



PUBLIC NOTICE

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NOTICE OF GRANT OF CONDITIONAL CERTIFICATION FOR CSDVRS, LLC, TO PROVIDE VIDEO RELAY SERVICE AFTER ITS ACQUISITION BY KINDERHOOK CAPITAL FUND IV, L.P.

CG DOCKET NOS. 03-123 & 10-51

By the Acting Chief, Consumer and Governmental Affairs Bureau:

By this Public Notice, the Consumer and Governmental Affairs Bureau (Bureau) announces that it grants conditional certification to CSDVRS, LLC (d/b/a ZVRS) to continue to provide Video Relay Service (VRS)¹ following the consummation of the acquisition of ZVRS by Kinderhook Capital Fund IV, L.P. and its affiliate Kinderhook Capital Fund IV-B, L.P., both of which are advised by Kinderhook Industries, LLC (collectively Kinderhook). This will enable ZVRS to remain eligible to receive compensation from the Interstate Telecommunications Relay Services Fund (TRS Fund),² during the interim period pending the filing of, and Commission action on, an application for full certification by the post-merger entity. We find it to be in the public interest to permit ZVRS to provide video relay service (VRS) after the consummation of the acquisition of ZVRS by Kinderhook and while the Commission considers the post-merger entity's qualifications for certification, in order to ensure uninterrupted service to the existing customers of ZVRS's service.

ZVRS currently holds a full certification as a VRS provider eligible for compensation from the Interstate Telecommunications Relay Service Fund (TRS Fund).³ As the Commission has ruled:

[An Internet-based TRS provider] certification is not transferable. Therefore, in the event that an entity not certified pursuant to section 64.605 [subsequently renumbered 64.606] purchases, acquires, or merges with another TRS provider, the acquiring or surviving provider must be certified under section 64.605 (or otherwise eligible for compensation from the Fund) before it can receive payments from the Fund. On the other hand, if an entity that is certified pursuant to

¹ VRS is a form of "[a] telecommunications relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the [Communications Assistant] to view and interpret the party's signed conversations and relay the conversation back and forth with a voice caller." 47 C.F.R. § 64.601(a)(40).

² The TRS Fund compensates eligible providers of Internet-based and interstate TRS for their reasonable costs of providing these services. See 47 C.F.R. § 64.604(c)(5)(iii).

³ *Consumer and Governmental Affairs Bureau Grants CSDVRS, LLC. Full Certification as a Provider of Video Relay Service Eligible for Compensation From the Interstate Telecommunications Relay Service (TRS) Fund*, Public Notice, 27 FCC Rcd 14505 (CGB 2012).

section 64.605 purchases, acquires, or merges with another TRS provider, the acquiring or surviving provider need only notify the Commission of the change in its TRS program and provision of service within 60 days pursuant to section 64.605(f)(2).⁴

The Commission certification process is designed to ensure compliance with the TRS rules, and “[b]ecause the Commission certifies providers based on the attestations of their owners or their representatives, who are ultimately responsible for compliance with the Commission’s rules, the certification of a provider does not automatically transfer to new owners.”⁵

On November 25, 2014, ZVRS and Kinderhook (Applicants) filed an “Application of CSDVRS, LLC (D/B/A ZVRS) and Kinderhook for Conditional Certification to Provide Video Relay Service.”⁶ In the Application, ZVRS and Kinderhook state that they are negotiating a merger agreement pursuant to which Kinderhook will acquire indirect majority ownership and control of ZVRS following the Commission’s grant of a conditional certification to the post-merger entity.⁷ Although Kinderhook does not currently hold Commission certification as a VRS provider, the company it is acquiring, ZVRS, is a certified VRS provider. The Applicants seek conditional certification to enable ZVRS to maintain its eligibility to provide VRS and receive compensation from the TRS Fund on an interim basis following its acquisition by Kinderhook.⁸

The Applicants state that the proposed transaction will not result in any changes to the management team or day-to-day operations of ZVRS and that ZVRS will continue to comply with all of the Commission’s VRS regulations following consummation of the transaction. The Applicants assert that, within 15 days of the transaction’s consummation, the post-merger ZVRS (referred to in this Public Notice as “ZVRS/Kinderhook”), which then will be indirectly majority owned and controlled by Kinderhook, will file an application for full certification to provide VRS.⁹ The Applicants request the Commission to allow the conditional certification to remain in effect while the Commission evaluates and makes a final determination regarding that application.¹⁰ They claim that a conditional grant is in the

⁴ *Consumer and Governmental Affairs Bureau Clarifies the Transferability of Telecommunications Relay Service (TRS) Provider Certification*, CG Docket No. 03-123, Public Notice, 23 FCC Rcd 10438, 10438 (CGB 2008) (*Certification Transfer PN*). See also *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second Report and Order and Order, 26 FCC Rcd 10898, 10918, ¶ 47 (2011) (*Internet-based TRS Certification Order*) (confirming the ruling in the *Certification Transfer PN*).

