REDACTED FOR PUBLIC INSPECTION

EX PARTE OR LATE FILED

HWG | HARRIS, WILTSHIRE & GRANNIS LLP

Accepted / Filed

JUN - 4 2015

Federal Communications Commission
Office of the Secretary

June 4, 2015

VIA HAND-FILING AND ECFS
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: Request for Confidential Treatment Pursuant to 47 C.F.R. §§ 0.457 and 0.459

Dear Ms. Dortch:

Sorenson Communications, Inc. ("Sorenson") and its affiliate, CaptionCall, LLC ("CaptionCall") file these comments in response to the Commission's Public Notice regarding Rolka Loube Associates LLC's proposals for video relay service ("VRS") and Internet protocol captioned telephone service ("IP CTS") provider compensation rates.[1] Sorenson and CaptionCall are filing a confidential and publicly available version of this letter.

Sorenson and CaptionCall request pursuant to 47 C.F.R. §§ 0.457, 0.459 of the Commission's rules that the Commission withhold from any future public inspection and accord confidential treatment to the sensitive business information they are providing—all of which has been redacted from the publicly available version of the attached comments. The redacted data constitutes sensitive commercial information that falls within Exemption 4 of the Freedom of Information Act ("FOIA"). Exemption 4 of FOIA provides that the public disclosure requirement of the statute "does not apply to matters that are ... (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). Because these comments include commercial information "of a kind that would not customarily be released to the public," this information is "confidential" under Exemption 4 of FOIA. *Critical Mass Energy Project* v. *NRC,* 975 F.2d 871, 879 (D.C. Cir. 1992).

In support of this request and pursuant to Section 0.459(b) of the Commission's rules, Sorenson and CaptionCall hereby state as follows:

---

1 *Rolka Loube Associates LLC Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2015-16 Fund Year*, Public Notice, DA 15-612, CG Docket Nos. 03-123, 10-51 (rel. May 20, 2015).

No. of Copies rec'd 0+1
List ABCDE

1. Identification of the Specific Information for Which Confidential Treatment Is Sought (Section 0.459(b)(1))

Sorenson and CaptionCall seek confidential treatment of detailed information regarding financial data and relationships with their sponsors—all of which has been redacted from the publically available version of the attached comments.

2. Description of the Circumstances Giving Rise to the Submission (Section 0.459(b)(2))

Sorenson and CaptionCall are submitting these comments in response to the Commission's Public Notice referenced above.

3. Explanation of the Degree to Which the Information Is Commercial or Financial, or Contains a Trade Secret or Is Privileged (Section 0.459(b)(3))

The information described above is protected from disclosure because it constitutes highly sensitive information about Sorenson's and CaptionCall's financial data and sponsor relationships. This constitutes sensitive commercial information "which would customarily be guarded from competitors." 47 C.F.R. § 0.457.

4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition (Section 0.459(b)(4))

The VRS and IP CTS markets are highly competitive throughout the United States.

5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))

Disclosure of this information would provide Sorenson's and CaptionCall's competitors with sensitive insights related to Sorenson's and CaptionCall's financial data and sponsor relationship—all of which would work to Sorenson's and CaptionCall's severe competitive disadvantage.

6. Identification of Any Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))

Sorenson and CaptionCall do not make this information publicly available.

7. Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))

Sorenson and CaptionCall do not make this information publicly available.

Sincerely,

John T. Nakahata
Counsel to CaptionCall

REDACTED FOR PUBLIC INSPECTION

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

Accepted / Filed
JUN - 4 2015
Federal Communications Commission
Office of the Secretary

In the Matter of	
Misuse of Internet Protocol (IP) Captioned Telephone Service	CG Docket No. 13-24
Structure and Practices of the Video Relay Service Program	CG Docket No. 10-51
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	CG Docket No. 03-123

