



FEDERAL COMMUNICATIONS COMMISSION

Mignon L. Clyburn
Acting Chairwoman

September 27, 2013

The Honorable Tim Murphy
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Murphy:

Thank you for your letter regarding the Commission's efforts to ensure that the Video Relay Service (VRS) program is free from waste, fraud and abuse and providing the maximum intended benefit to the deaf and hard-of-hearing communities. I instructed Kris Monteith, Acting Chief of the Consumer and Governmental Affairs Bureau, to coordinate a response to your questions. I appreciate your interest in this matter and am pleased to provide the enclosed letter responding to your inquiry.

If you have any further questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Mignon L. Clyburn".

Mignon L. Clyburn

Enclosure



Federal Communications Commission
Washington, D.C. 20554

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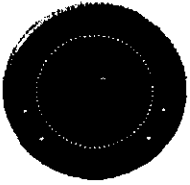
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 Kris Ann Monteih
Acting Chief
Consumer and Governmental Affairs Bureau

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September 27, 2013

The Honorable Michael Burgess
U.S. House of Representatives
2241 Rayburn House Office Building
Washington, DC 20515

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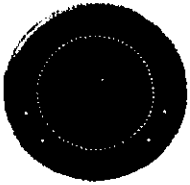
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for Kris Ann Monteih
Acting Chief
Consumer and Governmental Affairs Bureau

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September 27, 2013

The Honorable Robert Latta
U.S. House of Representatives
2248 Rayburn House Office Building
Washington, DC 20515

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The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
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FEDERAL COMMUNICATIONS COMMISSION

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September 27, 2013

The Honorable Joe Barton
U.S. House of Representatives
2107 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Barton:

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K Kris Ann Monteih
Acting Chief
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**Responses to Questions on Video Relay Service Program
Committee on Energy & Commerce
Oversight & Investigations Subcommittee**

- 1) How does the FCC, in coordination with the Interstate TRS Fund Administrator, determine what constitutes the "reasonable" costs of providing VRS services? Does the FCC conduct its own independent evaluation of VRS costs or does it rely solely on the representations of VRS providers seeking compensation from the Fund? If the latter, how does the FCC verify this information?

Response: Both the Commission and the Fund Administrator have a role in evaluating the reasonable costs of providing VRS. As an initial matter, the Commission determines which categories of costs are reasonably attributable to the provision of TRS, and rejects those categories that are not.¹

Then, with respect to cost data submitted by providers, the Fund Administrator has the responsibility, in the first instance, to ensure the accuracy and reasonableness of such data and to ensure that reimbursement is provided only for costs the Commission has allowed. The Fund Administrator may "examine, verify, and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments."² In order to further test the provider-supplied information, the Consumer and Governmental Affairs Bureau authorized \$3,000,000 in funding for service provider audits in the most recent TRS rate order.³

- 2) Why did the FCC initially reject the TRS Fund Administrator's proposal for a sharper reduction in VRS compensation rates beyond those established in June 2010?

Response: In June 2010, the Commission began a review of the structure of the VRS program, taking both immediate and long-term steps to address rates and the sustainability of the vital service. To address compensation rates immediately, the

¹ See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20169, ¶ 75 (2007) (*2007 TRS Rate Methodology Order*) (concluding that indirect overhead costs are not reasonable costs of providing TRS); *id.* at 20170, ¶ 80 (financial transaction costs or fees unrelated to the provision of relay service are not compensable as reasonable costs of providing service); *id.* at para 82 (costs attributable to relay hardware and software used by the consumer, including installation, maintenance costs, and testing are not compensable from the Fund.).

² 47 C.F.R. § 64.604(c)(5)(iii)(D)(6). See also Letter from David VanRoekel, Managing Director, FCC, to David Rolka, Rolka Loube Saltzer Associates, 26 FCC Rcd 5099, 5100-01 (Apr. 5, 2011) (directing the Fund Administrator to, *inter alia*, "verify the accuracy of the data submitted by the providers to ensure that, with respect to projected costs, the costs are reasonable and recoverable under the guidelines set forth in the Commission's rules and orders.").

³ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, 28 FCC Rcd 9219, 9226 ¶ 22 (2013) (*TRS Rate Order*).

