Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Commission

REPLY COMMENTS OF CONVO COMMUNICATIONS, LLC

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EXECUTIVE SUMMARY

The Commission has made tremendous strides in establishing safeguards that virtually have eliminated opportunities for waste, fraud, and abuse of the video relay service ("VRS") program. The Commission now must focus its efforts on fostering functional equivalence for the deaf and hard of hearing Americans that use VRS. Preserving competition in the VRS market ultimately will serve the Commission and VRS users by fostering disruptive innovation and creating service-quality competition. Creating an industry climate that entrenches the dominant provider, inhibits competition, discourages providers' investment in research and development ("R&D"), and hinders innovation is the surest way to halt the VRS industry's progress towards functional equivalence.

Convo Communications, LLC ("Convo") commends the Commission for considering new and innovative ways to reduce VRS costs to the Telecommunications Relay Services ("TRS") Fund using competitively-based proxies to establish VRS rates. As a general matter, however, this novel approach is premature. The proposed approach relies on certain, yet-to-be implemented initiatives. Until these initiatives are successfully implemented and the Commission has had an opportunity to review and evaluate their implementation, neither VRS providers nor the Commission can adequately evaluate the reasonableness of the Commission's proposed proxy-based approach to establishing future VRS rates. For example, the use of a basic and generic neutral platform to set VRS rates likely will result in rates so low that no VRS provider will be able to innovate and improve VRS to gain market share. Also, when considering these ratemaking proposals, the Commission should recognize the benefit of preserving the unique role in the VRS industry of smaller providers by maintaining a tiered rate structure.

Convo also addresses herein other issues raised by the *Further Notice*:

- *Regulatory Costs.* The costs incurred by VRS providers resulting from the Commission's regular and substantial changes to the VRS regulatory framework should be compensated. These significant costs are not reflected in the cost data that was used by the Commission to develop its automatically falling rate structure.

- *R&D.* New methods to fund R&D are critical to ensure functional equivalence for VRS users and unleash continued innovation in VRS. Convo therefore encourages the Commission to consider methods by which the Commission directly can fund the R&D of providers, which are incented by competitive pressures to use this R&D to improve service. Convo also urges the Commission to allow providers to offer input into the R&D conducted by, or on behalf of, the National Science Foundation.

- *Assigning TDNs to Hearing Individuals.* This Commission proposal to allow VRS providers to sell point-to-point service to hearing individuals and permit hearing individuals to acquire ten-digit numbers that are registered in the iTRS database has the potential to significantly increase functional equivalence and reduce the overall cost of VRS to the TRS Fund.

- *Interoperable Video Mail.* The Commission should adopt its proposal to require VRS providers to ensure that video mail messages can be left by point-to-point callers to customers of another VRS provider. The current lack of interoperability of video mail is an excellent example of the "walled garden" approach used by Sorenson to "lock in" its dominant share of the VRS market by leveraging network effects. Thus, by requiring video mail interoperability, the Commission would not only improve the functional equivalence of VRS, but may also reduce the market dominance of Sorenson.

- *Guest User Policy.* The Commission should retain its current guest user policies until the deployment of the centralized TRS user registration database ("TRS-URD") and the centralization of verification. Otherwise, potential VRS users may be disenfranchised. The Commission also should ensure that it provides previously verified VRS users a grace period to make VRS calls as guest users if the users initially are falsely rejected by the TRS-URD administrator.

- *TRS Fund Advisory Council.* The Commission proposes to define the role of the TRS Fund Advisory Council role to include issues that involve policy matters which must be determined exclusively by the Commission. To the extent the Commission pursues this proposal, it must ensure that policy recommendations are made directly to the Commission and in compliance with the Federal Advisory Committee Act.

- *Centralizing VRS 911.* Substantial operational benefits can be obtained by centralizing the processing of 911 calls under a single contractor pursuant to a contract bid with the TRS Fund.

- *Speed of Answer.* The Commission's proposal to reduce the speed of answer ("SOA") requirement to 85 percent of calls within 10 seconds measured on a daily basis is unworkable and would impose inefficient costs. An overly aggressive and impractical SOA raises particular challenges for VRS providers in light of the Commission's recent adoption of automatic reductions in VRS compensation.

- *Format of TRS Rules.* The administrative expediency of having one set of iTRS rules is undermined by the resulting complexity and potential ambiguity of such rules. To reduce ambiguity, the Commission should restructure its rules to that the rules are service-specific.

- *Unjust and Unreasonable Practices.* The Commission must clearly articulate rules to reduce fraud, waste, and abuse, such as a prohibition on "unjust and unreasonable" practices to enable VRS providers to understand exactly what actions they must take and refrain from taking to comply with the rules.

- *Separating VRS and VRI Costs.* A clarification regarding how VRS providers that offer video remote interpreting ("VRI") should allocate costs between their VRI and VRS businesses will provide regulatory certainty to VRS providers who want to build a structurally separate VRI business, as well as VRI providers that may wish to enter the VRS market. In addition, by establishing clear, uniform accounting, the Commission will

ensure a level playing field both for VRS-only providers and providers that offer both VRS and VRI.

- *Use of CPNI.* Regardless of the policy merits of the Commission's proposal to restrict VRS providers from using customer proprietary network information to contact users for political and regulatory advocacy purposes, the courts already have determined that such a prohibition constitutes an impermissible and unconstitutional restraint on the First Amendment rights. Therefore, the Commission should not devote additional resources to this proposal.

- *Data Disclosures by Providers.* The Commission should require comprehensive public disclosures by VRS providers of information about their costs and operations, which can serve as an effective method to further protect the TRS Fund against waste, fraud, and abuse without establishing any new burdens or reporting obligations for providers.

- *CA Non-Compete Clauses.* The Commission should prohibit non-compete clauses in CA employment contracts. Even legitimate business justifications for non-compete clauses are outweighed by the substantial harms they create.

- *CAs Working from Home.* The Commission should not revisit the prohibition against CAs working from home at this time, which raises significant concerns related to privacy, compliance with the mandatory minimum requirements and quality standards, and opportunities for fraud.

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REPLY COMMENTS OF CONVO COMMUNICATIONS, LLC

Convo Communications, LLC ("Convo")[1] hereby replies to comments filed in response to the Further Notice of Proposed Rulemaking ("*Further Notice*")[2] issued by the Federal Communications Commission ("Commission") in the above-captioned video relay service ("VRS") proceeding.[3]

I. THE COMMISSION'S PRIMARY OBJECTIVE SHOULD BE TO FOSTER FUNCTIONAL EQUIVALENCE

The Commission has made tremendous strides in establishing safeguards that virtually have eliminated opportunities for waste, fraud, and abuse in the VRS program. The Commission

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[1] Convo is a primarily deaf-owned and operated, independent VRS provider. Convo received its conditional certification from the Commission to operate as an independent VRS provider in November 2011. *Notice of Conditional Grant of Application of Convo Communications, LLC for Certification as a Provider of Video Relay Service Eligible for Compensation from Interstate Telecommunications Relay Service Fund*, Public Notice, 26 FCC Rcd 15956 (CGB 2011).

[2] *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, 28 FCC Rcd 8618 (2013) ("*Further Notice*").

