

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

In the Matter of)
Telecommunications Relay Services) CG Docket No. 03-123
And Speech-to-Speech Services for)
Individuals with Hearing and Speech Disabilities)
Structure and Practices of the Video Relay Service) CG Docket No. 10-51
Program)
Notice of Grant of Conditional Certification for)
CSDVRS, LLC, to Provide Video Relay Service)
After Its Acquisition by Kinderhook Capital Fund)
IV, L.P., DA 14-1887)

ORDER

Adopted: January 28, 2015

Released: January 28, 2015

By the Acting Chief, Consumer and Governmental Affairs Bureau:

1. By this Order, the Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (Commission) dismisses an "Opposition" filed in the above-captioned proceedings by ASL Services Holdings, LLC (ASL).

I. BACKGROUND

2. On November 25, 2014, Kinderhook Capital Fund IV, L.P., and its affiliate Kinderhook Capital Fund IV-B, L.P. (collectively, Kinderhook), and CSDVRS, LLC (D/B/A ZVRS) (ZVRS), filed an application for conditional certification to provide video relay service (VRS), seeking conditional certification to enable ZVRS to maintain its eligibility to provide VRS and receive compensation from the Interstate Telecommunications Relay Services Fund (TRS Fund) on an interim basis following Kinderhook's planned acquisition of a controlling interest in ZVRS.

3. On December 22, 2014, the Bureau granted the application for conditional certification of ZVRS/Kinderhook. The Bureau made its grant of conditional certification subject to the condition that ZVRS/Kinderhook file an application for full certification within 15 days after the date the merger transaction is consummated.

1 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) (ZVRS/Kinderhook Conditional Certification Application).

2 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, Public Notice, DA 14-1887 (Dec. 22, 2014) (ZVRS/Kinderhook Conditional Certification).

3 Id. at 4.

4. On December 24, 2014, ASL filed an “Opposition to Application of Kinderhook Industries, LLC, for Certification to Provide Video Relay Service.”⁴ ASL states that it has been engaged in civil litigation against ZVRS for more than three years, in which ASL seeks damages in a Florida state court for breach of contract resulting from the alleged failure of ZVRS to remit payments for service rendered pursuant to an agreement between ZVRS and ASL.⁵ While providing no further details concerning the matters at issue in the litigation, other than to claim generally that ZVRS is responsible for “procedural delays and inattention,”⁶ ASL contends that, until the pending litigation is resolved, “ZVRS’ ethics, intentions, compliance and fitness to serve remain in question” and the Commission cannot make a full and accurate assessment of whether ZVRS is qualified for certification.⁷

5. On January 6, 2015, ZVRS and Kinderhook filed a joint response to the ASL Opposition.⁸ Noting that the ASL Opposition indicates that it is filed pursuant to section 1.115 of the Commission’s rules, which governs applications for review of Commission actions,⁹ ZVRS and Kinderhook argue that, as an application for review, the ASL Opposition is procedurally defective and substantively inadequate.¹⁰ ZVRS/Kinderhook adds that to the extent that ASL’s pleading is intended as an opposition to ZVRS/Kinderhook’s application for certification, whether conditional or full, it is untimely because the application for conditional certification was granted and the application for full certification has not yet been filed.¹¹

6. On January 14, 2015, ASL filed a Reply to the ZVRS/Kinderhook Opposition.¹² ASL states that the litigation referenced in its Opposition “stems from ZVRS’s receipt of federal funds for the provision of Fund-compensated video relay services that were actually provided by [ASL] – but for which [ASL] was never compensated. . . .”¹³ ASL also states that “[i]t is up to the Commission to determine whether [the concerns raised by ASL] should be addressed in the context of a reconsideration of the Commission’s rapid grant of conditional certification to ZVRS and Kinderhook in late December or whether these concerns should be weighed in the forthcoming Kinderhook application.”¹⁴

II. DISCUSSION

7. As noted above, ASL has filed an “Opposition” to Kinderhook’s application to obtain certification to provide VRS. ASL does not clearly state whether its “Opposition” is intended to oppose (1) the ZVRS/Kinderhook Conditional Certification Application or (2) the application for full certification that ZVRS/Kinderhook is required to make upon consummation of the merger transaction.¹⁵ Regardless

⁴ ASL, Opposition to Application of Kinderhook Industries, LLC, for Certification to Provide Video Relay Service, CG Docket Nos., 03-123, 10-51 (filed Dec. 24, 2014) (ASL Opposition).

