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March 14, 2017

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51

Dear Ms. Dortch:

On March 10, 2017, Scott Wood, General Counsel, and Lance Pickett, Vice President of Marketing, Sorenson Communications, LLC ("Sorenson"), Rebekah Goodheart, outside counsel to Sorenson, and I, outside counsel to Sorenson, met with Nicholas Degani, Senior Counsel to the Chairman, and Zenji Nakazawa, Acting Public Safety and Consumer Protection Adviser to the Chairman, regarding the proposed Order and Further Notice of Proposed Rulemaking on Video Relay Services[1] that the Commission may consider at its March 23, 2017 Open Meeting. Sorenson greatly appreciates the increased transparency resulting from publishing the draft Order and FNPRM, which has allowed it to provide much more specific and focused feedback.

Sorenson supports the proposed decision to pilot skill-based routing and deaf interpreters, and to allow VRS providers to place phone numbers associated with ASL-speaking hearing persons in the iTRS database subject to safeguards, which will allow those individuals to place point-to-point calls with deaf family, friends, and business associates without using VRS. These will improve service and expand calling options to and from deaf individuals.

Sorenson is also pleased that the FCC is moving forward with an FNPRM to provide certainty and stability with regard to VRS rates but believes that the FNPRM misses an opportunity to seek comment on alternative, less regulatory approaches, as we explain in greater detail below. In addition, Sorenson is concerned that the FNPRM does not ask questions to test key assumptions and potentially could be read to preclude consideration of more efficient and less regulatory approaches, all while seeking additional services at additional cost to VRS providers. While the draft acknowledges a balance between efficiency and competition, it should also seek comment on whether it remains appropriate to pay for inefficient providers after

[1] *Structure and Practices of the Video Relay Service Program*, Order and Further Notice of Proposed Rulemaking, FCC-CIRC 1703-03 (2017) ("Draft Order and FNPRM," "Draft Order," or "Draft FNPRM," as appropriate).

a decade of tiered rates, as well as to examine more closely the sources of cost differentials and potential scale efficiencies.

Sorenson urged the Commission to seek comment on additional, alternative frameworks for determining VRS rates to those in the Draft FNPRM that would be more deregulatory in approach, minimize line drawing between allowable and categorically disallowed costs that can distort innovation and investment. Doing so would also not only better reconcile Section 225's three directives for (i) efficient, functionally equivalent telecommunications relay services,[2] (ii) rates to telecommunications relay service users that are "no greater than the rates paid for functionally equivalent voice communications services,"[3] and (iii) rules that "do not discourage or impair the development of improved technology,"[4] but is also consistent with Commission precedent recognizing that price caps and incentive regulation are more efficient and can provide substantial public interest advantages over cost-of-service approaches.

We described three additional alternatives, a market-based auction patterned after capacity auctions conducted by the Federal Energy Regulatory Commission ("FERC"), a long-term price cap based on a reasonable efficient provider, and a deregulatory approach founded in private contracts. We previously attached outlines of the market-based auction and price cap approaches to our ex parte of March 7, 2017, and we describe all three options more fully below. We respectfully ask that the Commission include all three alternatives within the scope of the FNPRM as adopted. To ensure that the Commission would have the discretion to consider all relevant factors in determining how best to move forward with VRS rates, we urged that n.237 in the Draft FNPRM be removed, as it would preclude the Commission from reevaluating whether rates should take into account additional costs necessary to provide the services that consumers receive today.[5] Sorenson noted that all of these approaches could encourage efficiencies and ensure competition and choice for consumers.

Sorenson also noted its commitment to be more efficient and reduce debt. We emphasized that none of these three proposals ask the Commission to set VRS compensation rates based on Sorenson's historical levels of debt and debt service.

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[2] *See* 47 U.S.C. §§ 225(a)(3) and (b)(1).

[3] *Id.* § 225(d)(1)(D).

[4] *Id.* § 225(d)(2).

