



June 14, 2016

VIA HAND DELIVERY AND ECFS

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

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

Pursuant to Sections 0.457 and 0.459 of the Commission's rules,¹ Sorenson Communications, Inc. ("Sorenson") respectfully requests that the Commission accord confidential treatment to the attached letter providing details of Sorenson's speed of answer. One original and one copy of the letter is attached in both confidential and redacted form. Sorenson is also filing an electronic copy of the redacted version via ECFS.

Sorenson respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Commission's rules, the Commission withhold from any future public inspection and accord confidential treatment to the highly confidential, business sensitive information contained in the attached SOA letter. This version is marked with the header "Subject to Request for Confidential Treatment Pursuant to 47 C.F.R. §§ 0.457 and 0.459." All of the Confidential Information has been redacted from the attached redacted version, which is also being filed electronically.

The Confidential Information constitutes highly sensitive commercial information that falls within Exemption 4 of the Freedom of Information Act ("FOIA").² 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."³ Because Sorenson is providing this information voluntarily, and it is commercial information "of a kind that would not customarily be released to the public," this information is "confidential" under Exemption 4 of FOIA.⁴

¹ 47 C.F.R. §§ 0.457 and 0.459.

² 5 U.S.C. § 552(b)(4)&(7).

³ 5 U.S.C. § 552(b)(4).

⁴ See *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 hereby states as follows:

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

Sorenson seeks confidential treatment for the speed-of-answer data disclosed in the attached letter—all of which has been redacted from the public version of the attached filing.

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

Sorenson is voluntarily submitting this information in support of its request for a waiver of the TRS rules.

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 does not release its speed-of-answer data to the public or to competitors, and releasing this data could give competitors a competitive advantage. The information constitutes sensitive commercial information “which would customarily be guarded from competitors.”⁵

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

The Video Relay Service (“VRS”) market is 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 the data would provide Sorenson’s competitors with sensitive insights related to Sorenson’s speed of answer, which would work to Sorenson’s competitive disadvantage.

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

Sorenson does not make this information publicly available.

⁵ 47 C.F.R. § 0.457.

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 has not previously disclosed this information to the public.

If this request for confidentiality is denied, I request pursuant to 47 C.F.R. § 0.459(e) that the Commission return the confidential materials without consideration.

Sincerely,

/s/ Mark D. Davis

Mark D. Davis
Counsel to Sorenson Communications, Inc.

Attachments



June 14, 2016

VIA ELECTRONIC MAIL

Mr. Eliot Greenwald
Disability Rights Office
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Mr. David Rolka
RolkaLoubé
4423 North Front Street
Harrisburg, PA 17110-1788

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 Messrs. Greenwald and Rolka:

Sorenson Communications, Inc., (“Sorenson”) has discovered two errors in its software that caused an inaccuracy in the speed of answer reported for hearing-to-deaf calls. Sorenson is reporting these errors even though, as explained below, it appears that the errors had no impact on Sorenson’s compensation or on its compliance with the Commission’s speed-of-answer requirement. Nevertheless, to the extent that the errors constitute a violation of the Commission’s data-reporting rules, Sorenson is seeking a waiver.

The source of the errors is a difference in the way that deaf-to-hearing and hearing-to-deaf calls are routed. When a Sorenson user places a deaf-to-hearing call, the call is answered by Sorenson’s Automatic Call Distribution (“ACD”) servers, which manage inbound call queues and route VRS calls within and among Sorenson’s VRS call centers. The ACD servers immediately connect the caller to an interpreter if one is available or place the user on hold until an interpreter is available. The ACD servers automatically record the speed of answer for each call by tracking what time a call first hits Sorenson’s system and what time that call is answered by an interpreter.

For hearing-to-deaf calls, however, there is a step before a call is received by the ACD servers. Because hearing callers may not understand that calls to VRS users may take longer to connect than a typical call, every hearing-to-deaf call begins with a brief recording that explains that the call is being connected. This recording, which lasts 9 seconds, is played by an interactive voice response (“IVR”) system *before* the call hits Sorenson’s ACD servers. At the

end of the recording, the call is then transferred to Sorenson's ACD servers, which transfer the call to an interpreter or place it in a hold queue. Sorenson's ACD servers are only capable of tracking the callers that wait long enough to reach the ACD and for the time from when the call hits the server to the time it is answered by an interpreter. This has resulted in two errors. *First*, until recently, the 9 seconds during which a hearing caller listens to the recording explaining that the call is being connected was erroneously excluded from the speed of answer calculations. *Second*, even today, Sorenson is unable to accurately track callers that hang up before the call connects with the ACD. In other words, if a hearing caller hangs up during the 9-second message announcing that the call will be connected, Sorenson has no way to keep a record of that call.

