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**REDACTED FOR PUBLIC INSPECTION – SUBJECT TO REQUEST FOR  
CONFIDENTIAL TREATMENT PURSUANT TO 47 C.F.R. §§ 0.457 AND 0.459**

November 1, 2018

*Via Electronic Filing*  
Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: Sprint Petition for Reconsideration –  
Request for Confidential Treatment  
RM-\_\_\_\_\_

Dear Ms. Dortch:

Sprint Corporation (“Sprint”) hereby submits the attached confidential version of its Petition for Reconsideration (“Petition”), the redacted version of which has been filed today. Pursuant to Exemption 4 of the Freedom of Information Act (“FOIA”) and the rules of the Federal Communications Commission (“FCC” or “Commission”),<sup>1</sup> Sprint requests confidential treatment for the information that has been marked confidential in the attached Petition and redacted in the public version of the Petition (“Sprint Information”), which contains commercially sensitive information. The Sprint Information relates to Sprint’s provision of Telecommunications Relay Services (“TRS”) and includes company-specific, confidential commercial information, including information that is protected from disclosure

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<sup>1</sup> 5 U.S.C. § 552(b)(4); 47 C.F.R. §§ 0.457(d) and 0.459; *see also* 18 U.S.C. § 1905 (prohibiting disclosure “to any extent not authorized by law” of “information [that] concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association”).

by FOIA Exemption 4<sup>2</sup> and the Commission's rules protecting information that is not routinely available for public inspection and that would customarily be guarded from competitors.<sup>3</sup>

1. *Identification of the specific information for which confidential treatment is sought.* Sprint requests that the Sprint Information be treated as confidential pursuant to Exemption 4 of FOIA and Sections 0.457(d) and 0.459 of the Commission's rules, which protect confidential commercial and other information not routinely available for public inspection. The Sprint Information concerns the company's provision of IP Relay, a form of TRS, and includes information about Sprint's operations and the costs of providing the service. This is company-specific, competitively-sensitive, business confidential and/or proprietary commercial and financial information concerning Sprint's operations that would not routinely be made available to the public.

2. *Identification of the Commission proceeding in which the information was submitted or a description of the circumstance giving rise to the submission.* Sprint is submitting a Petition for Rulemaking that urges the Commission to initiate a proceeding that establishes a sustainable ratemaking methodology for IP Relay service.

3. *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.* The Sprint Information contains company-specific, competitively-sensitive, confidential and/or proprietary, commercial and financial information.<sup>4</sup> This information can be used to determine information about Sprint's operations and finances that is sensitive for competitive and other reasons. This information would not customarily be made available to the public and would be guarded from all others.

4. *Explanation of the degree to which the information concerns a service that is subject to competition.* The confidential information at issue relates to the provision of IP Relay, which was once subject to vigorous competition from other TRS providers, and may again be subject to vigorous competition when the current regulatory and market forces are

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<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> 47 C.F.R. §§ 0.457(d) and 0.459.

<sup>4</sup> The Commission has broadly defined commercial information, stating that "[c]ommercial" is broader than information regarding basic commercial operations, such as sales and profits; it includes information about work performed for the purpose of conducting a business's commercial operations." *Southern Company Request for Waiver of Section 90.629 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 1851, 1860 (1998) (citing *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

addressed. If the information is not protected, Sprint's competitors and potential competitors will be able to use it to their competitive advantage.

5. *Explanation of how disclosure of the information could result in substantial competitive harm.* Since this type of information generally would not be subject to public inspection and would customarily be guarded from competitors, the Commission's rules recognize that release of the information is likely to produce competitive harm.

6.-7. *Identification of any measures taken by the submitting party to prevent unauthorized disclosure, and identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.* The confidential information in the Sprint Information is not available to the public, and has not otherwise been disclosed previously to the public. Sprint takes precautions to ensure that this type of information is not released to the general public or obtained by its competitors and potential competitors through other means.