Commission considered the TRS Fund Administrator's proposal, as well as the concerns expressed by users and providers regarding the impact of a significant and sudden cut to providers' compensation on the VRS program.⁴ The interim VRS rates adopted in June 2010 represented the average of the then-existing tiered rates and the rates proposed by the TRS Fund Administrator, and reflected a balance between the goal of ensuring that VRS providers recovered from the Fund only the reasonable costs caused by their provision of VRS and the goal of ensuring quality and sufficient service during the Commission's consideration of structural reforms.⁵ Nevertheless, the June 2010 rate reduction was a significant one. This 18.75% cut in the compensation rate for the bulk of VRS traffic marked the first substantial VRS rate reduction in six years.⁶ On the same day, the Commission unanimously adopted a Notice of Inquiry to initiate a comprehensive review of the rates, structure, and practices of the VRS program, seeking to sustain the VRS program in the long-term and make it less susceptible to the waste, fraud, and abuse that had burdened it in the past.⁷

- 3) Why did the FCC allow VRS compensation rates for the 2011-2012 and 2012-2013 Fund Years to remain unchanged despite its own recognition that these rates were "set significantly higher than actual VRS costs"?

Response: The Commission in 2011 and 2012 was actively considering the VRS market structure and compensation method proposals (raised initially in a June 2010 Notice of Inquiry and then in a December 2011 Further Notice of Proposed Rulemaking) related to the structure and practices as part of a comprehensive review of the VRS program.⁸ The Commission concluded that extending the interim rates and compensation structure provided the best means to ensure stability and certainty for VRS users while the Commission continued to evaluate the issues and the substantial record developed in response to that proceeding.⁹ While that proceeding was underway, however, the Commission took a number of

⁴ *Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 25 FCC Rcd 8689, 8695, ¶ 12 (2010) (*2010 TRS Rate Order*).

⁵ *2010 TRS Rate Order*, 25 FCC Rcd at 8690, ¶ 2.

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, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8693, ¶ 184 (2013) (*VRS Structural Reform Order*).

⁷ *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Notice of Inquiry, 25 FCC Rcd 8597 (2010) (*2010 VRS NOI*).

⁸ *2010 VRS NOI*, 25 FCC Rcd 8597 (2010); *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, Further Notice of Proposed Rulemaking, 26 FCC Rcd 17367 (2011) (*2011 VRS FNPRM*).

⁹ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 26 FCC Rcd 9972, 9974-75, ¶ 7 (2011) (*2011 TRS Rate Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 27 FCC Rcd 7150, 7154, ¶ 11 (2012) (*2012 TRS Rate Order*).

significant steps to curb waste, fraud, and abuse that could threaten the program's viability¹⁰

On June 10, 2013, the Commission released the *VRS Structural Reform Order*, which set out a number of significant structural reforms and initiated a transition from existing tiered compensation rates toward a unitary, market-based compensation rate.¹¹ That transition will cut rates by more than 30% over the next four years.

- 4) How did the Interstate TRS Fund Administrator calculate the carrier contribution factor for the 2013-2014 Fund Year? What accounts for the more than 100 percent increase in the carrier contribution factor between the 2012-2013 and 2013-2014 Fund Years?

Response: The Fund Administrator, Rolka Loube Saltzer Associates (RLSA), filed the "Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate" report with the Commission on May 1, 2013.¹² In this document, RLSA provides an explanation of how it calculated the contribution factor, as well as a detailed explanation of the reasons for the growth in the contribution factor. The document is attached.

As a result of the Commission's emergency rules adopted for IP CTS, a finding regarding IP Relay outreach costs, and the lower compensation rates adopted in the *VRS Structural Reform Order*, projected demand for these services decreased, and the Commission was able ultimately to adopt a contribution factor far below the TRS Fund Administrator's recommendation.¹³

For Fund Year (FY) 2012-2013, the Commission adopted:

- Funding requirement: \$711.4 million
- Contribution factor: .01053

¹⁰ See, e.g., *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, 25 FCC Rcd 1868 (CGB 2010) (*Compensable VRS Calls Declaratory Ruling*) (reiterating the scope of compensable VRS calls and curbing certain abusive practices); see also *Hands On Video Relay Services, Inc., Go America, Inc., and Purple Communications, Inc.*, Order and Consent Decree, 25 FCC Rcd 13090 (2010) (approving settlement for in excess of \$22 million of alleged rule violations involving abuse of the TRS Fund); *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 (2011) (*VRS Call Practices R&O*) (adopting rules to detect and prevent fraud and abuse in the provision of VRS); *Structure and Practices of the Video Relay Service Program*, Second Report and Order and Order, CG Docket No. 10-51, 26 FCC Rcd 10898 (2011) (*2011 iTRS Certification Order*) (revising the provider certification process to ensure that providers of Internet-based TRS (iTRS), including VRS, receiving certification are qualified to provide services in compliance with the Commission's rules); *Structure and Practices of the Video Relay Service Program; Healinc Telecom, LLC, Request for Reimbursement of July 2011 and August 2011 Video Relay Service Minutes*, Order, CG Docket No. 10-51, 27 FCC Rcd 9314 (2012) (denying payment to Healinc, a VRS provider, of amounts withheld by the TRS Fund administrator for non-compliance with the TRS rules).

¹¹ *VRS Structural Reform Order*, 28 FCC Rcd 8618.

¹² Rolka Loube Saltzer Associations, LLC, *In the Matter of Telecommunications Relay Services and Speed-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, Report (filed May 1, 2013).

¹³ *TRS Rate Order*, 28 FCC Rcd. 9219, 9220, ¶ 4.

The original proposal from RLSA in the rate filing for FY2013-2014 was:

- Fund Requirement: \$1,543,602,649
- Proposed Contribution factor: 0.02327

Following changes in the projected demand for FY2013-2014, the Commission ultimately adopted:

- Fund Requirement: \$995,533,697
- Proposed Contribution Factor: 0.01484

- 5) Please state when the "structural reforms" proposed in the FCC's June 10, 2013 Report and Order and Further Notice of Proposed Rulemaking will be fully implemented.

Response: In the *VRS Structural Reform Order*, the Commission adopted a number of structural VRS reforms as modifications of the reform measures previously proposed.¹⁴ Implementation of the reforms requires the development of new systems, such as a VRS access technology reference platform, an application which will be developed using consensus interoperability and portability standards and will enable the use of off-the-shelf tablets and smartphones for VRS;¹⁵ a central TRS user registration database, which will help combat fraud, waste, and abuse by ensuring VRS user eligibility;¹⁶ and a neutral video communication service platform, which will encourage competition and innovation in VRS call handling services by lowering barriers to entry for eligible relay providers.¹⁷ The *VRS Structural Reform Order* states that these systems will be built by contractors and the Commission is preparing a solicitation for bids. Although the *VRS Structural Reform Order* did not set specific deadlines for the completion of these projects, the Commission is committed to ensuring reform implementation occurs quickly and efficiently. Pending implementation of the structural reforms, the Commission also initiated in the *VRS Structural Reform Order* a series of incremental rate reductions, every six months, over a four-year period.¹⁸ By the end of this process, these new rates for the bulk of VRS traffic will be 31.2% below existing rates and 44.1% below the rates in place before the 2010 interim rate order. The Commission's Order will thus significantly reduce the costs of operating the program while ensuring stability for providers and users until the structural reforms are completed.

The Commission also adopted additional reforms that will be in place while structural changes occur, such as rules to prohibit practices resulting in waste, fraud, and abuse, to require adoption of regulatory compliance plans subject to

¹⁴ *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, 28 FCC Rcd 8618 (2013) (*VRS Structural Reform Order*).

¹⁵ *Id.* at 8644-47, ¶¶ 53-61.

¹⁶ *Id.* at 8647-53, ¶¶ 68-77.

¹⁷ *Id.* at 8656-63, ¶¶ 87-115.

¹⁸ *Id.* at 8703-06, ¶¶ 212-216.

Commission review, and to protect relay consumers from unauthorized default provider changes, known as "slamming."¹⁹

Why is the FCC, according to its June 10, 2013 Order, waiting to set final VRS compensation rates until after these reforms are fully implemented?

Response: The Commission expects the reforms to substantially change the way the service is provided and necessarily change the compensation regime. For example, after completion of the neutral video communication service platform, providers who choose to make use of the neutral platform will no longer be compensated for the provision of the video communication service component of VRS.²⁰ Final compensation rates for these providers cannot be set until the neutral platform is completed.