[3] *See also* Comments of Convo Communications, LLC, CG Docket Nos. 10-51 & 03-123 (filed Aug. 19, 2013) ("Convo Comments").

now should focus its efforts on fostering functional equivalence for the deaf and hard of hearing Americans that use VRS. Among other things, this requires continued service-quality competition within the VRS industry. Accordingly, it is not in the Commission's or the public's interest for the VRS industry to be dominated by a single provider that is "too big to fail."[4] Preserving competition in the VRS market ultimately will serve the Commission and VRS users by fostering disruptive innovation and creating service-quality competition. Both the Commission[5] and consumer groups[6] have emphasized the importance of such competition to achieving the ultimate objective of the Telecommunications Relay Services ("TRS") program – functional equivalence.

Indeed, ensuring that innovative smaller providers have the opportunity to thrive in the VRS marketplace is the Commission's best approach to fulfilling its statutory mandate under Title IV of the Americans with Disabilities Act—to "encourage … the use of existing technology and … not discourage or impair the development of improved technology."[7] By contrast, creating an industry climate that entrenches the dominant provider, inhibits competition,

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[4] *See, e.g.,* Comments of Convo Communications, LLC in Response to October 15, 2012 Public Notice, CG Docket Nos. 10-51 & 03-123, at 4-5 (filed Nov. 14, 2012) ("Convo Nov. 14 Comments"); Reply Comments of Convo Communications, LLC, CG Docket Nos. 10-51 & 03-123, at 8-9 (filed Mar. 30, 2012).

[5] *See, e.g., Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, 25 FCC Rcd 8622, ¶ 75 (2010) (recognizing the importance of "competition over service quality and features" in UNE-based competition).

[6] *See, e.g., Consumer Groups' TRS Policy Statement – Functional Equivalency of Telecommunications Relay Services: Meeting the Mandate of the Americans with Disabilities Act*, at 9 (attached to Notice of *Ex Parte* of Telecommunications for the Deaf and Hard of Hearing, Inc. *et al.*, CG Docket Nos. 10-51 & 03-123 (filed Apr. 12, 2011)) ("[I]ntense competition among a number of qualified vendors in the telecommunications relay services market … give[s] the TRS user population a range of choices in features and service within any one form of TRS.").

[7] 47 U.S.C. § 225(d)(2).

discourages providers' investment in research and development ("R&D"), and hinders innovation is the surest way to halt the VRS industry's progress towards functional equivalence. As the Commission moves forward with proposals regarding rate-setting mechanisms, R&D funding, the iTRS database, and other reforms, it should be guided by its functional equivalency mandate.

A. IT IS PREMATURE TO CONSIDER THE COMMISSION'S COMPETITIVE-BASED RATE-SETTING PROPOSALS

Convo commends the Commission for considering new and innovative ways to reduce VRS costs to the TRS Fund using competitively-based proxies to establish VRS rates.[8] As a general matter, however, consideration of this novel approach is premature because it relies on certain, yet-to-be implemented initiatives.[9] Until these initiatives are successfully implemented and the Commission has the opportunity to review and evaluate them, neither VRS providers nor the Commission can adequately determine the reasonableness of the Commission's proposed proxy-based approach to establishing future VRS rates. In addition, the Commission only recently adopted significant rate reductions and has not yet had an opportunity to evaluate their effect on the structure of the VRS market and the quality of VRS offered by providers going forward.[10] As time passes under the new rates, the Commission may determine that these rates undermine the ability of providers to maintain service-quality competition and functional equivalence.

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[8] *Further Notice* ¶ 217.

[9] *See id.* ¶¶ 218-219.

[10] Note that the new rates became effective on September 1. Therefore, no provider has received the lower compensation payments yet. As a result, it will take months to determine the real-world impact of the lower rates.

1. The Commission Should Not Use the Neutral Video Communication Service Provider Contract as a Ratemaking Benchmark

Commenters are uniformly opposed to the Commission determining to use the neutral video communication service provider contract as a rate benchmark prior to the implementation and assessment of the platform. The terms of the contract, including those related to compensation and technical requirements, have yet to be drafted, negotiated, and agreed to. As a result, it would be premature to even consider whether VRS rates should be established in part based on this contract. It also remains to be seen whether the neutral video communication service provider will provide VRS of sufficient quality both to successfully attract customers to the VRS provided via the platform and to attract non-integrated VRS providers to rely on the platform. Commenters' concerns are widespread. ASL Service Holdings, LLC ("ASL/Global VRS") wonders if the proposal will favor incumbent providers;[11] Sorenson Communications Inc. and CaptionCall, LLC ("Sorenson") and consumer advocates question if it will inhibit innovation;[12] and other providers simply note that the Commission's tentative conclusion to use this contract as a rate proxy is premature.[13] Convo shares these concerns.

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[11] Comments of ASL Service Holdings, CG Docket Nos. 10-51 & 03-123, at 27 (filed Aug. 19, 2013) ("ASL/Global VRS Comments").

[12] Comments of Sorenson Communications, Inc. and CaptionCall, LLC, CG Docket Nos. 10-51 & 03-123, at 18-19 (filed Aug. 19, 2013) ("Sorenson Comments"); Comments of Telecommunications for the Deaf and Hard of Hearing *et al.*, CG Docket Nos. 10-51 & 03-123, at 2-3 (filed Aug. 19, 2013) ("Consumer Groups Comments").

[13] Comments of Hancock, Jahn, Lee & Puckett, LLC d/b/a Communication Axess Ability Group, CG Docket Nos. 10-51 & 03-123, at 1-2 (filed Aug. 19, 2013) ("CAAG Comments"); Comments of CSDVRS, LLC, CG Docket Nos. 10-51 & 03-123, at 24 (filed Aug. 19, 2013) ("CSDVRS Comments"); Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123, at 2-3 (filed Aug. 19, 2013) ("Purple Comments").

As an initial matter, the Commission should not make a decision regarding whether to use the neutral platform contract as part of future ratemaking efforts until the neutral platform is operating and the Commission has experience with its operation, viability, and the quality of VRS service provided via the platform. It is premature to adopt a ratemaking approach based on a platform that does not yet exist. A thorough evaluation of the neutral platform is a fundamental prerequisite to any consideration of using the neutral platform's contract as a rate benchmark.

Further, it is not clear whether the neutral platform provider will incur a bucket of costs that is equivalent to the costs borne by integrated VRS providers.[14] Hancock, Jahn, Lee & Puckett, LLC d/b/a Communication Axess Ability Group ("CAAG") notes, for example, that the neutral provider may have costs that are not incurred by an integrated provider, such as the expense of dedicating resources to support the technology required for the neutral platform provider to seamlessly connect with the system of a non-integrated provider that only offers CA services.[15] Other costs are likely to be incurred by integrated providers that are not borne by the neutral platform provider. Providers will not be able to exhaustively determine the nature of these cost disparities between their costs and the costs of the neutral provider until after the establishment of the neutral platform.

In addition, as a general matter, the use of a basic and generic neutral platform to set VRS rates likely will result in rates so low that no VRS provider will be able to innovate and improve VRS to gain market share.[16] Instead, the resulting low rates may undermine further efforts to promote functional equivalence and, in Sorenson's words, will promote a "frozen-in-time

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[14] *See, e.g.,* ASL/Global VRS Comments at 26-27.

[15] CAAG Comments at 2.

[16] *See, e.g.,* Sorenson Comments at 18-19; Consumer Groups Comments at 2-3.

version of a substandard 2013 platform."[17] The Commission should not adopt a compensation methodology that would sacrifice VRS quality of service and functional equivalency in favor of limited cost savings. There is a very real danger that using the neutral platform contract as a VRS rate proxy will do just that.

For these reasons, neither the Commission, nor VRS providers, can adequately evaluate the reasonableness of the Commission's proposal and its effect on functional equivalence. Therefore, the Commission should wait until its most recent reforms have been fully implemented and the marketplace has adjusted before considering further radical changes to the compensation mechanism.