8. *Justification of the period during which the submitting party asserts that the material should not be available for public disclosure.* Sprint requests that the Sprint Information be treated as confidential indefinitely, as it is not possible to determine at this time any date certain by which the information could be disclosed without risk of harm.

9. *Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.* Under applicable Commission and federal court precedent, the information provided by Sprint on a confidential basis should be shielded from public disclosure. Exemption 4 of FOIA shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The commercial and financial information in question clearly satisfies this test.

Additionally, where disclosure is likely to impair the government's ability to obtain necessary information in the future, it is appropriate to grant confidential treatment to that information.<sup>5</sup> Failure to accord confidential treatment to this information is likely to dissuade providers from voluntarily submitting such information in the future, thus depriving the FCC of information necessary to evaluate facts and market conditions relevant to applications and policy issues under its jurisdiction.

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<sup>5</sup> See *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992) (*en banc*) (recognizing the importance of protecting information that "for whatever reason, 'would customarily not be released to the public by the person from whom it was obtained'") (citation omitted).

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If a request for disclosure occurs, please provide sufficient advance notice to the undersigned prior to any such disclosure to allow Sprint to pursue appropriate remedies to preserve the confidentiality of the information.

If you have any questions or require further information regarding this request, please do not hesitate to contact me.

Respectfully submitted,

/s/ Scott R. Freiermuth  
Scott R. Freiermuth  
*Counsel, Government Affairs,*  
*Federal Regulatory*

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Sprint Corporation Petition for Rulemaking ) RM-\_\_\_\_\_  
to Reform the Commission’s Ratemaking )  
Methodology for IP Relay Service )

**PETITION FOR RULEMAKING OF SPRINT CORPORATION**

Pursuant to Section 1.401 of the Commission’s rules,<sup>1</sup> Sprint Corporation (“Sprint”) hereby petitions the Federal Communications Commission (“Commission”) to initiate a rulemaking that establishes a sustainable ratemaking methodology for IP Relay service.

**I. INTRODUCTION AND SUMMARY**

The Commission correctly has found that “certain categories of consumers currently rely upon IP Relay service as their sole or primary means of communicating by telephone, including consumers who are deaf-blind or have speech disabilities, as well as deaf or severely hard-of-hearing consumers who do not know or are not comfortable with the use of American Sign Language.”<sup>2</sup> Given the fundamental importance of this service, Sprint urges the Commission to initiate a rulemaking proceeding to adopt a new approach to setting the rates for IP Relay services that will ensure the long-term viability and availability of IP Relay. Such action is particularly appropriate as the interim three-year price cap period for IP Relay service draws to a close with the 2018-19 funding year.

In particular, the Commission should move away from the current rate-setting methodology, which fails to account for *all* of the costs that Sprint reasonably incurs in providing

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<sup>1</sup> 47 C.F.R. § 1.401.

<sup>2</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 29 FCC Rcd 16273, ¶ 7 (2014) (“2014 Order”).

IP Relay service. The Commission instead should move to a hybrid rate methodology that is based on a combination of the Multistate Average Rate Structure (“MARS”) and provider costs. By using this methodology going forward, the Commission will enable Deaf, hard-of-hearing, and DeafBlind consumers to continue to enjoy access to this critical form of relay service, consistent with the tenets of the Americans with Disabilities Act.<sup>3</sup>

**II. THE COMMISSION SHOULD INITIATE A RULEMAKING PROCEEDING TO CONSIDER HOW THE SOLE REMAINING IP RELAY PROVIDER WILL BE COMPENSATED**

As the Commission is aware, IP Relay is an important form of Telecommunications Relay Service (“TRS”). IP Relay does not require the user to know American Sign Language (“ASL”), a feature that makes the service especially useful for those with hearing loss who lack the ASL skills to use Video Relay Services. As a result, IP Relay frequently is used by those who lose hearing later in life and “is often the only way someone who is deaf or hard of hearing can reach 911 while outside of the home.”<sup>4</sup> IP Relay also is uniquely beneficial to DeafBlind users. IP Relay does not require the ability to see an interpreter on a screen, and the service can be enhanced with adaptive technologies such as Braille or screen readers. Indeed, the Commission has recognized the importance of accessibility technologies such as IP Relay to DeafBlind users, finding that while the “ability to communicate enables people to be

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<sup>3</sup> See 47 U.S.C. § 225.

