Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	))))	CG Docket No. 03-123

COMMENTS OF SORENSON COMMUNICATIONS, INC.

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Sorenson Communications, Inc. ("Sorenson") submits these Comments in response to the Public Notices[1] released in the above-captioned proceeding, in which the Federal Communications Commission ("Commission" or "FCC") seeks comment on the interstate telecommunications relay services ("TRS") fund payment formula and fund size estimate submitted to the FCC by the National Exchange Carrier Association ("NECA") on May 1, 2006.

I. INTRODUCTION

Video Relay Service ("VRS") is the only technology that enables deaf, hard-of-hearing, and speech-disabled persons to communicate in their own language, American Sign Language ("ASL"), when communicating "by wire or radio."[2] Therefore, it is the

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1 "National Exchange Carrier Association (NECA) Submits the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services (TRS) Fund for the July 2006 Through June 2007 Fund Year," Public Notice, CG Docket No. 03-123, DA 06-970 (May 2, 2006); "National Exchange Carrier Association (NECA) Submits the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services (TRS) Fund for the July 2006 Through June 2007 Fund Year," Public Notice, CG Docket No. 03-123, DA 06-1031 (May 12, 2006).

2 47 U.S.C. § 225(a)(3).

ideal technology to fulfill the "functional equivalency" requirement of the Americans with Disabilities Act ("ADA") for deaf Americans who sign. NECA, however, has proposed to slash the reimbursement rate for this vital service by nearly 8 percent from the rate the FCC approved as reasonable for the current rate year of 2005-06. (It is therefore no surprise that NECA also proposes to reduce the amount collected to fund TRS by more than $53 million from the amount collected in 2005-06, despite the fact that demand for Video Relay Service has increased substantially.) The proposed reduction in reimbursement per minute – from the current rate of $6.644 per minute to $6.138 – undercuts the explicit mandates of the ADA and the Communications Act, and this Commission's repeated statements that access to Video Relay Service should be extended to all deaf Americans. Less than 10 percent of all deaf Americans currently have VRS access – this is the lowest penetration rate for vital communications services of any community in America. Moreover, cutting the compensation rate for Video Relay Service is on its face illogical, given that providers reasonably expect to incur higher costs because of interoperability, reduced hold times, new services, and inflation. Finally, NECA's proposed Video Relay Service rate is unreasonably low because it is based on an unsound methodology and is the result of a defective process. Therefore the Commission should instead collect the same amount as last year for TRS, and increase funding per minute for VRS to a reasonable level, which Sorenson has estimated is approximately $7.073.

II. SUMMARY

The Commission established the Interstate TRS Fund pursuant to its statutory duty under Title IV of the ADA and section 225 of the Communications Act of 1934, as amended ("Act"), which require the Commission to ensure that individuals who are deaf, hard-of-hearing, or speech-disabled receive access to the same level of high-quality communications service as that long enjoyed by their hearing compatriots. Specifically, section 225 directs the FCC to ensure, "to the extent possible," that 100 percent of deaf, hard-of-hearing, and speech-disabled persons have access to telecommunications relay services that are "functionally equivalent" to the phone services used by hearing persons.[3] Earlier this month, the Chairman and three Commissioners supported the principle that *all* deaf Americans deserve access to communications technology that lets them participate in American society.[4] Congress adopted the civil rights requirements of the ADA in 1990 in order to achieve a simple and laudable goal that was long overdue: to facilitate the integration of people who are deaf or hard-of-hearing into the mainstream of society, to the benefit of all Americans. As Congress recognized, equal access to communications is critical to this effort: without functionally equivalent services, deaf individuals often cannot communicate with friends, neighbors, family members, or

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3 47 U.S.C. § 225(a)(3) & (b)(1).

4 *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Further Notice of Proposed Rulemaking, CG Docket No. 03-123, FCC 06-57 (rel. May 9, 2006) ("*VRS Interoperability Order*"), Statement of Chairman Kevin J. Martin, at 32 ("[T]he Commission's work [is] to ensure that all Americans have full access to communications and emergency services.") ("*Martin Statement*"); Statement of Commissioner Deborah Taylor Tate, at 35 ("I hope to do as much as possible to keep all Americans connected to vital information, whether in everyday life or in an emergency."); Statement of Commissioner Michael J. Copps, at 33 ("The Americans with Disabilities Act charges the Commission with doing everything we can to ensure that people with disabilities have access to functionally equivalent services."); Statement of Commissioner Jonathan S. Adelstein, at 34 ("I'm glad that we take another step toward ensuring that every person who is deaf or hard of hearing will have access to a dial tone and the critical link to the rest of the world," and "I look forward to . . . continu[ing] to work towards the ADA's enduring standard of accessibility and functional equivalency for all Americans.") ("*Adelstein Statement*").

