the Commission adopted VRS was that it represented a truly functionally equivalent form of telecommunications as envisaged by the ADA. VRS has been a tremendous success in that it has enabled greater opportunities for deaf people to participate in employment, education, commerce, recreation and other aspects of society

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<sup>24</sup> Reply Comments of CSDVRS, LLC, CG Docket No. 10-51 (“CSDVRS ... would direct the Commission’s attention to the fact that all of the certified VRS providers, except for Sorenson, as well as the consumer groups are patently opposed to a reverse auction system.”) (September 3, 2010); *see also* Redacted Sorenson *Ex Parte* Notice, CG Docket 10-123 (May 2, 2013).

<sup>25</sup> Order, CG Docket No. 03-123 and WC Docket No. 05-196, DA 13-1489 (July 1, 2013).

through accessible telecommunications. Although deaf people are experiencing the tremendous benefits of VRS, they will also describe a multitude of challenges that continue to make VRS not yet a fully functionally equivalent service.<sup>26</sup> In particular, the Commission rule which requires providers to handle incoming calls in the order they are received<sup>27</sup> has created a system of constant random assignment of VIs in responding to VRS calls. This indiscriminate approach has caused “cold” launches of calls where the consumer expectation is to be immediately connected with the calling party and thoroughly effective interpreting to transpire without the VI having advance knowledge of the consumer’s signing style, communication preferences, cultural or disability variances, any specialized terms and the context of the conversation. As a result, Consumer Groups have called for advancements in interpreting services which would enable “matching VRS CAs and callers [to] improve functional equivalency” and provide “consumers the ability to control the quality of their calls.”<sup>28</sup>

In such a context, it is obligatory to consider how competitive bidding could ultimately impact the necessary progress towards functional equivalency or even to maintain the current level of services and technological innovation. The historic cost-based VRS compensation methodology has served as the foundation for the tremendous

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<sup>26</sup> See e.g. Comments of Consumer Groups in Response to Public Notice Seeking Additional Comments on Structure and Practices of the Video Relay Services (VRS) Program and on Proposed VRS Compensation Rates, CG Docket Nos. 10-51 and 03-123, at pg. 2 (November 14, 2012).

<sup>27</sup> Public Notice, DA 05-141 (January 26, 2005). ZVRS vigorously dissents with the Commission’s decision not to allow skill-based routing at this time (FCC Order para. 180); such a decision was unnecessary and excessive regulating. ZVRS (along with consumers and interpreters) finds skill-based routing essential to advance functional equivalency and now that the Commission has blocked what appeared to be a natural eventual progression of interpreting services, ZVRS calls on the Commission to engage in rulemaking on this issue at its earliest opportunity.

<sup>28</sup> See *Ex Parte* of National Association of the Deaf, CG Docket No. 10-51; CG Docket No. 03-123 (February 15, 2012); See also *Ex Parte* of Telecommunications for the Deaf and Hard of Hearing, Inc., CG Docket No. 10-51; CG Docket No. 03-123 (February 15, 2012).

progress experienced in video interpreting services and technology. It has created choices as a result of providers seeking to differentiate from each other with service or technology enhancements which expanded the availability and utility of VRS to the public.

An auction system, in contrast, has as a paramount objective driving down the cost of the service to the lowest possible level. Even a moderate reduction to the current rate will substantially slash provider capability to innovate and refine service and technology offerings. In the best case scenario, where competitively set price is sufficiently sustainable for selected providers, the inherent cost considerations in competitive bidding will serve as a powerful incentive to provide relay customers with only the minimal level of service and technology, rather than seeking to provide them with superior service and technology to support a fully functionally equivalent calling experience. Service and technological innovation become secondary to offsetting rising market costs for interpreter labor and platform maintenance costs against a competitively fixed price.

With interpreters as the largest VRS cost, it can be expected that interpreting will be subjected to the greatest pressure to decrease costs in a competitive price environment, all the while providers are stressed in implementing and managing the new rules and operating requirements. Simply put, competitive bidding will lead to inferior interpreting as cost not quality becomes a paramount concern.<sup>29</sup> ZVRS finds it especially egregious that the Commission is proposing to discount the cost of service for the top numbers

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<sup>29</sup> ZVRS believes that such inferior interpreting will have a reverse effect on the efficiency of the TRS Fund in that interpreting VRS calls will take significantly longer because of the challenges in the VI understanding the deaf caller and translating exactly what is being communicated by ASL. If VRS calls take 10% longer to accomplish because of the inferior interpreting, that amounts to approximately \$54,000,000 additional TRS Fund reimbursements for VRS providers over a period of a year.

being called – which the Commission described as being to the “Social Security Administration..., Medicare, the Internal Revenue Service, state agencies such as the Florida Children and Families,” “large banks,” “technology companies” and “service providers,” - exactly the type of calling which requires the highest quality interpreting because they pertain to the health and welfare of the callers. Limiting the choice of providers for VRS callers only serves to greatly compound the problem in that they will no longer have other options to be able to get out from under the inferior interpreting. We should heed the comments of interpreter representatives expressing great concern to the Commission that further rate reductions will adversely impact the health of VIs and VRS quality by: “1) allowing the off-set of rates through lowered hiring standards and requirements and, 2) increasing productivity expectations of working CAs (e.g., limiting breaks, asking interpreters to work for unhealthy periods of time, and restricting the support of CDIs).”<sup>30</sup>

The uncertainties associated with competitive bidding will require VRS providers to discard their institutional experience with budgeting and allocating costs and usher in a chilling effect on their investments in VRS until tangible outcomes from the structural change are fully realized and understood. Such uncertainties will also drive investors out of the market and decrease capitalization opportunities. The net result of an auction system would be a reduction of competition (which otherwise benefits consumers), a loss of innovation, and ultimately drive the costs of VRS upward even though it might

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<sup>30</sup> Letter of the Registry of Interpreters for the Deaf, Inc. (“RID”), CG Docket Nos. 03-123 and 10-51 (November 14, 2012). In fact, the recent rate reductions have already started to adversely impact the work conditions of VIs according to the Communications Workers of America (“CWA”), *Ex Parte* Notice, CG Docket No. 10-51 (“CWA *Ex Parte*”) (July 22, 2013).

initially lower rates.<sup>31</sup>

The sole proponent among relay stakeholders of an auction system, Sorenson, has offered at best vague and unsubstantiated possibilities about how such an approach would enhance functional equivalency.<sup>32</sup> We should look instead to the experience of competitive bidding in state TRS program as instructive in its shortcomings in bringing about the necessary service and technological advancements. As the state TRS programs have conclusively shown, achieving functional equivalency through setting minimum standards is a wholly inadequate substitute for the advancements created by a dynamic market such as the one now in place for VRS. Further, ZVRS agrees with Sorenson that winning bidders with a guaranteed market share (in order to ameliorate the market imbalance caused by the monopoly provider) would not only lead to a loss of consumer choices, it would also remove the incentive to provide adequate service and would instead result in lower quality service to customers in order to increase their earnings.<sup>33</sup>

Accordingly, any competitive bidding or auction scheme should be paused in the interests of ensuring functional equivalency. The new FCC Order programs will drive better data about VRS users and thus will enable the Commission to more effectively and accurately determine a rate structure which adequately sustains providers' ability to provide and progress functionally equivalent services. Adequate time should be allowed

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<sup>31</sup> See e.g. Comments in Response to Notice of Inquiry, Telecommunications for the Deaf and Hard of Hearing, Association of Late-Deafened Adults, Inc., National Association for the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, American Association of the Deaf-Blind, CG Docket 10-51, pgs. 28-29 (August 18, 2010).

