

**TELECOMMUNICATIONS FOR THE DEAF, INC.**  
**CALIFORNIA COALITION OF AGENCIES SERVING THE DEAF AND HARD OF HEARING**  
**NATIONAL ASSOCIATION OF THE DEAF**  
**ASSOCIATION OF LATE DEAFENED ADULTS**  
**DEAF AND HARD OF HEARING CONSUMER ADVOCACY NETWORK**

February 15, 2006

VIA ELECTRONIC FILING

Marlene H. Dortch, Esq., Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

RE: Written Ex Parte Presentation, In the Matter of Telecommunication Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123

Dear Ms. Dortch:

Telecommunications for the Deaf, Inc. (“TDI”)<sup>1</sup>, California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”)<sup>2</sup>, National Association of the Deaf

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<sup>1</sup> TDI is a national advocacy organization that seeks to promote equal access in telecommunications and media for the 28 million Americans who are deaf, hard-of-hearing, late-deafened, or deaf-blind, so that they may enjoy the opportunities and benefits of the telecommunications revolution to which they are entitled. TDI believes that only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

<sup>2</sup> CCASDHH consists of eight community-based nonprofit agencies providing various social services to deaf and hard-of-hearing Californians – Deaf Counseling, Advocacy and Referral Agency; Greater Los Angeles Agency of Deafness, Northern California Center on Deafness, Deaf and Hard of Hearing Service Center; Orange County Deaf Equal Access Foundation; Tri-County GLAD; Center on Deafness – Inland Empire, and Deaf Community Services of San Diego.

(“NAD”)<sup>3</sup>, Association of Late Deafened Adults (“ALDA”)<sup>4</sup>, and Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”)<sup>5</sup> (collectively the “Consumer Organizations”) hereby submit their response to the January 6, 2006 written *ex parte* presentation submitted by Sorenson Communications, Inc. (“Sorenson”)<sup>6</sup> regarding CCASDHH’s Petition for Declaratory Ruling on Video Relay Service Interoperability.

In its presentation Sorenson reiterated its previous position that it opposes any requirements that would regulate its Video Relay Service (“VRS”) equipment and business design. Sorenson offers certain video equipment, the VP-100, to consumers free of charge but conditioned on an exclusivity arrangement whereby customers must agree to allow Sorenson to block outgoing calls to non-Sorenson VRS providers as a pre-requisite to accepting the equipment. In other words, VP-100 users must exclusively use Sorenson’s service when using the equipment. The VP-100 is attractive to consumers because it is free and has a number of features that are not available with other video conferencing equipment on the market.

Sorenson argues that regulation of VRS hardware and software is contrary to the interests of the deaf community. As member organizations of the deaf and hard of hearing communities whose leadership comes from the deaf and hard of hearing communities, the Consumer Organizations find it disturbing that Sorenson presumptuously speaks for the deaf and hard of hearing communities. Sorenson does not have any people who are deaf or hard of hearing in any corporate leadership position. Sorenson’s arguments are particularly disturbing to the Consumer

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<sup>3</sup> Established in 1880, NAD is the nation's oldest and largest nonprofit organization safeguarding the accessibility and civil rights of 28 million deaf and hard of hearing Americans across a broad range of areas including education, employment, health care, and telecommunications. Primary areas of focus include grassroots advocacy and empowerment, policy development and research, legal assistance, captioned media, information and publications, and youth leadership.

<sup>4</sup> Formed in Chicago, Illinois in 1987, ALDA works collaboratively with other organizations around the world serving the needs of late-deafened people. Through its chapters and groups around the country, ALDA promotes public and private programs designed to alleviate the problems of late-deafness and for reintegrating late-deafened adults into all aspects of society. ALDA also provides educational information concerning issues affecting late-deafened adults, as well as advocacy on behalf of, and support for, late-deafened adults and their families and friends.

<sup>5</sup> DHHCAN, established in 1993, serves as the national coalition of organizations representing the interests of deaf and/or hard of hearing citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. DHHCAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

<sup>6</sup> *Regulating VRS Hardware and Software is Contrary to the Intent of Section 225 and to the Interests of the Deaf Community: A Presentation by Sorenson Communications, Inc.*, CG Docket No. 03-123, January 6, 2006.