[5] N.237 reads: "Although we seek comment on the possible substitution of an alternative approach, such as described above, for the current rate-of-return allowance, we do not reopen questions regarding the types of expenses that should be included in allowable costs." This note would preserve all existing line drawing among costs, no matter how reasonable or unreasonable they may be after consideration of a full record.

I. THE COMMISSION SHOULD ASK ADDITIONAL QUESTIONS WITH RESPECT TO THE TIER-BASED PROPOSAL IN THE DRAFT FNPRM.

The principal proposal in the Draft FNPRM is based on a proposal by the other three VRS providers to continue setting VRS compensation using volume-based tiers for the next four years, to expand the volume of minutes covered by those tiers, and to increase the per minute compensation rate for each of the new, expanded Tiers I and II, while reducing the per minute compensation paid for Tier III minutes.[6] Under this proposal, Tier I—and the associated "Emergent Provider" tier— would double to cover 1 million minutes per month, instead of just 500,000 minutes, and Tier II would cover all minutes from 1 million to 2.5 million minutes per month, rather than 500,000 to 1 million under the current tiers.[7] In embracing the proposed expansion of tiers, the Draft FNPRM would find that these tiers are justified by economies of scale.

We believe that in order to develop a more complete record and to test assumptions underlying the FNPRM, the Commission should ask additional questions as well, which we set forth below:

- To what extent are higher costs per minute reported by smaller VRS providers due to economies of scale, rather than other potential sources of inefficiency or choices to incur higher costs?

- The Joint VRS Providers assert that economies of scale continue to increase significantly for VRS providers with more than 1 million monthly minutes, and may continue to until a provider supplies more than 2.5 million minutes per month. We seek further information as to which components of a VRS provider's costs are subject to significant economies of scale, and which are not. For example, VRS interpreter time would likely be subject to limited economies of scale because, after a limited increase in minutes, an additional interpreter must be added. Similarly, call center space is directly correlated with the number of interpreters operating simultaneously.

- If there are some economies of scale to be recognized, what marketplace distortions may be created if tiers boundaries are not closely correlated to the scale economies? For example, if the Commission adopts a tier boundary at the high end of record evidence, but scale economies are fully realized at a lower volume level, would that distort competition or lead to undesirable incentives?

- To what extent do tiers encourage or discourage inefficiencies that are ultimately reflected in the contributions borne by ratepayers?

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[6] Letter from VRS Providers Purple, Convo, Z, and Global to M. Dortch, CG Docket Nos. 10-51 & 03-123 (filed Jan 31, 2017) ("Other VRS Providers' Letter").

[7] *Id.*

- How would adopting the proposed rates that maintain a large disparity between Tier III and Tiers I and II impact efficiency incentives? Would the lower rate for Tier III discourage further efficiencies and economies of scale?

- How could the Commission modify the current tier approach to better encourage efficiencies, reduced costs, and economies of scale?

- What incentives do tier boundaries create or mute to grow beyond a tier boundary? For example, if a tier rate is set as an average cost per minute for the tier, a provider may incur more costs for the first minutes in a new tier than it will receive in compensation, even if the tiers boundaries are set perfectly.

- To what extent, if any, does significantly reducing compensation rates for efficient providers relative to less efficient providers diminish incentives for providers to reduce costs, or incent providers to increase allowable costs as compared with disallowed costs?

- How does the choice to pay average per minute compensation to higher cost VRS providers align or reconcile with the Commission's policy only to provide high cost universal service support to only one provider of supported services, where necessary?

- To what extent do higher costs reflect higher per hour compensation for labor? Are any such higher labor costs offset by increased interpreting efficiency? To the extent that a provider has a lower level of interpreter efficiency (i.e., the ratio of interpreted minutes to time clocked in), to what extent is that due to larger standing staffing levels as opposed to a lack of any calls to interpret? What is the minimum amount of staffing needed to operate 24 hours during the periods of least calling demand?