2. It Is Premature for the Commission to Consider Using Auctions to Establish a Per-Minute Rate for CA Service

Commenters raise serious concerns regarding the Commission's proposal to use auctions to establish a per-minute rate for CA service. Smaller providers and consumer advocates question whether the use of auctions will drive out competition and undermine consumer choice.[18] Consumer advocates also raise privacy concerns.[19]

Convo agrees with CAAG that, to the extent that the Commission wishes to pursue its auction proposal, the Commission first should conduct an initial trial auction.[20] More details

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[17] Sorenson Comments at 18.

[18] *See* ASL/Global VRS Comments at 28-30; CAAG Comments at 2-5; Consumer Groups Comments at 7-11; CSDVRS Comments at 6-8, 14-24; Comments of Communications Workers of America and National Interpreter Action Network, CG Docket No. 10-51, at 7 (filed Aug. 19, 2013) ("CWA/NIAN Comments").

[19] Consumer Groups Comments at 6 ("Using [calling] data to determine calling patterns in the deaf and hard of hearing community as the first step in an auction process goes beyond appropriate oversight of VRS minutes and reimbursement and intrudes on consumers' rights to protect the confidentiality of the destination and frequency of calls placed.").

[20] *See* CAAG Comments at 5.

about the nature of the auction are needed to make an informed recommendation regarding the use of a CA auction to establish VRS rates. Accordingly, the Commission should use an initial trial auction as a proof of concept prior to considering whether to use auction pricing to set VRS rates. Such a trial would allow the Commission and interested stakeholders to review potential benefits of, or issues raised by, the auction. If, for example, a trial auction results in winning bids by only the largest two providers (or even just the dominant provider), the Commission would need to consider what effect an auction and the rate set by such auction would have on service-quality competition and functional equivalence. The Commission historically has acknowledged that Sorenson's dramatically outsized market share enables it to provide VRS at a lower cost than the rest of the VRS providers, and the proposed auction is likely to validate this fact.

To offset this fundamental problem with the Commission's auction proposal, to the extent that the Commission moves forward with the auction, "bidding credits" and "set asides" should be allowed for smaller providers in much the same manner that bidding credits and set asides often are available to small companies in wireless spectrum auctions.[21] The Commission also has tried to create opportunities for small businesses to own broadcast interests.[22] Using

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[21] *See* 47 C.F.R. § 1.2110(f) ("The Commission may award bidding credits (*i.e.*, payment discounts) to eligible designated entities. Competitive bidding rules applicable to individual services will specify the designated entities eligible for bidding credits, the licenses for which bidding credits are available, and the amounts of bidding credits and other procedures."); 47 U.S.C. § 309(j)(4)(D) (requiring that when the Commission prescribes regulations to establish a competitive bidding methodology for the grant of licenses through the use of competitive bidding, it must "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services").

[22] *See Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5926 ¶ 7 (2008) (Concluding that defining "eligible entity" as a small business consistent with the Small Business Administration standards "will advance our objectives of promoting diversity of ownership in the

such credits, the Commission could establish competitively-bid rates without undermining the service-quality competition offered by smaller, innovative providers. This may help prevent the "race to the bottom" that might otherwise result from an auction and thereby prevent the auction from undermining the Commission's functional equivalency mandate. It also would be consistent with the Commission's mandate from Congress to promote competition.[23]

However, as with the use of the neutral platform contract to set VRS rates, it simply is premature for the Commission to further consider the auction proposal at this time. The Commission should wait until its most recent reforms have been fully implemented and the marketplace has adjusted before considering further radical changes to the compensation mechanism.

Moreover, the Commission also should reject calls to establish a competitive bidding process for all VRS call types and minutes.[24] Any proposal that restricts VRS users from choosing their preferred service provider – whether for access technology or for CA service – will harm functional equivalence.[25] CA service-quality competition is the best method to ensure

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broadcast industry by making it easier for small businesses and new entrants – that otherwise might find it difficult or impossible to compete – to acquire a license and attract the capital necessary to compete in the marketplace with larger and better financed companies…. We anticipate that small businesses will be more likely than large corporations to have ties to the communities that they seek to serve, and thus be more attuned to local needs and interests.").

[23] Section 257 of the Communications Act of 1934, as amended, directs the Commission "[t]o promote the policies and purposes of [the Communications Act] favoring a diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity." 47 U.S.C. § 257(b). To attain these goals, Congress directed the Commission to identify and eliminate, through regulatory action, "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services…." *Id.* § 257(a).

[24] *See* Purple Comments at 4.

[25] *See, e.g.,* ASL/Global VRS Comments at 28-30; CSDVRS Comments at 19-24.

a high quality of CA services for VRS users. Therefore, the Commission should continue to support service-quality competition and consumer choice, rather than adopt proposals that would eliminate both in a single-minded effort to drive down VRS rates.

3. It Is Premature to Decide to Use Novel Initiatives to Establish VRS Rates

As set forth above, VRS providers currently lack the information required to make an informed recommendation regarding the reasonableness of using the neutral platform provider contract rate and an auction-established CA rate to set VRS rates.[26] Just as it is premature at this time to use these nascent initiatives individually as ratemaking proxies, it also is premature for the Commission to combine them to establish VRS rates. It is necessary to understand the nature of the neutral platform providers' costs and the functions of the neutral platform, as well as the auction mechanism used to establish a CA rate via auctions, in order for VRS providers to offer an informed opinion as to the reasonableness of using a combination of these initiatives to set rates. It is impossible to know at this early stage whether this approach will result in a proposed rate that bears any resemblance to the operating costs of an integrated VRS provider. Accordingly, the Commission should implement the regulatory initiatives required to pursue this ratemaking proposal and evaluate their success and viability before considering whether to use the "costs" demonstrated by these initiatives for the market-wide VRS rate.

Moreover, the Commission generally should not impulsively pursue VRS cost reductions at the expense of functional equivalence. The Commission already has set in motion a drastic reduction in VRS rates over the next four years and now should wait to see the result of this rate

[26] *See also* Purple Comments at 7 ("The Commission asks whether it is reasonable to assume that the sum of the cost for the neutral video communications service provider and the winner(s) of the segregated minutes would be sufficient to compensate integrated VRS providers. Without knowing the scope and costs incurred by the neutral video communications service provider, it is not possible to answer this question.") (footnotes omitted).

reduction before considering further rate changes. Rather than continue to focus on VRS cost reductions, the Commission should consider whether there are means available to reward and incentivize providers to innovate, improve VRS, and enhance functional equivalence, including, as described later herein, through R&D funding mechanisms.

In addition, when considering these ratemaking proposals, the Commission should recognize the benefit of preserving the unique role in the VRS industry of smaller providers by maintaining a tiered rate structure. Small, innovative providers offer much-needed service-quality competition and innovation, which ultimately benefits VRS users and improves functional equivalence. In addition to directly benefitting from the high-quality services that smaller providers must offer to gain market share from the dominant provider, VRS users also indirectly benefit from the improvement that the dominant provider makes to its VRS offerings in response to the competition provided by smaller providers.[27] The Commission should seek to preserve this important dynamic that serves VRS users and should not undermine it in an effort to yet further drive down VRS rates.