<sup>4</sup> Letter from Andrew S. Phillips, National Association of the Deaf, to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 12-38 and 03-123, at 1 (Aug. 23, 2012).

independent, productive, safe and secure,” “accessibility barriers confronting people who are deaf-blind have largely prevented this community from enjoying these benefits.”<sup>5</sup>

Notwithstanding the importance of IP Relay, the service is on the verge of extinction. When the Commission adopted the current “cost-based” rate methodology for IP Relay providers, seven providers offered service.<sup>6</sup> Given the lack of adequate compensation, however, one after another of these providers stopped offering IP Relay.<sup>7</sup> As a result, in late 2014, Sprint became the lone provider of IP Relay to the Deaf, hard-of-hearing, and DeafBlind individuals who are uniquely dependent on IP Relay communications. Since then, Sprint has remained the

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<sup>5</sup> *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Report and Order, 26 FCC Rcd 5640, ¶ 1 (2011).

<sup>6</sup> *See TRS Fund Performance Status Report*, Rolka Loubé Saltzer Associates (Feb. 2008) (showing seven IP Relay providers as of January 2008).

<sup>7</sup> *See, e.g., 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 of Rolka Loubé Saltzer Associates, CG Docket No. 03-123 (2014) at Appendix G, Interstate TRS Advisory Council Meeting Minutes, April 15, 2014, at 2 (noting that a Sorenson representative reiterated that “the exit by multiple providers [from the IP Relay market] was the result of a decrease in the rate and not the decrease in demand”); Comments in Support of Sprint’s Petition for Reconsideration of Telecommunications for the Deaf and Hard of Hearing, National Association of the Deaf, Association of Late-Deafened Adults, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Cerebral Palsy and Deaf Organization, and California Coalition of Agencies Serving the Deaf and Hard of Hearing, CG Docket Nos. 10-51 and 03-123, at 4 (Dec. 5, 2013) (“There is strong evidence that the Commission’s decision to reduce immediately IP Relay rates by nearly 20%, and to mandate further annual six percent reductions for the next two years, has had a dramatic and negative impact on the ability of deaf and hard of hearing consumers to have a choice of multiple providers from which they can obtain high-quality IP Relay services.”); *id.* at 5 (“There is enough evidence in the record for the Commission to conclude that the drastic reduction in IP Relay service providers is the direct result of an unrealistically low reimbursement rate.”); Letter from John T. Nakahata, Sorenson Communications, Inc., to Marlene H. Dortch, FCC Secretary, CG Docket No. 03-123 (July 8, 2013) (indicating that the rates adopted “are simply too low to sustain a high quality service” and “will not yield functionally-equivalent telecommunications relay service”).

sole IP Relay provider, as the compensation rates based on the current methodology have not led to entry (or reentry) by other potential providers.

Notably, Sprint has continued providing service pursuant to a series of temporary rates based on multiple assurances that the Commission would restructure the IP Relay compensation structure to be sustainable over the longer term.<sup>8</sup> While years have now passed, Sprint continues to wait for Commission action and continues to be subject to an outdated, cost-plus rate-setting methodology that was designed for a capital-intensive, competitive dynamic that no longer exists. Sprint simply cannot sustain service in this environment and at a rate where Sprint breaks even at best. Accordingly, as previously stated, Sprint can only commit to providing IP Relay service through June 30, 2019 unless the Commission takes action to adopt a compensatory rate for this vital service.<sup>9</sup>

Sprint, however, does not wish to discontinue its provision of IP Relay service. To be clear, Sprint wants to continue providing IP Relay for many years to come so long as Sprint receives sensible and sufficient compensation for providing this vital service. Sprint is proud of its long history in providing IP Relay service, and Sprint understands the importance of this service to the consumers who benefit from this offering, including the thousands of people who

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<sup>8</sup> See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 31 FCC Rcd 7246, ¶¶ 18-19 (2016); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 32 FCC Rcd 5142, ¶¶ 11-13 (2017).