- To what extent do VRS providers plan to utilize the Neutral Video Communications Platform, if the Commission completes the development of that Platform? To what extent would the Neutral Video Communications Platform substitute for costs providers presently incur that are subject to economies of scale? Which elements of providers' current video communications networks are subject to economies of scale, what is the extent of such economies and at what level of minutes are any such economies realized?

II. USING AN AUCTION TO ESTABLISH MULTIYEAR, MARKET-BASED VRS RATES

We ask that the Commission seek comment on Sorenson's auction proposal, as outlined in our March 7, 2017 ex parte and as further refined and described below, to use an auction to establish multiyear, market-based rates, consistent with the direction started in the *2013 VRS Order and FNPRM.* What follows is a description of that proposal, with suggestions for related questions, that could be used to provide more detailed notice and to solicit the development of a full record.

In the 2013 *VRS Order and FNPRM*, the Commission noted that "[r]atemaking based on calculations of allowable costs is inherently a contentious, complicated, and imprecise process."[8] Accordingly the Commission sought comment on "replac[ing] cost-of service ratemaking with more market-based approaches, to the extent that this can be accomplished without adversely affecting the public interest and the goals of Section 225."[9] The Commission sought comment on one such proposal for an action to establish a per-minute rate for interpreting services.[10] Continuing that inquiry, the Commission should also seek comment on whether there are market-based alternatives to cost-of-service ratemaking that could allow the Commission to pursue a more market-driven and deregulatory path in setting VRS compensation rates, and the associated timetable along which any such proposal could be implemented.

The Commission has been using reverse auctions in other settings as an alternative to cost-of-service determinations. For example, the Commission used reverse auctions to select high cost support recipients for Mobility Fund Phase I and Tribal Mobility Fund Phase I, as well as to select recipients of support under the Rural Broadband Experiments.[11] More recently, the Commission adopted auctions as the means to allocate support both for fixed service Connect America Fund ("CAF") Phase II in areas in which a price cap carrier declined support, and for Mobility Fund Phase II.[12] In these cases, the Commission used auctions as its method to determine the recipients and levels of high cost universal service support for particular areas "to maximize the impact of finite universal service resources and [] enable it to identify those providers that will make most effective use of" scarce funds.[13]

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8 *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*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-84, 28 FCC Rcd. 8618, ¶ 217 (2013) ("*2013 VRS Order and FNPRM"*).

9 *Id.*

10 *Id.* ¶¶ 223-238.

11 *See, e.g.*, *Connect America Fund and ETC Annual Reports and Certifications and Rural Broadband Experiments*, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-64, 31 FCC Rcd. 5949 (2016).

12 *See Connect America Fund and ETC Annual Reports and Certifications*, Report and Order and Order on Reconsideration, FCC 17-12 (rel. Mar. 2, 2017) ("*CAF Phase II Order*"); *Connect America Fund and Universal Service Reform –Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 17-11 (rel. Mar. 7, 2017) ("*Mobility Phase II Order*").

13 *See e.g.*, *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd. 17,663, 17,732 ¶ 179 (2011) ("*USF Transformation Order*"); *Mobility Fund Phase II Order* ¶ 17.

In the context of VRS, preserving competitive choice for consumers while driving to efficient rates creates some tension,[14] but Sorenson believes that its proposal could both accommodate choice by promoting competition and encourage greater efficiencies. VRS consumers have strongly opposed denying them a choice of VRS providers.[15] The Commission should seek comment on whether maintaining consumer choice among multiple providers remains a critical feature of a market-based reverse auction.

Sorenson proposes a VRS reverse auction, based on the successful design of auctions used in energy markets in which the desired end result was to set rates for more than one generator of electrical capacity. This proposal expressly contemplates that it would yield more than one winning bidder, should the Commission continue to choose to ensure that consumers have the ability to choose from among multiple providers of VRS. Under Sorenson's proposal, the reverse auction would set VRS rates for a multiyear period of at least five years or longer, providing long-term rate and investment stability for bidders, including potential entrants, which should reduce the levels of bids. A multiyear award period would also obviate the need to conduct annual rate determinations, or to collect detailed cost data. At the end of the initial, multiyear period, the Commission could either conduct a new auction, or shift to a price cap mechanism initialized using the auction-determined rate.

