

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 )

DECLARATORY RULING

Adopted: July 15, 2020

Released: July 15, 2020

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. Video relay service (VRS) enables people with hearing or speech disabilities who use American Sign Language (ASL) to communicate by video with voice telephone users.1 In the 2013 VRS Reform Order, the Commission adopted a rule prohibiting a VRS provider from engaging in any practice that it knows or has reason to know will cause or encourage the making of VRS calls that would not otherwise be made.2 In the 2019 VRS Program Management Order, the Commission adopted rule 64.604(8)(c)(v), which prohibits a VRS provider from offering or providing "any form of direct or indirect incentives, financial or otherwise, for the purpose of encouraging individuals to register for or use the VRS provider's service."3 In doing so, the Commission made clear its intent to prohibit "non-service-related" inducements that aim to encourage current VRS users to switch (or refrain from switching) their default VRS provider, not "service-related" offers of devices (such as videophones and video monitors) that consumers need in order to access and use VRS.4 To facilitate compliance, the Commission expressly "invite[d] providers that are uncertain about the permissibility of giving away a particular device [to] . . . seek guidance from the Commission prior to engaging in such activity."

1 See 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 and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8669, para. 133 (2013) (2013 VRS Reform Order).

3 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, 3414-17, paras. 33-37 (2019) (2019 VRS Program Management Order), pet. for review pending, Sorenson Communications, LLC v. FCC, Case No. 19-1145 (D.C. Cir., July 12, 2019) (adopting 47 CFR § 64.604(c)(8)(v)).

4 2019 VRS Program Management Order, 34 FCC Rcd at 3415-17, paras. 36-37.

5 Id. at 3417, para. 36 & n.124.

2. Convo Communications, LLC (Convo), a VRS provider, now seeks guidance from the Commission on the permissibility under rule 64.604(8)(c)(v) of other VRS providers' decisions to give away particular devices.<sup>6</sup> Specifically, CSDVRS, LLC, d/b/a ZVRS (ZVRS) and Purple Communications (Purple) (collectively, ZP) give away certain laptops, tablets, video-streaming devices, and signaling devices as part of their "Complete Home Package" for VRS users that sign up with ZP.<sup>7</sup> Convo seeks guidance on whether these offers are "service-related" and permissible under our rules. Convo also asks several hypothetical questions about the scope of our rules.

3. Pursuant to Section 1.2 of the Commission's rules,<sup>8</sup> the Consumer and Governmental Affairs Bureau clarifies that the "particular devices" offered by ZP are in fact "service-related" and thus are not prohibited by rule 64.604(8)(c)(v). While we provide clarification regarding the particular offerings raised in Convo's petition, we decline at this time to wade into Convo's broader hypothetical questions about the scope of our rules that are untethered to the offer of a particular device.

## II. BACKGROUND

4. Under section 225 of the Communications Act of 1934, as amended, the Commission must ensure that persons who are deaf, hard of hearing, deafblind, or have speech disabilities can use telecommunications relay services (TRS) to communicate by telephone in a manner that is "functionally equivalent" to voice communication services utilized by persons without such disabilities.<sup>9</sup> Such functionally equivalent service must be made available "in the most efficient manner" and subject to rules that "do not discourage or impair the development of improved technology."<sup>10</sup> VRS is one form of TRS.

5. The Commission has, unfortunately, a long history of attempting to combat waste, fraud, and abuse within TRS programs—especially connected with schemes for inducing VRS users to increase their usage of a provider's service. In the *Financial Incentives Declaratory Ruling*, the Commission had to prohibit a provider's "Brown Bag" program, which allowed customers to receive five points for every minute of VRS placed through the company, with the customer being able to cash in the points for high speed Internet service.<sup>11</sup> In the *Call Handling Public Notice*, the Commission had to prohibit VRS providers from contacting users and asking or telling them to make TRS calls, imposing minimum usage requirements, or offering any type of financial incentives to make relay calls.<sup>12</sup> In the *TRS Long Distance Incentives Order*, the Commission concluded that offering free or discounted long distance service to

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<sup>6</sup> Request for Expedient Clarification of 47 CFR § 64.604(c)(8)(v), CG Docket Nos. 10-51 and 03-123 (filed Aug. 19, 2019) (Convo Request).

<sup>7</sup> Purple Communications, Inc., surrendered its conditional certification to provide VRS as of February 15, 2020, when it became a wholly owned subsidiary of CSDVRS, LLC d/b/a ZVRS. See *Purple Communications, Inc., Surrenders Conditional Certification and Withdraws Application to Provide Video Relay Service*, CG Docket Nos. 03-123 and 10-51, Public Notice, 35 FCC Rcd 1347 (CGB 2020). CSDVRS continues to provide VRS under the sub-brands ZVRS and Purple. The combined company has been renamed ZP Better Together, LLC. In this order, the term "ZVRS" or "Purple" refers to a single entity offering a specific service or device; and the terms "ZVRS and Purple" and "ZP" are used when referring to the certified entity as a whole.