employers, or undertake such critical tasks as making a doctor's appointment or readily obtaining access to emergency services – abilities most hearing people take for granted.[5]

Although Video Relay Service is still in its infancy – having been offered for less than five years – it already has dramatically improved the quality of life of tens of thousands of ASL users, freeing them from the keyboards they were forced to use as part of traditional TRS and instead permitting them to communicate in their own language with a rapidity, nuance, and fluency that rivals that of spoken English.[6] ASL users who communicate via Video Relay Service thus enjoy the greatest degree of functional equivalency available today. With the advent of Video Relay Service, it is now possible for all deaf and hard-of-hearing individuals to have access to statutorily-prescribed functionally equivalent relay services. There is, therefore, no excuse for failing to achieve 100 percent accessibility by the end of this decade.

ASL users, however, cannot benefit from Video Relay Service unless they are informed about its existence, capabilities and benefits, and much work remains to be done in this area. In terms of access to communications services, deaf Americans remain

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5 *See* Letter from Telecommunications for the Deaf and Hard of Hearing, National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, and California Coalition of Agencies Serving the Deaf and Hard of Hearing, to Monica Desai, FCC, CG Docket No. 03-123 (April 28, 2006); *VRS Interoperability Order* ¶¶ 3-4 & nn.13, 17 (citing legislative history of the ADA).

6 *See Martin Statement* (Video Relay Service has had a "huge positive impact . . . on the lives of so many Americans"); *Adelstein Statement* ("VRS more vividly conveys emotions than traditional relay services," and "opens a world of new communications opportunities for many"); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration, 20 FCC Rcd 13140, ¶ 11 (2005) ("the grammar and syntax of ASL are different from English"); Wikipedia, "American Sign Language," *available at*: <http://en.wikipedia.org/wiki/American_sign_language> (ASL is its own language, and is characterized by a number of features, including a unique grammar and syntax, that distinguish it from speech).

the most poorly served community in the United States. For example, Video Relay Service is currently not accessible to *over 90 percent* of ASL users, many of whom are not even aware that the service exists.[7] Under the ADA, all ASL users are entitled to access to Video Relay Service at home, at work, and in libraries, post offices, and schools – everywhere that hearing people have access to telephone service. Anything short of the goal of 100 percent penetration is contrary to the law and sound public policy. Under the ADA, therefore, the Commission is obligated to encourage providers to undertake reasonable outreach efforts to extend Video Relay Service to new users while still providing high-quality service to existing users. Indeed, the Chairman and all three sitting Commissioners have recently stated that access to Video Relay Service for 100 percent of the deaf community isn't simply desirable – it is a national duty, as set forth in the ADA, the Act, and the Commission's orders.[8]

To encourage the continued deployment of Video Relay Service and increased awareness among deaf as well as hearing Americans,[9] the Commission must establish a

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7 Not only is the 10 percent penetration of VRS among ASL users dramatically lower than the percentage of the hearing population that has access to traditional telephone service (approximately 93 percent nationwide), it is far lower even than the 46.6 percent overall telephone penetration rate on all tribal lands that caused the Commission to be so "particularly concerned" that it launched a series of initiatives to address "the unique issues that may limit telecommunications deployment and subscribership . . . on tribal lands." *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, ¶¶ 5, 6, & 9 (1999); *see also Extending Wireless Telecommunications Services to Tribal Lands*, Notice of Proposed Rulemaking, 14 FCC Rcd 13679 (1999). Even the most poorly served Native American population recently addressed by the FCC – the Eastern Navajo Agency – has a penetration rate more than triple that of deaf ASL users. *See infra* pp. 17-18.

8 *See supra* note 4; *see also, e.g., VRS Interoperability Order* ¶¶ 3-4 & nn.13, 17.

9 Even ASL users with access to Video Relay Services continue to be frustrated in communicating with hearing individuals because the latter frequently are not aware of

fair compensation rate for Video Relay Service providers. This reimbursement rate must cover all costs reasonably associated with interpreting between ASL and spoken languages, including the costs of promoting access to Video Relay Service and funding the provision of this important service to all deaf ASL users. The rate proposed by NECA falls far short of meeting this basic requirement.

