

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

In the Matter of)	
)	
Telecommunications Relay Services)	
and Speech-to-Speech Services for)	CC Docket No. 98-67
Individuals with Hearing and Speech)	
Disabilities)	

To: Chief
Consumer & Governmental Affairs Bureau

PETITION FOR RECONSIDERATION OF SORENSON MEDIA, INC.

Sorenson Media, Inc. (“Sorenson”), by its attorneys and pursuant to Section 1.429 of the Commission’s rules,¹ hereby requests that the Commission reconsider its June 30 *Order* adopting \$7.751 per minute as the interim cost-recovery rate for Video Relay Services (“VRS”).²

I. Introduction

Sorenson is a recognized industry leader in providing high-quality video compression technologies and streaming media solutions. Sorenson also has a strong history of supplying technology solutions to the Deaf and hard of hearing communities, including affordable videophone appliances and CD-based American Sign Language (“ASL”) training tutorials. Sorenson’s video communication solutions are used in turn by other telecommunications relay service (“TRS”) providers, including Sprint and Communication Service for the Deaf (“CSD”), as well as by educational institutions such as Gallaudet University. Sorenson has been very successful as a start-up provider of VRS service and is one of the fastest-growing providers.

¹ 47 C.F.R. § 1.429.

² Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, *Order*, CC Docket No. 98-67 (rel. June 30, 2003) (the “*Order*”). This petition is timely filed. *See* 47 C.F.R. § 1.429(d), 1.4(b).

Like the Commission, Sorenson is “committed to greater flexibility, more aggressive outreach and fostering innovation in the provision of” innovative TRS offerings like VRS.³ Nonetheless, as a new entrant into the VRS market, Sorenson is particularly concerned about this dramatic drop in the VRS cost-recovery rate.

As shown below, Sorenson has three main concerns about the *Order*. First, the rate shock caused by the significant reduction in the reimbursement rate is likely to have a significant effect on the growth and availability of VRS to the Deaf and hard of hearing community. Second, the *Order* does not provide a sufficient explanation of the analytic structure used to determine the interim rate. Finally, the *Order* does not sufficiently account for the Congressional mandate to make TRS offerings widely available. Consequently, the *Order* should be reconsidered and the Commission should adopt the interim rate proposed by the National Exchange Carrier Association (“NECA”).

II. The Interim Rate Will Reduce the Availability of VRS.

The Commission’s new interim rate results in a 55% reduction from the previous rate and is little more than half the rate suggested by NECA. Sorenson believes that the new rate does not accurately reflect the costs of providing VRS. Consequently, the new rate could force some current providers out of the market and discourage new entrants. Moreover, as service providers and members of the Deaf community have noted, to continue providing service consistent with the Commission’s new reimbursement rate, many providers undoubtedly will be forced to cut back their VRS offerings, either reducing hours or the number of interpreters available to handle

³ See FCC Recognizes Ten Years of Nationwide Provision of Telecommunications Relay Services And Certifies As Compliant The State TRS Programs of All 50 States, *News Release*, July 25, 2003 (quoting Chairman Michael K. Powell).

calls.⁴ This is not a hypothetical concern: Two weeks after the *Order* was released, USA Video Relay Service (“USAVRS”) reduced the number of hours it provides VRS from 24-hours, 7 days-per-week to only 6 hours per day during the week and 16 hours on weekends and holidays.⁵ USAVRS anticipates further service reductions if the Commission retains the interim rate, and it would appear likely that other providers could follow suit.⁶ At its own interpreting centers Sorenson is struggling with high demand, and subsequent lengthened call hold times are occurring since adding additional interpreters is not economically feasible under the new reimbursement rates. Indeed, some providers may choose to eliminate the service altogether.

As a practical matter, the Commission cannot expect VRS to continue to grow in the uncertain atmosphere that now surrounds it. Since the inception of VRS only three years ago, the per-minute compensation rate for the service has ranged from \$5.143 (July 2000) to \$17.044 (July 2002), and now has been slashed to \$7.751.⁷ These unpredictable and dramatic fluctuations over such a short period make it nearly impossible for VRS providers to plan their businesses. The price shock inherent in a 55% reduction in the reimbursement rate is likely to drive away capital investment and discourage new entrants. Furthermore, when the rates were set below \$17.044 there was only one reputable provider willing to supply VRS and traffic was minimal. Accordingly, even if the Commission were right that the previous rate was too high, a much more pragmatic way to correct that anomaly would be a gradual reduction over several

⁴ See Open Letter from CSD of Texas to Consumer Leaders, dated July 22, 2003 (“*CSD Letter*”); Letter from Shelly Franks, Executive Director, Deaf and Hard of Hearing in Government (“DHHIG”), to K. Dane Snowden, Chief, Consumer & Governmental Affairs Bureau, Federal Communications Commission, dated July 10, 2003 (“*DHHIG Letter*”).