Organizations because Sorenson has made its arguments knowing that the deaf and hard of hearing communities are nearly unanimous in objecting to Sorenson's business practices.

As discussed below, Sorenson's exclusionary marketing strategy has resulted in a system that is not functionally equivalent to traditional voice services and thus violates the functional equivalency mandate of the American's with Disabilities Act of 1990 (the "ADA").<sup>7</sup> This is consistent with Sorenson's past positions, where it has consistently opposed essential functional equivalency requirements. For example, Sorenson opposed requirements for the provision of VRS on a 24 hours a day, seven days a week basis. Sorenson initially opposed average speed of answer requirements, and when, after realizing that the Commission was about to adopt an average speed of answer requirement, supported a ten minute average speed of answer for VRS. Clearly, a ten minute average speed of answer time, which does not even approach functional equivalency, was in reality a back door approach to advocating no average speed of answer requirement.

In addition, the imposition of exclusive service agreements associated with the distribution of equipment is anti-competitive. By allowing a VRS provider to block outgoing calls to other service providers, while allowing that same provider to collect compensation for VRS from the interstate TRS fund, the FCC is condoning and supporting these restrictive practices and contributing to the creation and success of a VRS monopoly to the detriment of consumer choice.

We must not lose sight of the fact that VRS is funded pursuant to the ADA, which is a civil rights statute. As the Commission has stated, the provision of relay services is "an accommodation that is required of telecommunications providers, just as other accommodations for persons with disabilities are required by the ADA of businesses and local and state governments."<sup>8</sup> As a result, Sorenson's arguments against regulation must take a secondary position to the civil rights purposes of the ADA and the needs of the deaf and hard of hearing communities who are the intended beneficiaries of the ADA.

It is not surprising that in order to compete, another VRS service provider apparently has found it necessary to follow Sorenson's lead in entering into agreements with consumers that block outgoing calls to other VRS providers. It is the understanding of the Consumer Organizations that Hands On Video Relay Service ("Hands On") is now offering an Internet access subsidy to VRS consumers willing to let Hands On configure their devices so that all outgoing VRS calls are routed to Hands On and are blocked from being routed to other VRS providers.

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<sup>7</sup> Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990), adding Section 225 to the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 225.

<sup>8</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket Nos. 90-571 & 98-67, CG Docket No. 03-123, FCC 04-137, 19 FCC Rcd. 12475 at ¶ 182 n.521 (2004).

Both Sorenson and Hands On are restricting free consumer choice within the VRS market. Due to the limited number of interpreters available to the entire VRS system, any restriction on consumer ability to reach VRS providers severely undermines the ability of VRS users to efficiently and effectively place calls. Furthermore, although Sorenson may be belatedly trying to reduce the risks to its customers that its blocking has caused, the risks remain and should never have been allowed to exist in the first place. Hands On customers participating in its subsidy program would also appear to be at risk. VRS is a publicly funded program, and as such any attempts to restrict the ability of consumers to select the VRS provider of their choice must not be tolerated. For this reason, the Consumer Organizations urge the Commission to prohibit the blocking of outgoing VRS calls.

**I. It is Unlawful to Block Outgoing VRS Calls.**

Any attempt by a VRS provider to block calls violates the principles of functional equivalency. Sorenson offers its unique and attractive VP-100 free to consumers but on the condition that it be used exclusively with Sorenson service. Sorenson blocks outgoing calls by configuring the equipment in such a way that if a customer attempts to use his or her VP-100 to access another VRS provider such an attempt is blocked. This leaves Sorenson customers illegally trapped into dependence on Sorenson service, regardless of the wait times they may endure or level of customer service they experience in using Sorenson. This restriction on consumer choice is contrary to the purpose and intent behind the ADA and must not be tolerated.

