**REDACTED - FOR PUBLIC INSPECTION**

HWG | HARRIS, WILTSHIRE & GRANNIS LLP

June 1, 2017

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:

In accordance with the *Second Protective Order* for the above-referenced proceedings, Sorenson Communications, LLC ("Sorenson") herein submits a redacted version of the attached ex parte in the above-referenced proceedings.

Sorenson has designated for highly confidential treatment the marked portions of the attached documents pursuant to the *Second Protective Order* in CG Docket Nos. 03-123 and 10-51.[1] Sorenson's ex parte includes granular data with respect to costs that has previously been designated as highly confidential.[2] As such these materials fall under the following enumerated items in Appendix A of the *Second Protective Order*:

> 2. Information that provides granular information about a Submitting Party's past, current or future costs, revenues, marginal revenues, or market share, and future dividends.

Pursuant to the protective order and additional instructions from Commission staff, Sorenson is filing a redacted version of the document electronically via ECFS, one copy of the Highly Confidential version with the Secretary, two copies of the redacted version with the Secretary, and sending copies of the highly confidential version to Eliot Greenwald and Robert Aldrich of the Consumer and Governmental Affairs Bureau and the TRS Reports mailbox.

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[1] *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Protective Order, DA 12-858, 27 FCC Rcd. 5914 (Cons. & Gov't Affs. Bur. 2012).

[2] *See* Letter from John T. Nakahata, Counsel to Sorenson Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 and 03-123 (filed May 5, 2017).

Please contact me if you have any questions or require any additional information.

Sincerely,

John T. Nakahata
*Counsel to Sorenson Communications, LLC*

Attachment

cc: Eliot Greenwald
Robert Aldrich
TRSReports@fcc.gov

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HWG | HARRIS, WILTSHIRE & GRANNIS LLP

June 1, 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 May 30, 2017, Scott Wood, General Counsel of Sorenson Communications, LLC ("Sorenson"), Rebekah Goodheart, outside counsel to Sorenson, and I, outside counsel to Sorenson, met separately with Amy Bender, Legal Advisor to Commissioner O'Rielly, and Claude Aiken, Legal Advisor to Commissioner Clyburn, regarding the *Order and Further Notice of Proposed Rulemaking* on Video Relay Services ("VRS").[1] In the meeting, we made the points that were discussed in my letter of May 18, 2017,[2] a redacted version of which is attached. Scott Wood was not present for the discussion of Highly Confidential information of providers other than Sorenson, and did not receive copies of those materials. During the course of the discussion, we provided Ms. Bender and Mr. Aiken with copies of the attached documents, as well as copies of the following, which are incorporated by reference:

- The data summary placed into the record by the Consumer and Governmental Affairs Bureau pursuant to its May 10, 2017 Public Notice, DA 17-448.
- The charts entitled "SVRS Wage Trends" and "VI Part Time Average Hours Worked," attached as Exhibit 2 to the Reply Comments of Sorenson Communications, LLC, Regarding Section IV.A-B and F of the Further Notice of Proposed Rulemaking, CG Dockets No. 10-51 and 03-123 (filed May 4, 2017).
- Page 24 of the Comments of Sorenson Communications, LLC, Regarding Section IV.A-B and F of the Further Notice of Proposed Rulemaking, CG Dockets No. 10-51 and 03-123 (filed Apr. 24, 2017).

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[1] *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, Notice of Inquiry, Further Notice of Proposed Rulemaking, FCC 17-26, 32 FCC Rcd. 2436 (2017) ("*FNPRM*").

[2] *See* Letter from John T. Nakahata, Counsel to Sorenson Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51 (filed May 18, 2017).

- Attachments A-2 and B-2 to the Letter of Gregory Hlibok, Chief Legal Officer, ZVRS Holding Company, to Marlene H. Dortch, Secretary, FCC, CG Dockets No. 10-51 and 03-123 (filed May 11, 2017).

In addition, we note that in its ex parte letter filed May 30, 2017,[3] ZVRS Holdings details various steps that it has taken and is taking to rapidly integrate the operations of its ZVRS and Purple subsidiaries. Such actions, and the resulting savings, do not appear to be reflected in ZVRS Holdings' recent submissions to Rolka Loube. In any event, there is no justification of permitting "double dipping" of tiers, which would only serve to reduce the incentive for rapid integration and efficient operation. Further, ZVRS' reliance on its Consent Decree is wholly unjustified. Not only does the Consent Decree contain no mention of the then-existing compensation rates, the Decree provides that "The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which the Companies do not expressly consent), that provision will be superseded by such Rule or Order."[4] The proposed rules under consideration in this proceeding are rules of general applicability that were not adopted as of the time the Consent Decree was entered, and, as a result, cannot be considered an order specifically intended to revise the terms of the decree.