<sup>32</sup> Comments of Sorenson Communications, CG Docket 10-51 at pgs. 18 and 23 (August 18, 2010). We also note that Sorenson has erroneously argued the ADA mandate that TRS be made available "in the most efficient manner" in the context of fiscal efficiency. Section 225(b)(1) makes clear that the term efficient goes towards functional equivalence, "to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation..."

<sup>33</sup> Id at 23.

for the attainment of sufficient market volume and scale by non-dominant providers in a locked-in VRS program prior to any radical change in how they compete price-wise. The proposed restructured TRS advisory committee should be tasked to provide the Commission their recommendations as to functional equivalency metrics as an essential component of any competitive bidding process.

**E. Gauging a Neutral VRS Platform as a Price Benchmark is Premature**

ZVRS professes its great perplexity about the Commission proceeding at this time to consider and reaching a tentative conclusion that the costs of the neutral video communication service provider will serve as a benchmark for setting VRS compensation rates prior to the issuance of a Request For Proposals for a provider, prior to entities bidding, prior to a build out, prior to its functioning, and most critically, prior to any actual consumer use of the neutral VRS platform. The VRS provider experience is that it cost a significant amount of time, resources and expertise to build a technology platform for VRS. The VRS platform is never static but requires involved management and expenditures to resolve issues and incorporate evolving technology. Even so, a VRS platform will fail if it does not meet consumer needs. A neutral VRS platform provider is unprecedented and therefore its experience and outcomes are absolutely uncertain at this time. It is unnecessarily premature to draw any conclusion at this time about the actual functioning of the neutral VRS platform provider and its costs. At this point no one can provide the Commission with the input it must have to make an informed and empirically-based reasoned policy decision. ZVRS believes that the neutral VRS platform will set a benchmark for interoperability but only incur a fraction of a full service VRS providers' network and service costs. ZVRS urges deferring this

consideration until after the neutral VRS platform is fully operating and its functions and costs are apparent.

If the Commission insists on proceeding on this issue at this time, ZVRS goes on the record as strongly opposing the Commission's tentative conclusion. As extensively discussed with the Commission, providing VRS involves significant effort and resources beyond the cost of video interpreters and the technology to make it available to consumers. ZVRS has spent considerable time outlining its organization, which includes among other things platform engineering and support, CPE engineering, finance and legal support, customer and installation support, outreach, and human resources.<sup>34</sup> Operating as a VRS provider requires real estate expenditures, network connections and quality backbone networks as well as multiple high-end technology products and the team to support them, all of which must be factored into compensation to make VRS available. Point to point video calling, the substantial bulk of consumer use of VRS provider technology and services, also require infrastructure support. Since VRS providers compete to differentiate themselves and provide greater options for consumers to draw their business, their infrastructure investments and costs will be dramatically different from that of a neutral VRS platform provider.

In addition, the provision of VRS requires significant consumer interaction which a neutral VRS platform provider need not engage in. The Commission is aware of the significant cost of VRS customer services in the outreach, education, installation, training and troubleshooting in their use of VRS. VRS providers have found individuals with limited language proficiency or income to need intensive training in how to use VRS

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<sup>34</sup> See, e.g. *Ex Partes* of CSDVRS, LLC, CG Docket Nos. 10-51(PowerPoint presentations detailing corporate costs) (September 2, 2011, February 1, 2011 and April 29, 2010).

technology and services. VRS consumers also are of the full range of cultural and disability diversity which require different and involved VRS provider assistance to access and use VRS. Critically, there is no VRS without a videophone and such equipment costs including its provisioning, installment, training, troubleshooting and regular repair and replacement necessarily have to be part of the business of VRS. These are issues and associated costs that a neutral VRS platform provider will be much less concerned with if at all.

The Commission has the obligation to properly resource VRS providers to make possible competition and choices consistent with the ADA mandates. An overreliance on the costs of a neutral VRS platform provider will serve to dumb down technology and service since providers will become incented to match the inert VRS platform costs rather than risk capital on innovation and enhancements above and beyond the technology and services offered by the neutral VRS platform provider. ZVRS supported the disaggregation of VRS technology and interpreting services, but only with respect to the VRS companies continuing to provide the technology and services. ZVRS is concerned about the shift to a government-managed VRS platform and the consequential impact on functional equivalency let alone technology innovation and quality services. ZVRS takes the position that, until conclusively shown otherwise, the costs of such a VRS platform will be significantly different from those of VRS providers and inadequate to fully support accessible (not minimal) telecommunications. Thus ZVRS opposes the Commission's tentative conclusion to use the costs of a neutral VRS platform provider as

a baseline and respectfully requests the Commission to continue with a rate structure which properly compensates providers for the reasonable costs of providing VRS.<sup>35</sup>

We additionally note that any successful use of a neutral platform in a new VRS market will depend on the transition to off-the-shelf equipment to ensure that VRS remains available to everyone. The use of proprietary VPs by Sorenson has been identified by the Commission as a cause of the VRS market dysfunction.<sup>36</sup> The transition to off-the-shelf hardware will lead to more and better equipment options that consumers can independently acquire and use with a neutral VRS platform. This will enable users to choose their VRS hardware based on pro-competitive metrics rather than being locked into using a single VRS provider. ZVRS urges the Commission to stop funding the closed network in the reformed VRS market by issuing a clear directive which effectuates a transition to off-the shelf equipment. We believe that a Commission mandated transition to off-the-shelf hardware will provide VRS users with a consumer directed and self-determined telecommunication experience in the true spirit of the ADA.

### **III. Speed of Answer Should Remain As Is**

The FCC Order established significantly lower VRS speed of answer (“SOA”) requirements to be measured on a daily basis. The Commission now proposes and seeks comment on the following SOA formula: (Calls unanswered in 30 seconds or less + calls answered in 30 seconds or less)/(all calls (unanswered and answered)). ZVRS

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<sup>35</sup> We note the FCC’s Office of the Inspector General’s determination that ZVRS was properly compensated at the current rates. ZVRS Letter from Jeff Rosen, General Counsel, CSDVRS, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51, at 3 (“The 2012 preliminary audit report conducted on behalf of the Commission’s Office of Inspector General indicates that ZVRS was not overcompensated for VRS services provided in 2011, concluding that ‘TRS funds received by CSDVRS for VRS were for the reasonable costs of providing VRS.’”) (Dec. 17, 2012).