<sup>9</sup> See Comments of Sprint Corporation, CG Docket Nos. 03-123 and 10-51 (May 29, 2018) (“If the Commission declines to take the steps necessary to ensure a reasonable rate, Sprint will have little choice but to exit the IP Relay marketplace at the end of the current price cap period.”).

rely on IP Relay service as their sole or primary means of communication by telephone. As the Commission has found, the “consequences of Sprint’s termination of IP Relay service would be severe for consumers who are deaf, deaf-blind, hard-of-hearing, or have speech disabilities.”<sup>10</sup> To avoid this result, Sprint hopes to work with the Commission on a sustainable business model that ensures a high-quality service for Americans in need of IP Relay. Sprint believes that the Commission shares this goal and thus encourages the FCC expeditiously to initiate a rulemaking proceeding that seeks comment on the appropriate ratemaking methodology for IP Relay.<sup>11</sup>

### **III. A HYBRID APPROACH IS THE MOST EFFICIENT RATEMAKING METHODOLOGY FOR IP RELAY**

As part of its rulemaking proceeding, the Commission specifically should consider adopting a rate-setting methodology that represents a blend of the MARS approach and a cost-based methodology. A combination of competitively-based and cost-based inputs will result in a sensible, sufficient, and sustainable rate that will allow Sprint to continue providing IP Relay.

#### **A. The Commission Should Begin with the MARS-Based Rate that Governs Traditional TRS**

Sprint repeatedly has explained the benefits of the MARS-based methodology that currently governs the federal TRS rate. As a general matter, the Commission has found the costs

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<sup>10</sup> 2014 Order ¶ 7.

<sup>11</sup> It is in the public interest for the Commission to move quickly on this matter. Sprint’s potential discontinuance of service on June 30, 2019 will necessitate the transition of the IP Relay customer base to a new provider. Sprint estimates such a transition would require at least 90 days.

of providing IP Relay and traditional TRS to be “generally similar.”<sup>12</sup> In fact, for many years, the FCC set the IP Relay rate equal to the traditional TRS rate.<sup>13</sup> The two services offer largely the same functionality, and, in many instances, “the same [Communications Assistants or “CAs”], sitting at the same offices, handle both traditional TRS and IP Relay calls.”<sup>14</sup> Today, Sprint uses the same network, CAs, and equipment to provide both IP Relay and traditional TRS. As a result, it defies logic that the Commission has set the rate for traditional TRS at a level that is well over twice the IP Relay rate – \$3.26 compared to \$1.40 for 2018-19.

Moreover, the MARS methodology is the *only* ratemaking mechanism that relies on the competitive marketplace to set rates. By relying on the rates set through competitive bidding, MARS results in the lowest price consistent with recouping all of the costs incurred in providing the service. The market inherently disciplines the TRS rate because bidders know that if they ask for an unreasonably high rate they will be undercut by a more efficient competitor. As the Commission explicitly has acknowledged, the use of MARS therefore “produces a rate that better approximates providers’ reasonable costs, and . . . promotes the efficient recovery of all costs.”<sup>15</sup> Indeed, “rate regulation can only be, at best, an imperfect substitute for market forces”

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<sup>12</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, ¶ 41 (2007) (“2007 Order”).

<sup>13</sup> *Id.* ¶ 39.

<sup>14</sup> *Id.* ¶ 41.

