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VIA ECFS

May 2, 2019

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

Telecommunications for Deaf and Hard of Hearing, Inc., National Association of the Deaf, Cerebral Palsy and Deaf Organization, Association of Late-Deafened Adults, American Association of the Deaf-Blind and Hearing Loss Association of America (the "Consumer Groups") and Gallaudet University ("Gallaudet") submit this letter to address the enterprise videophone registration portion of the *Draft Report and Order and Further Notice of Proposed Rulemaking* ("Draft R&O").¹

The Consumer Groups previously asked the Commission not to adopt rules that would restrict certain deaf and hard of hearing and speech-disabled individuals from being able to use videophones in public spaces.² In the *Draft R&O*, the Commission proposes to require VRS providers to obtain, from the individual responsible for ensuring compliant use of an enterprise videophone, a certification that the responsible individual "will make reasonable efforts to ensure that *only registered VRS users* are permitted to use the phone for VRS calls."³ The Consumer Groups and Gallaudet object to this proposal. That certification is likely to result in restricted access to enterprise videophones by deaf and hard of hearing and speech-disabled individuals that may not be

¹ See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51 & 03-123, FCC-CIRC1905-07 (circulated April 18, 2019) ("Draft R&O").

² See *Ex Parte* Letter from the Consumer Groups and RERC to Marlene H. Dortch, Secretary, CG Docket Nos. 10-51 and 03-123, dated February 20, 2018 ("Consumer Groups Ex Parte Letter").

³ *Draft R&O* at ¶ 27 (*emphasis added*).

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registered in the TRS User Registration Database (“TRS-URD”), including spouses or partners, children, and roommates of registered users; students; homeless individuals; and minors.⁴

The Consumer Groups and Gallaudet support the alternative proposal that the responsible individual “will make reasonable efforts to ensure that *only persons with a hearing or speech disability* are permitted to use the phone for VRS calls.”⁵ The modified proposal will ensure that deaf and hard of hearing and speech-disabled individuals, regardless of whether they are individually registered in the TRS-URD, will have the same ability to access enterprise videophones as those who are individually registered.

The Consumer Groups and Gallaudet also are concerned about what may constitute “reasonable efforts” and ask the Commission to ensure that any examples of “reasonable efforts” do not undermine functional equivalency or infringe on consumers’ privacy rights. The example given is “reasonable efforts *could* include maintaining a list of users, requiring such individuals to provide proof of registration when requesting to use a videophone, and maintaining a copy of the user’s request.”⁶ This suggested “reasonable efforts” approach is inconsistent with the requirement of functional equivalency.⁷ Hearing individuals are not required to identify themselves, provide proof of their need to make a telephone call, or be recorded in a log of users of an enterprise phone available for non-employee use. Organizations providing enterprise videophones should not maintain a list of deaf and hard of hearing and speech-disabled users, require proof of registration, or maintain a copy of the user’s request either. Nor should organizations be required to monitor an enterprise videophone to ensure that only deaf and hard of hearing and speech-disabled individuals place VRS calls. The Commission’s rules should encourage enterprises to make videophones available to their employees and non-employee customers or guests. The Consumer Groups and Gallaudet fear that the restrictive registration requirements proposed in the *Draft R&O* would discourage enterprises from doing so, with the adverse effect of restricting access to communications by deaf and hard of hearing and speech-disabled consumers.

The “reasonable efforts” requirements as drafted also could compromise consumer privacy protections provided by laws like the Health Insurance Portability and Accountability Act of 1996 (HIPPA) and the Children’s Online Privacy Protection Act (COPPA). The Consumer Groups have expressed repeated concerns about providing personal information and about keeping applicable authentication mechanisms secure.⁸ Although the Commission has adopted measures to protect consumers’ privacy for information collected by VRS providers and the TRS-URD, it does not have

⁴ See *Ex Parte* Letter from John T. Nakahata and Julie A. Veach, Counsel to Sorenson Communications, LLC, to Marlene H. Dortch, Secretary, CG Docket Nos. 10-51 and 03-123, dated April 30, 2019 (noting the TRS Administrator Database Instructions permit a single user to register a “family/shared/joint” account for use by all family members and the TRS Administrator does not maintain the names of minors) (“*Sorenson Ex Parte Letter*”).

⁵ *Id.* at Appendix A (*emphasis added*).

⁶ *Draft R&O* at ¶ 27, fn. 93 (*emphasis added*).

⁷ See Consumer Groups’ TRS Policy Statement – Functional Equivalency of Telecommunications Relay Services: Meeting the Mandate of the Americans with Disabilities Act (Apr. 12, 2011) (“TRS Policy Statement”), <https://ecfsapi.fcc.gov/file/7021748016.pdf>. One of the core functional equivalency principles is the “TRS experience for an individual who is deaf, hard of hearing, deaf-blind or speech-disabled must, at the minimum, be equivalent to that of a call between two hearing persons on the telephone network or over the Internet.”

⁸ See *Consumer Groups Ex Parte Letter*.

jurisdiction to mandate the enterprises provide equivalent protections for sensitive consumer information. The Commission should not require enterprises to collect such sensitive information if it cannot also protect that information.

Given these functional equivalency and privacy concerns, the Consumer Groups and Gallaudet urge the Commission to seek additional comments on what may constitute "reasonable efforts." Taking more time on this topic, particularly when the Commission plans to seek further comment on individual log-in requirements, should help protect consumers' privacy rights and ensure that organizations are not discouraged from making enterprise videophones available.⁹

Please feel free to contact the undersigned if you have any questions.

Respectfully submitted,

/s/ Danielle Burt

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⁹ See *Sorenson Ex Parte Letter* (stating the proposed requirement discourages "entities from making this critical accommodation available – which discourages compliance with the ADA's reasonable accommodation requirements).

May 2, 2019
Page 4

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