<sup>36</sup> FCC 2011 FNPRM at pgs 16-19 and 41-48.

understands this formula as codifying what is now in use in measuring SOA. As such, ZVRS has no issues with the above formula.

Alternatively the Commission proposes and seeks comment on a SOA formula which does not count unanswered calls abandoned less than 30 seconds after being dialed:  $(\text{Calls answered in 30 seconds or less}) / (\text{All calls answered by a CA} + \text{Calls abandoned after more than 30 seconds})$ . ZVRS strongly disagrees with the alternative formula. The proposal to remove unanswered calls for which the caller ended the call prior to the threshold time means that a huge number of calls would not be considered even though providers “handled” them prior to them being abandoned within the threshold. As such, providers would get no “credit” for unanswered calls, while being penalized (still in the denominator) for any calls which exceed the threshold. The alternative formula is unbalanced in that it penalizes providers for unanswered calls within the threshold, making it much more difficult, if not impossible to achieve the required SOA. As an example of a SOA challenge, one reason for long abandoned calls is not necessarily that providers cannot answer them within the threshold, but that the caller may have requested – and be willing to wait additional time for - a different service such as a Spanish-fluent agent. In order to meet the standard under the alternative formula, providers might need to do away with specialized queues such as Spanish interpretation. Thus if the Commission wishes to reconsider the formula, then the standard must be re-evaluated as well.

The current calculation which looks at how many of the total calls were handled, either answered or unanswered, in less than some amount of time, is the more appropriate and logical way to measure SOA compliance. The SOA calculation should take into

account all calls, as it does now, or looks at the percentage of answered calls to all answered calls and the percentage of unanswered calls to all unanswered calls, each separately.

ZVRS also strongly opposes any further reduction of the SOA, as inquired in the FNPRM about a standard which requires calls to be answered 85 percent of the time within 10 seconds. It is imperative to understand that there is in each instance a several seconds delay (which ZVRS has estimated to be as high as 7 seconds) in the time between the time a consumer places a VRS call, the call being routed through the automatic call distribution (“ACD”) and being picked up by a VI.<sup>37</sup> This technology process is beyond ZVRS’ capacity to reduce and thus makes it virtually impossible at this time to fulfill an even lower SOA standard.

It is also imperative to understand that providers as well established as ZVRS will be significantly challenged by the 85/30 standard, particularly given the change to the SOA’s measurement on a daily basis. This standard will drive up provider costs at a time the lower compensation rates are in effect. To meet the new 85/30 standard, ZVRS will have to significantly increase staffing levels (including the labor intensive process of recruiting, qualifying, hiring, training and retaining). In the hypothetical example of a provider which needed to staff at a minimum 959 hours per day with a peak of 95 seats to satisfy an 80/120 SOA standard in handling a certain call volume, the same provider would need to increase staffing to schedule a total of 1003 hours with a peak of 98 seats to handle the same call volume within an 85/60 SOA standard. With respect to an 85/30 SOA standard, the provider would need to schedule a total of 1027 hours with a peak of 100 seats to handle the same call volume within the SOA, representing an overall

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<sup>37</sup> See e.g. *CWA Ex Parte* at pgs. 3-4.

increase of 6% of the required video interpreting workforce in a one year period. If the SOA was lowered to 85/10, the provider would need to schedule a total of 1046 hours with a peak of 102 seats, to handle the same call volume within the SOA, representing an overall increase of 9% in VI labor costs only. The cost increase shown in the hypothetical does not take into account any related support expense, facility expense and all other related expense of maintaining VI operations. ZVRS believes that the VRS market as it is now constituted with resulting competition and choices has done an awesome job of providing the optimum level of answer time and it is our perception that consumer complaints in this area have already dropped dramatically.

#### **IV. Remote Interpreting Supports Greater Availability and Safety Goals**

ZVRS appreciates the Commission including in its FNPRM ZVRS' petition to permit remote interpreting for a maximum of 10% of its VIs on active duty and 10% of its total call volume serviced.<sup>38</sup> As we explained, this allowance would benefit the public interest in that it would ensure interpreter safety in reducing the need for their travel to call centers for overnight hours (which ZVRS defines as between 7 pm and 7 am) and during hazardous weather or other unsafe or disruptive conditions.<sup>39</sup> The public interest is also served when providers have the capability to maintain a consistent speed of answer of VRS calls (a functional equivalency metric) by scheduling VIs to work remotely on short notice during unusual circumstances which affect call centers and their staff such as weather, network, power or facility issues.<sup>40</sup> In its discussions with the Commission, ZVRS indicated that it was amenable to a limitation of remote interpreting to overnight

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<sup>38</sup> CSDVRS, LLC Petition for Temporary Waiver, CG Docket No. 10-51 ("ZVRS Remote Interpreting Petition) (August 12, 2011).

<sup>39</sup> Id. at pgs. 2-4.

<sup>40</sup> Id. at pg. 5.

shifts, and at the same time expressed that greater flexibility would support safety and functional equivalency goals by enabling the scheduling of remote interpreting to ensure consistent coverage during unforeseeable circumstances occurring at other times such as severe weather conditions.<sup>41</sup>

ZVRS has described in detail how its remote interpreting program (called Secure Virtual Call Centers (“SVCC”)) incorporated core functions and operating requirements which achieved full compliance with TRS mandatory minimum standards and utilized rigorous monitoring of VI conduct to prevent fraud.<sup>42</sup> We commend to the Commission the following SVCC requirements for consideration in adopting as rules in this area:

- All of the SVCC VIs were certified members of RID and had worked in call centers for three years or more.
- VIs were accepted into SVCC only after meeting strict qualification requirements that determine their eligibility for the program. For example, they had to satisfy strict standards for an at home office, understood the mandate of providing confidential and uninterrupted services from their remote location, and had obtained the recommendation of their current center manager regarding their ability to work independently and to be a good fit for the program.

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<sup>41</sup> CSDVRS’ *Ex Parte* Notice, CG Docket No. 10-51 (August 9, 2013).

<sup>42</sup> *See*, Comments of CSDVRS, CG Docket 10-51, pp. 5-8 (June 10, 2010) (describing strict VI eligibility, SVCC set up, call handling including 911 calls, supervision, monitoring and virtual call center parameters); CSDVRS *Ex Parte* Notice, CG Docket 10-51 (January 7, 2011) (demonstration of SVCC functionalities and security measures); CSDVRS *Ex Parte* Notice, CG Docket 10-51 (February 18, 2011) (discussing the operations of the SVCC and their impact in maintaining consistent VRS during severe weather conditions); and Letter from CSDVRS to F.C.C., CG Docket 10-51, pgs. 3-4 (March 14, 2011) (describing operations and call handling procedures which ensure privacy, confidentiality, redundancy and failsafe 911 call handling).