⁵ *Certification Transfer PN*, 23 FCC Rcd at 10439. See also *Structure and Practices of the Video Relay Services Program: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8689, ¶ 175 (2013) (permanently adopting an attestation requirement for certification applications, and explaining that “[t]he Commission believes that this attestation requirement will provide an added deterrent against fraud and abuse of the Fund by making senior officers of providers more accountable for the information provided”).

⁶ Application of CSDVRS, LLC (D/B/A ZVRS) and Kinderhook for Conditional Certification to Provide Video Relay Service, CG Docket Nos. 03-123, 10-51 (filed Nov. 25, 2014) (Application).

⁷ *Id.* at 2.

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ *Id.* The Applicants note that the Commission, in 2012, found that CSDVRS will provide VRS in compliance with the Commission’s rules and orders and is qualified to receive compensation from the Fund. *Id.* The Applicants state (continued...)

public interest because, through its indirect ownership and control of ZVRS, Kinderhook will provide financial support and business expertise to enable ZVRS to gain scale and economic efficiencies, to invest more in innovative VRS software and hardware, and to become a stronger competitor in the VRS market, to the ultimate benefit of consumers.¹¹

The Commission's rules provide that providers of Internet-based TRS must be granted certification by the Commission in order to receive compensation from the TRS Fund.¹² As noted above, such certification is not transferable to a non-certified entity that purchases, acquires, or merges with the certified TRS provider.¹³ Being granted certification requires the provider, among other things, to establish that its provision of TRS will meet the minimum TRS standards of section 64.604.¹⁴ Until ZVRS/Kinderhook files and the Bureau completes its review of the post-merger application for full certification, the Bureau is not in a position to make such a finding regarding ZVRS/Kinderhook's eligibility for such certification.

The Commission's rules allow the grant of conditional certification, in order to avoid interruption of service, where the Commission has not completed its evaluation of an applicant's qualifications.¹⁵ Such conditional certifications are granted without prejudice to the Commission's final determination of the applicant's qualifications and thus preserve the Commission's ability to fully review an application for certification on the merits.¹⁶

As the ZVRS-Kinderhook merger is not yet effective, ZVRS/Kinderhook does not at this time have an application for certification on file. However, the Application includes as an exhibit a draft application for full certification, which substitutes ZVRS/Kinderhook as the applicant, provides information about ZVRS/Kinderhook, and addresses how ZVRS/Kinderhook will comply with all of the minimum TRS standards.¹⁷ Based on the representations in the Application and the Draft Certification Application, the Bureau is able to conclude that authorizing ZVRS to continue to operate subsequent to

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that the proposed transaction will not impact ZVRS' management team or day-to-day operations. *Id.* at 7. This, they contend, will assure it continues to meet or exceed all Commission VRS requirements after the proposed transaction is consummated. *Id.*

¹¹ *Id.*, Exhibit A, "Application of CSDVRS, LLC (D/B/A/ ZVRS), as Indirectly Majority-Owned and Controlled by Kinderhook, for Certification to Provide Video Relay Service," at 5 (Draft Certification Application).

¹² 47 C.F.R. § 64.606.

¹³ *Certification Transfer PN*, 23 FCC Rcd at 10438; *Internet-based TRS Certification Order*, 26 FCC Rcd at 10918, ¶ 47.

¹⁴ 47 C.F.R. §§ 64.606(b)(2)(i).

¹⁵ *Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, ¶ 37. The ability to issue conditional grants of certification "balances the need for continuity of service with the need to ensure that only qualified applicants for [Internet-based TRS] service are eligible to receive compensation from the TRS Fund for their provision of [Internet-based TRS] services." *Id.* at 10914, ¶ 37. See also *Notice of Grant of Conditional Certification for Sorenson Communications, Inc., as Reorganized Pursuant to Chapter 11, to Provide Internet-based Telecommunications Relay Services Pending Commission Action on Sorenson's Application for Certification*, Public Notice, 29 FCC Rcd 4111 (CGB 2014) (*Sorenson Conditional Certification*).

¹⁶ *Internet-based TRS Certification Order*, 26 FCC Rcd at 10914, ¶ 37; *Sorenson Conditional Certification*, 29 FCC Rcd at 4114.

¹⁷ Draft Certification Application at 5.

the merger transaction is in the public interest and will serve the objectives of section 225 and the Commission's TRS rules by allowing the uninterrupted continuation of service to the existing customers of ZVRS pending Commission action on an application for the full certification of ZVRS/Kinderhook.

For these reasons, the Bureau grants Kinderhook/ZVRS conditional certification to provide VRS after completion of the merger transaction and pending the Commission's review of a forthcoming full certification application. Such conditional certification will allow the Commission, upon the filing of a full certification application by ZVRS/Kinderhook, to examine carefully whether ZVRS/Kinderhook's provision of VRS will meet or exceed the minimum TRS standards. We grant conditional certification subject to the condition that ZVRS/Kinderhook file such an application within 15 days after the date the merger transaction is consummated. This grant of conditional certification is without prejudice to the Commission's final determination on the anticipated full certification application and is dependent on the Commission verifying the information provided in that application, a process that may include, but not be limited to, conducting one or more site inspections of ZVRS/Kinderhook call centers and facilities.¹⁸

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¹⁸ See *Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, ¶ 37.