⁵ See *CSD Letter*.

⁶ *Id.*

⁷ See *Order*, ¶ 18.

years. A difficult and unconventional service like VRS needs to be encouraged and nurtured, not strangled by extreme, unpredictably fluctuating economic conditions.

III. The *Order* Does Not Sufficiently Justify the Adjustments to VRS Provider Cost Data.

Sorenson submits that NECA's reimbursement rate provides a much more accurate picture of the fair costs of providing VRS and a much more reasonable choice than that made by the FCC in its *Order*. NECA's proposed per-minute compensation rate of \$14.02 for VRS was based on a straightforward analysis of cost data prepared by current VRS providers, and recognized the unique costs faced by VRS providers in this new and changing market.⁸

In contrast, it is impossible to tell from the *Order* exactly how the reimbursement rate was determined. While the Commission found some of the cost data submitted by VRS providers to be deficient, the *Order* does not explain how, except for profit margins, the data were adjusted. In fact, given the Commission's acknowledgment that the data used to calculate the reimbursement rate required significant adjustments and, in some cases, was deemed unreliable, it is unclear why the Commission did not seek additional data after providing more specific guidance to VRS providers.⁹ A better course would have been to adopt the NECA proposal as an interim rate until the Commission could analyze refined cost data to determine if a substantial rate cut is warranted in light of the new data.

⁸ Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CC Docket 98-67 (filed by NECA May 1, 2003), as amended by *Errata* (filed by NECA May 6, 2003) (the "*NECA Proposal*").

⁹ Sorenson appreciates the difficulties that the Commission faced in reviewing the cost data and will seek to remedy any shortcomings in new cost data that it will be submitting promptly.

While the *Order* encouraged providers to meet with the staff to discuss adjustments to individual cost showings, this is not sufficient to meet the Commission's obligations to explain its decisions. These meetings do not give the public (in particular, the Deaf community) an opportunity to understand the Commission's specific decisions and, equally important, do not demonstrate that the Commission has created and employed a consistent analytic framework for reviewing cost showings. In the absence of such disclosure in the *Order*, the Commission did not meet its obligation to engage in reasoned decisionmaking.¹⁰

In continuing to evaluate the VRS rate, the Commission should avoid the temptation to assume that VRS costs will be similar to those of other TRS offerings. For example, VRS is, contrary to the Commission's intimation in the *Order*,¹¹ a much more costly service to provide than Video Remote Interpreting ("VRI"). Although the services appear similar, there are significant operational differences that distinguish them. Most notably, VRI is a scheduled service, and can turn customers away, whereas VRS is structured to be available on demand.¹² Therefore, unlike VRS, VRI can be provided very efficiently because the VRI provider knows in advance exactly how many calls are scheduled, when and for how long interpreters will be needed, and how long each call is scheduled to last. These differences make the VRS/VRI comparison inapt.

In addition, the Commission must bear in mind that VRS, much more than traditional TRS offerings, is an evolving service. The basic model for VRS, for instance, is changing from

¹⁰ See, e.g., *Brookings Municipal Telephone Co. v. FCC*, 822 F.2d 1153, 1165 (D.C. Cir. 1987) ("[T]he Federal Communications Commission must demonstrate a 'rational connection between the facts found and the choice made.'").

¹¹ See *Order*, ¶ 30.

¹² As noted above, in light of the rate cut adopted in the *Order*, some VRS providers are likely to restructure their offerings to more closely resemble the VRI model, notably by eliminating 24-7 service availability.

an appointment service that requires users to travel to specific centers to a service that is available as needed in the user's home or workplace. This model requires significantly more investment in equipment, but greatly improves the convenience and perceived quality of VRS. The reduction in the VRS rate adopted in the *Order* will discourage such technological innovations and, instead, encourage only bare-bones VRS that does not meet the needs of the user community. In contrast, the NECA recommendation was at a level that was much more likely to encourage continued technological and service innovation as a means of attracting users to a provider's services.

IV. The Commission Must Consider the Congressional Mandate to Make TRS Offerings Available “to the Extent Possible.”

Review of the *Order* also shows that the Commission employed too rigid a standard for analyzing VRS providers' recoverable costs. Congress has instructed the Commission to ensure that TRS services are available to the Deaf and hard of hearing communities “to the extent possible and in the most efficient manner.”¹³ To facilitate the development and growth of the various TRS services, Congress empowered the Commission to develop mechanisms for TRS cost recovery that spread the costs of nurturing the development of the various TRS services over all telecommunications service users.¹⁴ The Commission has admirably fulfilled this mandate thus far by taking an expansive view of the services that are included under the TRS umbrella –

¹³ See 47 U.S.C. § 225(b)(1).