As explained in detail in the attached Declaration of Commissioner Cheryl Parrino, NECA arrived at its proposed rate of $6.138 per minute by taking providers' projected costs and making two types of adjustments, both of which are erroneous. First, NECA excluded all marketing costs projected by providers, as well as a significant portion of Sorenson's outreach costs. These exclusions are contrary to the ADA and the costs must be reinstated. Second, NECA increased projected demand, but failed to increase projected costs, or did not increase costs proportionately. It was completely unreasonable for NECA to cut the marketing and outreach activities that are necessary to increase penetration of the service and simultaneously project increased demand. In addition, the increased demand projected by NECA would result in a proportionate increase in projected costs, which NECA failed to recognize. Commissioner Parrino estimates that the effect of correcting these erroneous adjustments would be the addition of $0.935 per minute to the rate proposed by NECA, resulting in a revised per-minute

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VRS. As a consequence, VRS users experience a high incidence of hang-ups when placing calls to hearing persons. As the Commission has recognized, "the lack of public awareness [regarding TRS] prevents TRS from achieving th[e] Congressionally mandated objective" of "bridg[ing] the gap between people with hearing and speech disabilities and people without such disabilities with respect to telecommunications services." *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, ¶ 105 (2000) ("*2000 Improved TRS Order*").

rate of $7.073. This is the rate the FCC should adopt in order to cover industry costs for 2006-07 and encourage operators to meet the national duty to provide VRS to all deaf Americans.

NECA's proposal to lower the Video Relay Service reimbursement rate for a rate year in which FCC-imposed requirements will raise providers' costs undermines the goals of the ADA and flies in the face of the Commission's efforts to devise a cost-recovery system designed to encourage providers to fulfill the ADA's mandates. Specifically, the Commission has chosen to foster access to Video Relay Service and improvement in service quality by adopting rules that encourage multiple providers to compete for potential users, and reimbursing all providers at a single per-minute rate designed to allow a hypothetical reasonably efficient provider to recover its costs – including the costs of identifying ASL users and educating them about the benefits of Video Relay Services (*i.e.*, outreach). This paradigm creates the proper incentives for providers: inefficient providers are encouraged to lower their costs, efficient providers are encouraged to keep their costs down, and both are encouraged to continue to look for ways to improve the quality of their service in order to enhance the appeal of their service to deaf Americans. As a result, ASL users today have a choice among several VRS providers, each of which has a strong incentive to provide the highest quality service at the lowest cost.

For the 2006-07 rate year, however, NECA has proposed an unexplained and unreasonable departure from the FCC's established paradigm. Instead of developing a weighted average of the forecasted costs submitted by the various providers, NECA appears to have adjusted the input costs of providers without a clear and reasoned explanation for those adjustments.[10] For example, NECA apparently excluded all marketing costs and a substantial portion of the costs of outreach/educational activities, despite the fact that the Commission has allowed the recovery of marketing costs in prior years, made no change to the rules regarding permissible compensable costs for the current rate year, and, as noted, has explicitly recognized the vital role of educational efforts in fulfilling its statutory mandate. Similarly, NECA appears to have adjusted upward the forecasted Video Relay Service demand for the rate year without also adjusting upward all of the costs of service that are likely to increase as demand increases. Further, as noted above, NECA appears to have given little weight to the fact that requirements imposed by the Commission to improve service quality that will take effect during the rate year are likely to cause the per-minute costs of VRS providers to rise.

Last year, NECA proposed a rate based on a weighted average of all providers' costs. The FCC adjusted the proposed rate upward, choosing to promote competition for Video Relay Service by adopting a rate based on the median, rather than the average costs. The Commission's actions created additional incentives for providers to enter the industry and compete for new and existing users.[11] This year, the FCC must once again adjust NECA's proposed rate if it wants to ensure robust competition among Video Relay Service providers. Indeed, the use of methodologies that vary significantly from year to

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[10] In addition, NECA appears to have examined each category of costs in isolation, ignoring the differences in providers' business plans. Not only does this prevent providers from differentiating themselves – thereby undermining the FCC's decision to promote VRS through competition – it also creates false outliers by ignoring differences in business plans.