A. Background—Auctions in the Energy Industry

The energy sector provides a useful example of how auctions could be used to set industrywide rates, as a potential model to set VRS rates. The Federal Energy and Regulatory Commission ("FERC") allows electricity-grid regulators to use auctions to set rates for future electricity supply, known as "capacity." A recent Supreme Court decision describes how a regulator may run a capacity auction.[16] First, the regulator "predicts electricity demand three years ahead of time, and assigns a share of that demand to each participating [electricity provider]."[17] Next, electricity providers bid on the capacity assigned to them, and the regulator "accepts bids, beginning with the lowest proposed rate, until it has purchased enough capacity to satisfy projected demand."[18] No matter what they originally bid, the accepted providers receive the market-clearing, i.e., highest accepted, rate needed to procure the desired capacity.[19] In these

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[14] *See* Draft Order and FNPRM ¶ 81.

[15] *See, e.g.*, Letter from Tamar E. Finn and Danielle Burt, Counsel to TDI, to M. Dortch, CG Docket Nos. 03-123 and 10-51 (filed Apr. 28, 2016); Letter from Tamar E. Finn and Brett P. Ferenchak, Counsel to TDI, to M. Dortch, CG Docket Nos. 03-123 and 10-51 (filed Apr. 12, 2011).

[16] *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288 (2016).

[17] *Id.* at 1293.

[18] *Id.*

[19] *Id.*

auctions, some electricity providers choose to be "price takers," and bid $0 with the intent to accept the resulting market-clearing rate.

To illustrate, suppose a regulator determines that in three years, the demand for capacity will be 100 kilowatts. Five providers make the following bids:

- A is a price taker and bids $0 for the 40 kilowatts assigned to it by the regulator.
- B bids $100 per kilowatt for 30 kilowatts. Combined with A's offer, 70 percent of the needed units are now covered.
- C bids $110 per kilowatt for 30 kilowatts. Combined with A's and B's offers, 100 percent of the needed units are covered.
- D bids $120 per kilowatt for 10 kilowatts
- E bids $130 per kilowatt for 10 kilowatts.[20]

In this example, A, B, and C together would cover the demanded capacity. Thus, D and E would be excluded, and A, B, and C would all receive a rate of $110 per kilowatt—the highest proposed rate of the accepted bidders.

B. Sorenson's Proposal for an Auction to Establish VRS Rates

Sorenson believes a similar auction plan could be developed for VRS. Under Sorenson's proposal, the Commission would determine how many VRS providers are needed to provide sufficient competitive choices for users. VRS providers would not bid for the right to provide any specified number of minutes, but instead would bid for the right to obtain compensation from the Fund. As in electricity auctions, winning bidders would be paid at the market-clearing price, and losing bidders would not be compensated at all. Such an approach would ensure competitive bidding.

To illustrate how this would work, suppose the Commission determined that VRS users should be able to choose among three providers and, for the length of the multiyear period subject to bid:

- A is a price taker.
- B bids $2.90.

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[20] *See id.* at 1293 n.1, which explains the process used by one RTO:

> For example, if four power plants bid to sell capacity at, respectively, $10/unit, $20/unit, $30/unit, and $40/unit, and the first three plants provide enough capacity to satisfy projected demand, PJM will purchase capacity only from those three plants, each of which will receive $30/unit, the clearing price.

- C bids $3.30
- D bids $3.60.
- E bids $3.70.

Under this proposal, the market-based VRS rate would be $3.30, the amount bid by the third-highest bidder. As with energy auctions, all providers permitted in the market (whether incumbent providers or new entrants)—in this example, A, B, and C—would receive that rate. After the auction, the Fund would not compensate E and F, the high-priced bidders.