¹⁴ See 47 U.S.C. § 225(d)(3)(B).

including VRS¹⁵ – and by prescribing cost-recovery rules that permit providers of the nascent TRS services to grow.¹⁶

As the Commission has recognized, Congress required that providers be permitted to recover their “fair costs” for providing VRS.¹⁷ The *Order*, however, employs an unnecessarily strict interpretation of what costs are recoverable. Consequently, it fails to establish a rate that will allow cost recovery sufficient to provide for the healthy growth of the VRS industry. This is contrary to the Congressional mandate that TRS be made available “to the extent possible.” As the Commission noted in the *Order*, there are unique costs associated with providing VRS.¹⁸ The labor costs for VRS are considerably higher than for TRS and IP Relay because highly trained ASL interpreters and special equipment including cameras, Internet servers and broadband connections are necessary to support VRS. Each of these component costs also is highly variable. There is a very limited number of ASL interpreters with the necessary skills, and as demand for their services increases, so too does the cost of employing them. Moreover, the costs of operating a state-of-the-art VRS system are difficult to predict given the need to constantly maintain and upgrade the software and hardware necessary to continue providing top-quality service. The strict methodology endorsed by the *Order* cannot account for the likely fluctuations in the cost of providing service, because it assumes tomorrow’s costs will be

¹⁵ See, e.g., 47 C.F.R. § 64.601(9), (11), (12) (defining telecommunications relay services, speech-to-speech services, and video relay services).

¹⁶ See generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 5140 (2000).

¹⁷ See Telecommunications Services for Individuals with Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guidelines, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 22948 (2001).

¹⁸ *Order*, ¶ 6.

identical to yesterday's. In a new and highly technology-intensive industry, such as VRS, that assumption is very unlikely to prove to be correct.

Moreover, the methodology employed by the *Order* does not take account of the higher capital costs inherent in providing a service like VRS that has a highly uncertain future reimbursement structure. As the Commission knows, there currently is no permanent compensation plan in place for VRS.¹⁹ If provision of VRS does not offer a relatively high short-term return on investment, there is no incentive to new entrants to build or maintain the infrastructure necessary to provide VRS. Accordingly, until a long-term reimbursement plan is adopted, a short-term "cost of uncertainty" should be built into the VRS reimbursement rate.

As the recent letter from DHHIG shows, Sorenson's economic concerns and the service reductions adopted by USAVRS translate into real-world fears and effects.²⁰ The likelihood that Deaf government workers' productivity will decline with the quality of VRS should give the Commission pause. That decreased productivity is symptomatic of the decreased quality of life that all Deaf and hard of hearing citizens that do or will utilize VRS may face if the Commission's rate decision stands. Sorenson takes pride in providing the quality services that DHHIG and its members fear losing. More economical but lower quality service is not a model that appeals to VRS users or providers and it is not a model that should appeal to the Commission. The specter of fewer providers providing lower quality VRS service also is inconsistent with Congress's direction that the Commission encourage both the provision of services and the development of new technologies to serve the Deaf and hard of hearing communities.²¹

¹⁹ *See id.*, ¶ 24.

²⁰ *See DHHIG Letter.*

²¹ 47 U.S.C. § 225(d)(2).

The Commission is not constrained by an inflexible standard in adopting a VRS compensation rate in this proceeding. To the contrary, the Commission's mandate is only that VRS providers be permitted to recover their *fair* costs of providing service. It is well within the Commission's discretion, and entirely consistent with the Congressional mandate, to establish a compensation rate that accounts for the unique costs associated with providing VRS and ensures the continued availability of VRS, especially given that demand is growing rapidly.²² Doing so would further Congress's goal of ensuring that Deaf and hard of hearing citizens are "incorporated into the telecommunications mainstream."²³ Sorenson does not expect incentives or premiums to be built into the VRS compensation rate. However, for the reasons described above, maintaining the current rate is likely to jeopardize the availability of this important service, to the enormous detriment to the Deaf and hard of hearing community.

V. Conclusion

For all of these reasons, Sorenson Media, Inc., respectfully requests that the Commission

²² See *Order*, ¶ 20, citing *NECA Proposal* at Exh. 4.

²³ See *Order*, ¶ 2, citing H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. at 129-130 (1990).

reconsider the *Order* and adopt an interim rate consistent with the proposal previously filed in this proceeding by NECA.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ruby Brown, a secretary at the law firm of Dow, Lohnes & Albertson, PLLC do hereby certify that on this 30th day of July, 2003, the foregoing "Petition For Reconsideration of Sorenson Media, Inc." was served via hand delivery to the following:

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