

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

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

ORDER

Adopted: October 30, 2019

Released: October 30, 2019

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. By this Order, the Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (Commission) grants a limited waiver of the expiration date of the at-home call handling pilot program for video relay service (VRS), extending the program through April 30, 2020, or the effective date of a Commission decision regarding at-home call handling, whichever occurs first.

II. BACKGROUND

2. In March 2017, the Commission adopted rules establishing a one-year pilot program for at-home VRS call handling. Under this program, authorized VRS providers may be compensated for calls handled by communications assistants (CAs) through at-home workstations. Participating VRS providers may be compensated for calls handled by CAs working at home for up to 30 percent of a participating provider’s monthly minutes, so long as the provider complies with the Commission’s mandatory minimum standards; personnel, technical, and environmental safeguards; and monitoring, oversight and reporting requirements specified for at-home call handling.

1 VRS is a form of “telecommunications relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment.” 47 CFR § 64.601(a)(47).

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, CG Docket Nos. 10-51 and 03-123, Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, and Order, 32 FCC Rcd 2436, 2455-56, para. 46 (2017) (2017 VRS Improvements Order) (adopting 47 CFR § 64.604(b)(4)(iii), (8)).

3 This monthly maximum is calculated as the greater of (1) 30 percent of the provider’s total compensated minutes for that month, or (2) 30 percent of the provider’s average monthly minutes for the 12 months ending October 31, 2017. 47 CFR § 64.604(b)(8)(iii).

4 47 CFR § 64.604(b)(8). Current participants in the pilot program submitted in advance a detailed plan explaining how their management of at-home workstations would comply with the program safeguards, meet the TRS mandatory minimum standards, guarantee call confidentiality, and protect against waste, fraud, and abuse. See id. § 64.604(b)(8)(i). Each participating provider must file (1) monthly information with compensation requests identifying the location of each home workstation, the CA identification number (ID) for each individual handling

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3. Initially, two VRS providers under common ownership—CSDVRS, LLC, d/b/a ZVRS (ZVRS), and Purple Communications, Inc. (Purple)—were authorized to participate in the pilot program.⁵ On October 31, 2018, the Bureau granted ZVRS and Purple limited waivers to extend their participation in the program for an additional six months, or through April 30, 2019.⁶ On April 30, 2019, the Bureau granted additional waivers to further extend the pilot program for another six months, or through October 31, 2019, and authorized Sorenson Communications, LLC (Sorenson), ASL Services Holdings, LLC d/b/a GlobalVRS (GlobalVRS), and Convo Communications, LLC (Convo) to participate in the pilot program as extended.⁷ In granting the most recent program extension waiver, the Bureau found evidence that the pilot program had produced significant benefits, improving the reliability, redundancy, effectiveness, and efficiency of the participants' relay services.⁸ Further, the Bureau also determined that allowing the pilot program to expire would eliminate such benefits, increase the providers' costs, and make it more difficult to maintain or increase the quality of service they provide.⁹ The Bureau conditioned the waiver on participating providers continuing to comply with the pilot program's requirements in section 64.604(b)(8) of the rules, including the submission of reports to the TRS Fund administrator and the Commission.¹⁰

4. On May 9, 2019, the Commission adopted a Further Notice of Proposed Rulemaking proposing to convert the VRS at-home call handling pilot program into a permanent program, subject to personnel, technical, and environmental safeguards.¹¹ On October 18, 2019, ZVRS and Purple filed a petition requesting the Commission extend the Pilot Program until the effective date of a Commission order permanently authorizing at-home call handling.¹² On October 21, 2019, Sorenson filed a letter

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VRS calls from that workstation, the location and call center IDs of call centers supervising at-home workstations, and the names of the supervisors at such call centers; and (2) a mid-term report providing detailed information about the provision of service during the first six months of the program. *Id.* § 64.604(b)(8)(viii)-(ix).

⁵ *Authorizations Granted to CSDVRS, LLC, and Purple Communications, Inc., to Participate in the VRS At-Home Call Handling Pilot Program*, CG Docket Nos. 10-51 and 03-123, Public Notice, 32 FCC Rcd 9245 (CGB 2017).