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[27] *See, e.g.,* Convo Nov. 14 Comments at 10 ("Smaller providers are the primary source of the innovation in the VRS market that improves the VRS consumer experience…. [S]maller providers were the first to deploy the mobile VRS applications on which many VRS users now regularly rely. In addition, they were the first to provide customers with a variety of new, innovative hardware, such as all-in-one videophones, Wi-Fi enabled videophones, and touch-screen enabled videophones."); *see also* Reply Comments of CSDVRS, LLC, CG Docket Nos. 10-51 & 03-123, at 6-7 (filed Nov. 29, 2012) ("The tremendous innovation seen in VRS has been made possible by the tiered rate structure as a stable and predictable funding mechanism which best balances the objectives of progressing towards an ADA-compliant level of relay services and ensuring that providers have the opportunity to realize a reasonable return in providing that level of relay services during a period that substantive changes are being made to the VRS program.").

B. THE COMMISSION SHOULD ALLOW VRS PROVIDERS TO RECOVER THE SUBSTANTIAL COSTS IMPOSED BY THE COMMISSION'S NEW INITIATIVES

The costs incurred by VRS providers resulting from the Commission's regular and substantial changes to the VRS regulatory framework should be compensated.[28] These significant costs are not reflected in the cost data that was used by the Commission to develop its automatically falling rate structure.[29] In fact, the Commission's current rates already do not reflect many of the legitimate and necessary costs of providing VRS, such as certain R&D costs, numbering expenses, emergency 911 expenses, and user equipment. Further, the Commission's rates also do not reflect many of the additional costs imposed on providers in the Commission's latest rulemaking, including the reduced speed of answer ("SOA") requirement. In light of this, it is not even clear that the Commission's already adopted automatically falling rate structure will prove viable even if VRS providers were not saddled with the additional costs of complying with the Commission's newest VRS regulations. Therefore, it is imperative that the Commission incorporate new regulatory compliance costs into its recently adopted rate structure either as an exogenous cost allowance or through rate increases (or a reduction or delay in rate decreases) in the future.[30]

Further, the cost of participating in Commission proceedings and understanding and implementing frequently changing VRS regulations impacts smaller providers much more significantly than larger providers. Larger providers can spread these costs across a much

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[28] *See* CSDVRS Comments at 43-44; Purple Comments at 9-10; Sorenson Comments at 24-28.

[29] Importantly, the Commission set rates based in large part on the weighted average of historical provider costs. The historical costs – and the projections that providers submitted at the time – could not have accounted for the costs to comply with the Commission's new rules.

[30] To the extent that some providers are already overcompensated, the Commission can review and deny the exogenous cost compensation requests of such providers.

greater volume of minutes. In contrast, smaller providers incur similar costs as compared to larger providers but have a drastically lower base across which to absorb the costs.[31] Constant regulatory changes and instability in the VRS regulatory framework can cause smaller providers to divert limited resources to participate in Commission proceedings and implement processes to ensure compliance with new requirements. In a stable regulatory landscape, providers could allocate these resources to efforts to improve service and gain market share. The Commission therefore should compensate at least smaller providers for the costs of regulatory compliance and should establish a mechanism that can be used by such providers to request recoupment of such costs.

C. Research and Development Funding Is Critical to Functional Equivalence

New methods to fund R&D are critical to ensure functional equivalence for VRS users and unleash continued innovation in VRS. Convo commends the Commission for recognizing the importance of R&D to TRS and VRS technologies. Convo, along with other providers,[32] however, is skeptical that R&D by a noncommercial entity such as the National Science Foundation ("NSF"), which is not incented by competitive pressures, will have any meaningful impact on the VRS market. Convo therefore encourages the Commission to consider methods by which the Commission directly can fund providers' R&D. Further, Convo urges the

[31] Although implementation costs are higher for larger providers, this increase is not linear. As a percent of total revenue, it most likely is less expensive for a larger provider to implement a particularly regulatory reform (such as implementing safeguards to comply with the customer proprietary network information rules) than it is for a smaller provider. Further, the cost of participating in Commission proceedings and evaluating new Commission regulations is largely the same for smaller and larger providers.

[32] *See* Purple Comments at 10-11; Sorenson Comments at 28-31.

Commission to allow providers to offer input into the R&D conducted by, or on behalf of, the NSF.

VRS users today enjoy many innovations that resulted from intense service-quality competition among VRS providers. Providers, particularly smaller providers like Convo, invest in R&D and compete to improve products and services to acquire market share from the dominant provider. These providers have the incentives to invest in R&D to attract new customers and retain old ones, even when such investments reduce profits due to the Commission's decision not to fund R&D beyond that necessary to satisfy mandatory minimum TRS standards. Under the Commission's reduced rates, however, smaller providers may no longer be able to afford such pro-user investments. Convo agrees with commenters that suggest that the Commission fund providers' R&D to ensure that they can continue to innovate and increase functional equivalence.[33]

For example, Convo urges the Commission to consider providing R&D grants directly to smaller VRS providers under the condition that the results of the R&D ultimately are shared with the VRS industry as a whole on reasonable, nondiscriminatory terms and conditions. Under this approach, the providers that develop new technologies using Commission grants could be permitted to benefit from the technologies for some period of time (*e.g.*, two to three years) prior to being required to share the technologies with the rest of the VRS industry. Moreover, the issuance by the Commission of such targeted R&D grants to smaller providers may help offset the dominant market position and overwhelming financial resources of the largest provider.

Convo generally does not believe that R&D conducted by NSF is likely to have a meaningful impact on the VRS experience of users because the NSF's research will not be

[33] *See* Purple Comments at 11; Sorenson Comments at 28.

driven by competitive pressures. In addition, NSF may not have the same meaningful insight into the needs of the VRS user community as providers develop through their provision of VRS.[34] Nevertheless, if the Commission determines to fund R&D by NSF, VRS providers should have a significant role in determining the nature and purpose of the R&D. The best method to do so is through a public process, involving notice and comment. Without such a process, NSF grants could become a new form of waste from the TRS Fund, with new technologies being developed by NSF at the TRS Fund's expense that ultimately are not adopted and used by VRS providers. Even after NSF grants are released, the Commission should ensure that all aspects of NSF R&D are transparent to VRS providers on an ongoing basis so that providers can piggy-back on the NSF's efforts when the providers develop the products and technologies that they believe their users will adopt. VRS providers subject to service-quality competition will determine whether R&D has a beneficial impact to the services they offer and VRS users' experience.

D. HEARING INDIVIDUALS SHOULD BE PERMITTED TO PURCHASE ACCESS TO TDNS FOR POINT-TO-POINT CALLS

VRS providers and consumer advocates provide unanimous support for the Commission's proposal to allow VRS providers to sell point-to-point service to hearing individuals and permit hearing individuals to acquire ten-digit numbers ("TDNs") that are registered in the iTRS database.[35] Convo agrees with these commenters. This Commission proposal has the potential to significantly increase functional equivalence and also reduce the

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[34] Convo, as a primarily deaf-owned and operated VRS provider, has unique insight into the needs of VRS users.

