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ASL SERVICES HOLDINGS, LLC.

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April 24, 2014

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12 Street SW
Washington, DC 20554

RE: *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Notice of Ex parte Meeting*

Dear Ms. Dortch,

On April 22, 2014, Angela Valcarcel-Roth, Managing Member, President & Chief Executive Officer of ASL Services Holdings, LLC ("ASL/Global VRS"), Gabrielle Joseph, Vice President of ASL/Global VRS, and Andrew Isar, Miller Isar, Inc. on behalf of ASL/Global VRS, Jeremy Jack and Everett Puckett of Hancock, Jahn, Lee & Puckett, LLC d/b/a Communication Axess Ability Group ("CAAG"); Jeff Rosen of Convo Communications, LLC ("Convo"); Sean Belanger, Lydia Runnels, Aaron Wegehaupt, and Mike Strecker, all of CSDVRS, LLC; John Ferron, John Goodman and John Kelleher of Purple Communications, Inc. ("Purple"); and Christopher Wakeland of Sorenson Communications, Inc. ("Sorenson"), and John Nakahata, of Wiltshire & Grannis, LLP, on behalf of Sorenson (collectively, "VRS Providers"), participated in a meeting (either in person or by phone) with FCC attendees Karen Peltz Strauss (Deputy Chief, Consumer and Government Affairs Bureau ("CGB")), Robert Aldrich (Attorney Advisor, CGB), Gregory Hlibok (Chief, Disability Rights Office, CGB), Eliot Greenwald (Attorney-Advisor, Disability Rights Office, CGB), Roger Holberg (Attorney-Advisor, Disability Rights Office, CGB). met to address concerns over the Commission's Speed of Answer ("SoA") rule, 47 C.F.R. §64.604(b)(2). ASL/Global VRS incorporates the April 24, 2014 joint VRS Providers' *Notice of Ex parte Meeting* submitted by the participating providers in the above captioned matter by reference. ASL/Global VRS further provides the following additional discussion and supporting information specific to ASL/Global VRS.

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Ms. Roth thanked the Commission for acknowledging the benefit of additional industry information regarding SoA implementation and for its willingness to consider SoA regulatory options. Ms. Roth noted that the Telecommunications for the Deaf and Hard of Hearing, Inc. and Consumer Groups[1] (collectively, the "Consumer Groups") initial request for shorter SoA times, which had served as an impetus for SoA rule amendments, had since been tempered by the Consumer Groups' expressed acknowledgement of the many issues raised by the Commission's SoA rule amendments and need for additional information in determining the impact on service quality.[2] Ms. Roth underscored the disproportional impact of the amended SoA requirements and daily measurement requirement in particular on emerging providers, and staffing challenges faced by providers with a limited pool of qualified interpreters, particularly when serving Spanish speaking subscribers.

Ms. Roth also questioned the need for strict penalties as an incentive for improved performance. Historic penalization for missed standards that have been imposed to curb fraud, waste, and abuse, do not lend themselves well for SoA requirements, particularly in instances of non-compliance for issues outside of the Company's control. Ms. Roth noted that providers are already incentivized by competitive pressure to meet subscriber expectations. Ms. Roth stressed that providers faced an untenable risk between the cost of overstaffing and meeting SoA requirements, as ASL/Global VRS now does, or understaff and risk foregoing reimbursement under an "all or nothing" approach for meeting SoA, for circumstances that cannot be anticipated and are outside of the Company's control. ASL/Global VRS staffing challenges and risks are exacerbated by an exceptionally limited pool of qualified Spanish speaking video interpreters.[3]

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[1] National Association of the Deaf ("NAD"), Association of Late-Deafened Adults, Inc. ("ALDA"), Cerebral Palsy and Deaf Organization ("CPADO"), American Association of the Deaf-Blind ("AADB"), and California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc. ("CCASDDH")

[2] *See*, Consumer Groups letter to Marlene Dortch, CG Docket Nos. 03-123 and 10-51 (December 28, 2014) [*Consumer Groups' Letter*] "Consumer Groups appreciate the stronger SoA requirements but are concerned that significant rate reductions were imposed in the same order without taking in account the costs for the new SoA requirements." The Consumer Groups recognized that a reduction in speed of answer requirements would lead to an increase in costs and expressed concern that, like the IP Relay services, without sufficient reimbursement [to providers] consumers will see providers drop out of the market or the quality of services will deteriorate." *Consumer Groups' Letter* at page 2. *See also* Deaf and Hard of Hearing Consumer Advocacy Network meeting notes by Andrew Phillips, National Association for the Deaf; "One individual explained that due to the rate cuts, providers will have to make difficult decisions such as choosing to invest in interpreter quality or better technology. If interpreters aren't able to earn enough money in VRS, they will do more community work instead. Some consumers explained that they already know of interpreters who have left VRS due to the lack of competitive pay. Others echoed these concerns and explained that in their opinion, the quality of VRS has already declined…" "One consumer responded saying that while we understand the difficulties of a shorter answering time, it is a step towards functional equivalency and the consumers support lowering the answering time requirement. However, by all means, the rates should support shorter answering time requirements. The rates need to support functional equivalency and sometimes that means higher rates for higher service quality."

[3] In 2013 ASL/Global VRS was able to identify only [Redacted] video interpreter applicants as qualified for employment. Nevertheless, the Company has had to invest additional resources for training, professional development, and compensation commensurate with their trilingual skills. The unique requirements of meeting demand for Spanish language interpreting must be considered, militating against an all or nothing penalty approach.

The Commission has stated its desire to harmonize video relay service SoA with those applicable to other forms of telecommunications relay service.[4] Yet the individual characteristics associated with the provision of each type of service must also be considered. The Americans with Disabilities Act requires reasonable accommodation for those with disabilities, not necessarily equal service. This too should be considered as the Commission moves to harmonize SoA between services.