- SVCC VIs worked in separate locked rooms with identical security parameters to those of a traditional call center, supplemented with remote monitoring, which created an equivalent level of confidentiality to that of a traditional call center.
- SVCC VIs were remotely monitored by a dedicated operational manager using monitoring software to ensure adherence to all TRS rules. SVCC VIs were monitored whenever they were logged in. Each and every button clicked by the VI was recorded and viewable by supervisors and upper management. Access to an external camera was available to the supervisor and upper management team. Random checks via the external camera were done by upper management, while the supervisor checked in regularly. Management provided immediate guidance to a VI as needed. Management also observed employees to facilitate proper confidentiality. If access to these monitoring systems was altered in any way, the VI would be immediately terminated from the program.
- ZVRS technology at the SVCC allowed VIs to process any call, including emergency calls, and provided the ability to transfer a fully connected call to or from a call center if additional support is needed. The call routing and skill set technology was identical for SVCC as for a standard call center. VRS calls were routed to the next available interpreter including those working at SVCCs. Emergency calls were handled by SVCC VIs in the same manner as those at call centers, with immediate backup and remote supervisor assistance readily available.
- Fraud prevention was thoroughly addressed in the SVCC program by employing a rigorous eligibility process for VIs, the continuous monitoring of VIs and the

automatic recording of VI clicks and other technology platform operations for all calls (the content of the relayed conversation was not recorded), from their beginning to the end.

Sorenson is the only party of record opposing ZVRS' remote interpreting petition, primarily reiterating the Commission's rationale for the rule instead of drawing on their interpreting experiences in explaining their disagreement with ZVRS' proposed approach even though they were concerned about the need to ensure the safety and adequate coverage in the provision of VRS.<sup>43</sup> ZVRS responded that it addressed Commission concerns by demonstrating that its SVCC program provides for the safety of VRS interpreters within the parameters of a fully compliant, secure, redundant and monitored environment and promotes greater functional equivalency to ensure uninterrupted and consistent coverage during extraordinary circumstances such as severe weather conditions.<sup>44</sup> ZVRS pointed out that the advantageous scale of Sorenson as the largest provider and its greater geographic range allowed it greater flexibility in staffing overnight hours and during geographically specific hazardous conditions.<sup>45</sup> ZVRS commented that it had developed its position on virtual video interpreting services in careful consultancy with deaf/hard of hearing consumer and interpreter organizations<sup>46</sup> and again discussed this issue with these organizations prior to its petition for a waiver to

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<sup>43</sup> Opposition of Sorenson Communications, Inc. to Petition for Temporary Waiver of CSDVRS, LLC., CG Docket 10-51 (August 16, 2011).

<sup>44</sup> CSDVRS, LLC. Reply to Opposition to Petition for Temporary Waiver, CG Docket No. 10-51 ("ZVRS Reply") (August 19, 2011).

<sup>45</sup> *Id.* at pg. 4.

<sup>46</sup> *See* Letter from CSDVRS, CG Docket 10-51, at pg. 3 (March 14, 2011), *See also* Letter from Registry of Interpreters for the Deaf, CG Docket No. 03-123, ("[c]omments from interpreters, VRS providers and deaf and hard of hearing consumers also show that use of well regulated and supported home offices have been an effective way to staff VRS.") (May 25, 2010).

truly ensure that its position was fully informed by their input and experiences.<sup>47</sup> Accordingly ZVRS urges the Commission to restore the ability to provide secure and compliant remote interpreting to promote interpreter safety and functional equivalency aims. Providers should have the capability to schedule remote interpreters beyond overnight shifts, but also for unforeseeable circumstances which affect the availability of its VIs such as geographically widespread hazardous weather conditions.<sup>48</sup> Additionally, ZVRS is now of the view that remote interpreting for a maximum of 20% of its VIs on active duty and 20% of its total call volume serviced should be permitted to ensure that the availability of VIs working remotely is not artificially capped and rendered ineffective for smaller providers and to allow their sustained use in cases where there is prolonged or multiple recurring emergency circumstances.

#### **V. Broader Access to iTRS Numbers is a Functional Equivalency Goal**

ZVRS was a strong proponent of an enhanced iTRS database that the Commission ultimately adopted in its FCC Order, for several reasons including “the exciting promise of the iTRS numbering directory evolving to an universally designed telecommunications database which eventually allows the registration of anyone’s video phone number, whether they have a disability or not.”<sup>49</sup> This outcome would be consistent with the ADA’s integration mandate for telecommunications rather than using iTRS to perpetuate a segregated “special needs” population. Doing so would enable functional equivalency in that it would enable anyone – hearing or deaf – with any type of video phone readily

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<sup>47</sup> ZVRS Reply at pgs. 3-4.

<sup>48</sup> ZVRS notes that the TRS rule which requires reporting of service interruptions could be modified to require reporting in cases where providers needed to schedule remote VIs in order to avoid such interruptions.

<sup>49</sup> Comments of CSDVRS, LLC. CG Docket Nos. 10-51 and 03-123, at pgs. 31-32 (“ZVRS FNPRM comments”) (March 9, 2012).

connect with each other, a telecommunications environment which does not exist today unlike for audio phones. Deaf people can once again be technology pioneers with their VP use in the same way they were as one of the early adopters of pagers or captioning before their use became prevalent in the general public.

ZVRS fully supports the provision of iTRS numbers to hearing individuals on a paid subscription basis. This would significantly reduce waste, fraud and abuse by allowing a sizable contingent of hearing people who know sign language to communicate directly with deaf people without requiring the intervention of VRS.<sup>50</sup> To comply with the TRS rule limiting iTRS numbers to eligible users, ZVRS has employed a rigorous verification process supplemented by careful on the ground installation of equipment, outreach, education, training and monitoring to screen out hearing ASL users who desperately want to use VPs to directly communicate with deaf people for a variety of legitimate reasons, such as hearing teachers needing to support both deaf students and parents and hearing family and significant others of deaf people in confinement situations (e.g. hospitals, assisted living and skilled nursing facilities with restrictive networks to meet security and HIPPA requirements). Nevertheless ZVRS is troubled by the many instances it encounters in the field of hearing people accessing VPs made available to them by other providers or their subterfuge in obtaining provider VPs simply so they can directly and interoperably communicate with deaf people regardless of the type of

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<sup>50</sup> While the exact number of deaf ASL users are not known, they were estimated to be as high as 500,000 to 2 million Americans. *A journey into the deaf-world*, Harlan Lane, Robert Hoffmeister, and Ben Bahan (San Diego, Calif.: DawnSignPress, 1996, p.42). Also *How Many People Use ASL in the United States? Why Estimates Need Updating*, Mitchell, Young, Bachleda, and Karchmer of the Gallaudet Research Institute ([http://research.gallaudet.edu/Publications/ASL\\_Users.pdf](http://research.gallaudet.edu/Publications/ASL_Users.pdf))( February 21, 2005). The number of family, friends, service professionals, work colleagues who use ASL to communicate with deaf people are exponentially greater. A USATODAY article reported that ASL was close to becoming the third-most studied foreign language at American higher education institutions ([http://usatoday30.usatoday.com/news/education/2010-12-08-1Alanguages08\\_ST\\_N.htm](http://usatoday30.usatoday.com/news/education/2010-12-08-1Alanguages08_ST_N.htm)) (December 8, 2010).

provider distributed VP they use. The current rule is not conducive to promoting the integrity of the VRS program including point to point video calls and must be updated to allow registered hearing individuals paid subscriptions to iTRS numbers so that no one needs to break the law in order to facilitate legitimate direct telecommunications. The cost benefit of allowing ASL literate hearing people to use point-to-point services is significant. Allowing a hearing person to communicate directly with a deaf person using only the provider technology network is in order of magnitude less expensive than using an interpreter.