[35] *See* ASL/Global VRS Comments at 40; CAAG Comments at 5-6; Consumer Groups Comments at 14-16; CSDVRS Comments at 35; Purple Comments at 12-14; Sorenson Comments at 33-34; Comments of the Registry of Interpreters for the Deaf, Inc., CG Docket Nos. 10-51 & 03-123, at 11 (filed Aug. 19, 2013) ("RID Comments").

overall cost of VRS to the TRS Fund. VRS users should be able to communicate directly with hearing users of American Sign Language ("ASL") on a person-to-person basis without having to use a CA (and vice versa). As a result of this reform, hearing ASL users would no longer be required to make VRS calls to contact VRS users, which, in turn, will reduce costs to the TRS Fund while simultaneously improving the VRS user's experience. The Commission promptly should adopt and implement this unopposed proposal.[36]

E. THE COMMISSION SHOULD REQUIRE VRS PROVIDERS TO OFFER INTEROPERABLE POINT-TO-POINT VIDEO MAIL CAPABILITY

Commenters in the record overwhelmingly support the Commission's proposal to require VRS providers to ensure that video mail messages can be left by point-to-point callers to customers of another VRS provider.[37] Only Sorenson opposes this proposal.[38] Sorenson misleadingly suggests that a point-to-point video mail interoperability requirement would require Sorenson "to adopt [other providers'] inferior video-mail-system design."[39] This is inaccurate. Instead, Sorenson only would need to ensure that its system is capable of receiving video messages using common video standards (*i.e.*, h.264) and communication protocols (*i.e.*, SIP) imposed by the Commission or a neutral third party to whom the Commission delegates this responsibility. The current lack of interoperability of video mail is an excellent example of the "walled garden" approach used by Sorenson to "lock in" its dominant share of the VRS market

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[36] Convo notes that providers likely will incur costs in establishing a system where hearing users can purchase a TDN. The Commission should allow providers flexibility in what they charge such hearing users to ensure that all overhead costs can be covered.

[37] *See* Convo Comments at 3; Consumer Groups Comments at 23; CSDVRS Comments at 41-43; Purple Comments at 22.

[38] *See* Sorenson Comments at 5, 72, 74-75.

[39] *Id.* at 5.

by leveraging network effects. Thus, by requiring video mail interoperability, the Commission would not only improve the functional equivalence of VRS, but also may reduce the market dominance of Sorenson.

Further, in addition to requiring full interoperability of video mail, the Commission should actively seek to identify other means that Sorenson uses to lock in market share through the network effect and promptly implement rules or policies to mitigate such wrongful actions by Sorenson. Due to the network effects caused by interoperability issues involving Sorenson's service, VRS users have no choice but to use Sorenson's services to communicate in a functionally equivalent manner with Sorenson users.[40] By reducing Sorenson's opportunity to lock in market share, the Commission can provide consumers with greater choice of VRS providers and can enable smaller providers to gain scale.

Of course, the adoption of a point-to-point video mail interoperability requirement only will enable advancement towards these benefits if it is adequately enforced. Accordingly, the Commission must promptly and robustly enforce any such new rules.

F. THE COMMISSION SHOULD CONTINUE TO ALLOW A TEMPORARY GUEST REGISTRATION TO ENSURE THAT VRS USERS ARE NOT DISENFRANCHISED

Convo has urged the Commission to retain its current guest user policies until the deployment of the centralized TRS user registration database ("TRS-URD") and the

[40] *See* CSDVRS Comments at 42 ("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."); Request for Immediate Public Notice of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123, at 8 (filed Apr. 11, 2013) ("Sorenson is effectively trying to make it harder for its users to switch providers – after all, if a user opted to leave Sorenson, he or she would be prevented from leaving messages to 80% of the VRS market.").

centralization of verification.[41] Convo is not alone in its concern that potential VRS users may be disenfranchised unless some form of temporary guest registration is maintained. ASL/Global VRS, for example, comments that "without some limited-time temporary registration, a new VRS consumer may be precluded from placing telephone calls in a functionally equivalent manner pending verification and TRS-URD registration."[42]

There is no immediate need to discontinue the temporary guest registration. Unlike with respect to IP captioned telephone service,[43] there has not been the rampant abuse of the Commission's current VRS guest registration policy such that the policy needs to be reformed in the short term. Further, unlike with respect to IP relay, VRS has a built-in safeguard: VRS users must know ASL. Any guest users who do not know ASL can be immediately identified and reported by CAs so that their accounts can be terminated. Therefore, at most, the Commission should limit the time period during which a registrant who has not been verified may place VRS calls, for example to 24 hours. The Commission can – and should – readdress this issue once registration and verification procedures have been implemented on a centralized basis. Once this process has been effectively centralized, registration and verification may be sufficiently streamlined to enable the guest user policy to be repealed without a concomitant adverse impact on VRS users. For example, Convo would support reducing the limited guest user time period to

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[41] Convo Comments at 3-4.

[42] ASL/Global VRS Comments at 49.

[43] *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order and Notice of Proposed Rulemaking, 28 FCC Rcd 703, 707 ¶ 7 (2013) ("[W]e have reason to believe that [IP captioned telephone service] growth is being caused by the offering of incentives for referrals to use this service, as well as usage of this service by people without a hearing loss that necessitates the use of IP CTS to communicate in a functionally equivalent manner, and that, if unchecked, this growth threatens in the very near term to overwhelm the Fund.").

whatever time is necessary for the TRS-URD to complete a verification check of a potential new VRS user.[44]

Relatedly, the Commission should ensure that it provides users who previously were verified by providers a grace period to make VRS calls as guest users if the users initially are rejected by the TRS-URD administrator as part of the new centralized verification procedure. The centralized verification procedure is likely to result in some number of "false negatives" with respect to users that previously were verified by a provider, and it is likely to take some time to further research and resolve the false negatives. Users subject to this type of disruption should not be completely barred from using VRS during the time that the users' default VRS provider and the TRS-URD administrator are attempting to mitigate false negatives. Further, illegitimate users who initially are rejected by the TRS-URD will still be rejected by VRS CAs unless they use ASL, making it less likely that an individual who is not a legitimate VRS user will be able to gain access to the service. Ensuring that VRS users can continue to make calls as needed during this period is necessary for functional equivalence.

II. THE COMMISSION CANNOT ALLOW THE TRS FUND ADVISORY COUNCIL TO MAKE POLICY RECOMMENDATIONS INDIRECTLY TO THE COMMISSION

Convo is concerned with the Commission's proposal to redefine the role of the TRS Fund Advisory Council ("Council") to include providing advice to the Commission, directly or indirectly, regarding issues such as technology, efficiency, outreach, user experience, user eligibility and verification, and porting and slamming.[45] This appears to be inconsistent with the

[44] Without any sort of guest user period, potential new VRS users who register and are not immediately able to make VRS calls may give up trying to attempt calls and forgo the use of VRS entirely.

[45] *Further Notice* ¶ 247.

Federal Advisory Committee Act ("FACA").[46] FACA applies to "advisory committee[s]," *i.e.*, "any committee, board, commission, council, conference, panel, task force, or other group, or any subcommittee or other similar subgroup thereof," which is "established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for … one or more agencies … of the Federal Government…."[47] The Council as apparently envisioned by the Commission appears to fall under this definition and therefore the Commission would need to comply with FACA procedural requirements when expanding the role of the Council.

Further, the Commission should not attempt to circumvent FACA requirements by mandating for the Council to provide policy advice to the Commission indirectly through the TRS Fund Administrator, iTRS Outreach Coordinator, VRS access technology reference platform administrator, TRS-URD administrator, and/or neutral video communication service provider (collectively, "TRS Contractors"). The TRS Contractors were (or will be) hired by the Commission for a limited and largely administrative purpose, and the TRS Contractors should not establish VRS policy. As a result, it also would be inappropriate for the Council to provide policy advice to the TRS Contractors.[48]

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[46] 5 U.S.C. App. 2.

[47] *Id.* § 3(2).