Sincerely,

John T. Nakahata
*Counsel to Sorenson Communications, LLC*

cc: Claude Aiken
Amy Bender
Zenji Nakazawa
Nicholas Degani
Brendan Carr
Patrick Webre
Karen Peltz Strauss
David Gossett
Dana Shaffer
Robert Aldrich
Terry Cavanaugh
Eliot Greenwald
Andrew Mulitz
Grey Pash
David Schmidt

Attachs.

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[3] *See* Letter from Gregory Hlibok, Chief Legal Officer, ZVRS Holding Company, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51, at 2-3 (filed May 30, 2017).

[4] *Purple Communications, Inc.; CSDVRS, LLC*, Order, FCC 17-10, 32 FCC Rcd. 1608, 1621 ¶ 32 (2017).

# Attachment A

HWG | HARRIS, WILTSHIRE & GRANNIS LLP

**REDACTED—FOR PUBLIC INSPECTION**

May 18, 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 May 16, 2017, Rebekah Goodheart, outside counsel to Sorenson Communications, LLC ("Sorenson"), and I, outside counsel to Sorenson, spoke with Zenji Nakazawa, Public Safety and Consumer Protection Advisor to Chairman Pai, regarding the *Order and Further Notice of Proposed Rulemaking* on Video Relay Services ("VRS").[1]

We noted that Sorenson had put in the record detailed, principled, and data-driven proposals and justifications for a unified or Tier III VRS rate, which yielded rates of $3.73 per minute for VRS service alone, or $4.19 including the cost of necessary end user equipment. Both of these proposed rates were determined from the bottom up, i.e., they did not include any provision for compensation for Sorenson's historical debt service. The key reasons the $3.73 service-only rate differs from rates proposed in the NPRM are as follows:[2]

- *Increasing Video Interpreter wages and benefits costs.* This rate recognizes that wage and benefit costs for video interpreters necessarily will increase over time, because of

[1] *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, Notice of Inquiry, Further Notice of Proposed Rulemaking, FCC 17-26, 32 FCC Rcd. 2436 (2017) ("*FNPRM*").

[2] In addition to these items, the Commission should include all numbering fees and charges incurred by VRS providers, which would add another *****BEGIN HIGHLY CONFIDENTIAL***** [redacted] *****END HIGHLY CONFIDENTIAL***** per minute in costs.

inflation, the need to attract highly-skilled video interpreters to allocate their time to VRS rather than to community interpreting, and recent mandates by states and localities for paid sick leave for part-time workers.[3] These sources of cost increases make it unreasonable to rely only on historical costs from 2015 or 2016 to project video interpreter wage and benefits costs for 2017 through 2021. For 2017-2018, the Commission should use the average of projected 2017 and 2018 costs.[4] As Sorenson explained in its comments, it is not likely that there will be significant new efficiencies that will generate more compensable VRS minutes from an hour of interpreter time. Within a work hour, a Video Interpreter has a ten minute break, which is necessary to maintain the alertness necessary to conduct simultaneous translations, and spends approximately 25% of the time setting up and taking down calls. If the Video Interpreter continuously handled calls, never attended training "on the clock," never handled a non-compensable call, never had paid sick or vacation leave, never teamed with another interpreter to assist with a 911 or hard-to-understand caller, the maximum number of compensable minutes would be 37.5 per hour or about 62.5% "efficiency".[5] That level is unattainable and if attempted, would rapidly lead to interpreter burnout.[6] Sorenson provided in the record its actual interpreter efficiency levels since 2013, which show no significant increase despite pressures from declining VRS rates.[7]

- *Recognizing Costs for Intellectual Property Owned by Affiliates.* It is apparent from the Rolka Loube Report that some IP CTS providers claim a considerable amount of "other costs,"[8] and these other costs almost certainly include those licensing costs. The intellectual property used by Sorenson for VRS is actually held by a separate subsidiary, Sorenson IP Holdings, LLC. There is no reason to differentiate between the treatment of intellectual property for IP CTS and for VRS, or between third party intellectual property

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[3] Reply Comments of Sorenson Communications, LLC, Regarding Section IV.A-B and F of the Further Notice of Proposed Rulemaking at 11-12, CG Docket Nos. 10-51 and 03-123 (filed May 4, 2017).