This approach differs from capacity auctions by taking into account an important difference between the electricity market and the VRS market: kilowatts are fungible, while VRS is not. That is, consumers are indifferent to whether A or B generates their electricity whereas they may have a preference as to who delivers VRS. Indeed, VRS providers offer different services at varying qualities, and consumers may prefer one VRS provider to another. Moreover, consumer choice is beneficial because it encourages VRS providers to invest in and improve their services. So unlike a capacity auction, Sorenson proposes that a VRS auction should not allocate minutes to providers without regard for consumer preference.[21] The Commission should seek comment on whether these assumptions are correct, and how they align with Section 225's express objectives.

In addition, in the context of VRS, Sorenson proposes that the largest provider must be a price taker. As a practical matter, given the current structure of VRS supply, it is unlikely that the other VRS providers could increase their capacity to provide VRS quickly enough to cover the largest provider's market share. This, however, would not be expected to mute the capability of the auction to yield reduced VRS rates because a large incumbent has a strong disincentive against bidding at levels that will significantly reduce revenues and because, as the proposed auction is structured, as other provider bid aggressively, the rate the largest provider would receive also would fall. The Commission should seek comment on this analysis, or whether there are feasible alternatives to the largest provider being a price taker in the auction.

Additionally, the Commission should seek comment on whether it needs to set a floor to prevent recklessly low bids, and/or a ceiling to protect ratepayers. Although very low bids may seem attractive at first, such bids could harm consumers in the long run if the resulting compensation levels were set so low that it drove all VRS providers (including the bidder) out the market. The Commission should seek comment on whether such a result is plausible in an auction with multiple winners in which the market-clearing price is the highest bid yielding the desired number of providers. The Commission should also seek comment on the appropriate levels of any floors or ceilings. Any floor and/or ceiling would need to be set with sufficient room for the market to test assumed levels, while still safeguarding both VRS consumers, who need a viable and innovative service, and ratepayers.

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[21] *See 2013 VRS Order and FNPRM* ¶ 200 n.525 (recognizing value of consumer choice in VRS market).

The Commission should seek comment on whether Sorenson's auction proposal is consistent with and adequately reconciles Section 225's three directives for (i) efficient, functionally equivalent telecommunications relay services,[22] (ii) rates to telecommunications relay service users that "are no greater than the rates paid for functionally equivalent voice communications services,"[23] and (iii) rules that "do not discourage or impair the development of improved technology."[24] Sorenson believes that a multiyear VRS rate determined according to its proposed reverse auction would provide a better means of reconciling Section 225's three directives than continued cost-of-service regulation. The Commission should seek comment on that conclusion.

The Commission should seek comment on the potential public interest benefits, as well as costs, of such an auction. Sorenson submits that using an auction to set a VRS price cap would offer three main benefits. First, the auction, if correctly designed, would yield rates that were the result of market bidding rather than the FCC picking rates based on its analysis of costs founded upon artificial line-drawing between permissible and disallowed costs. This is more likely to yield a sustainable result, and to minimize the market-distorting effects that can result from regulatory line-drawing. Second, this approach would likely be more flexible and responsive to both current and future marketplace and technological realities than the current system, as the price would reflect the bidders' assessment of relevant costs, regardless of whether they were historically allowable or disallowed. Providers could invest the revenues received from the price cap in the manner that best meets consumer needs, as well as providing a return to encourage further investment. Third, by setting rates based on bids for a multiyear period, the Commission would automatically capture the benefits of multiyear rate stability for the TRS Fund, would not have to revisit rates annually, and could eliminate cost reporting.

III. A MULTIYEAR PRICE CAP APPROACH

A second proposal on which Sorenson asks the Commission to seek comment in the FNPRM is for a multiyear price cap regime, based on reasonable efficient provider's costs of providing, and supporting consumers' utilization of, VRS. Again, what follows is a description of that proposal, with suggestions for related questions, that could be used to provide more detailed notice and to solicit the development of a full record.