<sup>8</sup> 47 CFR § 1.2.

<sup>9</sup> 47 U.S.C. § 225(a)(3).

<sup>10</sup> *Id.* § 225(b)(1), (d)(2).

<sup>11</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 20 FCC Rcd 1466 (CGB 2005).

<sup>12</sup> *Federal Communications Commission Clarifies That Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices Are Improper and Reminds That Video Relay Service (VRS) May Not Be Used as a Video Remote Interpreting Service*, CG Docket No. 03-123, CC Docket No. 98-67, Public Notice, 20 FCC Rcd 1471 (CGB 2005).

TRS consumers constitutes an impermissible financial incentive, and that the programs “directed at giving the consumer an incentive to make a TRS call in the first place . . . are prohibited.”<sup>13</sup> In the *2007 TRS Declaratory Ruling*, the Commission clarified that providers “may not offer consumers financial or other incentives, directly or indirectly, to make TRS calls” and set forth “in greater detail the kinds of incentives that are impermissible under our rules.”<sup>14</sup>

6. The common thread in these rulings is that inducement schemes undermine the statutory goals of functional equivalence, efficiency, and technological improvement. Because the Interstate TRS Fund, not the consumer, pays for the cost of TRS, such practices increase the costs borne by all providers and users of voice communications service, with no commensurate public benefit, and thereby impede the statutory goals of making functionally equivalent service available in the most efficient manner and in a way that fosters the development of improved technology.<sup>15</sup> In addition, inducement schemes encourage consumers to select a VRS provider based on the value of the free or discounted offers rather than the quality of the service provided, undermining the efficient provision of functionally equivalent TRS by discouraging providers from competing on quality of service.<sup>16</sup> And, because unlike voice communications subscribers, TRS users do not pay for TRS calls, the giveaway may result in a financial windfall for users rather than ensuring functionally equivalent service.<sup>17</sup>

7. Building on these earlier rulings, the Commission in 2013 adopted a rule prohibiting a VRS provider from engaging “in any practice that the provider knows or has reason to know will cause or encourage . . . [t]he making of VRS . . . calls that would not otherwise be made.”<sup>18</sup> Although successful in prohibiting some inducement schemes, this prohibition did not explicitly address all of the seemingly endless variations on providers’ efforts to induce users to increase their VRS minutes. In particular, as relevant here, some VRS providers have long sought to leverage free offers as a means to capture and retain market share. Under this practice, a VRS provider offers free or discounted items in order to retain customers or entice them away from their current default VRS provider—the subject of many complaints by VRS providers against one another.<sup>19</sup>

8. In the *2019 VRS Program Management Order*, the Commission adopted rule 64.604(c)(8)(v) to expressly prohibit VRS providers from offering or providing “any form of direct or indirect incentives, financial or otherwise, for the purpose of encouraging individuals to register for or use the VRS provider’s service.”<sup>20</sup> The Commission affirmed that the new rule specifically prohibits the offering or providing of non-service-related inducements that aim to encourage current VRS users to switch (or refrain from switching) their default VRS provider.<sup>21</sup> The Commission nonetheless confirmed

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<sup>13</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123 Order, 20 FCC Rcd 12503, 12505-06, para. 6 (CGB 2005).

<sup>14</sup> *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, 20173-75, paras. 89-94 (2007).

<sup>15</sup> *2019 VRS Program Management Order*, 34 FCC Rcd at 3414, para. 34.

<sup>16</sup> *Id.* at 3414-15, para. 35.

<sup>17</sup> *Id.*

<sup>18</sup> 47 CFR § 64.604(c)(13)(i)(C); *2013 VRS Reform Order*, 28 FCC Rcd at 8669, para. 133.

<sup>19</sup> *2019 VRS Program Management Order*, 34 FCC Rcd at 3396, 3400, para. 7.

<sup>20</sup> 47 CFR § 64.604(c)(8)(v); *2019 VRS Program Management Order*, 34 FCC Rcd at 3414-17, paras. 33-37.