⁶ *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, Order, 33 FCC Rcd 10998 (CGB 2018) (*Pilot Program Extension Order*).

⁷ *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, Order, 34 FCC Rcd 2824 (CGB 2019) (*Second Pilot Program Extension Order*).

⁸ *Id.* at 2827, para.7.

⁹ *Id.*

¹⁰ *Id.* at 2829, 2831, paras. 10, 15 (citing 47 CFR § 64.604(b)(8)(viii)-(ix)). The Bureau required participating providers to continue filing monthly reports with the TRS Fund administrator and to file additional reports on or before June 3, 2019 (covering the last three months of the previous six-month extension, to be filed by ZVRS and Purple only), September 3, 2019 (covering the first three months of the additional six-month extension), and December 3, 2019 (covering the final three months of the extension), each of which must include information specified in section 64.604(b)(8)(ix) of the rules. *Id.*

¹¹ *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, 34 FCC Rcd 3396 (2019) (*2019 VRS Improvements Order and FNPRM*).

¹² Request for Extension of the At-Home Call Handling Pilot Program, CG Docket Nos. 10-51 and 03-123 (filed Oct. 18, 2019), <https://ecfsapi.fcc.gov/file/1019128969079/ZVRS%20and%20Purple%20Request%20for%20Extension%20of%20At-Home%20Pilot%20Program.pdf> (ZVRS and Purple Extension Request).

supporting the request and urging that any extension of the Pilot Program apply to all providers authorized to participate.¹³

III. DISCUSSION

5. A Commission rule may be waived for good cause shown.¹⁴ In particular, waiver of a rule is appropriate where the particular facts make strict enforcement of a rule inconsistent with the public interest.¹⁵ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁶ Waiver of a rule is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest and will not undermine the policy underlying the rule.¹⁷

6. We find there are special circumstances establishing good cause for granting a further six-month waiver, through April 30, 2020, of the expiration date for the at-home VRS call handling pilot program while the Commission considers whether to authorize VRS at-home call handling on a permanent basis.¹⁸ In both the *Pilot Program Extension Order* and the *Second Pilot Program Extension Order*, the Bureau found that the record indicated that the pilot program had produced significant benefits, including improvements in the reliability, redundancy, effectiveness, and efficiency of the relay services provided by the program participants.¹⁹ Information reported by pilot program participants, ZVRS and Purple, indicates that the pilot program continues to produce the benefits anticipated by the Commission.²⁰ Specifically, ZVRS and Purple have continued to increase the number of at-home CAs²¹

¹³ Letter from Randall W. Sifers, Counsel to Sorenson to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 and 03-123 at 1 (filed Oct. 21, 2019).

¹⁴ 47 CFR § 1.3 (providing for suspension, amendment, or waiver of Commission rules, in whole or in part, for good cause shown).

¹⁵ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹⁷ *Northeast Cellular*, 897 F.2d at 1166; *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127-128 (D.C. Cir. 2008).

¹⁸ *See 2019 VRS Improvements Order and FNPRM*, 34 FCC Rcd at 3417-23, paras. 39-54; *see also 2017 VRS Improvement Order*, 32 FCC Rcd at 2455-56, 63, paras. 46, 59 (indicating the Commission's intent to evaluate the effectiveness of this program and make a final determination on its future upon the pilot program's conclusion).

¹⁹ *See Pilot Program Extension Order*, 33 FCC Rcd at 11000, para. 6; *Second Pilot Program Extension Order*, 34 FCC Rcd at 2827, para. 7.

²⁰ Sorenson, GlobalVRS, and Convo are approved to participate in the pilot program, but have yet to commence the provision of at-home call handling. Extension of the pilot program for an additional, limited period allows these providers to begin participating in the pilot program.