SORENSON COMMUNICATIONS, INC. AND CAPTIONCALL, LLC COMMENTS ON ROLKA LOUBE PAYMENT FORMULAS AND FUNDING REQUIREMENTS

Sorenson Communications, Inc., ("Sorenson") and its affiliate CaptionCall, LLC, ("CaptionCall") submit these comments on the Commission's May 20, 2015, Public Notice addressing, among other things, the video relay service ("VRS") and Internet protocol captioned telephone service ("IP CTS") provider compensation rates proposed by Rolka Loube Associates LLC ("Rolka Loube"), the telecommunications relay service ("TRS") Fund administrator.[1] With respect to VRS, Sorenson is disappointed that the Commission has decided to adopt a contribution factor for the upcoming Fund year without seeking comment on the Joint Proposal of All Six VRS Providers for Improving Functional Equivalence and Stabilizing Rates ("Joint Proposal"),[2] which has the support of all six VRS providers, the Consumer Groups, the Registry for Deaf Interpreters ("RID"), and the iTRS Advisory Council.

---

1 *Rolka Loube Associates LLC Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2015-16 Fund Year*, Public Notice, DA 15-612, CG Docket Nos. 03-123, 10-51 (rel. May 20, 2015) ("TRS Rate PN").

2 *See id.* at 4.

With respect to IP CTS, the MARS-based methodology, which the Commission has applied since 2007, yields yet another increase in the IP CTS rate. To reverse this trend, the Commission should adopt the price-cap methodology that CaptionCall has proposed, which would (1) be initialized at $1.6766, which is more than $.20 below the proposed $1.8895 MARS-based rate, (2) encourage innovation and efficiency, and (3) allow providers to make long-term investments without fear of unexpected dramatic rate cuts. CaptionCall, however, is alarmed that the Commission seeks comment on Rolka Loube's calculation of a compensation rate based on "allowable costs." The Commission has already abandoned rate-of-return regulation as a primary means of rate setting for all other regulated services, and the "allowable cost" approach has had detrimental effects on IP Relay and VRS. Though CaptionCall has proposed a reduction in the IP CTS rate, that proposal is contingent on the efficiency and innovation enhancing incentives, combined with the long-term certainty, that come with a price-cap methodology. Thus, CaptionCall cannot support any rate that is based on a rate-of-return methodology, even if such a rate looks similar to the rate that CaptionCall has proposed to initialize an IP CTS price cap.

I. THE COMMISSION'S FAILURE TO ACT ON THE JOINT PROPOSAL WILL FORCE SORENSON TO MAKE CUTS THAT WILL ADVERSELY AFFECT SERVICE.

Sorenson is disappointed that the Bureau does not intend to consider the Joint Proposal before the next set of rate cuts takes effect.[3] As a result of the Commission's inaction, Sorenson will have to continue to make and implement plans for dealing with the scheduled rate cuts. Not only does that mean cutting expenses in light of the July 1, 2015 rate cut, but it also means making adjustments in order to prepare for the future rate cuts that are scheduled to occur

[3] *Id.*

between now and June 2017. Because Sorenson must make many of its budgeting decisions in advance, the cuts scheduled for 2017 will inevitably affect spending decisions that Sorenson makes in coming months. For example, as leases expire, Sorenson will have to carefully consider whether it makes sense to renew each lease in light of the rates scheduled to go into effect in 2017. As Sorenson has explained in prior filings,[4] past rate reductions have forced it ****BEGIN HIGHLY CONFIDENTIAL**** [redacted] ****END HIGHLY CONFIDENTIAL**** It is entirely foreseeable that the scheduled rate cuts will have the same effect.

As Sorenson has also explained previously in more detail,[5] the rate cuts will inevitably degrade the quality of VRS service—including by forcing Sorenson to ****BEGIN HIGHLY CONFIDENTIAL**** [redacted]

---

[4] Sorenson Communications, Inc.'s Response to Staff Questions re VRS Providers' Joint Proposal for Improving Functional Equivalence and Stabilizing Rates, at 3, CG Docket Nos. 03-123, 10-51 (filed Apr. 20, 2015).

[5] *Id.* at 3-6.

[redacted]

****END HIGHLY CONFIDENTIAL**** As the Commission is well aware, for Sorenson, as for other VRS providers, the largest variable component of costs is expenditures for VRS interpreter and customer service labor. Accordingly, Sorenson continues to urge the Commission to expeditiously put the Joint Proposal out for public comment on a shortened pleading cycle and to adopt the proposal before further cuts go into effect.