⁵ *Id.* at 2, 5.

⁶ *Id.* at 5.

⁷ *Id.* at 6.

⁸ ZVRS and Kinderhook, Joint Opposition to Application of Kinderhook Industries, LLC for Certification to Provide Video Services (filed Jan. 14, 2015) (ZVRS/Kinderhook Opposition).

⁹ 47 C.F.R. § 1.115.

¹⁰ ZVRS/Kinderhook Opposition at 3-6 & n. 23.

¹¹ *Id.* at 1-2 n. 2, 6.

¹² Reply of ASL Services Holdings, LLC to Joint Opposition to “Opposition to Application of Kinderhook Industries, LLC for Certification to Provide Video Services” (filed Jan. 14, 2015) (ASL Reply).

¹³ *Id.* at 2.

¹⁴ *Id.* at 3.

¹⁵ ZVRS/Kinderhook Conditional Certification at 4.

of how this ambiguous pleading should have been characterized, however, we dismiss ASL's Opposition for the reasons that follow.

8. To the extent that ASL's Opposition is intended as an opposition to the ZVRS/Kinderhook Conditional Certification Application, it is untimely, because as ZVRS/Kinderhook points out, it was not filed until after the application was granted by the Bureau.¹⁶ To the extent that ASL's Opposition is intended as an opposition to "the application for certification . . . being filed by [Kinderhook] upon consummation of Kinderhook's acquisition of [ZVRS]," it is premature, and therefore again untimely, as ZVRS/Kinderhook has not yet filed an application for full certification.¹⁷

9. Moreover, even if it were found procedurally proper,¹⁸ the ASL Opposition nonetheless must be dismissed. ASL proffers no factual showing or legal basis whatsoever that could justify denying or delaying conditional certification of ZVRS/Kinderhook. The mere fact that one party is engaged in litigation with another over the disposition of funds received from a Commission-supervised fund provides no basis for questioning that party's qualifications to hold a Commission authorization. The Commission will determine whether to grant certification to a TRS provider based on the criteria set forth in its rules.¹⁹ "[T]he purpose of the [Communications] Act is to protect the public interest rather than to provide a forum for the settlement of private disputes."²⁰

10. Therefore, we dismiss the ASL Opposition. Although this action does not preclude ASL from communicating its views on ZVRS/Kinderhook's application for full certification after such application has been filed, we again draw ASL's attention to the Commission's longstanding policy of not allowing its proceedings to be used as a forum for litigating private contractual disputes.²¹

11. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 1, 2, 4, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 225, sections 1.45 and 1.115 of the Commission's rules, 47 C.F.R. §§ 1.45, 1.115, and authority delegated in sections 0.141 and 0.361 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, the ASL Opposition is DISMISSED; and

12. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE on the date of release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief
Consumer and Governmental Affairs Bureau

¹⁶ ZVRS/Kinderhook Opposition at 6.

¹⁷ 47 C.F.R. 1.45(b) (oppositions to be filed within 10 days *after* the request being opposed). *See ZVRS/Kinderhook Conditional Certification* at 4 (requiring ZVRS/Kinderhook to file a full application for certification within 15 days *after* the acquisition is consummated).

¹⁸ In the ASL Reply, ASL suggests that the ASL Opposition also could be viewed as a request for "reconsideration of the Commission's rapid grant of conditional certification to ZVRS and Kinderhook." ASL Reply at 3. *But see ZVRS/Kinderhook Opposition* at 3-6 (arguing that the ASL Opposition fails to conform to the filing requirements for seeking review of Bureau action).

¹⁹ *See* 47 C.F.R. § 64.606.

²⁰ *PCS 2000, L.P.*, File No. 00414-CW-L-96 *et al.*, Memorandum Opinion and Order, 12 FCC Rcd 1681, 1691 (1997), *quoting United Tel. Co. of Carolinas v. FCC*, 599 F.2d 720, 732 (D.C. Cir. 1977).

²¹ *PCS 2000*, 12 FCC Rcd at 1691.