Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JOINT PETITION OF ALL SIX VRS PROVIDERS FOR A TEMPORARY WAIVER OF THE SOCIAL SECURITY NUMBER RULE AND DATE OF BIRTH REQUIREMENTS, AND PETITION FOR RULEMAKING

All six providers of Video Relay Service (“VRS”) (collectively, “the Providers”) submit this Petition to seek an immediate temporary waiver of the requirement that the Providers obtain from each new and existing user date of birth and the last four digits of the user’s Social Security number or Tribal identification number as part of the VRS user registration process (the “Social Security Number Rule”). The Providers also request that during the pendency of the requested waiver, that the Commission initiates rulemaking to consider alternatives to the Social Security Number Rule. Under the VRS Reform Order, consumers must provide to the Providers, among other pieces of information necessary to verify their identity, their date of birth and the last four digits of their Social Security numbers.¹ For consumers living on Tribal lands who lack a Social Security number, the Commission allows an official Tribal identification card number to be provided to the Provider in lieu of this Social Security data.² The application of these personal


² Id., n.170.
identification information (“PII”) requirements is not consistent with the functional-equivalence mandate of the Americans with Disabilities Act and will cause an unreasonable risk to consumer privacy. Thus the VRS providers jointly petition the Commission to follow the grant of a temporary waiver with a rulemaking proceeding to establish alternative verification methods.

The Commission recently released an Order granting a temporary, limited waiver of the Social Security Rule requirement if the user does not have a Social Security or Tribal identification number, on the condition that certain alternative documentation is provided. The grant of this waiver does not resolve the exposure of consumers’ PII to risks of identity theft, raises information concerns, and is not necessary to prevent waste, fraud, and abuse for VRS. The Providers therefore urge the Commission to immediately waive for all users the requirement to collect such highly sensitive PII and accept an alternative verification procedure that will be as effective as collecting date-of-birth and the last four digits of a user’s Social Security or Tribal identification number in ensuring the VRS program is as immune as possible from waste, fraud, and abuse.

In considering this waiver, the Commission should take into account that there has been absolutely no indication that misrepresentation of a user’s identity has led to waste, fraud, or abuse in VRS – which is the only form of TRS to which the URD currently would apply. VRS is not usable unless the individual can sign in American Sign Language. Unlike IP Relay, there

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3 47 U.S.C. § 225(a)(3)
5 In addition, the list of approved alternative verification documents identified in the temporary, limited waiver likely will not be sufficient to establish eligibility for undocumented immigrants.
have not been reports of hearing persons pretending to be deaf in order to use VRS to place calls under a cloak of anonymity. The Commission’s fears about hearing people taking advantage of this service to make free long distance calls should have evaporated given the plethora of free long distance calling options available to hearing persons such as Skype, and strict video interpreter training to immediately disconnect any calls that appear to be between two hearing persons, without a deaf or speech-impaired person as part of the call. Moreover, the Commission has never implemented any system to verify the identity and eligibility of a specific VRS caller, as distinguished from the VRS user registered to a VRS service. Deaf individuals can lawfully use VRS phones registered to a friend or family member, as well as public or semi-public videophones. For VRS, the collection of date of birth and the last four digits of the registrant’s Social Security number to aid in identity verification is a solution in search of a waste, fraud, or abuse problem.

I. PROVIDERS HAVE ENCOUNTERED SIGNIFICANT RESISTANCE FROM USERS.

In anticipation of the new collection requirements, certain VRS providers have attempted to collect date of birth and the last four digits of Social Security numbers from new registrants. But these providers encountered significant resistance from all types of users in providing the last four digits of Social Security numbers. Users routinely question why the information is now needed when it was not in the past, and express concern about the potential for identity theft especially given the constant public reports of data breaches. Other users (correctly) insist the new collection requirements are not functionally equivalent to what hearing consumers are

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6 See, e.g., the Office Of Personnel Management’s June 4, 2015 Announcement of Cybersecurity Incident involving the compromising of the personal information of approximately 4 million individuals (http://www.opm.gov/news/latest-news/announcements/)
required to provide when ordering voice telephone service. If instead, new registrants are asked to see copies of utility bills—a common practice applied to hearing users when they request voice telephone service—providers typically encounter no resistance. Consumer groups have extensively presented to the Commission their adamant opposition to the collection of their Social Security Number and date-of-birth information due to, among other things, the unwarranted risk of theft of identity information, its incongruence with functional equivalency, and the consequential de facto exclusion of individuals lacking any such documentation regardless of the recent limited temporary waiver. Providers reported to the Commission last year their difficulty in collecting consumers’ Social Security Number and date-of-birth information and recommended those requirements be replaced by less problematic solutions.