The Rolka Loube report also confirms yet again the economic irrationality of the Commission's existing practice of calculating a target compensation rate based on allowable costs and a rate of return applied to booked capital investment. The RL Report shows that under this methodology, "return on investment" amounts to a 1-2% margin on all other expenses.[6] This is not a financially-viable margin for a service-based, labor-intensive industry, especially when allowable costs also do not include, among other things, actual taxes paid, research and development related to end user equipment necessary to use the service, or customer support for necessary end user equipment. Any VRS provider that tried to operate only on a rate calculated based on allowable costs and the prescribed rate-of-return on booked capital investment would lose money, given the high percentage of labor and relatively low amount of capital costs. The allowable costs-based rate-of-return calculation yields a false and misleading yardstick with which to evaluate VRS compensation levels, just as it is also fundamentally flawed in judging IP CTS rates, as explained further below.

---

[6] *See* Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, at 23, CG Docket Nos. 03-123, 10-51 (filed Apr. 24, 2015) ("Rolka Estimate") (chart noting return on investment and total investment).

II. THE COMMISSION SHOULD NOT CONSIDER A COST-BASED IP CTS RATE BUT SHOULD INSTEAD ADOPT CAPTIONCALL'S PRICE CAP PROPOSAL.

In 2007, the Commission adopted the MARS methodology for setting IP CTS rates and set the initial MARS-based rate at $1.6295.[7] Each subsequent year, the MARS-based rate has increased, and the 2015-16 Fund year will be no exception, as the IP CTS rate will rise from $1.8205 to $1.8895.[8] To alleviate the combined pressures of steadily rising IP CTS rates and demand, CaptionCall has proposed a price-cap methodology for setting IP CTS rates.[9] As CaptionCall has proposed, the Commission should initialize the price cap at $1.6766 per-minute, which represents the average MARS-based rate in the years before CTS-to-IP CTS migration caused steep rate increases.[10] And a 0.5% X-factor will give providers incentive to restrain labor prices and more efficiently use communications assistants.

Furthermore, a price-cap methodology will give providers a measure of certainty over future revenues, creating incentives for long-term investments that will yield service improvements and future efficiencies, without fear of dramatic, unexpected rate declines. To that end, the Commission should wait at least five years before adjusting the base IP CTS rate, in order to avoid the catastrophic consequences that occurred after the Commission reset the IP Relay rate at unsustainably low levels only three years after it adopted an IP Relay price cap.

---

7 *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, FCC 07-186, 22 FCC Rcd. 20,140, 20,149-50 ¶ 16 (2007).

8 Rolka Estimate at 17.

9 *See* Sorenson Communications, Inc., Petition for Rulemaking, CG Docket No. 03-123 (filed Feb. 20, 2013).

10 *Id.* at 8-9. CaptionCall's proposal based its $1.6766 calculation on the average of MARS-based rates from 2008, 2009, and 2010, which was a time of relative stability in MARS rates before they began to rise dramatically in 2011.

Under no circumstances, however, should the Commission consider an "allowable cost" based rate-of-return methodology for IP CTS rates.[11] The Commission has already concluded that rate-of-return regulation, which sets provider returns as a percentage of booked capital, does not make sense for most of the telecommunications industry.[12] And, as discussed above, rate-of-return makes even less sense for TRS, all forms of which are uniformly labor—and not capital—intensive. Indeed, rate-of-return regulation has already gutted the IP Relay market, and without action on the Joint Proposal, threatens the same result for VRS.

As with other forms of TRS, IP CTS relies on Communications Assistants ("CAs") to manage voice-recognition and transcription software. Salaries and benefits for CAs—and not capital investments—are providers' greatest costs. To improve key service-quality metrics, such as speed-of-answer and captioning latency, IP CTS providers do not incur increased *capital* expense—for items such as additional rights of way or facilities—but rather increased *operating* expense, for items such as additional staffing and training. Under rate-of-return, the rate merely reimburses those operating expenses without yielding additional returns. As a result, reducing operating costs will simply cause corresponding rate reductions—removing all incentives for providers to operate more efficiently. At the same time, because TRS requires very little capital, providers cannot meaningfully boost their margins by making additional capital investments, as

---

[11] *See* TRS Rate PN at 2 (seeking comment on "whether Rolka has correctly calculated the weighted average projected costs for IP CTS").