<sup>21</sup> *2019 VRS Program Management Order*, 34 FCC Rcd at 3414-16, paras. 35-36 & n.127. Although not relevant here, the Commission made clear this prohibition on non-service-related inducements did not extend to giving away an item of *de minimis* value, such as a pen or t-shirt. *See id.* n.125.

that the new rule was not intended to prohibit VRS providers from continuing to distribute, at no or minimal charge, devices (such as videophones and video monitors) that consumers need in order to access and use VRS (so long, of course, as such distribution is consistent with other Commission rules).<sup>22</sup> To determine whether a provider's device distribution constitutes a non-service-related inducement, the Commission explained that it would consider, among other things, the extent to which the equipment is designed, marketed, and used for relay communication.<sup>23</sup> Recognizing that guidance would clarify the application of this rule to specific situations, the Commission described the purpose of the rule, explained its relation to prior Commission orders regarding the provision of incentives by VRS providers, and provided examples of permitted and prohibited product offers based on the record at that time.<sup>24</sup> The Commission also "invite[d] providers that are uncertain about the permissibility of giving away a particular device [to] . . . seek guidance from the Commission prior to engaging in such activity."<sup>25</sup>

9. Convo filed a request for further clarification of the scope and requirements of the amended rule. Convo's request is threefold. First, Convo seeks "further guidance regarding what test should be used to distinguish between service-related and non-service-related equipment for the purpose of the application of the new rule."<sup>26</sup> Second, Convo asks under "what circumstances, if any, the giveaway of service-related equipment to induce users to port their [VRS] provider-assigned ten-digit telephone number . . . is prohibited."<sup>27</sup> Third, in the course of asking these broader questions about the scope of the Commission's rules, Convo raises specific objections to free offers allegedly made by ZVRS and Purple to target registered users of other providers. According to Convo, ZVRS and Purple are giving away the following package of products, known as the "Complete Home Package," to VRS users who port their assigned VRS ten-digit telephone numbers: (1) a laptop computer or an NVIDIA SHIELD-based OneVP device; (2) an iPad tablet with a keyboard; and (3) a Firefly signaler or a POP light and socket.<sup>28</sup> Convo seeks clarification on whether this distribution of equipment constitutes a prohibited non-service-related inducement.<sup>29</sup>

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<sup>22</sup> *Id.* at 3415-17, paras. 36-37. The Commission has also ruled that costs incurred by VRS providers in such voluntary provision of equipment are not compensable from the TRS Fund. *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, 5447, 5457-58, paras. 15, 38 (2006) (*2006 Declaratory Ruling*); *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 Order, 32 FCC Rcd 5891, 5897, para. 12 (2017) (*2017 VRS Rate Order*).

<sup>23</sup> *2019 VRS Program Management Order*, 34 FCC Rcd at 3415-16, para. 36.

<sup>24</sup> *Id.* at 3415-16, paras. 35-37.

<sup>25</sup> *Id.* at para. 36 & n.124.

<sup>26</sup> Convo Request at 1-2.

<sup>27</sup> *Id.* at 2.

<sup>28</sup> *Id.* at 2, 10-12.

<sup>29</sup> *See id.* at 8-13.

10. On August 29, 2019, the Bureau released a public notice seeking comment on Convo's requests.<sup>30</sup> Four parties filed comments and reply comments.<sup>31</sup> After the record for filing comments closed, interested parties submitted a number of ex parte filings.<sup>32</sup>

### III. DISCUSSION

11. The inducement prohibition contained in rule 64.608(c)(8)(v) is necessarily general.<sup>33</sup> In response to the Commission's invitation to provide guidance "about the permissibility of giving away a particular device," Convo has requested that we examine the devices available to VRS users from ZVRS and Purple in their "Total Home Package."<sup>34</sup> Because the Commission has drawn a line between service-related distributions and non-service-related inducements, we focus on that question here and find that the "particular device[s]" identified by Convo are service-related. "Because . . . we recognize that incentive programs can be structured in limitless ways,"<sup>35</sup> we decline Convo's invitation to speculate about the hypothetical contours of the rule beyond these offerings. Instead, we reiterate our readiness to adjudicate whether giving away any particular device would violate rule 64.608(c)(8)(v).<sup>36</sup>

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<sup>30</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on the Request by Convo Communications, LLC for Clarification of Section 64.604(c)(8)(v) of the Commission Rules*, Public Notice, 34 FCC Rcd 7812 (2019).

<sup>31</sup> See Convo Comments; ASL Services Holdings, LLC d/b/a GlobalVRS (GlobalVRS) Comments; Sorenson Communications, LLC (Sorenson) Comments; CSDVRS, LLC d/b/a ZVRS and Purple Communications, Inc. (ZP) Comments; Convo Reply Comments; Sorenson Reply Comments; Telecommunications for the Deaf and Hard of Hearing, Inc., Hearing Loss Association of America, National Association of the Deaf, Association of Late-Deafened Adults, Cerebral Palsy and Deaf Organization, Deaf Seniors of America, Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center, Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access, and California Coalition of Agencies Serving the Deaf and Hard of Hearing (Consumer Groups and Accessibility Researchers) Reply Comments; ZP Reply Comments.