Sorenson argues that its practice is not unlawful because customers are free to use competing VRS providers if they obtain a second piece of VRS hardware to access the competing providers. This suggestion is both unduly burdensome and impractical and thus completely ineffective. First, it is burdensome on consumers who are deaf or hard of hearing to obtain a second VRS device. Second, having two pieces of VRS equipment interferes with receiving incoming calls because only one device can be hooked up to the Internet at a time, and each device has its own unique identifier. Thus, unless informed ahead of time, a caller would not know which device to call. If the caller picked the device that was not hooked up at the time of the call, the call would not go through. As a result, there would be missed calls, which is clearly contrary to the functional equivalency requirement of Section 225 of the Act. What Sorenson is advocating for people who are deaf or hard of hearing is the equivalent of hearing people being required to have two or more separate telephones with different telephone numbers in their homes, but having only one telephone hooked up to the telephone network at a time. Just as this would be a ludicrous idea for hearing people, it is equally ludicrous for people who are deaf or hard of hearing.

## **II. It is Unlawful for Sorenson to Use its Market Power Over the VP-100 Hardware to Gain Market Dominance Over VRS.**

As discussed above, Sorenson provides the VP-100 for free to consumers and requires, as a condition to accepting the equipment, that it be utilized only with Sorenson's service and may not be used to access any other VRS provider. Sorenson does not provide the option of purchasing the equipment independently of its service and allowing customers who purchase the VP-100 to access other VRS providers. This practice, which effectively prevents consumers with Sorenson VP-100s from choosing the VRS service provider of their choice when initiating a call, also results in an inefficient utilization of available VRS interpreters. Specifically, as a result of the limited number of VRS interpreters, consumers with Sorenson VP-100s are deprived of the opportunity to select a VRS provider that may have an available interpreter at a time when all Sorenson interpreters may be busy.

As CCASDHH and others have pointed out in their filings, Sorenson customers dependent upon the VP-100 are at unnecessary risk in trying to place emergency calls or calls made during times of a major disaster. This can include the additional risk that a VRS provider's operations can be interrupted by an emergency or disaster, and as a result of blocking, the consumer would be left with no other option for placing the emergency call. Sorenson's response is that it is working out ways to ameliorate the situation.<sup>9</sup> We do not know if these efforts will reduce the risks to its customers and, in any event, the FCC should take action to prevent any VRS provider from purposely establishing any VRS program or feature that would put customers at *any* increased risk of harm.

Sorenson's marketing scheme, that makes its VP-100 available only when used with Sorenson service, represents a classic antitrust tying arrangement situation similar to that presented in *United States v. Microsoft*, 87 F. Supp. 2d 30 (D.D.C. 2000). The central issue in the Microsoft case revolved around whether Microsoft was allowed to bundle its Internet Explorer web browser software with its Microsoft Windows operating system. It was alleged that this unfairly restricted the market for competing companies, as Microsoft was able to use its dominant position in the operating system market to dominate the web browser market by tying the operating system and web browser together. The case was eventually resolved by an agreement by which Microsoft was required to share its application program interface with third-party companies so as not to create unfair dominance within the web browser market.

Sorenson has clearly established itself as the dominant service provider within the VRS market. Sorenson achieved that dominance by unfairly requiring those who obtained the VP-100 to use it only with Sorenson's service and blocking its use to access competing VRS providers. The VP-100 is a unique and attractive product with features not available from other VRS devices on the market. Even the i2eye, which is manufactured by D-Link under license from

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<sup>9</sup> Sorenson also claims that it has taken a leadership role in addressing emergency access issues. In reality, Sorenson has not even come to the discussion table, while the Consumer Organizations have been working for an extended period of time with the Commission, the Department of Homeland Security and the Congress on emergency access for the deaf and hard of hearing communities.

Sorenson, does not have all of the enhancements available with the VP-100. Because the VP-100 is so attractive, and Sorenson offers it for free to people who are deaf and hard of hearing, a majority of VRS users quickly adopted it, and these same customers were then forced to use Sorenson's VRS service if they wanted to use the VP-100. This resulted in Sorenson dominating both the VRS equipment and service markets. Without regulatory intervention, this market dominance will continue. The Commission ought to require that the VP-100 be provided for free or sold at competitive prices to customers independently of Sorenson's VRS service. Consumers must have the freedom to choose both their service provider and hardware and not be restricted to a service provider as a result of their hardware choice.