In addition, the Commission concluded in the *VRS Structural Reform Order* that cost-of-service ratemaking, especially in the VRS context, is inherently a contentious, complicated, and imprecise process.²¹ Therefore, the Commission has proposed to improve the VRS compensation process by transitioning to a new ratemaking approach that makes use of contract prices set through a competitive bidding process, where feasible.²² Specifically, the Commission proposed that the contract price paid to the neutral provider of the video communication service platform serve as a benchmark for setting appropriate compensation for those VRS providers that choose to continue offering the video communication service component of VRS on their own.²³ The Commission also proposed that a portion of VRS traffic be allocated by auction, thereby permitting the establishment of a market-based compensation rate for the provision of the communications assistant component of VRS.²⁴ This more market-based approach, the Commission expects, will result in compensation rates that more accurately reflect the actual costs of providing VRS.

Why is the FCC recommending that 2013-2014 Fund Year VRS compensation rates be brought "closer" to provider costs as opposed to being set at "actual" provider costs?

Response: The Commission found that while interim VRS compensation rates set in 2010 had begun to close the gaps between rates and costs, the cost of providing VRS had declined significantly over the relevant period.²⁵ Certain large VRS providers, however, stated that, in part due to the need to make interest payments on long-term debt (payments that are not reimbursable from the TRS Fund to the extent that they exceed the authorized return on investment), they could not continue providing service if rates were reduced immediately to the level of costs. While not

¹⁹ *Id.* at 8624, ¶ 9.

²⁰ *Id.* at 8607, ¶ 219.

²¹ *Id.* at 8706-07, ¶ 217.

²² *Id.*

²³ *Id.* at 8707-08, ¶ 222.

²⁴ *Id.* at 8708-10, ¶¶ 223-235.

²⁵ *Id.* at 8694, ¶ 188.

condoning any provider's incurrence of excessive costs, the Commission recognized that immediate imposition of a fully cost-based rate would result in a significant and sudden cut to providers' compensation with potentially negative consequences for VRS consumers.²⁶ As a result, the Commission established a rate plan under which VRS compensation rate levels move steadily downward in the direction of actual allowable costs.²⁷ Reduced in increments every six months, the glide path significantly lowers compensation rates over the next four years by over 30% while providing predictability and ensuring the continuation of quality offerings for this vital communications service.²⁸

The Commission expects that this plan, which will remain in effect until the implementation of structural reforms, will permit service providers to continue offering VRS in accordance with the Commission's high standards for relay service pending the implementation of a disaggregated, market-based compensation methodology.²⁹ The Commission will continue to require the submission of cost data by providers, and it reserves the right to revisit VRS compensation rates if provider data shows that, notwithstanding the new rate plan, further rate adjustments are appropriate.³⁰

- 6) Is the FCC currently investigating any allegations of waste, fraud or abuse in the VRS program or any particular VRS provider? If so, what are the reasons for and current status of those investigations?

Response: The Commission's Enforcement Bureau is currently investigating multiple providers of iTRS, including not only VRS but also IP Relay and IP CTS. The VRS investigations in particular are focused on improper billing of the TRS Fund for, among other things, calls made with Internet applications that allowed users to make but not receive VRS calls, and calls made by providers' own employees and subcontractors.

The Commission's Enforcement Bureau also has concluded nearly 30 investigations involving iTRS. Five of these resulted in consent decrees, and collectively required the providers to reimburse nearly \$30,250,000 to the TRS Fund, to pay over \$23,750,000 to the U.S. Treasury, and to adopt compliance plans designed to prevent future misconduct.³¹ Another twenty-three investigations resulted in citations to providers for illegal operators; twenty-one of these providers cited subsequently ceased operations, and the other two corrected course and obtained the necessary FCC certifications to provide VRS.

²⁶ *Id.* at 8703-04, ¶ 212.

²⁷ *Id.* at 8703-06, ¶¶ 212-216.

²⁸ *Id.*

²⁹ *Id.* at 8706, ¶ 216.

³⁰ *Id.*

³¹ *Sorenson Communications, Inc.*, DA 13-1068, Order, 28 FCC Rcd 7841 (2013); *AT&T Inc.*, DA 13-594, Order, 28 FCC Rcd 5994 (2013); *American Network, Inc.*, DA 13-444, Order, 28 FCC Rcd 2816 (2013); *CSDVRS, LLC d/b/a/ ZVRS*, DA 12-1844, Order, 27 FCC Rcd 14172 (2012); *Hands on Video Relay Services, Inc.*, *Go America, Inc.*, and *Purple Communications, Inc.*, DA 10-1734, Order, 25 FCC Rcd 13090 (2010).