<sup>32</sup> Letter from Gabrielle Joseph, Global VRS, and Jeff Rosen, Convo (Apr. 9, 2020); Letter from Gregory Hlibok, ZP (Apr. 3, 2020); Letter from Jeff Rosen (Mar. 16, 2020); Letter from Gabrielle Joseph (Mar. 16, 2020); Letter from Angela Roth, Global VRS (Feb. 28, 2020); Letter from Mark D. Davis, Counsel to Sorenson (filed Feb. 21, 2020) (Sorenson Feb. 21 *Ex Parte*); Letter from John T. Nakahata, Counsel to Sorenson (Jan. 13, 2020) (Sorenson Jan. 13 *Ex Parte*); Letter from John T. Nakahata (Jan. 8, 2020); Letter from Jeff Rosen (Dec. 23, 2019) (Convo Dec. 23 *Ex Parte*); Letter from Jeff Rosen (Dec. 12, 2019); Letter from Gregory Hlibok (Dec. 11, 2019) (ZP Dec. 11 *Ex Parte*); Letter from John T. Nakahata (Nov. 21, 2019); Letter from Jeff Rosen (Nov. 14, 2019); Letter from Mark Davis (Nov. 1, 2019); Letter from Jeff Rosen (Oct. 22, 2019); Letter from Jeff Rosen (Oct. 3, 2019).

<sup>33</sup> See 47 CFR § 64.604(c)(8)(v).

<sup>34</sup> See Convo Request at 4-5.

<sup>35</sup> *2007 TRS Declaratory Ruling*, 22 FCC Rcd at 20175, para. 96 ("Because . . . we recognize that incentive programs can be structured in limitless ways, we will continue to carefully monitor the provision of service and equipment in this regard.").

<sup>36</sup> See *SEC v. Chenery Corp.*, 332 U.S. 194, 202-03 (1947) ("[P]roblems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations, the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective. There is thus a very definite place for the case-by-case evolution of statutory standards. And the choice made between proceeding by general rule or by individual, *ad hoc* litigation is one that lies primarily in the informed discretion of the administrative agency.") (citing *Columbia Broadcasting Sys., Inc. v. United States*, 316 U.S. 407, 421 (1942)); *Freeman United Coal Mining Co. v. Fed. Mine Safety & Health Review Comm'n*, 108 F.3d 358, 362 (D.C. Cir. 1997) ("[S]pecific regulations cannot begin to cover all of the infinite variety of conditions which [regulated entities] must face.") (internal quotation marks and alteration omitted); *Throckmorton v. Nat'l Transp. Safety Bd.*, 963 F.2d 441, 444 (D.C. Cir. 1992) ("[N]o more than a reasonable degree of certainty can be demanded' [with

(continued . . .)

12. In deciding whether the devices described in Convo’s request are “service related” under the *2019 VRS Program Management Order*, we apply the Commission’s definition of a service-related device as “the type of device ordinarily needed or used to place a VRS call” and consider “the extent to which equipment is *designed, marketed, and used* for relay communication.”<sup>37</sup> In addition, we take account of the need for consistency with other Commission rules and policies—in particular, the Commission’s longstanding policy to encourage consumer use of “off-the-shelf” equipment, rather than proprietary devices, to access VRS.<sup>38</sup>

13. *Laptops and tablets.* We conclude that the laptops and tablets<sup>39</sup> that ZVRS and Purple give to VRS users, as described in Convo’s request, qualify as service related under the Commission’s stated criteria. First, we address the extent to which these products are “*used* for relay communication.” Like video monitors and Braille readers, which the Commission has specifically identified as service related,<sup>40</sup> laptops and tablets have long been widely used to communicate via VRS, as well as for other purposes.<sup>41</sup> For example, in 2011, when proposing to adopt the current definition of VRS access technology,<sup>42</sup> the Commission noted that the record before it demonstrated that:

[O]ff-the-shelf VRS access technology hardware (i.e., commercially available computing and communications equipment such as laptops, mobile phones, and tablet computers with broadband Internet access and a front facing camera such as the Apple iPad2) is becoming increasingly available and popular among both VRS providers and VRS users—a dramatic change since VRS was first introduced.<sup>43</sup>

14. Similarly, in the Commission’s *2017 VRS Rate Order*, the Commission noted that VRS providers “increasingly run their own software on off-the-shelf mobile devices, tablets, desktop PCs, and laptops, reducing the need for specialized, stand-alone VRS equipment that has kept deaf and hard of hearing users in closed video conferencing systems for far too long.”<sup>44</sup> Nothing in the *2019 VRS Program Management Order* or the record of this proceeding suggests that such use has declined substantially. To the contrary, Convo acknowledges that “most VRS calls currently are placed using off-the-shelf consumer

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respect to agency regulations] and it is not ‘unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line.’”) (quoting *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 340 (1952)).

<sup>37</sup> *2019 VRS Program Management Order*, 34 FCC Rcd at 3415-16, para. 36.

<sup>38</sup> See *2017 VRS Rate Order*, 32 FCC Rcd at 5897-98, 5900-01, paras. 13 n.45, 18.