Contrary to Sorenson's assertions, regulation will not stifle innovation in the market. Currently, Sorenson's monopolistic tying arrangement between its hardware and service is leading to less competition within the VRS market. With less competition comes less incentive to create more advanced products or improve service quality as consumers are trapped into using the service bundled with the hardware provided to them. On the other hand, if there were an opportunity to obtain the VP-100 without being tied into Sorenson's VRS service, there would be a real opportunity for the VRS providers to compete on quality of service, thereby driving the need for service innovations.

Many of Sorenson's arguments revolve around its position that VRS is a developing business market and as such should not be subject to the regulations inherent in other communications service markets. VRS now handles over three million minutes of calls per month, and Sorenson is currently dominating the market. It is estimated that Sorenson's market share is approximately 70 percent or higher. Thus, the market appears to be far from infancy despite Sorenson's assertions to the contrary. Furthermore, as VRS services are federally funded, with the policy of promoting the communications needs of the deaf and hard-of-hearing communities, an appropriate regulatory framework needs to be established by the FCC before Sorenson's market dominance works to the ultimate detriment of those who are meant to benefit from the federal funds.

### **III. Commission Action is Required Now as Other VRS Providers are also Blocking Calls.**

Recently, and clearly in response to the effectiveness of Sorenson's marketing scheme, it appears that another VRS competitor, Hands On, has begun to offer customers a distinct system in which calls are routed to its relay service regardless of which provider the customer actually chooses. It is the understanding of the Consumer Organizations that Hands On offers a \$30 per month Internet access subsidy to consumers who are willing to let Hands On configure their devices so that all outgoing VRS calls go directly to Hands On and all calls to other VRS providers are blocked.

To similar effect as Sorenson's program, Hands On requires customers accepting the Internet access subsidy only one choice in service provider. Even if a consumer attempts to utilize another provider, the call to that provider is apparently blocked and sent to Hands On. This requires consumers to wait for a Hands On interpreter to become available. Again, as previously noted, the number of interpreters available to VRS users is extremely limited, and any effort to restrict the use of this pool stifles the ability of VRS users to effectively and efficiently

communicate with other individuals. Furthermore, these blocking techniques are contrary to Commission policy and leave consumers without a choice regardless of the sufficiency of service they are receiving. In its January 26, 2005 Public Notice, the Commission stated:

The TRS rules do not require a consumer to choose or use only one VRS (or TRS) provider. A consumer may use one of several VRS providers available on the Internet or through VRS service hardware that attaches to a television. Therefore, VRS consumers cannot be placed under any obligation to use only one VRS provider's service, and the fact that they may have accepted VRS equipment from one provider does not mean that they cannot use another VRS provider via other equipment they may have.<sup>10</sup>

Because the consumers who accept the Internet subsidy from Hands On cannot access other VRS providers even if they had a second VRS device, this arrangement by Hands On is contrary to the Public Notice. The Consumer Organizations therefore urge the Commission to take swift action and regulate any and all blocking attempts within the VRS market. Much like voice users have the ability to use their hardware with any service provider they choose, so should the deaf and hard-of-hearing communities. To restrict consumer access violates the standard of functional equivalency that must be met with respect to VRS service.

#### **IV. Conclusion**

For the reasons stated herein and in their previous comments to the Commission, the Consumer Organizations respectfully request that the Commission grant CCASDHH's Petition for Declaratory Ruling on Video Relay Service Interoperability and require all providers of Video Relay Services to offer interoperable Video Relay Services. Specifically, the Consumer Organizations urge the Commission to prohibit blocking activities that are occurring within the VRS market including anticompetitive tying arrangements between VRS equipment and VRS service.

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<sup>10</sup> Federal Communications Commission Clarifies that Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices are Improper and Reminds that Video Relay Service (VRS) May Not be Used as a Video Remote Interpreting Service, Public Notice DA 05-141, CC Docket No. 98-67, CG Docket No. 03-123, released January 26, 2005, at 3.

Respectfully Submitted,

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/S/

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