[4] Sorenson had previously calculated that amount to be $2.92, including corrections made by Sorenson. This did not include corrections filed in the record by ZVRS for both of its operating subsidiaries, and thus is likely to be somewhat higher.

[5] *See* Comments of Sorenson Communications, LLC, Regarding Section IV.A-B and F of the Further Notice of Proposed Rulemaking at 23-25, CG Docket Nos. 10-51 and 03-123 (filed Apr. 24, 2017) ("Sorenson Comments").

[6] *Id*.

[7] *Id*.

[8] Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate at 22 n. 24, CG Docket Nos. 10-51 and 03-123 (filed May 2, 2017) ("Rolka Loube Report").

owners and affiliated intellectual property holders.[9] Sorenson has placed in the record a valuation of its VRS-related intellectual property, and converted that to a per-minute amount amortized over ten years.[10] This should be included as a cost in determining the appropriate Tier III rate, and would be analogous to how regulated telephone companies reflect the costs of goods or services acquired from an affiliate.

- *Commercially Reasonable Operating Margin*. As the FNPRM acknowledges, "providers have long argued that, because substantial plant investment is not necessary to provide VRS, a rate-of-return allowance based on the telephone industry model is inadequate to generate sufficient profits to attract significant long-term investment in VRS companies. As such, providers have argued that an 11.25% rate-of-return on net capital investment is insufficiently compensatory."[11] This is fundamentally correct, as the Rolka Loube Report again shows a return component of only 1.2%-1.6% margin over allowable costs using the 11.25% return on net capital investment, with no return on expenses.[12] The NPRM thus seeks comment on utilizing an operating margin approach in the range of 7.12% to 9.75%, based on the weighted average cost of capital for rural incumbent local telephone companies.[13] Sorenson proposed a post-tax operating margin of 9.5%. That falls within the range proposed in the FNPRM, assuming that range was meant to be post-tax, as is the case of the rural telephone company weighted cost of capital. Sorenson derived a 9.5% post-tax margin by examining the *pre-tax* EBITDA margin for labor-intensive, publicly traded information technology consulting companies—which averaged 15.9%, excluding the one company with a negative EBITDA—and then applying a 40% average tax rate.[14] By comparison, a *post-tax* margin range of 7.12% to 9.75% would equate to a *pre-tax* margin range of 11.87% to 16.25%. To be clear, Sorenson is *not* proposing a 15.9% *post-tax* operating margin; it is proposing a 9.5% *post-tax* operating margin.

We noted that none of the other rates proposed in the record, especially the rates proposed by the other VRS providers, has any principled basis that can be anchored in the record data—including the data most recently filed by ZVRS for both its ZVRS and Purple subsidiaries. Unlike Sorenson, the other providers offer no detailed explanation of how they arrived at the rates they proposed in any way that can be tied to current data. The $2.83 Tier III rate proposed by the other providers was, in their own words, "Rolka Loube industry weighted average cost for

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[9] Sorenson Comments at 25-26.

[10] *Id*. The amount is *****BEGIN HIGHLY CONFIDENTIAL***** [redacted] *****END HIGHLY CONFIDENTIAL***** per minute.

[11] *FNPRM*, 32 FCC Rcd. at 2475 ¶ 96.

[12] *See* Rolka Loube Report at 38 Table 5.

[13] *FNPRM*, 32 FCC Rcd. at 2475-76 ¶ 97.

[14] Sorenson Comments at 37.

2015 of $2.83 per minute (when including 'Outreach' costs and excluding 'Return on Investment')."[15] They never explained why it made sense to include "Outreach" but exclude "Return on Investment," nor have they accounted for increased video interpreter wage and benefits costs, or any of the other data driven factors detailed by Sorenson. There is no rational basis for this number.