²¹ *See* Letter from Gregory Hlibok, Chief Legal Officer, ZVRS and Purple to Marlene H. Dortch, Secretary, FCC at 4 (Dec. 3, 2018) (ZVRS Dec. 3, 2018 Report) (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] at-home CAs for ZVRS); Letter from Gregory Hlibok to Marlene H. Dortch at 3 (Mar. 1, 2019) (ZVRS Mar. 1, 2019 Report) (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] at-home CAs for ZVRS); Letter from Gregory Hlibok to Marlene H. Dortch at 3 (June 3, 2019) (ZVRS June 3, 2019 Report) (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] at-home CAs for ZVRS); Letter from Gregory Hlibok to Marlene H. Dortch at 3 (September 3, 2019) (ZVRS September 3, 2019 Report) (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] at-home CAs for ZVRS); Letter from Gregory Hlibok to Marlene H. Dortch at 4 (Dec. 3, 2018) (Purple Dec. 3, 2018 Report) (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] at-home CAs for Purple); Letter from Gregory Hlibok to Marlene H. Dortch at 3 (Mar. 1, 2019) (Purple Mar. 1, 2019 Report) (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] at-home CAs for Purple); Letter from Gregory Hlibok to Marlene H. Dortch at 3 (June 3, 2019) (Purple June 3, 2019 Report) (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] at-home CAs for Purple).
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and the monthly conversation minutes handled by at-home CAs.²² They also report that on a daily basis, the average at-home CA continues to [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] CAs at traditional call centers.²³ The reports also indicate that [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***],²⁴ suggesting that the service quality likely has not been diminished by the use of at-home handling.

7. Allowing the pilot program to expire would eliminate these benefits, increase the providers' costs, and make it more difficult to maintain or increase the quality of service provided.²⁵

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2019) (Purple June 3, 2019 Report) (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] at-home CAs for Purple); Letter from Gregory Hlibok to Marlene H. Dortch at 3 (September 3, 2019) (Purple September 3, 2019 Report) (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] at-home CAs for Purple).

²² Compare ZVRS Mar. 1, 2019 Report at 10 (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***]) with ZVRS June 3, 2019 Report at 11 (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***]); ZVRS September 3, 2019 Report at 11 (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***]); compare Purple Mar. 1, 2019 Report at 13 (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***]) with Purple June 3, 2019 Report at 12 (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***]); Letter from Gregory Hlibok to Marlene H. Dortch at 1 (Sept. 11, 2019) (Purple Sept. 3 Report Update) (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***]).

²³ See ZVRS June 3, 2019 Report at 11 (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***]); Purple June 3, 2019 Report at 12 (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***]); ZVRS September 3, 2019 Report at 13 (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***]); Purple September 3, 2019 Report at 20 (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***]).

²⁴ See ZVRS June 3, 2019 Report at 6-7 (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] for at-home CAs compared to [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***], for call center CAs); Purple June 3, 2019 Report at 7, 9 (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] for at-home CAs compared to [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***], for call center CAs); ZVRS September 3, 2019 Report at 8, 10 (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] compared to [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***], for call center CAs); Purple September 3, 2019 Report at 14, 16 (reporting [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] for at-home CAs compared to [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***], for call center CAs).

²⁵ See *Pilot Program Extension Order*, 33 FCC Rcd at 11001, paras. 7-8; *Second Pilot Program Extension Order*, 34 FCC Rcd at 2827, para. 7; see also ZVRS and Purple Extension Request at 4-5.

ZVRS and Purple also would be burdened with unnecessary wind-down and start-up costs if the pilot program terminates and the Commission subsequently adopts its proposal to authorize at-home call handling on a permanent basis.²⁶ Moreover, an extension of the waivers previously granted to the three VRS providers that have been authorized but have not yet begun to provide at-home call handling—ASLGlobal, Convo, and Sorenson—will advance the equitable administration of our rules, ensure that the pilot program’s benefits are available to all users of VRS, and prevent possible loss of service quality (to the extent that these providers have difficulty recruiting or retaining qualified CAs without allowing them to work at home).²⁷ By a further extension of the program expiration date, we also provide a further record of experience, and with additional authorized providers, on which to base action in the pending rulemaking on the question of whether to expand the pilot program.