<sup>39</sup> “Tablet” in this order includes a tablet with an associated keyboard. See Convo Request at 2, 10-12.

<sup>40</sup> See *2019 VRS Program Management Order*, 34 FCC Rcd at 3416, para. 37 (stating that “[t]his new rule does not cover providing VRS-related items, such as videophones and video monitors, at no or more minimal charge”); *id.* at 3416, para. 36 n.128 (“Certain people with disabilities, such as individuals who are deaf-blind, may need auxiliary devices—such as Braille displays—to connect to the distributed equipment in order to meet their accessibility needs.”).

<sup>41</sup> See, e.g., Consumer Groups and Accessibility Researchers Reply Comments at 3-4; Convo Comments at 5-6.

<sup>42</sup> VRS access technology is “[a]ny equipment, software, or other technology issued, leased, or provided by an internet-based TRS provider that can be used to make and receive a VRS call.” 47 CFR § 64.601(a)(50).

<sup>43</sup> *Structure and Practices of the Video Relay Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, 26 FCC Rcd 17367, 17392, para. 48 (2011).

<sup>44</sup> *2017 VRS Rate Order*, 32 FCC Rcd at 5900-01, para. 18.

electronic products such as laptops, tablets, and mobile phones, rather than using VRS-dedicated videophones.”<sup>45</sup>

15. The use of laptops and tablets to access VRS not only is widespread as a factual matter but also is encouraged by Commission policy. As the Commission has stated, “since 2013, it has been the Commission’s policy to make it possible for consumers to access VRS with off-the-shelf devices as an alternative to costly, proprietary devices distributed by VRS providers.”<sup>46</sup> We find no indication in the *2019 VRS Program Management Order* that the Commission intended to reverse this established policy. To the contrary, as noted above, the Commission specifically cited a category of off-the-shelf equipment—video monitors—as examples of service-related devices.

16. An additional criterion for whether a device is “service related” is the extent to which it is “designed . . . for relay communication.”<sup>47</sup> Consistent with the Commission’s policy favoring the use of off-the-shelf devices for VRS,<sup>48</sup> we construe this criterion to encompass the multipurpose laptops and tablets considered here, since they are designed to support two-way video communication—the essential form of “relay communication” involved in VRS.<sup>49</sup> While laptops and tablets are designed to serve additional purposes as well, the same is true of Braille readers and video monitors, which the Commission has defined as service related. The Commission has defined a “service-related” device as “the type of device ordinarily needed or used to place a VRS call,” based on the extent to which the device is designed, marketed, and used for relay communication.<sup>50</sup> The Commission’s definition does not disqualify a device from being “service related” merely because it is also used or usable for other purposes in addition to VRS.

17. The third criterion is the extent to which a device is “marketed . . . for relay communication.”<sup>51</sup> ZP’s marketing of laptops and tablets, as manifested on ZVRS’s and Purple’s web pages, provides further evidence that they are service related. Specifically, the companies’ web advertisements for the “Complete Home Package” support ZP’s claim that laptops and tablets are presented to consumers as part of a menu of VRS device options that “allows them to make a device selection based on the customer’s needs, and informed by how and where they need to access VRS.”<sup>52</sup> For example, ZVRS requires consumers who apply for the “Complete Home Package” to select “your

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<sup>45</sup> Convo Reply Comments at 5.

<sup>46</sup> *2017 VRS Rate Order*, 32 FCC Rcd at 5897-98, para. 13, n.45. For example, in adopting interoperability requirements, the Commission required that interoperability testing software should be “useable on commonly available off the shelf equipment and operating systems,” such as Microsoft Windows and Apple iOS. *2013 VRS Reform Order*, 28 FCC Rcd at 8645, para. 55 & n.141.

<sup>47</sup> *2019 VRS Program Management Order*, 34 FCC Rcd at 3415-16, para. 36.

<sup>48</sup> An interpretation of the inducement rule as permitting the free distribution of dedicated, proprietary videophones while prohibiting such distribution of less costly off-the-shelf equipment that facilitates two-way video communication would conflict with this longstanding Commission policy.

<sup>49</sup> See 47 CFR § 64.601(47) (defining VRS as “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 CA to view and interpret the party’s signed conversation and relay the conversation back and forth with a voice caller”). We are unaware of any “off-the-shelf” products (including, e.g., “video monitors” and “Braille displays” as referenced in the *2019 VRS Program Management Order*) that are designed specifically for use with VRS. Indeed, the essence of an “off-the-shelf” product is that it is commercially available to a much wider market than that for VRS.

<sup>50</sup> *2019 VRS Program Management Order*, 34 FCC Rcd at 3415-16, para. 36.