Importantly, these errors have had *no effect* on Sorenson's compliance with the Commission's speed-of-answer requirements. To determine the effect of the first error (the exclusion of 9 seconds from speed of answer of hearing-to-deaf calls) on its compliance, Sorenson has recalculated its speed of answer compliance for some of the worst months—*i.e.*, the months for which it reported the lowest percentage of calls answered in the required time period—by adding 9 seconds to the speed of answer for all hearing-to-deaf calls. As shown in the chart below, even in these worst months, the error had no effect on its compliance: in each of those months, Sorenson originally reported that it had answered more than ****BEGIN CONFIDENTIAL****  ****END CONFIDENTIAL**** of all calls within the required time, and the adjustment changed that number by less than .4 percentage points:

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Moreover, the second error (exclusion of calls terminated before they reach the ACD server) has effectively subjected Sorenson to a *more stringent* speed-of-answer requirement. That is because all calls erroneously excluded from the speed-of-answer calculation were terminated within the first 9 seconds and before being answered by an interpreter, thus meeting the 120-second speed-of-answer threshold. Correcting this error would therefore *improve* Sorenson's compliance rate. Thus, even in its worst months, Sorenson answered more than 97% of calls within the required time period even when the extra 9 seconds are taken into account—well above the 80% or 85% standard in effect during the relevant time periods. 47 C.F.R. 64.604(b)(iii).

Effective with its April 15, 2016, billing submission, Sorenson has begun correcting the first error by adding 9 seconds—the length of time that a user spends in the IVR—to the speed of answer for all hearing-to-deaf calls. Sorenson respectfully requests, however, that the Commission not require it to submit revised Call Detail Records (CDRs) or billing submissions for all affected calls. Doing so would be extremely burdensome (and expensive) and would achieve no purpose because it is clear that the revisions would have no effect on Sorenson’s compensation or on its compliance with the speed-of-answer rules.

Sorenson is currently working on a software fix for the second problem, which prevents it from tracking calls that are terminated after less than 9 seconds. Sorenson expects to complete the fix in the third or early fourth quarter of 2016. It is not possible, however, to correct the problem for billing submissions that occurred in the past or that will occur before the software fix is implemented.

Although there is no doubt that Sorenson is complying with the Commission’s speed-of-answer rules, the Commission’s rules appear to require the submission of complete and accurate data related to speed-of-answer compliance.¹ Accordingly, Sorenson respectfully requests a waiver of the Commission’s data-reporting rules to the extent necessary to permit it to be compensated for the services that it previously provided and that it will continue to provide, in full compliance with speed-of-answer requirements, until the software error is fixed.

The Commission may waive its rules for good cause shown,² *i.e.* when “particular facts would make strict compliance inconsistent with the public interest.”³ Here, the public interest would plainly not be served by requiring Sorenson to forego compensation (and thereby go out of business) until it can complete the software update that serves only to improve data reporting, without any failure to meet the underlying speed-of-answer requirements. Moreover, granting the waiver is entirely consistent with the purposes of the rule. For past submissions, it is plain that Sorenson has always met the speed-of-answer requirement. And for future submissions until the software fix is completed, the error effectively holds Sorenson to a *more stringent* standard than required by the rules. This is because the error systematically *understates* the percentage of calls that Sorenson answers within the required threshold.

I look forward to your guidance about how to handle this error and am available to discuss it with you at your convenience.

¹ See, e.g., 47 C.F.R. §64.604(e)(4) (“TRS providers receiving payments shall file a form prescribed by the administrator.”). The Interstate TRS Fund Monthly Provider Submission form requires providers to report, for each day, the number of unanswered calls that rang for 120 seconds or less.

² 47 C.F.R. § 1.3.

³ *Keller Commc’ns, Inc. v. FCC*, 130 F.3d 1073, 1076 (D.C. Cir. 1997) (citing *Northeast Cellular Telephone Co., L.P. v FCC*, 897 F.2d 1164, 1166); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

Messrs. Eliot Greenwald and David Rolka
June 14, 2016
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Redacted – For Public Inspection

Sincerely,

/s/ Mark D. Davis

Mark D. Davis
Counsel to Sorenson Communications