The Commission should seek comment on whether there are alternative price cap mechanisms that would better reconcile Section 225's three directives for (i) efficient, functionally equivalent telecommunications relay services,[25] (ii) rates to telecommunications relay service users that "are no greater than the rates paid for functionally equivalent voice

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[22] *See* 47 U.S.C. § 225(a)(3) and (b)(1).

[23] *Id.* § 225(d)(1)(D).

[24] *Id.* § 225(d)(2).

[25] *See id.* § 225(a)(3) and (b)(1).

communications services,"[26] and (iii) rules that "do not discourage or impair the development of improved technology."[27] In its 2013 *VRS Order and FNPRM*, the Commission noted that "[r]atemaking based on calculations of allowable costs is inherently a contentious, complicated, and imprecise process."[28] As one possible approach, Sorenson proposes using a reasonable efficient provider's costs—potentially including for service, all service related costs, necessary access technology, research and development, and customer support—to initialize a multiyear price cap. Sorenson believes a price cap could simplify the ratemaking and provide a more technologically flexible and innovation-friendly framework than the current system of tightly defined allowable and disallowed costs. The price level determined could be used to establish the endpoint of transition for VRS rates.

The current system of allowable costs acknowledges some costs as part of VRS rate setting, and does not acknowledge others, as well as creates ambiguity as to which specific cost items fall into which group. As an example, not all numbering costs associated with VRS are considered allowable. Sorenson pays fees to CLEC number providers, including fees to support 911 service. Without these numbers, Sorenson could not comply with the Commission's requirement to provide ten-digit numbers and 911 service. Yet several millions of dollars per year of these numbering costs are not included in the allowable costs recognized for VRS ratemaking.[29] The Commission should seek comment on whether these costs should be considered in developing a price cap, the consequences of excluding these costs from a VRS price cap, and, if allowed in computing a cap, how best to compute an allowance for these other costs.

As another example, research and development to support mandatory minimum standards is allowable, but other research and development, and particularly research and development on access devices, is not considered to be allowable. These lines do not fit an IP technological environment, in which changes in features frequently require changes in both the network and in the access devices. In Sorenson's most recent videophone, for example, it upgraded the video to support 1080p, which allows for greatly enhanced video resolutions, making it easier for a deaf consumer to discern signs. Notwithstanding the critical importance of this change to deaf consumers, the portion of research and development for this feature related to the access device was not considered allowable. Implementing the SIP Profile and TRS-URD required changes to both access devices and to the network. Other examples of features Sorenson has developed that required access device development as well as network development include VCO/HCO support for higher-quality audio codecs to support better quality audio for those with partial hearing capability, support for deaf-to-deaf conference calls, N11 calling, services to better integrate to corporate environment settings (such as integration with corporate directories), features to allow users to block Caller ID, and features to block anonymous calls. Sorenson currently incurs several millions of dollars per year of research and development costs that are not reported as

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[26] *Id.* § 225(d)(1)(D).

[27] *Id.* § 225(d)(2).

[28] *2013 VRS Order and FNPRM* ¶ 217.

[29] Sorenson will provide more specific numbers in a separate, confidential filing.

"allowable" in its annual cost reports, but which are critical to providing functionally equivalent service and to developing improved VRS technology. The Commission should seek comment on whether these costs should be considered in developing a price cap, the consequences of excluding these costs from a VRS price cap in terms of ensuring functionally equivalent service, and, if included in computing a cap, how best to compute an allowance for these other costs.

The Commission should seek comment as to whether there are other types of currently disallowed costs that are necessary to the continue development and provision of VRS, including continued technological development, whether these costs should be considered in developing a price cap, the consequences of excluding these costs from a VRS price cap in terms of ensuring functionally equivalent service, and, if included in computing a cap, how best to compute an allowance for these other costs.