<sup>15</sup> *2007 Order* ¶ 18.

and “cannot replicate the complex and dynamic ways in which competition will affect [providers’] prices, service offerings, and investment decisions.”<sup>16</sup>

In addition, using a MARS-based approach as the first step in setting IP Relay rates will afford Sprint a measure of certainty that will inure to the benefit of IP Relay users. For example, knowing that Sprint’s investments are recoverable and will be reflected in the IP Relay rate will allow Sprint to move forward in making improvements to its IP Relay service. In addition, unlike the rate established under the current rate methodology, the MARS-based rate appropriately accounts for the fact that no provider – no matter how high the quality of its service – will be compensated for 100% of the call minutes it handles. Similarly, the market-based MARS rate reflects the fact that a provider incurs carrying costs when there are significant delays in receiving compensation. In short, use of a MARS-based rate is a sensible place to start in developing a sustainable IP Relay methodology.

**B. The Commission Should Adjust the MARS Rate Based on IP Relay-Specific Costs**

The Commission should adjust the MARS-based TRS rate downward to reflect the costs that providers incur for TRS, but not for IP Relay. To illustrate how the hybrid methodology would work, using 2018 data, Sprint suggests that the Commission begin with the current MARS-based TRS rate of \$3.26, multiply that rate by Sprint’s forecasted [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] IP Relay minutes for the current funding year, and find that a purely MARS-based IP Relay rate would result in an annual cost of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] to the TRS Fund. Next,

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<sup>16</sup> *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges*, Order, 12 FCC Rcd 15982, ¶ 289 (1997).

the Commission should eliminate state-specific costs related to TRS, such as the costs associated with state equipment distribution programs and other state requirements (*e.g.*, requiring an in-state account manager, a certain amount of outreach within the state, and that Sprint contract with entities to collect state TRS fees). As reflected in the attached Exhibit A, Sprint estimates that these state TRS costs amount to approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL].<sup>17</sup>

Of course, just as there are TRS-related costs in the MARS methodology that should be excluded, there are additional costs specifically associated with IP Relay that are not reflected in the MARS methodology and should be included. Specifically, the Commission should compensate an IP Relay provider for expenses such as the cost of the Internet portal and website, the costs of IP Relay outreach, the costs for ten-digit telephone numbers, as well as costs for customer registration and 911 fees. Sprint estimates these IP Relay-specific costs to be approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] a year, although further details regarding these costs could be submitted annually to the Commission.

By way of further example, after eliminating the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in state TRS-specific costs and adding the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in IP Relay-specific costs, the net costs of IP Relay would be [BEGIN CONFIDENTIAL] [REDACTED] [END

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<sup>17</sup> For many years, Sprint has separated these costs into a MRC that is charged to the state and then has charged the state a price-per-minute that covers only the service component of TRS. These MRCs are reported to the FCC on the annual filing as “Additional Costs Paid to Provider.” The FCC, however, cannot eliminate reimbursements for the MRCs entirely. In recent years, some states have requested that Sprint charge an MRC for the costs of providing TRS service as well. These MRCs are associated with the costs of providing service, not state-specific costs, and should be included in the FCC’s rate.

**CONFIDENTIAL]**. The resulting number would then be divided by the projected minutes of use to determine a rate.<sup>18</sup> Sprint believes this to be a reasonable rate-making methodology that blends market-based competitive bidding and cost data, and this rate structure should ensure that IP Relay users continue to have access to this service for many years to come.

**IV. IF THE FCC DECIDES TO EXAMINE ALTERNATIVE RATE STRUCTURES, IT MUST ENSURE THAT IP RELAY USERS OBTAIN FUNCTIONALLY EQUIVALENT SERVICE**

As part of its proceeding, the Commission may wish to consider alternative approaches to setting the compensation rate for IP Relay. For example, Sprint understands that the Commission has considered the use of a single provider contractual arrangement to account for the fact that Sprint is the only remaining IP Relay provider. Sprint's extensive experience with such arrangements in the state context could be a useful resource for the Commission in the development of a Request for Proposal or a service contract.