In addition, the restriction on iTRS numbers has adversely impacted the availability of relay services to the extent possible and in the most efficient manner by being a barrier to the installation of VRS access technology in public spaces and confinement circumstances. Any VP in a public space must be associated with an eligible deaf or hard of hearing person to have the number associated with it permissibly entered in the iTRS numbering database and thereby enabling VRS use, interoperable point to point video calling and 911 services. This has created challenges when there are no deaf people permanently located at the public space. As a result, there are strange circumstances such as federal agencies “assigning” the number of a VP in federal building lobbies to one of their deaf employees or the publicly installed VP being one of multiple numbers assigned to a deaf employee working for a provider. The Commission has not enforced in the area of public VPs because it rightly does not want to discourage the availability of VPs in public spaces. The ADA requirements of accessible workplaces (outside of individual employee offices), government entities, places of public accommodation and specialized confinement situations (hospitals, assisted living and

skilled nursing facilities with restrictive networks to meet security and HIPPA requirements) cannot be fully achieved without the greater prevalence of publicly available VPs in those spaces. Now is the time for the Commission take an affirmative step and bring structure and order to the issue.

The challenge of assigning iTRS numbers to public space VPs pose an unacceptable risk to the health, welfare and safety of people. For example, deaf patients in hospitals, emergency or other health care facilities find it nearly impossible to readily access the growing number of mobile devices at those facilities such as iPads to use to make VRS or point to point calls to their families, concerned others and outside professionals regarding their circumstances. It is unreasonable and even discriminatory to require that health impaired deaf people to first download VRS access technology on unfamiliar devices before they are able to access telecommunications. With the advent of electronic health records requiring robust network connectivity, medical facilities are now familiar and capable with technology which can support VPs for deaf people and desire to make VPs available on their computer or mobile devices used as part of medical services provided to patients, but are stymied by the requirement that the VRS access technology require iTRS numbers assigned to an eligible individual to become functional. On the other hand, hearing individuals in medical facilities are unnecessarily barred from making point to point video calls to directly engage and perhaps reassure their deaf family members or significant others. The barrier described in the example of a medical context equally applies to a number of other settings such as detention facilities, lodging, libraries, employer multi-purpose spaces, retail stores, educational institutions,

governmental services, places of transportation and any other place that deaf people have the occasion to be present at and need to make a video call using a public VP.

The Commission should allow VRS providers the ability to provision iTRS numbers to hearing individuals for a paid subscription. The Commission should require that VRS providers charge hearing individuals, at minimum, the costs of providing that service. The costs of such service should be freely set by VRS providers, but substantiated on an individual provider cost basis as reported to the TRS Fund administrator. Due to their expertise, experience and customer service workforce, VRS providers are in the best position to provide hearing individuals and entities with iTRS numbers in compliance with the TRS rules. iTRS numbers provisioned to hearing individuals and entities should be placed in the iTRS database by VRS providers and flagged as non-compensable. ZVRS does not understand the apparent suggestion in the FNPRM that providers must be integrated with the neutral video communication service provider in order to do so, and wishes to clarify that any necessary provider integration is actually with the central TRS user database rather than the neutral VRS platform. ZVRS does not support allowing the neutral video communication service provider selling such subscriptions, not only would such a provider lack the appropriate customer service personnel, it should not engage in competition with other telecommunications providers. Rather, the role and scope of engagement of the neutral provider should be akin to those of the TRS Fund or iTRS database administrators.

The Commission should also codify as a TRS rule the current practice of providers provisioning iTRS numbers to VPs which are installed for the general public

use at entities' place of business or operations.<sup>51</sup> We emphasize that there should be no issue with deaf people using public space VPs including confined environments and their minutes compensable from the TRS Fund as is the case now. Individuals who seek to use VRS through VPs made available by entities or at public spaces should be required to first provide their name (or unique identifier when the TRS-URD database is operating) or personal iTRS number to the VI for verification using the iTRS database of the caller's eligibility to use VRS.<sup>52</sup> At some point soon VRS access technology will evolve to allow eligible VRS users to key in a PIN on a public VP to be able to automatically connect with a dialed number rather than being pre-screened by a VI. The process to use VP in public spaces is readily available to be implemented, the Commission must move forward in establishing a rule which enables providers to assign iTRS numbers to VPs which are deployed in public spaces and confinement situations subject to safeguards such as flagging and monitoring.

#### **VI. Certified VRS Providers Must be Held to a Rigorous Standard**

ZVRS is of the view that the stringent new TRS rules which establish detailed requirements for VRS applicants or providers to become certified<sup>53</sup> has been an instrumental step in screening out drastically below scale or otherwise unfit entities and consequentially reducing fraud, waste and abuse in the VRS program. ZVRS appreciates that it was the first (and so far only) VRS provider fully certified under the new TRS rules.<sup>54</sup> In so far as the FNPRM inquiry regarding any changes to the certification rules

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<sup>51</sup> We note that this is different than VPs used by deaf people at their places of employment, such VPs should continue to be associated with the deaf employee and continue to be handled and their VRS minutes compensated as it is now.

<sup>52</sup> ZVRS reminds the Commission that this process will have an impact on the speed of answer.

<sup>53</sup> 64 C.F.R. § 64.606(a)(2)(ii)(A).

<sup>54</sup> Consumer and Governmental Affairs Bureau Public Notice, CG Docket No. 10-51, DA 12-1886 (November 20, 2012).

for full service VRS providers, ZVRS is not certain why other operating VRS providers have yet to receive a determination regarding their certification applications and suspects it may be in significant part due to the limited Commission resources to process applications and verify the information. If that is indeed the case, ZVRS would think it beneficial to complete the review of pending applications prior to making any changes to the certification rules. ZVRS would not want to see the importance of certification diminished by allowing VRS providers to operate without them for a significant period of time.