<sup>51</sup> *Id.*

<sup>52</sup> ZP Dec. 11 *Ex Parte* at 3.

primary videophone” from a list that includes a “[l]aptop” as well as other products, and to select as “your secondary videophone” either an “iPad with keyboard or Samsung Tablet.”<sup>53</sup> Consumers are then asked to describe whether they will use the service for communication from home, business, or both, and to indicate “Current Products Used” from a list of videophones (e.g., “Sorenson nVP1”) and products with videophone capabilities.<sup>54</sup>

18. *OneVP*. We also conclude that the OneVP—which Convo describes as a \$200 streaming media player, the NVIDIA SHIELD, with VRS software installed<sup>55</sup>—is service related because the record indicates it is designed, marketed, and used to facilitate two-way video communications. Although the record does not indicate that the NVIDIA SHIELD or OneVP was widely *used* for VRS prior to ZP’s offers, the record supports ZP’s assertion that the OneVPs given to its customers are used to facilitate access to VRS.<sup>56</sup> According to ZP, the offers are specifically tailored to allow each user “to make a device selection based on the customer’s needs, and informed by how and where they need to access VRS”<sup>57</sup>:

After learning of these needs, ZVRS or Purple staff help to provide guidance on which device will best meet each customer’s needs. For example, a customer who accesses VRS mainly from home, or a low vision user, may want a TV solution with a remote control for VRS, such as the OneVP.<sup>58</sup>

In other words, the OneVP provides a means to access VRS on a large-screen home television.<sup>59</sup> The descriptions ZP has submitted for the record are consistent with how the OneVP is described on the companies’ web pages.<sup>60</sup> Thus, unlike the gaming systems referenced in the *2019 VRS Program Management Order*,<sup>61</sup> the OneVP is a multipurpose device that is used and useful for accessing VRS. ZP’s customers also can use the OneVP for other purposes, such as media streaming and video gaming.<sup>62</sup> As explained above, however, this does not disqualify a device from being service related.<sup>63</sup> Again, the

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<sup>53</sup> See <https://www.zvrs.com/complete/> (last visited May 21, 2020).

<sup>54</sup> *Id.*

<sup>55</sup> Convo Request at 9 & n.26.

<sup>56</sup> As Convo acknowledges, the OneVP “has many, although not all, of the capabilities of a laptop computer,” a device that, as discussed above, has long been widely used for VRS. *Id.* at 9. Neither Convo nor any commenter attempts to establish that OneVP recipients are not using this device to communicate via VRS.

<sup>57</sup> ZP Dec. 11 *Ex Parte* at 3.

<sup>58</sup> *Id.*

<sup>59</sup> See ZP Comments at 6 (stating that “the primary function of the OneVP [is] as a videophone that is integrated with a television as part of a VRS user’s common, everyday experience”).

<sup>60</sup> See, e.g., ZVRS, *OneVP*, <https://www.zvrs.com/onevp/> (last visited May 5, 2020) (FAQ video entitled “What is the OneVP?” stating that it “has VP capabilities to make and receive calls from the comfort of their couch like never before”); <https://www.zvrs.com/complete/> (inviting applicants for the “Complete Home Package” to “[c]hoose one of these devices [OneVP, Z70, or laptop] as your primary videophone.”). (The Z70, which is not mentioned in the Convo petition, appears to be a stand-alone video communications device with a relatively small screen, designed for office use. See <https://www.zvrs.com/services/products/z70/> (last visited May 21, 2020).)

<sup>61</sup> See *2019 VRS Program Management Order*, 34 FCC Rcd at 3416, para. 36 n.124.

<sup>62</sup> ZP acknowledges that the OneVP “enables eligible VRS users to access and use high-quality video capabilities that are essential for VRS and are seamlessly integrated with the apps and activities that the Community engages with most at home.” ZP Comments at 8.

<sup>63</sup> The fact that the OneVP may be usable to access streaming media platforms and may come with preloaded icons for such platforms, does not violate *per se* the non-inducement rules. *Cf.* Convo Request, Exhibit; *see also*

(continued . . .)



same can be said of the laptops and tablets discussed above, as well as products—i.e., video monitors and Braille readers—that the Commission has specifically identified as service related.

19. The record also supports a finding that the OneVP is “designed” for VRS in that, like a laptop, tablet, or video monitor, it is designed to support two-way video communication. The OneVP offering includes VRS-specific software, as well as a webcam, HDMI cable, and other accessories necessary to make it functional for the two-way video that VRS requires.<sup>64</sup> Nothing in the record contradicts ZP’s claim that “OneVP equipment has the type of robust video capabilities that make it . . . useful for VRS service.”<sup>65</sup> Moreover, according to ZP: “As provided by ZVRS and Purple, the NVIDIA Shield equipment does not function as a gaming system. A customer would need to purchase and install additional software and peripherals, including a game controller, to use the NVIDIA Shield as a gaming system.”<sup>66</sup> The retail price of the version of the NVIDIA Shield that is used for the OneVP is only \$180 to \$220, which is less than many other products commonly used for VRS and substantially less than a dedicated videophone.<sup>67</sup>