Above all, Sprint respectfully submits that the key consideration in examining any such alternative rate structure should be ensuring that IP Relay users continue to obtain high-quality service. The exchange of a marginally lower rate for a lower-quality service is not an acceptable "trade-off," either legally or as a policy matter. Only by establishing an IP Relay rate that encourages ongoing investment and innovation in IP Relay can the Commission ensure that IP Relay users continue to have access to a communications option that is functionally equivalent to the continually updated communications available to other users.

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<sup>18</sup> Again, these numbers are derived from 2018 data and are for illustrative purposes only (*i.e.*, to demonstrate how the proposed hybrid rate-setting methodology works).

**V. CONCLUSION**

For the foregoing reasons, the Commission promptly should initiate a rulemaking proceeding designed to establish an IP Relay ratemaking methodology that ensures that the individuals who rely on IP Relay continue to have access to this life-changing service.

Respectfully submitted,

SPRINT CORPORATION

/s/ Scott R. Freiermuth

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Counsel – Government Affairs

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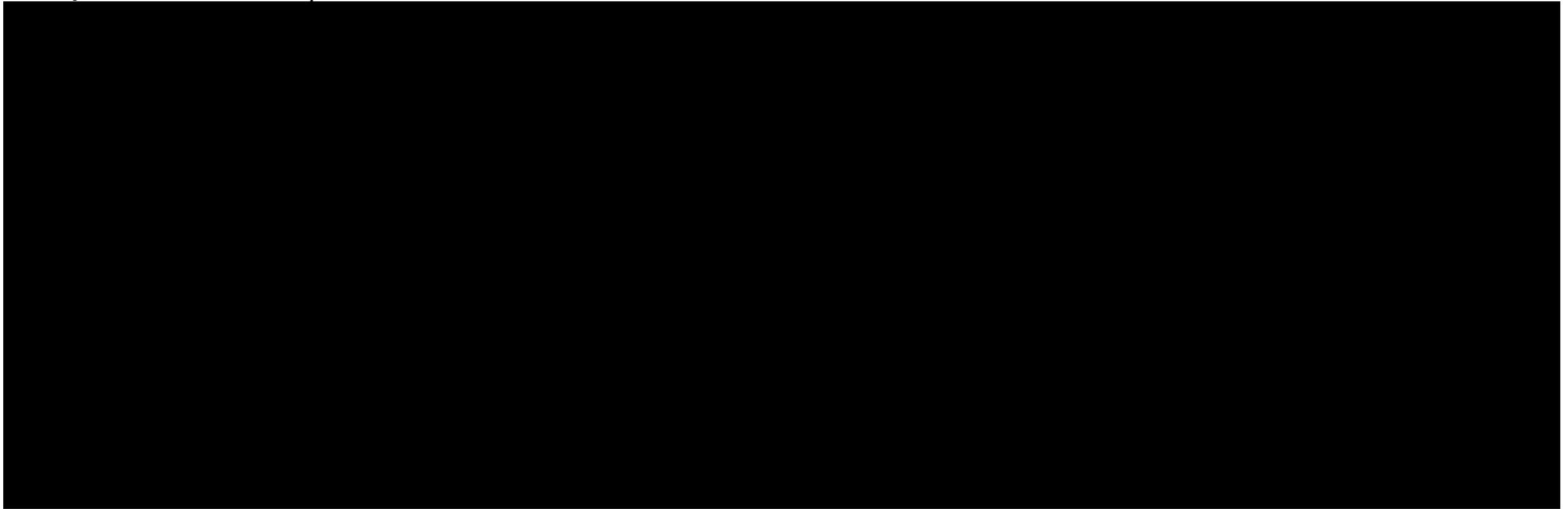
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November 1, 2018

**EXHIBIT A**

[BEGIN CONFIDENTIAL]



[END CONFIDENTIAL]