[48] Nor is it appropriate for one of the TRS Contractors to receive policy recommendations from an advisory committee, review the recommendation, and offer its own recommendation to the Commission. The Commission should not rely on TRS Contractors for broader policy advice, which may exceed their expertise and experience. *See* Convo Nov. 14 Comments at 12 ("The elimination of rate tiers irrespective of the concomitant impacts on the overall VRS market ultimately is a policy decision that must be made by the Commission and should not be made by the Administrator. [The Administrator's] role should be limited to an accounting review of cost data provided by VRS providers using the method prescribed by the Commission. At most, [the Administrator] should provide several proposed rates taking into account the various alternative rate-setting methods that the Commission may choose given the Commission's policy goals.").

Ultimately, Convo fully supports the concept of an advisory committee chartered to negotiate complex issues that will define the future of the TRS program, including efforts to increase efficiency and functional equivalency, and offer to the Commission consensus positions on these issues. The Commission, however, must establish such an advisory committee in compliance with FACA. Convo believes that the Commission should explore whether it can redefine the Council such that it can advise the Commission directly on a wide variety of issues in a manner consistent with the requirements of FACA.

To the extent the Commission directs the TRS Fund Administrator to establish a new advisory committee to provide advice related to the TRS program, the Commission should ensure that all VRS providers have the same role with respect to the advisory committee. Thus, if any VRS provider has a voice on the committee, then all providers should have a voice. This will prevent certain VRS providers from dominating the Council. It also may be preferable for VRS providers only to have an advisory/observational role with respect to the council, rather than a voting role. In other words, the Council's meetings should be open to all VRS providers and VRS providers should be consulted with respect to all Council activities, but no VRS provider should have any vote with respect to the Council's ultimate reports. This will ensure that the Council can be relied upon by the Commission to take positions that are beneficial to the entire TRS ecosystem, rather than positions that serve only the interests of a specific VRS provider.[49]

[49] Again, Convo emphasizes that any advisory committee constituted in this manner should not, and cannot, advise TRS Contractors on policy matters.

III. DISAGGREGATING EMERGENCY CALLS TO 911 OFFERS OPERATIONAL BENEFITS

Substantial operational benefits can be obtained by centralizing the processing of 911 calls under a single contractor pursuant to a contract bid with the TRS Fund, as recognized by numerous commenters.[50] Centralizing the processing of emergency calls will ensure conformity and stability with respect to the handling of such calls. The comments of the Communications Workers of America and the National Interpreter Action Network, representatives of CAs, are particularly informative:

> Creating a dedicated pool of video interpreters who choose to do [VRS 911] work and who are properly trained to handle the unique situations that come up in emergency calls would benefit deaf and hard-of-hearing consumers. It would also relieve one significant source of stress on video interpreters.[51]

Convo agrees.

A centralized emergency VRS contractor would be able to focus all of its resources to develop highly trained CAs with specialized emergency skill sets for a variety of unique, emergencies. CAs employed by the centralized contractor would receive regular experience handling emergency calls, unlike current CAs who seldom individually handle a high volume of 911 calls. Moreover, a VRS provider focused solely on emergency calls can more easily work with public safety officials to uniformly and rapidly adopt new and innovative 911 call handling and processing technologies. For example, there currently are untapped possibilities with respect to the use of location technologies to identify the actual (rather than registered) location of VRS

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[50] *See* ASL/Global VRS Comments at 43-44; CAAG Comments at 6; CWA/NIAN Comments at 5-6. The advantages of a centralized VRS provider for emergency calls are not the same as for a centralized VRS provider more generally. Emergency calls are only a small fraction of overall VRS calls. Therefore, there are limited incentives for VRS providers to compete vigorously on service quality specific to such a small number of VRS calls.

[51] CWA/NIAN Comments at 5.

users utilizing mobile platforms with GPS technology. The public safety benefits that can be obtained through such 911 innovation are likely to be realized much more quickly under a centralized 911 system.

Moreover, Convo has no reason to doubt the recommendations of the Emergency Access Advisory Committee ("EAAC"),[52] which recommended the creation of a nationally certified "Media Communication Line Service."[53] For the reasons stated by the EAAC and because of the potential to improve the quality of the handling of emergency VRS calls, Convo believes the Commission should centralize 911 call processing and disaggregate it from VRS providers.

IV. THE RECORD DOES NOT SUPPORT A 10-SECOND SPEED OF ANSWER PROPOSAL

VRS providers overwhelming support retaining the current formula for calculating a provider's SOA.[54] Convo agrees with these commenters and urges the Commission to retain the current formula, as expressed in paragraph 261 of the *Further Notice*.[55]

By contrast, VRS providers almost unanimously oppose the Commission's proposal to reduce the SOA to 85 percent of calls within 10 seconds measured on a daily basis.[56]

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[52] The EAAC is a collection of consumer advocates and telecom provider representatives that spent considerable time discussing and evaluating the options for emergency call handling for individuals with disabilities.

[53] *See Further Notice* ¶ 260 (discussing *Emergency Access Advisory Committee Working Group 3 Recommendations on 9-1-1 and Next Generation 9-1-1: Media Communication Line Services Used to Ensure Effective Communication with Callers with Disabilities* (Mar. 2013)).

[54] *See* CAAG Comments at 7; CSDVRS Comments at 28; Purple Comments at 20; Sorenson Comments at 46-57.

[55] *Further Notice* ¶ 261.

[56] *See* Convo Comments at 2-3; ASL/Global VRS Comments at 44-45; CAAG Comments at 6-7; CSDVRS Comments at 27-30; Sorenson Comments at 47-53; *see also* CWA/NIAN Comments at 2-4. Purple, the only VRS provider to support the proposal, still notes that the increasing standards would raise costs. *See* Purple Comments at 20-21.

Commenters agree that the proposal is unworkable and would impose inefficient costs because providers would need to hire and deploy a substantial number of additional CAs to achieve the standard. Due to natural fluctuations in VRS traffic, these additional CAs would be underutilized most of the time.[57] Convo agrees that the Commission should not reduce the SOA beyond the 30-second SOA that will become effective in July 2014, which is sufficient to ensure a quality experience for VRS users while still enabling cost-effective staffing by VRS providers. To the extent that the Commission desires to further reduce the SOA standard – which it should not – it should reduce it to no less than 20 seconds and, if it does so, it must allow the calculation of the SOA over a monthly period, rather than on a daily basis, to enable providers to "smooth" unforeseeable jumps in call volume.[58]

An overly aggressive and impractical SOA raises particular challenges for VRS providers in light of the Commission's recent adoption of automatic reductions in VRS compensation rates. The significant additional resources that VRS providers would be required to devote to comply with a further reduced SOA are not accounted for in the Commission's current compensation rates. Moreover, a further reduced SOA would require providers to reallocate resources currently dedicated to improving VRS in ways that would have a more meaningful impact on users. Ultimately, the quality of VRS is more important than any further incremental reduction

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[57] *See, e.g.,* ASL/Global VRS Comments at 45; Purple Comments at 20.