20. Finally, ZP’s marketing of the OneVP, as manifested on ZVRS’s and Purple’s web pages, is sufficiently VRS oriented to fall within the Commission’s definition of “service related.” As with laptops, applicants are asked to choose between the OneVP and other options as “your primary videophone,” to describe whether they will use the service for communication from home, business, or both, and to indicate “Current Products Used” from a list of videophones (e.g., “Sorenson nVP1”) and products with videophone capabilities.<sup>68</sup> Although ZVRS’s marketing video on the OneVP does point out its entertainment uses,<sup>69</sup> it also promotes the OneVP’s VRS “capabilities to make and receive calls from the comfort of their couch like never before.”<sup>70</sup> As we have noted above regarding products that may be used for multiple purposes, it is the extent to which the marketing of the device addresses VRS uses that is controlling, not the extent to which it also discusses non-service-related uses.

21. *Signaling devices.* We also conclude that the other options included in ZP’s “Complete Home Package,” a Firefly signaler and a POP light and socket, are service related.<sup>71</sup> Like laptops, tablets, and the OneVP, these products are usable for VRS (as well as other purposes), are designed to facilitate

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Sorenson Reply Comments at 3-5 (referencing ZVRS marketing material that shows various entertainment icons on NVIDIA Shield). According to ZP, the OneVP does not come preloaded with access to these entertainment options. ZP Comments at 6.

<sup>64</sup> See *OneVP*, ZVRS, <https://www.zvrs.com/onevp/> (last visited May 5, 2020) (FAQ video entitled “What will I need to use the OneVP?”).

<sup>65</sup> ZP Comments at 5. Sorenson expresses the general view that, relative to off-the-shelf equipment, its “purpose-built videophones offer significant advantages . . . because they are specifically designed for VRS” and “provide better resolution and higher framerates.” Sorenson Jan. 13 *Ex Parte* at 3. However, Sorenson does not dispute that off-the-shelf devices such as the OneVP are also useful for VRS.

<sup>66</sup> ZP Comments at 6.

<sup>67</sup> Convo Request at 9 n.26.

<sup>68</sup> See <https://www.zvrs.com/complete/>.

<sup>69</sup> *OneVP*, ZVRS, <https://www.zvrs.com/onevp/> (FAQ video entitled “What is the OneVP?”—with captions stating that “[t]he all-new OneVP is a top-notch multi-function entertainment unit that can play multiple apps”); see also Sorenson Reply Comments at 3 (describing various statements included in ZVRS’s marketing of the OneVP).

<sup>70</sup> *OneVP*, ZVRS, <https://www.zvrs.com/onevp/>.

<sup>71</sup> Convo Request at 2, 10-12. A Firefly is a Bluetooth signaler that causes lights to flash to alert a VRS user of an incoming call. See <https://www.zvrs.com/services/products/firefly/> (last visited May 21, 2020). A POP light and socket is a similar device. See <https://www.purplevrs.com/POP> (last visited May 21, 2020).

two-way video communications (among other uses), and are marketed in a way that promotes their use for VRS, even though they also may be usable for other purposes.<sup>72</sup>

22. We conclude further that the rule against non-service-related giveaways does not require that the products described in the record must be “locked down” to prevent their use for non-VRS purposes (e.g., if the user chooses to download non-VRS applications or purchase unrelated accessories or software).<sup>73</sup> We can find nothing in the *2019 VRS Program Management Order* to indicate that such was the Commission’s intent. In addition, such a restriction would be administratively complex<sup>74</sup> and could potentially frustrate the Commission’s intent to avoid discouraging innovative, service-enhancing VRS offerings.<sup>75</sup> However, “locking down” a device to prevent unrelated use may help dispel any questions as to whether the device is a non-service-related giveaway.

23. We do not agree with Convo that, under the inducement rule as explained above, “nearly all mass market consumer electronic devices can be transformed into service-related equipment merely by installing a VRS app.”<sup>76</sup> Consumer devices that do not enable or support the two-way video communications required for VRS cannot qualify as service related.<sup>77</sup> In addition, an otherwise permissible device, such as a laptop, cannot qualify as service related if it contains optional features or applications that are unnecessary for VRS access and that would substantially increase the retail value of the product (e.g., a laptop preloaded with non-VRS office suite software for which purchasers ordinarily would pay extra). Finally, the Commission’s inducement rule does not permit unlimited distribution of laptops, tablets, and similar products to a single user. While the components of the “Complete Home Package” are reasonably described by ZVRS and Purple as tailored to serve complementary, VRS-related needs of a single user,<sup>78</sup> offers that exceed a single user’s reasonable VRS access needs are not permitted,

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<sup>72</sup> See <https://www.zvrs.com/services/products/firefly/> (“Stop missing calls because you’ve left the room or have looked away. The Firefly is part of our Call Alert package, which when used with Call Alerts via E-mail and/or Text, allow you to rest easy and not worry about missing calls.”); <https://www.purplevrs.com/POP/> (“Introducing POP—the newest breakthrough in VRS, made just for you to make sure you never miss a call! . . . When someone calls your Purple number, Purple sends a signal to your POP to flash so you know you have a call.”).