ASL/Global VRS is meets a sustainable SoA standard of 85 percent of its calls answered within 60 seconds, measured monthly, pending Commission analysis of additional data to be submitted by the providers, including ASL/Global VRS.[5] The Company requests that a graduated penalty be implemented as an alternative to an "all or nothing" penalty for the measurement period proposed by Sorenson and others. In anticipation of a number of factors over which the Company has no control and cannot identify with certainty including winter Southeast/Caribbean hurricanes, tornados, and flooding that will impact staffing and therefore SoA, call spikes due to other weather issues, and network outages, ASL/Global VRS proposes that the daily measurement requirement to become effective July 1, 2014 be stayed for a period of one (1) year[6] to allow the Commission to fully develop a record on the impact of the industry's data and proposals by granting ASL/Global VRS' petition for waiver and extending the waiver to all companies. In support of ASL/Global VRS' request, the Company provides the following data.

Looking at a specific day of the week as an example of the ASL/Global VRS' Total Calls Received in Figure 1, below, it becomes obvious of the degree of call fluctuation day to day. While every effort is made to analyze variables, it is impossible to determine what impacts the fluctuation and would be considered an anomaly or exigent circumstances. This is precisely the point the VRS providers have underscored: that despite efforts to staff appropriately with building-in additional staffing to handle sudden increases at a financial loss, it is still impossible to avoid circumstances where these sudden unexpected spikes would impact the SOA, subject to significant loss of reimbursement.

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[4] *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket Nos. 10-51 and 03-123, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 13-82 (June 10, 2013) [*2013 VRS Reform FNPRM*] para 135, "The record demonstrates that it is appropriate to take steps to more closely align the VRS speed of answer rules with those applicable to other forms of TRS by reducing the permissible wait time for a VRS call to be answered to 30 seconds, 85 percent of the time, and to measure compliance on a daily basis."

[5] *See* VRS providers' *Notice of Ex parte Meeting* at page 2.

[6] Or alternatively that ASL/Global VRS' pending *Petition for Waiver* of the daily penalty assessment be granted. *See, In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Docket Nos. CG 10-51 and 03-123, ASL Services Holdings, LLC *Petition for Waiver* (October 24, 2013)

[REDACTED]

Figure 1

The Commission has requested alternative SoA measurement proposals from providers. With the understanding that a salient underlying concern in SoA measurement is whether a provider is purposely understaffing, thereby ignoring consumer need for reasonable SOA, or whether the provider is at any given moment understaffed due to an "anomaly" - exigent circumstances over which the provider has no control over – or difficulty in employing a sufficient and qualified labor pool, ASL/Global VRS' offers the following outline for a comprehensive analysis:

Propose: document staffing levels to establish a call volume/staffing base line for comparison.

Review a 24 hour daily baseline for ONE month (June) graph showing:

a. number of calls
b. number of interpreters staffed (is there "additional plus staffing built in? if yes , how much? If not, why not?)
c. how the SOA was impacted

For each day, show how the baseline of

a. Number of calls fluctuated

- Did the calls increase or decrease?
- If increased, by how much?
- if increased, can the source/reason be identified?

b. How the interpreting staff was adjusted?

- If increased, what was the financial impact? (example overtime)
- Was over time precluded due to labor law restrictions?
- Was there sufficient time to add additional interpreter staffing?

c. How was the current SOA was impacted? If the SOA had been 30 seconds? If the SOA was 10 seconds?

Analysis:

- What the increase in calls a temporary 'spike" or is there any basis to see it as "consistent" increase?

- If a "spike" can the reason for the spike be identified or if the number of calls consistent, did the provider continue to make reasonable adjustment to staffing?

- If the staffing was attempted by the provider, but not sufficiently so as to positively impact the SOA, why not?

- Is there a limited labor pool? For example, ASL/Global VRS interviews 58 applicants, of which only 18 could be hired. Of the 18, all but 3 have to be put on a professional development program significantly mentoring at significant internal unreimbursed costs. The number of certified trilingual is less than 1% of the entire interpreting labor pool.

- -training was set up but would not be able to be added to labor pool until training was completed

- individuals on probation were let go

This filing is made in accordance with Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1). Questions may be directed to the undersigned.

Request for Confidential Treatment. Pursuant to Section 0.459 of the Commission's rules, and "Exemption 4" of the Freedom of Information Act, ASL/Global VRS respectfully requests confidential treatment of the confidential version of this letter. The confidential version contains proprietary information not intended for public consumption. ASL/Global VRS would not make such information public under any circumstance. Release of the confidential version of the confidential version of this letter to the public could cause ASL/Global VRS irreparable and inestimable harm. ASL/Global VRS requests that the confidential version of this letter be withheld from public inspection, accordingly. Should disclosure of the confidential version of this letter be requested, ASL/Global VRS requests that it be informed of such request so that ASL/Global VRS may take appropriate action to safeguard its interests.

Pursuant to the Commission's *Second Protective Order* in the above-referenced matter,[7] one copy the confidential copy of this letter and two copies of the redacted public version are enclosed. Two copies of the confidential version are directed to Gregory Hlibok, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B431, Washington, D.C. 20554. Questions may be directed to the undersigned.

This filing is made in accordance with Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1). Questions may be directed to the undersigned.

Sincerely,

Angela Roth
Managing Member, President and
Chief Executive Officer

cc: Karen Pelz Strauss (via electronic delivery)
Gregory Hlibok (via electronic delivery)
Robert Aldrich (via electronic delivery)
Eliot Greenwald (via electronic delivery)
Roger Holberg (via electronic delivery)

[7] *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Second Protective Order*, DA 12-858 (rel. May 31, 2012)