The certification rules which, among other things, require proof of call center technology and equipment including ACD, has proven to be a significant entry threshold for the VRS market and has beneficially deterred the inexperienced, underfunded and unethical entities from participating. ZVRS agrees with the concern that removing or reducing the significant cost entry threshold for standalone VRS providers which use a neutral VRS platform and thus do not have to take on significant infrastructure costs potentially recreates the environment where a host of entities attempt prospecting the VRS market to the detriment of compliance and consistency of relay services. ZVRS supports establishing additional rigorous requirements for standalone providers including the areas of management structure, finance, call handling infrastructure, technical capacity, interpreter certification and experience and a demonstrated ability to handle nationwide 24/7 call volume.

ZVRS supports requiring standalone providers to have at least 3 years of expertise and experience in operating interpreting services, a minimum of \$2,000,000 of gross revenue each year and a staff of a minimum of 50 full time interpreters to demonstrate

that the provider has sufficient scale to participate in the VRS business and will not need to resort to minute generating schemes in order to remain solvent. The Commission should require that standalone provider certification applicants produce financial documents and at least 2 clear audits from an accredited accounting firm which evince their fiscal stability. The Commission should also require that such applicants have at least 2 years experience in providing video remote interpreting (“VRI”) as part of proof of their fitness to conduct VRS. ZVRS supports requiring standalone providers to have previous experience in the provision of TRS or VRS as inquired in the FNPRM, and would encourage the Commission to permit, where appropriate, waivers of TRS rule 47 C.F.R. § 64.604(c)(5)(iii)(N)(1)(iii) so that the standalone provider may acquire the necessary experience by providing subcontracted interpreting services to an eligible VRS provider. ZVRS has previously urged the Commission to be sensitive about the impact of VRS on community interpreting and its absorption of the available pool into large call centers.<sup>55</sup> As ZVRS previously mentioned, we view the neutral video communications provider serving the VRS program in the same capacity and manner as the TRS Fund and iTRS database administrators and thus do not find it appropriate for the neutral provider to be involved in the formation, development and operation of a standalone interpreting provider’s business.

## **VII. Interoperable Video Mail is Essential for Functional Equivalency**

In meetings with the Commission several years ago, ZVRS raised the non-interoperability of Sorenson’s nTouch products in that they cannot receive a video

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<sup>55</sup> Follow up Letter to CSDVRS Notice of Ex Parte, CG Docket No. 10-51, at pgs. 1-2 (citing a survey by National Consortium of Interpreter Education Centers, Phase I Deaf Consumer Needs Assessment Final Report in which 45% of the respondents indicated a view that VRS has made it more difficult for them to obtain in-person interpreters to fulfill their needs (September 2008)) (“Follow up Letter to CSDVRS Notice of Ex Parte”) (March 14, 2011).

message or mail from a user of a non-Sorenson VP or program.<sup>56</sup> Sorenson deliberately engineered the non-interoperability of its video mail by using a subpar approach in which the user records the video message locally on the device then uploads the video clip to Sorenson, resulting in a non-interoperable essential VP function in violation of the FCC's 2006 Interoperability Declaratory Ruling.<sup>57</sup> ZVRS and other providers utilize a more flexible approach which allows any VP to leave a video mail. ZVRS finds sadly ludicrous Sorenson's defense that "there is no industry standard for implementing video mail."<sup>58</sup> If that was a legitimate excuse, then the current lack of any VRS industry technology standards would justify no interoperability at all between providers' service and provisioned VPs. VRS providers have spent significant funds engineering the interoperability of their products and its core features before bringing them to the VRS market. It is inequitable not to hold Sorenson to the same interoperability requirements for its products and core features including video mail, especially given that Sorenson has the capacity to promptly engineer their interoperability.

We are beyond any question that interoperable video mail is a functional equivalency requirement. Virtually the entire VRS consumer market has video mail capability made available by a default provider. The non-interoperability of Sorenson video mail system with those of other providers have harmed VRS consumers by creating an unlawful barrier in their point to point calling with other VRS provider video mail systems. This non-interoperability is an anticompetitive practice of Sorenson as a dominant provider seeking to retain its "locked-in" market. The next two largest providers, ZVRS and Purple Communications, Inc., have no issue with leaving video

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<sup>56</sup> See e.g. ZVRS December 2011 Ex Parte at pg. 2.

<sup>57</sup> Id.

<sup>58</sup> Ex Parte of Sorenson, CG Docket No, 03-123 (May 1, 2013).

mail on each other's systems. ZVRS customers have frequently complained about the inability to leave video mail with Sorenson customers and many of them specified this inability as a reason for porting their ZVRS numbers to Sorenson given that the great majority of VPs in use are Sorenson's. Given the prevalence of ZVRS VPs behind firewall settings such as employers, governmental agencies, medical facilities and the like, and the prevalence of Sorenson VPs at their residences, which frequently leads the customer having at least two different provider VPs to use, the inability to use ZVRS VPs to leave video mail with Sorenson VPs leads to unacceptable risks to health and safety in not being able to communicate with family and significant others with different provider VPs regarding emergency or other time-sensitive and critical matters. ZVRS calls on the Commission to immediately cease funding Sorenson's closed system caused by the non-interoperability of its products including video mail, to refrain from dragging out the issue further by referring the matter to the SIP Forum to "voluntarily" develop industry standards, and enforce against Sorenson's noncompliance with its 2006 Interoperability Declaratory Ruling.

### **VIII. Providers should be Compensated for New Compliance Costs**

ZVRS has previously stated that VRS providers are compelled to engage in substantial research and development to operate compliant with the Commission's rules, providing as an example ZVRS' significant monthly costs to comply with the Commission's E911/Numbering requirements.<sup>59</sup> ZVRS has requested due recognition of the escalating costs of compliance which it believes are not being adequately accounted

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<sup>59</sup> Comments of CSDVRS, LLC., CG Docket Nos. 10-51 and 03-123, at pgs. 18, 21-22 (November 14, 2012).

for in the compensation rates for VRS calls.<sup>60</sup> ZVRS has joined competitive providers in expressing the view that non-dominant providers are particularly challenged in absorbing the costs of structural and regulatory expenditures required by the Commission mandates and that it is especially harmful to non-dominant providers to simultaneously increase their regulatory compliance costs while reducing their compensation.<sup>61</sup>

While ZVRS' additional costs to comply with the new requirements of the FCC Order are yet to be fully determined, they will be substantial. In particular, the new Customer Proprietary Network Information ("CPNI") rules require significant time and resources in development, management, education and training which involve significant administrative and operational costs. The Commission should reinstitute the recovery mechanism of such compliance costs as was the case for its TRS Numbering Order.<sup>62</sup> The Commission should provide an open category of compliance costs providers can seek reimbursement rather than precluding legitimate compliance costs by restricting them to certain specific costs. The reimbursement standard should be for those costs that are reasonably necessary to comply with the new requirements of the FCC Order. Providers should be allowed appropriate time to recover such compliance costs, which at minimum should be 2 years after the full implementation of the new rules and programs of the FCC Order.