When eligibility and verification procedures were imposed on iTRS providers in the Second Numbering Order, the Commission mandated that procedures adopted by providers be reasonable and not unduly burdensome or intrusive. To verify initial registration information and to help ensure that VRS and IP Relay were used only for their intended purposes, the Commission required iTRS providers to institute procedures to verify the accuracy of registration

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8 Ex Parte, All 6 VRS Providers, CG Docket Nos. 10-51 and 03-123 (October 16, 2014).

information, which consisted of consumer name and mailing address. Users also were required to include a verification component that required self-certification of a hearing or speech disability necessitating use of TRS.

Notably, the Commission did not mandate the use of any particular verification procedures. Instead, the Commission required “only that [iTRS] providers implement a *reasonable* means of verifying registration and eligibility that is not *unduly burdensome.*” (emphasis added). Examples of reasonable means of verifying registration included: (1) sending a postcard to the mailing address provided by the consumer, for return to the default iTRS provider; (2) in-person or on camera ID checks during registration; or (3) other verification processes similar to those performed by voice telephone providers and other institutions such as banks and credit card companies. In addition, the Commission urged providers to conduct consumer education and outreach on these registration procedures.

Similar to telecommunications companies, VRS providers go to great lengths to inform their consumers about fraudulent activity and continually advise them never to give out PII to anyone. Because the *Second Numbering Order* did not mandate the use of any particular verification procedure and also did not include the collection of date of birth and last four digits of an eligible user’s Social Security or Tribal identification Number in the list of examples of reasonable means of verification, and no justification has been provided for why the collection of this particular information is relevant or even necessary, users understandably have been reluctant to provide such information, particularly when the collection of such information does not align with addressing fraud that has occurred in VRS.

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10 *Id.* ¶ 37.

11 *Id.* ¶ 38.
II. COLLECTION OF DATE OF BIRTH AND LAST FOUR DIGITS OF A USER’S SOCIAL SECURITY OR TRIBAL INFORMATION NUMBER, OR COLLECTION OF ALTERNATIVE IDENTITY VERIFICATION DOCUMENTS, WILL NOT PREVENT WASTE, FRAUD, AND ABUSE IN VRS BUT WILL INCREASE RISKS TO CONSUMER PRIVACY.

The Providers support efforts to help ensure the integrity of the VRS program by identifying the eligibility of registrants and verifying the accuracy of initial registration information, while not causing unnecessary and unwarranted intrusions into eligible users’ privacy and personal information or causing unnecessary barriers to use of VRS by eligible users. Requiring VRS providers to collect date of birth and the last four digits of registrants’ Social Security or Tribal identification numbers is not a well-suited measure for reducing waste, fraud, and abuse in VRS. While the collection of such information may be helpful to prevent waste, fraud, and abuse in IP relay, where there is a history of ineligible individuals using the anonymity of IP relay to commit fraud, VRS, which requires a user to be fluent in American Sign Language and which allows the video interpreter to see the deaf party, has no history of being susceptible to that form of fraud. In fact, VRS Providers are not aware of any examples of VRS fraud that have resulted from the use of false identity by ineligible users. VRS fraud, when it has occurred, has largely stemmed from unscrupulous providers seeking compensation for unnecessary calls, not from calls placed by ineligible users. Collection of last four digits of an eligible user’s Social Security or Tribal identification number would not prevent such fraud.

In the VRS Reform Order, the Commission explained that it was adopting the date of birth requirement and the Social Security Rule because the Commission’s experience in the Lifeline context indicates the collection of this basic identifying information is necessary to
ensure that the validation process is effective. Unlike the FCC’s Lifeline program, VRS is not limited to a single supported line per household—a rule that necessitated determining that each subscriber was a unique individual so as not to provide duplicate service to an individual or household. VRS registrants may have multiple VRS numbers from multiple VRS providers. For VRS, so long as the registrant correctly and truthfully completes his or her self-certification of eligibility and is residing within the United States or its territories, the registrant is an eligible VRS subscriber.

In addition, compliance with the date of birth requirement and Social Security Rule will increase Providers’ compensable costs for added disclosures that must be made (e.g., online registration, electronic signature requirements, and other privacy policies). Moreover, for Spanish language users, there is an additional cost of translating these new procedures into Spanish, including for additional internal screenings and registration and verification of registered users. These additional costs are exacerbated by reduced compensation rates and the removal of compensable research and development and consumer education and outreach costs.