Sorenson also has a field staff, composed almost entirely of deaf individuals. While these employees help consumers install and configure their access devices, they also spend time instructing consumers on how to use Sorenson's VRS. Under current treatment of allowable costs, these costs are disallowed, even though they relate substantially to ensuring the consumers can adequately use and navigate their service, and the features that make the service usable. These are an additional several millions of dollars of costs not currently included in reported allowable costs. The Commission should seek comment on these and other examples of necessary costs to support the continued development of functionally equivalent VRS, including technological development. The Commission should seek comment on whether these costs should be considered in developing a price cap, the consequences of excluding these costs from a VRS price cap, and, if included in computing a cap, how best to compute an allowance for these other costs.

Sorenson encourages the Commission to seek comment on whether a price cap should also include some allowance for provision of consumer access devices. Under Section 225, the Commission is required to ensure that TRS users "pay rates no greater than the rates paid for functionally equivalent voice communication services." A hearing user can purchase a basic telephone adequate to support voice service for as low as $6.[30] Videophones, even when produced at scale volumes, cost several hundred dollars per unit, and to use software-based videophones, a deaf consumer must purchase the smartphone, tablet, or computer on which that softphone will run. A price cap should take these costs into account as well. Sorenson incurs several millions of dollars per year in these costs as well, to provide deaf consumers with necessary access devices—which are costs separate from those needed to develop and improve VRS functionality. The Commission should also seek comment on whether a reasonable

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[30] *See VTech CD1103 WH Trimstyle Telephone, White*, Walmart (last visited Mar. 14, 2017), https://www.walmart.com/ip/VTech-CD1103-WH-Trimstyle-Telephone-White/16472544. Because VRS requires different end-user devices than hearing persons would use for voice service, and because VRS cannot be used without some form of those devices, comparability of charges between VRS users and hearing users as required by Section 225(d)(1)(D) requires a different analysis than with respect to Lifeline or E-rate services supported under Section 254.

allowance for these costs should be included in a price cap, the consequences of excluding such costs from a price cap, and how best to compute such a reasonable allowance, if included.

The Commission has long recognized that price caps, and incentive regulation more generally, can provide substantial public interest advantages as compared with cost-of-service approaches. For example, the Commission in 2016 adopted a model-based support mechanism as an alternative to providing high cost universal service support based on continued cost-of-service calculations, noting that in doing so it "advance[s] the Commission's longstanding objective of adopting fiscally responsible, accountable and incentive-based policies to replace outdated rules and programs."[31] Similarly, nearly thirty years ago, when it first introduced price caps to replace rate-of-return regulation for AT&T, the Commission observed:

> The attractiveness of incentive regulation lies in its ability to replicate more accurately than rate of return the dynamic, consumer-oriented process that characterizes a competitive market. In general, such regulation operates by placing limits on the rates carriers may charge for services. In the face of such constraints, a carrier's primary means of increasing earnings are to enhance its efficiency and innovate in the provision of service. . . . The system also is less complex than rate of return regulation and easier to administer in the long run, which should reduce the cost of regulation.[32]

The Commission should seek comment on whether, with respect to VRS, a price cap approach could replicate more closely the consumer-oriented characteristics of a competitive market, improve efficiency, encourage—and not impair or discourage—technological innovation and the development of improvements in functional equivalency, and safeguard the interests of ratepayers in ensuring that this is accomplished "in the most efficient manner."

IV. A DEREGULATORY APPROACH CONSISTENT WITH THE STATUTE WHERE TRS IS PROVISIONED THROUGH PRIVATE CONTRACTS

The Commission should also seek comment on a third alternative, founded in the language of Section 225 and reliant upon private contracts rather than a TRS Fund. Again, what follows is a description of that alternative, with suggestions for related questions, that could be used to provide more detailed notice and to solicit the development of a full record.

The Commission should seek comment on replacing the TRS Fund with a system under which telecommunications carriers would provide service themselves or by contracting with TRS providers. Under such a system, there would be no need for regulations governing

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[31] *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33, 31 FCC Rcd. 3087, 3090-91 ¶ 4 (2016).