## **IX. Disaggregation of Emergency Calls Would Degrade Service**

As previously discussed, ZVRS opposes competitive bidding for any segment of VRS, including for emergency calls. Such an approach will result in great inefficiency of the service, poorer quality of interpreting and rob consumer options if they need to switch

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<sup>60</sup> See e.g. Comments of CSDVRS, LLC., CG Docket 10-51, at pg. 3 (June 1, 2011).

<sup>61</sup> Letter from Competitive Providers, CG Docket Nos. 10-51 & 03-123, at pgs. 5-7 (Apr. 19, 2013).

<sup>62</sup> First Internet-Based TRS Numbering Order, 23 FCC Rcd at 11626-27, ¶¶ 96-101.

interpreting providers. From a business perspective, handling emergency calls involve significantly higher costs than the per minute compensation rate for VRS. Emergency calls cost more to connect than typical VRS calls, involve a third party which charges for the technology and service required to support 911 calls, often involve an additional VI working as a team, involve greater supervisory oversight, incurs additional training and VI recovery time and at times VIs handling the 911 call will remain on the line after the call and continue to provide non-compensated interpreting when the emergency services arrive at the location and the parties need video interpreting to communicate. There is no question that disaggregating 911 calls would be beneficial to providers' bottom line and also result in higher costs to the TRS Fund, significantly more than the cost of integrating 911 call services into all VRS providers as it is now.

However, ZVRS as a deaf and interpreter-centric company takes a broader view of its role in providing VRS than focusing on corporate profits. ZVRS unequivocally states from a deaf and interpreter perspective that disaggregation of 911 calls will lead to their poorer handling. Even a cursory review of the literature will indicate that there are frequent shortages nationwide of 911 operators due to the high stress, overwork and low pay.<sup>63</sup> It will not be a different experience for VIs if they are primarily handling 911 calls for a single contractor. The ongoing high stress, arduous and exhausting work and competitively set pay will lead to great VI turnover in this environment. The quality of interpreting will suffer as a result, in circumstances that deaf people need the best interpreting possible to ensure their health and safety. The only way to overcome the service degradation would be to compensate VIs at an extraordinary level and to

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<sup>63</sup> See e.g., <http://money.msn.com/now/post.aspx?post=203de031-8c4d-4775-8796-f96c5417306e>;

compensate the contractor at a greater rate for providing the service at a sub-scale level. These compensation increases will simply not occur in the real world and deaf people and interpreters will suffer as a result of a regulatory wrong turn. Also, staffing would be an issue in that providers would have to over staff the 911 VI call center to cover peak number of calls whereas now, all VIs for VRS are available and trained to take 911 calls.

911 call data is part of provider submissions to the TRS Fund administrator and should be readily available to the Commission. However, for the record and in general terms to inform the public without disclosing proprietary data, since June 2011 ZVRS has handled an average of nearly 100 emergency calls per month and averages just over 11 seconds to connect the VP to the appropriate public safety answering point (“PSAP”). ZVRS provides training to all newly hired VIs about how to handle emergency calls including detailed information about the history of and operations of PSAPs to provide a fuller picture for VIs. ZVRS monitors VI handling of 911 calls, managers provide the VI with support and feedback and occasionally refresher training as part of its commitment for the continual improvement of the quality of its services. As a result, ZVRS has experienced virtually no consumer complaints about its interpreting of emergency calls. As one ZVRS interpreting manager put it, “if it ain’t broke, don’t fix it.”

#### **X. VI Non-Competition Agreements Must be Prohibited as Harmful**

As mentioned in the FNPRM, ZVRS joined several other providers in seeking from the Commission a declaratory ruling prohibiting Sorenson’s use of non-competition agreements (“NCA”) for VIs because such practice harmed the VRS market and was contrary to the public interest.<sup>64</sup> ZVRS reaffirms that position today, particularly in light

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<sup>64</sup> Hands On VRS (“HOVRS”), CSDVRS, Snap, GoAmerica and CAC, Petition for Declaratory Ruling and Complaint Concerning the Provision of Video Relay Services by Sorenson Communications, Inc., CG

of its previous comments to the Commission about the increasing scarcity of interpreters and consumer difficulties in obtaining interpreting services.<sup>65</sup> ZVRS uses a high standard in screening VI applicants, including a requirement of certification, and thus is constantly recruiting in a very limited market to fill available VI vacancies in a manner which will provide consumers with the high quality interpreting they demand to effectively telecommunicate. ZVRS has often encountered VIs who are currently employed by or have recently worked for Sorenson whom cite their NCAs as an employability issue. Those VIs often cite their desire to leave Sorenson due to the sub-standard interpreting conditions and services caused by the unfavorable terms (including pay), conditions, and the policies and procedures involved in the operation of Sorenson mega-center call centers. ZVRS experiences the already limited pool of qualified interpreters as being adversely impacted by the artificial constricts caused by Sorenson NCAs. Sorenson alone uses NCAs. ZVRS has no doubt that Sorenson resorts to such agreements as another anti-competitive practice to maintain their monopoly of the VRS market.

The availability and efficiency of VRS is fully tied to maintaining a robust pool of VIs; consumers are harmed by the artificial constricts of Sorenson NCAs on the availability of VIs. The Commission has the authority and obligation under Section 225 of the Communications Act to prohibit NCAs as unlawfully adversely affecting the availability and efficiency of VRS. Furthermore, several states which Sorenson operates call centers in expressly prohibit the use of NCAs as a matter of public policy.<sup>66</sup> The Commission is compelled to expeditiously act to end Sorenson's abuse of customers, VIs

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Docket No. 03-123 (May 18, 2007). *See also Ex Parte* Notice CSDVRS and HOVRS, CG Docket No. 03-123 (Mar. 17, 2008).

<sup>65</sup> *See* Follow up Letter to CSDVRS Notice of *Ex Parte* at pgs. 1-2.

<sup>66</sup> *See e.g.* Cal. Bus. & Prof. Code §§ 16600, 16601.

and the VRS program through the use of NCAs.

#### **XI. VRS “Guest User” Procedures can be Phased Out**

At the outset, ZVRS deems it important to note the significant difference between the problems experienced with fraudulent use of temporary registration for IP Relay as compared with VRS in that the use of ASL in interacting with the VI effectively serves to screen out virtually all of those who are not eligible to use VRS prior to the verification of the user. Nevertheless, ZVRS has successfully implemented a procedure which requires registrants to become verified prior to making a non-emergency VRS call. ZVRS is comfortable with the Commission proposal to eliminate the “guest user”<sup>67</sup> procedure for VRS (with the exception of emergency calls and calls made from confined environments such as hospitals) and recommends a gradual phase out so that the market has an opportunity to become educated about the new requirement and VRS providers are provided the time to develop and implement the operative procedures.