[58] To the extent the Commission wishes to further reduce the SOA standard and still measure SOA on a daily basis, it could do so by setting two, separate standards: 85% of calls answered within 30 seconds on a daily basis and 85% of calls answered within 20 seconds on a monthly basis.

of the SOA requirement below 30 seconds, particularly as such reductions would lead to inefficient and unwarranted costs that will further strain the TRS Fund.[59]

The Commission also should carefully consider the penalty that should be imposed on VRS providers that fail to meet the SOA standard. The penalty should not be overly punitive. In the event that a provider is unable to achieve the SOA on average over a month, the compensation penalty should be tied to the VRS provider's actual SOA issues. Specifically, the TRS Fund Administrator only should hold back compensation for individual calls that were not answered in a time frame consistent with the SOA requirement or should reduce monthly compensation based on the percentage by which a VRS provider failed to satisfy the SOA requirement.[60] A provider should not lose all compensation for an entire month for failing to achieve the SOA on average for the month.[61] Overly severe penalties ultimately will harm VRS users because providers will need to divert resources that otherwise would be allocated to improving service quality to instead overstaff their call centers to avoid such egregious penalties. In addition, providers who can demonstrate that their call centers were adequately staffed given reasonably foreseeable call volumes should not be significantly penalized for failing to meeting the SOA during certain periods of unforeseeable traffic increases beyond the control of the VRS

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[59] Convo again emphasizes that the Commission's current rates do not incorporate CA staffing necessary for a 30-second SOA requirement, let alone a 10-second SOA requirement. *See also* CSDVRS Comments at 29 ("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.").

[60] *See, e.g.,* Purple Comments at 20-21; Sorenson Comments at 53-55.

[61] Such a punitive approach would severely cripple VRS providers. One month of lost compensation amounts to a sudden and unexpected annual revenue reduction of over 8% without any concomitant cost savings, which could drive a provider to insolvency.

provider.[62] Such an allowance will not affect the purpose of penalizing providers for not meeting the SOA standard – to incent providers to staff their call centers appropriately.

V. THE COMMISSION SHOULD ADOPT PROPOSALS THAT WOULD REDUCE REGULATORY AMBIGUITY AND PROVIDE CLARITY TO VRS PROVIDERS

A. THE COMMISSION SHOULD CONSIDER EACH FORM OF iTRS SEPARATELY

Numerous commenters, including VRS and other TRS providers, express concern regarding the Commission's proposal to adopt consistent regulation of all forms of iTRS.[63] Even commenters that support the proposal do so with significant caveats.[64] Convo agrees that the administrative expediency of having one set of iTRS rules is undermined by the resulting complexity and potential ambiguity of such omnibus rules. Therefore, Convo also urges the Commission to restructure its rules so that the rules are service-specific.

Each variety of TRS raises different types of regulatory issues. Even where these issues are similar, they are not the same. Each of the various forms of TRS utilize different technologies, face different challenges and costs, and have different user bases. Consequently, a

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[62] For example, the Commission could require that providers show evidence that the traffic they projected fell within a certain confidence level (to be determined by the Commission) given past traffic levels and allow compensation if traffic volume was outside of reasonably predictable parameters, thereby causing providers to fail to meet SOA requirements.

[63] *See, e.g.,* Comments of Hamilton Relay, Inc., CG Docket Nos. 10-51 & 03-123, at 5-7 (filed Aug. 19, 2013) ("Hamilton Comments"); Comments of Sprint Corporation, CG Docket Nos. 10-51 & 03-123, at 3-11 (filed Aug. 19, 2013) ("Sprint Comments"); Sorenson Comments at 37-40.

[64] *See, e.g.,* Consumer Groups Comments at 20 ("Consumer Groups generally support this proposal, but … believe certain exceptions should apply, particularly the applicability of the neutral video communication service platform to other forms of iTRS."); Purple Comments at 18-19 ("Purple believes compliance standards should be uniform across all service types, to the extent such standards are applicable to a particular service…. However, the differentiation of technology platforms, call routing and service type among various services limit how broadly certain standards can be applied.").

"one size fits all" approach to TRS results in rules that do not adequately fit any of the multiple varieties of TRS. Even worse, this approach could create unnecessary costs to certain services and needlessly complicate consumers' use of such services without resulting in sufficient corresponding benefits to justify such harms. For these reasons, the maintenance of a single set of TRS rules is likely to increase waste from the TRS Fund and decrease functional equivalence. Further, this approach, as compared to a more tailored regulatory approach, has the potential to create pointless uncertainty, adding new ambiguities and complications to the Commission's regulatory regime as providers attempt to interpret regulations that may not clearly apply to a given service. Therefore, the Commission instead should develop independent and targeted regulatory regimes for the various types of TRS, which will foster an independent evaluation of the costs and benefits of each proposed regulation as applied to each specific TRS.[65]

In a similar vein, the Commission should restructure its rules so that the rules are service-specific, a proposal that is overwhelmingly supported in the record.[66] This separation will enable the Commission to more closely consider and tailor the costs and benefits of each particular rule for each particular service and identify rules that are not applicable for a given service. Separation of the TRS rules into service-specific sections also will make the application (or non-application) of individual rules to each service more clear and thereby reduce ambiguity in the Commission's rules. To the extent that the Commission determines that certain rules should apply to multiple types of TRS, the Commission easily can reproduce such rules in the service-specific rules for each such variety of TRS. The Commission also should take this opportunity

[65] The Commission can and should apply its experience from one TRS to another service; it should not, however, transfer regulations enacted for one service to another without first considering the costs and benefits of the regulations for that particular service.

[66] *See* ASL/Global VRS Comments at 48; CAAG Comments at 7; Hamilton Comments at 4-5; Purple Comments at 21; Sorenson Comments at 62; Sprint Comments at 2-3.

to reorganize and rationalize the rules for each service. The gradual evolution of TRS has led to complex and voluminous rules contained in the Code of Federal Regulations.

B. THE SCOPE AND REQUIREMENTS OF ANY PROHIBITION AGAINST "UNJUST AND UNREASONABLE" PRACTICES SHOULD BE CLEAR

Convo does not oppose any well-crafted rules adopted by the Commission to reduce fraud, waste, and abuse. However, such rules must be sufficiently clearly articulated to enable VRS providers to understand exactly what actions they must take and refrain from taking to comply with the rules. A vague prohibition on "unjust and unreasonable" practices is likely to subject VRS providers to unforeseeable enforcement actions.[67] Rather than adopt an amorphous, vague prohibition, Convo favors the adoption by the Commission of more granular and specific rules to combat any remaining fraud, waste, and abuse. Nevertheless, to the extent that the Commission instead determines to adopt its proposal, it should clearly articulate new enforcement policies prior to implementing them so that VRS providers have an opportunity to reform their practices as necessary to comply with newly developed policies under this rule.

C. THE COMMISSION SHOULD CLARIFY THE MANNER IN WHICH VRS PROVIDERS MUST SEPARATE VRI AND VRS COSTS

In the past, the Commission has provided certain, limited guidance regarding how VRS providers that offer video remote interpreting ("VRI") should allocate costs between their VRI and VRS businesses to ensure that the providers are not overcompensated for the use of shared resources by their VRS business.[68] Specifically, the Commission indicated that "indirect

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[67] As Sorenson notes, a vague prohibition that is intended to be enforced on an *ad hoc* basis may violate VRS providers' due process rights. Sorenson Comments at 68. Vague prohibitions also could lead to unnecessary legal and compliance costs, which ultimately would be borne by the TRS Fund, the Commission, and VRS providers and their customers.

[68] *See also Further Notice* ¶ 237 (seeking comment on how the Commission can make sure that iTRS providers that offer VRI are not overcompensated for shared resources); ASL/Global VRS

overhead costs may not be allocated to TRS by an entity that provides services other than TRS based on the percentage of the entity's revenues that are derived from the provision of TRS."[69] Presumably, this applies to an integrated VRI and VRS provider.