[32] *Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 89-91, 4 FCC Rcd. 2873, 2893 ¶ 36 (1989).

contributions to the Fund and compensation from it. Nor would there be any need for the Commission to periodically establish a contribution factor or conduct ratemaking proceedings. And, furthermore, there would be no need for a Fund Administrator or any of the outside consultants the Commission has hired over the last few years to develop end-user equipment or network services. The statutorily specified mandatory minimum standards, as well as such additional standards as the Commission would still find necessary, would continue in effect and ensure that TRS users are provided with functionally equivalent service, and that protection could be supplemented or replaced by providing TRS users with competitive options.

Section 225 itself does not mention a TRS Fund. Instead, the statute directs that "[e]ach common carrier providing telephone voice transmission services shall" provide TRS "throughout the area in which it offers services," and allows carriers to provide service directly or "through designees, through a competitively selected vendor, or in concert with other carriers."[33] Accordingly, Section 225 envisioned that contracts between telecommunications carriers and TRS providers as a means of meeting the statute's requirements. While Section 225 does state that the Commission's regulations on jurisdictional separations "shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service," this separations rule also does not mandate creation of the Fund.[34]

When Section 225 was first implemented, some carriers proposed the use of a system that did not rely on a fund, but others argued for a "shared funding" approach that would rely on a TRS Fund. The carriers arguing for a TRS Fund argued that it was needed because they had limited incentives to provide quality service because the statute prohibits them from charging TRS rates that are higher than rates for functionally equivalent voice service.[35] The Commission opted for the shared fund approach in 1993.[36]

Whatever the merits of that approach in 1993, service requirements are more robustly developed since they were in 1993, and there has been nearly twenty-five years of experience with TRS – and nearly two decades with VRS. Moreover, there is relatively little dispute about the speed-of-answer and other requirements ensuring quality service. Therefore, it would now be possible to ensure that deaf and hard-of-hearing Americans continue to have access to functionally equivalent services without the need for an FCC-mandated fund. The Commission could simply require carriers to provide the various forms of TRS that are currently supported by the Fund, and rely on the service quality requirements to ensure quality service.

The Commission should seek comment on the feasibility of migrating to a system based on private contracts or self-provisioning, rather than an FCC-administered TRS Fund. In

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[33] 47 U.S.C. § 225(c).

[34] *See id.* § 225(d)(3)(B).

[35] *See id.* § 225(d)(1)(D).

[36] *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Third Report and Order, FCC 93-357, 8 FCC Rcd. 5300, 5303 ¶ 21 (1993).

particular, it should seek comment on whether, if it were to adopt such a system, it would be likely for a market of third-party integrators or joint purchasing groups to develop to assist telecommunications carriers with meeting these requirements, just as carriers commonly contract for support with other types of services such as 911 and E911.

The Commission should seek comment on whether such an approach would allow the Commission to streamline and simplify its rules, much of which are in place to prevent waste, fraud, and abuse from an FCC-mandated fund, and to require interstate telecommunications carriers and VoIP providers to contribute to such a fund.

The Commission should seek comment on how to ensure competition and choice and whether to require carriers to provide consumers with more than one choice for VRS. Requiring a choice could promote better quality service within a given carrier's offerings. On the other hand, such a choice could potentially be more costly to implement or discourage self-provision.

The Commission should seek comment on how to minimize costs for smaller providers by encouraging a third-party or consortium approach. The Commission should also ask whether it need do anything more with respect to carrier cost recovery than to allow carriers to recover their costs of providing service by any legal means, provided that carriers do not subject deaf or hard of hearing users to rates that are greater than rates paid for functionally equivalent voice communications services, as specified by Section 225(d)(1)(D).

* * *

Sorenson respectfully requests that, as the Commission moves forward to consider and develop plans for VRS compensation rates over the next four or more years, that it seek comment on the proposals described above, and expand the questions with respect to the rate proposals currently contained in the Draft FNPRM.

Sincerely,

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