Furthermore, the date of birth requirement and Social Security Rule also cannot be used for verifying institutional users or for calls made on public video phones. To the extent added identity verification is necessary for VRS—and there is no evidence that it is necessary to address any waste, fraud, or abuse—one prior suggestion from consumer organizations was to use a third-party identification system. In such case, the Commission should allow VRS providers to choose among the various third-party identification providers, such as the credit

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12 VRS Reform Order, 28 FCC Rcd. 8650, n.170.
reporting entities and LexisNexis, and not limit it to a specific one. Alternatively, as discussed further below, the Commission could simply require that a provider view one of the forms of identity verification listed in the Waiver Order, and have an employee certify that she reviewed an appropriate identity document confirming the user’s name and address.14

Requiring the collection and retention of date of birth and the last four digits of the Social Security number or Tribal identification number, or the alternative forms of identity verification contained in the Waiver Order, also increases the risks to consumer privacy in the event of a data breach. Of course, all VRS providers will implement strong data protection measures; however, as experience in many industries has shown, such measures are not foolproof. As the FTC has repeatedly emphasized, the best privacy protection starts with tailoring information collection only to that information which is necessary, i.e., privacy by design.15 Requirements to collect and retain identity verification information for VRS serve no discernible purpose in eliminating waste, fraud, or abuse, and thus expose consumers to greater privacy risk with no offsetting public benefit.

14 Providers should not be required to make or retain copies of the user’s identity verification documents, given the lack of any record of identity fraud leading to waste, fraud or abuse of VRS.

For all these reasons, the Providers urge the Commission eliminate the requirement to collect date of birth and the last four digits of an eligible user’s Social Security or Tribal identification number by granting an immediate waiver of the Social Security Rule and initiate a rulemaking proceeding to establish less problematic and effective verification methods.

III. THE COMMISSION SHOULD GRANT A TEMPORARY WAIVER OF THE SOCIAL SECURITY RULE AND DATE OF BIRTH REQUIREMENT FOR ALL VRS USERS.

The Commission’s rules may be waived for good cause shown.16 The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.17 In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.18 Waiver of the Commission’s rules is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.19

Good cause exists for the Commission to waive the date of birth requirement and the Social Security Number Rule as applied to all VRS users. Section 225(b)(1) of the Act states that in order to fulfill the purposes of section 151 of the Act “to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation,” the Commission must make TRS available, to the extent possible and in the most efficient manner, to people with hearing and speech disabilities

16 47 C.F.R. § 1.3.
19 Id.
“in the United States.” At the time that it adopted this section, Congress explained that “[g]iven the pervasiveness of the telephone for both commercial and personal matters, the inability to utilize the telephone system fully has enormous impact on an individual’s ability to integrate effectively in today’s society.” Given the significant reluctance from all types of users in providing date of birth and the last four digits of Social Security numbers and the little utility in preventing waste, fraud, and abuse in VRS that such collection would provide, limiting the use of VRS to only users in the United States who provide Social Security or Tribal identification numbers would deny access to this form of TRS to a segment of individuals with hearing and speech disabilities who are in the United States and who are therefore among the intended beneficiaries of TRS. In addition to domestic VRS users, this category of individuals could include, without limitation, foreign students studying in the United States and residents of other countries who are visiting the United States or who have temporary visas for tourism, medical treatment, or other purposes. Depriving any of these individuals access to VRS would place an unnecessary hardship on these individuals if they are otherwise eligible to use this service and are “in the United States.” The Commission should therefore conclude that good cause exists to waive the date of birth requirement and the Social Security Number Rule for new and existing VRS users because strict compliance with this rule would be inconsistent with the public interest and the language of section 225(b)(1).

Moreover, the Commission’s recent limited temporary waiver devising a work around approach to verify the identity of those without Social Security number information will still have the effect of excluding significant numbers of otherwise eligible undocumented immigrants from being able to use VRS. A spot check of deaf and hard of hearing undocumented immigrants reflected that many if not most of them do not have any of the documents identified on the list of
alternative verification documents. The application of Lifeline’s verification documents to VRS is wholly inappropriate given that Lifeline is a benefit program for which eligibility can be regulatory adjusted as compared to VRS, which is a civil right for which eligibility is established as a matter of law. This continuing barrier to undocumented immigrants’ lawful use of VRS must be remedied before the TRS-URD is implemented. In any event, adoption of the Waiver Order demonstrates that the FCC is willing to accept the verification of individuals without Social Security numbers. Accordingly, the FCC should allow all eligible VRS users to be verified without requiring users to produce Social Security number and date of birth information.