[12] *See, e.g.*, *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, FCC 90-314, 5 FCC Rcd. 6786, 6789-90, ¶¶ 21-28 (1990) (abandoning rate-of-return regulation for large incumbent local telephone companies); *Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, FCC 95-132, 10 FCC Rcd. 8961 (1995) (affirming a commitment to the policy objectives that led the Commission to adopt price cap regulation); *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd. 17,663 (2011) (functionally ending rate-of-return for small telephone companies by adopting interstate terminating access rates and revenues based on formulas no longer tied to current costs or revenue requirements).

they can buy only so many desks and carpets. Moreover, the Commission has historically excluded real, nondiscretionary costs—such as equipment R&D and taxes—from the "allowable cost" formula. Without a rational delineation between what costs are "allowable" and not "allowable," providers face constant uncertainty about future rates.

Rolka Loube's "allowable cost" calculation for IP CTS reflects all of the fundamental flaws with rate-of-return in the TRS context. Rolka Loube's calculation allows for returns only on capital investment, which consistently yields profit margins of less than 1%.[13] Providers cannot operate under such paltry margins, even if the rate accounted for all costs of providing service. But Rolka Loube's calculation does not account for research and development, equipment, working capital, or tax expenses—all of which are real costs that are essential for the provision of high-quality IP CTS.[14] Though the Rolka Loube calculation does account for outreach costs,[15] the Commission has already removed outreach from the VRS and IP Relay rate bases, and is considering the same for IP CTS,[16] which would cause an immediate reduction in cost-based IP CTS rates, and which underscores the uncertainty inherent in the cost-based approach.

As a result, CaptionCall cannot support any allowable cost-based, rate-of-return IP CTS rate, even if Rolka Loube's calculated rate is similar to the rate CaptionCall has proposed to

---

[13] *See* Rolka Estimate, Appendix L at 11.

[14] *See id.*

[15] *See id.*

[16] *See Misuse of Internet Protocol (IP) Captioned Telephone Service*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-118, 28 FCC Rcd. 13,420, 13,478 ¶ 122 (2013).

initialize an IP CTS price cap.[17] CaptionCall's support for a $1.6766 per minute rate—an 11.3% reduction from the proposed $1.8895 MARS-based rate for 2015-16—is contingent on the benefits of a price-cap methodology. Under a price-cap, CaptionCall can continue to make efficiency- and quality- enhancing investments, without being punished with corresponding rate reductions, and without fear that future shifts in the Commission's definition of "allowable" costs will cause sudden, dramatic rate declines. Under a rate-of-return methodology, however, CaptionCall has no incentive to become more efficient, and it must operate with significant uncertainty over its future revenues—none of which justifies the steep drop from the current MARS-based rates.

The Commission should note that there is an additional benefit to adopting CaptionCall's price-cap proposal expeditiously. As discussed above, the Joint Proposal for VRS rates will cost the TRS Fund approximately $31,631,197. However, a $0.2129 reduction in IP CTS rates (from $1.8895 to $1.6766) would *save* the Fund approximately $43,144,495.20,[18] a net benefit of almost $12 million. Thus, by adopting both the Joint Proposal and CaptionCall's price-cap proposal, the Commission can, in one fell swoop, ensure the continued availability of high-quality VRS, inject stability into the provision of IP CTS, and save the TRS Fund money.

---

[17] Rolka calculated a cost-based rate of $1.6246 per minute, whereas CaptionCall has proposed a price cap initialized at $1.6766 per minute.

[18] *See* Rolka Estimate, Appendix L at 5 (projecting IP CTS demand at 202,651,457 minutes).

III. CONCLUSION.

For the reasons stated above, the Commission should act expeditiously on the Joint Proposal for VRS rates and CaptionCall's proposal to adopt a price-cap for IP CTS rates.

Respectfully submitted,

John T. Nakahata
Christopher J. Wright
Mark D. Davis
Walter E. Anderson
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street, N.W., Eighth Floor
Washington, D.C. 20036
T: (202) 730-1300
jnakahata@hwglaw.com

Counsel to CaptionCall, LLC

June 4, 2015