#### **XII. TRS Reporting Cannot be an Onerous Administrative Burden**

The Commission in its FNPRM proposes to increase the TRS Fund administrator’s filing to quarterly and correspondingly the administrator would request from providers more frequently than annually the projected minutes of use. ZVRS reiterates its concern about the steadily escalating administrative burden of reporting and compliance work. Through its numerous audits and meetings in which ZVRS described its corporate structure, the Commission is aware that ZVRS is a lean operation. ZVRS focuses its budget and investment in innovative technology and high quality (e.g., 100%

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<sup>67</sup> ZVRS strictly construes “guest user” in the context of VRS to be those individuals who temporarily use VRS prior to their name and address being verified by their default VRS provider. Notwithstanding any changes to the “guest user” procedures, eligible VRS users should continue to be able to readily access and use public space VPs and their calls fully compensable from the TRS Fund.

certified) interpreting. Until recently, ZVRS investors did not take in a profit, but continued to reinvest revenue for the benefit of VRS consumers. Greater administrative burdens such as quarterly reporting will add costs, detract resources from its services and products and not create greater efficiency. The compensation rate has steadily decreased and will continue to do so for the next several years. Thus ZVRS opposes the greater administrative burden required by any increase in the frequency of regular reporting of demand data. For the same reasons ZVRS opposes any new requirements regarding the reporting of additional detailed information (such as their financial status), particularly given that the Commission already has access to virtually all corporate information through the multiple annual audits which are now occurring for all providers.

### **XIII. The Advisory Committee Should be Recreated to Better Support TRS**

As cited in the FNPRM, ZVRS has long called for an advisory committee to assist the Commission in assessing the components of the VRS program and providing their recommendations on progressing with program objectives.<sup>68</sup> ZVRS supports the Commission's proposal to recreate the existing TRS Fund Council so that it advises the various VRS program administrators with the implementation and operations of these programs. ZVRS would add that the new committee should have the ability to directly and independently work with the Commission in the oversight and regulation of the VRS program. ZVRS agrees that the committee should focus on 1) technology especially access standards and transitioning to off-the-shelf products; 2) efficiency especially service quality; 3) outreach especially to frequently called entities; 3) functional equivalency metrics and approaches to closing the equivalency gaps for VRS users; 4) availability especially for those with limited English proficiency, those with low income

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<sup>68</sup> See e.g. ZVRS FNPRM Comments at pgs. 30-31.

and cannot afford bandwidth and in public spaces such as described in section V. above; and 5) barriers to consumer choices such as the non-portability of proprietary VPs and their core features such as address books/contact lists.

ZVRS agrees that the composition of the committee should consist of VRS consumers, researchers and other experts. ZVRS would also add the importance of including interpreters in the advisory committee. Although it is apparent that the Commission values the inclusion of VRS consumers in the development of public policy which particularly impacts them, ZVRS wishes to underscore the importance of doing so given the apparent lack of employment of people with disabilities including VRS consumers by the FCC contracted administrators of the VRS program.<sup>69</sup>

While ZVRS greatly appreciates the work of industry representatives on the TRS Fund Council, it has chosen not to directly participate on the Council because the industry presence in its current structure effectively neutered its responsibility to review and approve compensation rates. However, the proposed new committee is being considered for a much broader scope of responsibilities for which we find absolutely essential for industry representatives to participate as members to ensure the development and provision of appropriately informed advice and recommendations. The Commission should not place its apparent current discomfort with the TRS industry above a principled development and implementation of an advisory committee which can be sustained over the long term. ZVRS directs the Commission's attention to the Federal Advisory Committee Act – which perhaps is not directly applicable as the committee is envisioned

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<sup>69</sup> ZVRS has informally raised with Commission officials the apparent lack of compliance with Section 503 of the Rehabilitation Act in its contracts with third parties. ZVRS encourages the Commission to include the employment of people with disabilities as a consideration in its RFPs for the administration of the FCC Order's new programs.

under the FNPRM, but certainly a key guidance for federal agency required advisory committees under the direction of third parties - which sets out the requirement that membership must be “fairly balanced in terms of the points of view represented and the functions to be performed” clearly evincing an obligation to include members of the affected industry group.<sup>70</sup> ZVRS is especially appalled by the Commission’s intent to exclude TRS industry from the committee but include entities paying into the fund; such contributing entities have universally shown bias in its TRS filings in favor of actions which result in cost savings over any advancement in the VRS program including quality of service and technology options.<sup>71</sup> The Commission has not elected to exclude industry membership in its other advisory groups such as the Video Programming Accessibility Advisory Committee even though their inclusion has caused considerable challenges and tension, and the Commission should not depart course by excluding industry representatives from fully participating in the new TRS advisory committee.

#### **XIV. CPNI Rules Cannot Become Inconsistent to Bar Certain Activities**

ZVRS opposes the proposed prohibition of providers from using CPNI to contact consumers with respect to certain content such as “political and regulatory advocacy.” There is no such prohibition for hearing individuals, which ZVRS believes would exceed the Commission’s legal authority to impose and doing so would run afoul of constitutional law. Thus, the legal authority and constitutional law aside, such a prohibition would degrade rather than advance functional equivalency in that it would impose a restrictive condition on VRS consumers inequivalent to what hearing callers experience. ZVRS believes that CPNI rules, to the extent possible, should be identical for

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<sup>70</sup> Federal Advisory Committee Act (FACA) of 1972 (Public Law 92-463).

<sup>71</sup> ZVRS notes that it is licensed by South Dakota as a telecommunications provider and therefore is also an entity subject to the requirement of contributing to the TRS Fund.

deaf and hearing individuals. Moreover, it seems patronizing to deem deaf people to need greater protection than hearing individuals in receiving communications from providers; consumers have an easy option if they should disagree with a providers' communication in that they can switch to a new default provider. Thus the Commission should refrain from regulating a new CPNI prohibition and allow consumers to self-determine whether they want to continue with a provider which communicates about political or regulatory issues.

## **XV. Conclusion**

The Commission has effectuated a drastically different VRS market with a fresh rate structure, several new programs and rule changes. Competition and choice remains sustainable and progress will continue to occur in closing the gap with functional equivalency. This evolution should not be risked by the overwhelming challenges of competitive bidding. The Commission must allow the time and care to comprehensively work through the new structure in fidelity to consumer access rights including functional equivalency and maintain the ability of VRS companies to provide such services through robust and innovative choices. ZVRS looks forward to continuing to work with the Commission and relay stakeholders in accomplishing an efficient and effective VRS program for all.

If the Commission chooses to revisit competitive bidding once the locked-in VRS market is resolved by the new VRS program measures, ZVRS looks to the careful consideration of the policy issues of such bidding by the Commission using public discourse methods other than through a FNPRM which include diverse stakeholders, facilitating their collaborations, and incorporating in agency policy making their

overarching concepts and consensus views. This approach is particularly critical given the adverse experience of competitive bidding in state TRS programs. In matters concerning the ADA, it is most important to ensure that we get it right, for the lives of Americans with disabilities depend on us doing so.

Respectfully Submitted,

**CSDVRS, LLC**

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August 19, 2013