IV. PETITION FOR RULEMAKING: NEW RULES ARE NECESSARY TO RIGHT THE VERIFICATION RULES.

Based on the foregoing, in addition to the requested waiver, the VRS providers hereby request that the Commission initiate a rulemaking proceeding to establish alternative requirements to verify the accuracy of registration information that are aligned with reducing waste, fraud, and abuse in VRS. Verification procedures used since adoption of the Second Numbering Order have worked without issue and should be continued without requiring users to provide PII. The risk of requiring the provision of PII far outweighs any benefit of collecting such information, especially given that the Commission has offered no justification for the new PII requirements and such information is not necessary to prevent waste, abuse and fraud in VRS.

If the Commission has some other unarticulated reason for requiring date of birth and Social Security number information such as helping it to definitively establish the number of VRS users, there are numerous and far less invasive methods of tying each user to all of their assigned TRS ten-digit numbers, such as the use of Experian or Lexis/Nexis’ individual identification numbering systems. Furthermore, the Commission should authorize the use of
verification methods for minors, for whom third party data is no available from sources such as Experian or Lexis/Nexis, and for whom the collection of personally identifiable information may be subject to the Children’s Online Privacy Protection Act. The Commission must provide interested stakeholders the opportunity to offer information and recommendations regarding secure and private identification and verification mechanisms.

If the Commission insists on using Social Security number and date of birth information to establish eligibility, the providers urge the Commission to employ a third party entity to perform that function. Providers are not positioned to shoulder the heightened risk that is assumed in collecting and storing sensitive personal information, particularly when the collection of such information does not align with addressing fraud that has occurred in VRS and therefore offers no offsetting public benefit. The Commission is actively considering a neutral third party administrator to authenticate individuals seeking eligibility to participate in the Lifeline program. While the VRS providers firmly believe the Commission should abandon the new PII collection requirements, which would obviate the need for a third party authenticator, in the event the Commission rejects this waiver request and deems collection of PII necessary, it should make changes consistent with Lifeline regarding using a third party entity to perform verification.

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20 On May 8, 2015, FCC Chairman Wheeler released a Fact Sheet which sets forth a set of comprehensive proposals to restructure and modernize the FCC’s Lifeline program. The Fact Sheet indicated that the Chairman is circulating a Report and Order and Notice of Proposed Rulemaking that includes a proposal on Resetting Lifeline Eligibility Administration. The Commission acknowledges in the proposal that “Lifeline providers are currently responsible for ensuring the eligibility of their Lifeline Customers, a situation that invites waste and burdens providers. The Notice proposes to remove providers from this process and seeks comment on other ways to verify eligibility, such as establishing a neutral third party administrator.” available at: https://www.fcc.gov/document/chairman-seeks-comment-modernizing-reforming-lifeline-broadband
In addition, if identity verification by providers using their PII is deemed necessary, providers request that the Commission issue guidance clarifying that a copy of the actual document used for verifying identity should not be collected and retained by the VRS provider. Instead, the VRS provider employee would be required to certify that he or she saw the required verification documentation. The VRS provider only would be required to retain the employee certification. Adoption of this procedure would fulfill the Commission’s need, assuming one exists, to ensure the person is who they say they are, reduce information collection burdens on providers, and better protect consumer privacy since the information would not be collected and retained.

V. CONCLUSION.

Granting the Provider’s request will best serve the deaf, hard-of-hearing and deaf-blind consumers who depend on VRS. In light of the public interest favoring grant of the waiver and the absence of any negative impact on the TRS Fund, the Providers respectfully request that the Commission grant this waiver request.

Respectfully Submitted,

/s/ Angela M. Roth  
President & CEO  
ASL Services Holdings, LLC. /dba

/s/ Jeremy M. Jack  
Vice President CAAG VRS  
Hancock Jahn Lee & Puckett, LLC (CAAG)

/s/ Michael D. Maddix  
Director of Government and Regulatory Affairs  
Sorenson Communications, Inc.

/s/ Michael Strecker  
Vice President ZVRS  
CSDVRS, LLC (ZVRS)

/s/ Jeff Rosen  
General Counsel  
Convo Communications, LLC.

/s/ Michael Strecker  
Vice President ZVRS  
CSDVRS, LLC (ZVRS)

/s/ John Goodman  
Chief Legal Officer  
Purple Communications Inc.