This prior Commission guidance, however, does not provide adequate direction regarding how a provider should account for, and allocate the costs of, shared equipment and other resources. A clarification will provide regulatory certainty to VRS providers who want to build a structurally separate VRI business, as well as VRI providers that may wish to enter the VRS market. In addition, by establishing clear, uniform accounting, the Commission will ensure a level playing field both for VRS-only providers and providers that offer both VRS and VRI.[70] For these reasons, the Commission should clarify the manner in which VRS providers must structurally separate their VRI and VRS businesses, including from an accounting perspective.

VI. THE COMMISSION SHOULD NOT PROHIBIT PROVIDERS FROM USING CPNI FOR POLITICAL AND REGULATORY ADVOCACY PURPOSES

The Commission asks whether it should prohibit a VRS provider from using customer proprietary network information ("CPNI") to contact its users for political and regulatory advocacy purposes, unless the users affirmatively agree to such contacts.[71] Regardless of the policy merits of this proposal, the courts already have determined that such a prohibition

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Comments at 38 (proposing that the Commission require integrated providers to demonstrate that VRI is not being subsidized by VRS).

[69] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 ¶ 75 (2007).

[70] In addition, uniform accounting may reduce the overall costs of VRS by causing providers with thriving VRI businesses to assign more of their costs to the VRI business.

[71] *Further Notice* ¶ 270.

constitutes an impermissible and unconstitutional restraint on First Amendment rights.[72] The Commission should not devote additional resources to this proposal, which already has been litigated before the courts and likely will be litigated again if the Commission pursues such action.

VII. THE COMMISSION SHOULD REQUIRE INCREASED PUBLIC DISCLOSURE OF INFORMATION FILED BY VRS PROVIDERS

It is appropriate to require comprehensive public disclosures by VRS providers of information about their costs and operations. VRS providers are funded by a government-administered fund and their receipt of such government funding should be conditioned on their disclosure of how the funds are spent. Consistent with this principle, Convo supports the full public disclosure of all VRS information filed with the Commission and the TRS Fund Administrator by VRS providers, except that such information should be redacted as necessary to preserve the privacy of VRS users. Convo consistently has agreed to make data regarding its operations public and Convo believes that, subject to privacy concerns, *all* cost data and *all* call data should be made public.[73]

Requiring VRS providers to release cost and call data is an effective method to further protect the TRS Fund against waste, fraud, and abuse without establishing any new burdens or

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[72] *U.S. West, Inc. v. FCC*, 182 F.3d 1224, 1229 (10th Cir. 1999); *see also* CSDVRS Comments at 51-52; Sorenson Comments at 63-66.

[73] The Commission also should direct the TRS Fund Administrator to publicly release data regarding overall VRS usage, as well as aggregated and anonymized data regarding VRS users, derived from the iTRS database and the TRS-URD. Releasing such information is consistent with the White House's and the Commission's Government 2.0 initiatives to ensure open and transparent government processes and unleash data. *See, e.g.,* Memorandum for the Heads of Executive Departments and Agencies from President Barack Obama, *Transparency and Open Government* (Jan. 21, 2009) ("Transparency promotes accountability and provides information for citizens about what their Government is doing."); Federal Communications Commission, Open Government Directive, http://reboot.fcc.gov/open/.

reporting obligations for providers. VRS providers currently report all of the data that the Commission and the TRS Fund Administrator need to regulate the VRS industry. Any additional reporting obligations would add new burdens without corresponding benefits. However, the public disclosure of the already-reported data will enable VRS providers to police each other, for consumer groups to police VRS providers, and for taxpayers to ensure that their money allocated for the TRS Fund is not wasted. This will assist the Commission and TRS Fund Administrator's efforts without the need to dedicate additional sparse government resources.

VIII. THE COMMISSION SHOULD PROHIBIT NON-COMPETE CLAUSES IN INTERPRETER EMPLOYMENT CONTRACTS

Convo agrees with the overwhelming support in the record that the Commission should prohibit non-compete clauses in CA employment contracts.[74] Only one commenter, Sorenson, opposes the prohibition.[75] Sorenson asserts certain business justifications for such clauses.[76] However, Convo and other commenters[77] believe that even legitimate justifications for non-compete clauses are outweighed by the substantial harms they create. Moreover, providers can utilize non-disclosure agreements, which the Commission should continue to permit, to address many of Sorenson's concerns regarding the disclosure of training and operational informational.

If the VRS market were fully competitive, a Commission prohibition of non-compete clauses for interpreters likely would be less necessary. But the VRS market is not fully competitive or even somewhat competitive. Instead, the only commenter that opposes the

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[74] *See* ASL/Global VRS Comments at 50; CAAG Comments at 8-10; Consumer Groups Comments at 24; CWA-NIAN Comments at 4; CSDVRS Comments at 46-48; Purple Comments at 23-24; RID Comments at 18-20.

[75] *See* Sorenson Comments at 76.

[76] *See id.* at 76-78.

[77] *See, e.g.,* Consumer Groups Comments at 24.

prohibition dominates the market. Sorenson utilizes non-compete clauses to lock-in its interpreters just as it tries to lock-in its customers. Rather than continue to allow this practice, the Commission can provide another avenue by which smaller providers can offer quality competition and gain scale – by enabling smaller providers to attract high quality interpreters untethered by anticompetitive employment contracts.

IX. THE COMMISSION SHOULD NOT RELAX THE PROHIBITION AGAINST CAS WORKING FROM HOME

The Commission should not revisit the prohibition against CAs working from home at this time. Convo agrees with consumer advocates that allowing CAs to work from home raises significant privacy concerns.[78] In addition, home-based call centers present concerns regarding compliance with the Commission's mandatory minimum requirements and quality standards. Home-based call centers also are more conducive to fraud than supervised call centers with on-site management. The Commission previously recognized these concerns when it determined that allowing VRS CAs to work from home posed more risks than benefits.[79] Nothing has changed since then to warrant that the Commission revisit this decision. Permitting VRS CAs to work from home, even on a limited basis during overnight hours, still raises the same risks without generating sufficient corresponding benefits. Accordingly, the Commission should maintain this prohibition.

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[78] *See id.* 25 ("Consumer Groups maintain that call centers provide a more controlled environment to maintain confidentiality.").

[79] *See Further Notice* ¶ 280 (citing *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5556 ¶ 16 (2011)).

X. NEUSTAR'S PROPOSAL OFFERS A WAY TO CUT OVERALL COSTS AND WASTE FROM THE TRS FUND

Neustar suggests that the Commission combine the TRS-URD with the existing iTRS Telephone Numbering Directory to reduce costs and increase efficiency.[80] Convo supports this proposal as a way to cut overall costs and prevent an instance of waste of the TRS Fund. In addition, the proposal would better rationalize both databases and avoid the potential for user or provider disruptions caused by inconsistencies between the databases.

XI. CONCLUSION

The Commission already has made tremendous strides in reforming the VRS program to reduce waste, fraud, and abuse. As it continues its efforts – particularly as it considers further radical changes to the rate setting mechanisms – the Commission should be guided by its statutory mandate to ensure functional equivalence. The Commission also should focus on preserving consumer choice and allowing smaller providers to continue to unleash service-quality competition and innovation. Convo therefore respectfully requests that the Commission consider the proposals in the *Further Notice* carefully to ensure that they do not undermine the ability of smaller carriers to provide needed service-quality competition, which, in turn, will increase functional equivalence.

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[80] Letter from Richard L. Fruchterman, III, Associate General Counsel, Neustar, to Marlene Dortch, Secretary, Federal Communications Commission, CG Docket Nos. 10-51 & 03-123 (filed Aug. 15, 2013).

Respectfully submitted,

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