<sup>73</sup> See Convo Reply Comments at 4-5; Convo Dec. 23, 2019 *Ex Parte* at 2 (urging the Commission to require that non-VRS features of devices included in free offers must be locked down); Sorenson Feb. 21, 2020 *Ex Parte* at 1 (stating that Sorenson’s proposed principles, including a lock-down requirement for smart devices, “would draw a clearly defined, practically administrable line, while ensuring VRS users access to communication devices”).

<sup>74</sup> Cf. Sorenson Feb. 21, 2020 *Ex Parte* at 2 (suggesting that permitted devices be “locked down with software that is intended to prevent the user from installing additional generally available, mass-market apps (with the exception noted below) and from accessing any app other than a Video Relay Service app, computer or network security apps, accessibility apps or other apps specifically for use by deaf or hard-of-hearing users, an e-mail app, and a web browser,” except that “these lock-down requirements would not apply to generally available, mass-market apps that enhance the functionality of a provider’s VRS device or application as a communications device”).

<sup>75</sup> See *2019 VRS Program Management Order*, 34 FCC Rcd at 3416, para. 36, n.128.

<sup>76</sup> Convo Reply Comments at 4.

<sup>77</sup> See, e.g., *2019 VRS Program Management Order*, 34 FCC Rcd at 3416, para. 36, n.124 (in response to commenter’s argument that video game giveaways should not be prohibited because “VRS may be an integral component of the video game experience much like a chat room is for hearing video gamers,” pointing out that “[a]s far as the Commission is aware, the vast majority of VRS calls are for communications that are unrelated to video games and do not require video game equipment to complete such calls”).

<sup>78</sup> For example, according to ZVRS’s online marketing page, when applying for the “Complete Home Package,” a user is asked to choose one device from the first category above “as your primary videophone” and one device from the second category above “as your secondary videophone.” <https://www.zvrs.com/complete/>.

even though each component of the package may meet the definition of “service related” if offered as a stand-alone.<sup>79</sup>

24. Although we conclude that the devices described in the record are service related and thus not prohibited by rule 64.604(c)(8)(v), we emphasize that offering or distributing such devices is neither required by section 225 nor supported by the TRS Fund. We agree with Convo that “functional equivalence does not—and should not—require VRS providers to buy for deaf users the same laptops, tablets, phones, and other off-the-shelf consumer electronic devices that hearing individuals purchase for themselves.”<sup>80</sup> Functional equivalence similarly does not require VRS providers to give dedicated, proprietary videophones to their customers.<sup>81</sup> While not prohibiting providers from giving away service-related equipment, the *2019 VRS Program Management Order* does not in any way promote, or commit to financial support of, the free or discounted distribution of laptops, tablets, or videophones. Rather, the Commission has merely declined to prohibit such offers, which can improve a consumer’s ability to access and use VRS, in rule 64.604(c)(8)(v).

25. We emphasize that the scope of this ruling is limited to the application of existing rules. Accordingly, we deny Convo’s requests for a total prohibition on the provision of equipment (including service-related equipment), for a requirement that VRS providers obtain certain affirmations from users prior to delivering equipment, and for a specific limit on the amount of devices that a consumer may receive from a provider.<sup>82</sup>

#### IV. ORDERING CLAUSES

26. 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 the authority delegated pursuant to sections 0.141, 0.361, and 1.2 of the Commission’s rules, 47 CFR §§ 0.141, 0.361, and 1.2, this Declaratory Ruling IS ADOPTED.

27. IT IS FURTHER ORDERED that Convo’s Request for Expedient Clarification of 47 CFR § 64.604(c)(8)(v) is GRANTED TO THE EXTENT DESCRIBED HEREIN and is otherwise DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Patrick Webre, Chief  
Consumer and Governmental Affairs Bureau

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<sup>79</sup> For example, multiple devices of the same type are not “ordinarily needed or used to place” VRS calls. *2019 VRS Program Management Order*, 34 FCC Rcd at 3415-16, para. 36. Similarly, repeated distribution of devices that exceed a single user’s reasonable VRS access needs are not permitted.

<sup>80</sup> Convo Reply Comments at 6.

<sup>81</sup> *2017 VRS Rate Order*, 32 FCC Rcd 5899-5901, paras. 15-19 (ruling that section 225 does not require the TRS Fund to support the provision of customer premises equipment to VRS users).

<sup>82</sup> See Convo Comments at 3-12; Convo Dec. 23, 2019 *Ex Parte* at 2-3.