With respect to the reports filed by Dr. Harold Furchtgott-Roth, these do not provide a rational basis for the other providers' proposed rates. We stated that neither of his declarations evince any examination of the record data, including the record data filed by the two ZVRS subsidiaries. Had he done so, he would have had to acknowledge that *****BEGIN HIGHLY CONFIDENTIAL***** [redacted] *****END HIGHLY CONFIDENTIAL*****[16] His conclusory statement that the "cost structure of the industry demonstrates substantial economies of scale"[17] cites no data, does not purport to be based on data, and specifies no range over which such economies are experienced. The question has never been whether there are economies of scale, but at what level such scale economies are substantially realized. Moreover, he dismisses the econometric study performed by Dr. Michael Katz as based on 2012 data, but he fails to explain why the levels at which queuing efficiencies are realized as discussed by Dr. Katz would have changed from 2012 to the present.[18] Because he has not examined any data, his conclusions cannot be used to sustain any proposed rate levels.

We also stated that, if the Commission adopts tiered rates, it should make clear that ZVRS' two subsidiaries are treated as a single entity for determining the applicable rate. In other words, the ZVRS and Purple subsidiaries should together receive one allotment of Tier I minutes and one allotment of Tier II minutes, regardless of how those minutes split between the subsidiaries. The ZVRS and Purple subsidiaries should not be allowed to double dip by receiving two allotments of Tier I minutes and two allotments of Tier II minutes as if they were not commonly owned by the same holding company. Were they allowed to double dip, under their rate proposal, they could receive as much as $51 million in added compensation per year, if they could reach 2.5 million minutes per month in each subsidiary (for a total of 5 million

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[15] Letter from Paul C. Besozzi and Benjamin D. Tarbell, Counsel, Purple Communications, Inc., to Marlene H. Dortch, Secretary, FCC, at 9, CG Docket Nos. 10-51 and 03-123 (filed Jan. 31, 2017).

[16] *See* Letter from Gregory Hlibok, Chief Legal Officer, ZVRS, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 and 03-123 (filed May 11, 2017).

[17] Expert Report of Harold Furchtgott-Roth at 11 ¶ 24, CG Docket Nos. 10-51 and 03-123 (filed Apr. 24, 2017).

[18] Reply Report of Harold Furchtgott-Roth, at 4 ¶ 5.c, CG Docket Nos. 10-51 and 03-123 (filed May 4, 2017).

minutes per month across the holding company). Such a result could not possibly be reconciled with the statutory directive that TRS be provided "in the most efficient manner."

In addition, we noted that *****BEGIN HIGHLY CONFIDENTIAL***** [redacted] *****END HIGHLY CONFIDENTIAL***** One would also expect ZVRS to expedite merger synergies across its two VRS subsidiaries because existing rules allow them to subcontract functions from the higher-cost to lower-cost provider.

We expressed Sorenson's willingness to work with the Commission to find reasonable, principled, data-driven rates that would meet all of the requirements of the Americans with Disabilities Act, as incorporated in Section 225.

Sincerely,

John T. Nakahata
*Counsel to Sorenson Communications, LLC*

cc: Zenji Nakazawa
Nicholas Degani
Claude Aiken
Amy Bender
Brendan Carr
Patrick Webre
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David Schmidt

# Attachment B

## VRS RATE INCLUDING ALL COSTS

***BEGIN HIGHLY CONFIDENTIAL***

| | |
|---|---|
| Starting Rate | $2.92 |
| Numbers-Related Costs | [redacted] |
| Intellectual Property for Service | [redacted] |
| CPE Research and Development | [redacted] |
| Customer Premises Equipment | [redacted] |
| Intellectual Property for End Points | [redacted] |
| Installs and Outreach | [redacted] |
| 9.5% Post-Tax Permitted Margin + Tax (15.9% Pre-Tax) | $0.58 |
| Total Rate | $4.19[1] |
| Taxes Paid | ($0.23) |
| Margin After Taxes | 9.54% |

***END HIGHLY CONFIDENTIAL***

## VRS RATE EXCLUDING ACCESS DEVICES/OUTREACH

***BEGIN HIGHLY CONFIDENTIAL***

| | |
|---|---|
| Starting Rate | $2.92 |
| Numbers-Related Costs | [redacted] |
| Intellectual Property for Service | [redacted] |
| 9.5% Post-Tax Permitted Margin + Tax (15.9% Pre-Tax) | $0.51 |
| Total Rate | $3.73[2] |
| Taxes Paid | ($0.20) |
| Margin After Taxes | 9.5% |

***END HIGHLY CONFIDENTIAL***

[1] The figures here sum to $4.21 rather than $4.19, due to error introduced by rounding to two decimal places.

[2] The figures here sum to $3.74 rather than $3.73, due to error introduced by rounding to two decimal places.