8. The reports of participating providers also indicate that the providers are in compliance with the Commission’s mandatory minimum standards, as well as the specific personnel, technical, and environmental safeguards adopted in the *2017 VRS Improvements Order*.²⁸ For example, ZVRS and Purple report that they remain in compliance with rules requiring that at-home CAs possess the requisite three years of experience handling VRS calls prior to handling at-home functions.²⁹ ZVRS and Purple also report that they continue to meet the requirement for additional training for at-home CAs, and that they continue to successfully supervise and monitor their at-home CAs to fulfill their at-home call handling oversight obligations.³⁰ ZVRS and Purple report that they continue to ensure the confidentiality of calls handled in at-home workstations by complying with requirements for at-home workstations to be in a secure, separate, and locked location; installing white noise emitters or soundproofing to prevent eavesdropping; and providing a secure and dedicated Internet connection between at-home workstations and the Companies’ secure network.³¹ The data reflects that ZVRS and Purple are ensuring the seamless integration of call routing distribution and tracking systems for both their at-home workstations and traditional call centers.³²

9. For these reasons, we find good cause to waive the expiration date of the pilot program and extend the pilot program through April 30, 2020, or the effective date of a Commission decision regarding rules for at-home call handling, whichever occurs first.

10. VRS providers that opt to continue participating in the pilot program must comply with the pilot program’s requirements in section 64.604(b)(8) of the rules, including the submission of monthly reports to the TRS Fund administrator as specified in section 64.604(b)(8)(viii) of the rules.³³ Further, the

²⁶ See *Pilot Program Extension Order*, 33 FCC Rcd at 11001, para. 8; *Second Pilot Program Extension Order*, 34 FCC Rcd at 2828, para. 8; see also ZVRS and Purple Extension Request at 4-5. Such costs include training CAs, procuring, installing, and configuring the necessary facilities, and providing management and administrative support for at-home call handling. *Pilot Program Extension Order*, 33 FCC Rcd at 11001, para. 8.

²⁷ See *Second Pilot Program Extension Order*, 34 FCC Rcd at 2830, para. 12 & n.43.

²⁸ See ZVRS June 3, 2019 Report; Purple June 3, 2019 Report; ZVRS September 3, 2019 Report; Purple September 3, 2019 Report.

²⁹ See ZVRS June 3, 2019 Report at 3; Purple June 3, 2019 Report at 3; ZVRS September 3, 2019 Report at 3; Purple September 3, 2019 Report at 3.

³⁰ See ZVRS June 3, 2019 Report at 3, 8; Purple June 3, 2019 Report at 3, 9-10; ZVRS September 3, 2019 Report at 3, 10-11; Purple September 3, 2019 Report at 3, 17-18.

³¹ See ZVRS June 3, 2019 Report at 3, 9, 15; Purple June 3, 2019 Report at 3, 10, 17; ZVRS September 3, 2019 Report at 3, 11, 17; Purple September 3, 2019 Report at 3, 18, 25.

³² See ZVRS June 3, 2019 Report at 8-9, 11; Purple June 3, 2019 Report at 10, 12; ZVRS September 3, 2019 Report at 11, 13; Purple September 3, 2019 Report at 18, 20.

³³ 47 CFR § 64.604(b)(8), (8)(viii).

providers shall submit additional reports, to be filed on or before December 2, 2019 (covering the last three months of the previous six-month extension), and June 1, 2020 (covering the six-month extension authorized by this Order), each of which must contain the information specified in section 64.604(b)(8)(ix) of the rules.³⁴

IV. PROCEDURAL MATTERS

11. *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY).

V. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 225, and sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, and 1.3, this Order IS ADOPTED.

13. IT IS FURTHER ORDERED that the joint request of CSDVRS, LLC d/b/a ZVRS and Purple Communications, Inc. for waiver and extension of the VRS at-home call handling pilot program IS GRANTED, subject to the conditions herein.

14. IT IS FURTHER ORDERED that VRS providers authorized to participate in the at-home call handling pilot program may continue to participate in the at-home call handling pilot program through April 30, 2020, or the effective date of a Commission decision regarding rules for at-home call handling, whichever occurs first.

15. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE immediately upon release.

FEDERAL COMMUNICATIONS COMMISSION

Patrick Webre, Chief
Consumer and Governmental Affairs Bureau

³⁴ *Id.* § 64.604(b)(8)(ix). In the event the effective date of a Commission decision regarding at-home handling is earlier than April 30, 2020, in lieu of outstanding report[s], a final report containing the information specified in section 64.604(b)(8)(ix) shall be submitted 60 days after the effective date of that order to help the Commission ensure providers met all the conditions of the pilot program throughout the remaining program period.