[11] For example, during the past year new providers such as SNAP Telecommunications, Inc. and Healinc Telecom, LLC have applied for certification as VRS providers.

year leads to massive uncertainty and makes it difficult for providers to invest in long-term improvements in their service. One place where NECA's under-funding and lack of rate stability is likely to have a strong adverse effect is on the recruiting and training of interpreters. Depriving providers of the funds needed to attract and retain these key employees is likely to lead to a significant increase in overall costs in future years as providers scramble to find interpreters to keep up with increased demand for Video Relay Service. Lack of adequate and predictable funding also would deter providers from making other important investments, such as developing 911 solutions and making other improvements in technology.

NECA's decision to propose a lower reimbursement rate is even more puzzling given that providing adequate funding for interstate TRS and a reasonable rate for Video Relay Service providers for the 2006-07 rate year would result in a fund size – and assessment – that are approximately the same as last year's. Specifically, if the FCC approved a rate of $7.073, the effect would be to require an Interstate TRS Fund of approximately $478 million, an increase of only about 8 percent from the current rate year, assuming NECA's forecast of rate year demand is reliable. Moreover, given NECA's projected surplus from the 2005-06 rate year, NECA would need to collect only $438 million for the upcoming rate year. This level of funding would translate into a contribution factor of approximately of 0.00559, slightly above NECA's proposed factor of 0.00494, but still less than the 0.00564 that the Commission approved last year.[12]

[12] Even if the amount needed to ensure reasonable reimbursement required an increase in the contribution factor, neither NECA nor the FCC would have the discretion to lower the rate simply to keep the Fund size down. The ADA requires sufficient funding to meet the need, and does not include any cap on the contribution factor.

As described above, and explained in more detail below, NECA's proposal inexplicably ignores the clear mandate of the ADA – not to mention the apparent support of all the current Commissioners – for the promotion, deployment and provision of Video Relay Service. Instead, NECA has proposed a reimbursement rate that fails to cover the costs VRS providers reasonably expect to incur during the coming rate year as part of their efforts to satisfy the obligation to provide high-quality Video Relay Service to as many deaf ASL users as possible. In addition, NECA has sent a strongly negative signal to the deaf community by proposing to reduce the overall interstate TRS funding requirement for the upcoming 2006-07 rate year by approximately $12 million and the amount collected from telecommunications service providers during the rate year by approximately $54 million. NECA's submission does not offer a reasoned explanation for proposing to reduce the Video Relay Service rate during a period when newly imposed Commission requirements regarding "speed of answer" and interoperability, as well as the rising costs of recruiting and retaining qualified interpreters and inflation will increase the cost of providing Video Relay Service. For the reasons explained below, the Commission should reject NECA's proposed reductions, maintain funding for interstate TRS at the current level, and prescribe a Video Relay Service rate of $7.073 per minute for the 2006-07 rate year. This rate will reimburse providers for their reasonable costs of providing service.

III. DISCUSSION

The process NECA followed in formulating its proposal is deeply flawed and the resulting reimbursement rate proposed by NECA is unacceptable. As explained below, the FCC would violate the Administrative Procedure Act ("APA") if it were to rely on that process. Moreover, this failure of process, if ratified by the FCC, would result in substantive harms, including the disallowance of key costs, such as the costs of marketing and outreach, that relate to functions necessary to fulfill the ADA.

The fundamental error in NECA's proposal is clear on its face: NECA has proposed a per-minute reimbursement rate for VRS that is lower than the current rate, despite the fact that increased regulatory requirements, along with other factors, indisputably drive up the cost of providing this important service. It defies logic – and the requirements of the ADA – to lower the reimbursement rate in the face of increasing costs. This problem is exacerbated by NECA's failure to account correctly for the effect that increased demand will have on many categories of costs.

NECA's approach is not only wrong, it is also shortsighted. NECA's proposal fails to provide adequate reimbursement. Adopting NECA's proposed rate therefore would deter providers from investing in the human capital and technology required to provide functionally equivalent Video Relay Service – a result that is clearly contrary to the ADA.

The FCC cannot adopt NECA's proposal. Instead, the Commission must adjust the rate to ensure that VRS providers are compensated for the reasonable costs they will incur in providing service at a level that meets the requirements of the ADA and fulfills the Congressional mandate for outreach and education.

A. If the FCC Were to Rely on NECA's Process, It Would Violate the APA

In accordance with the FCC's rules, NECA previously has arrived at a recommended VRS rate by taking each provider's reasonable compensable costs and averaging them to arrive at a "reasonable" per-minute rate.[13] For the 2006-07 year, NECA has abruptly changed course and disallowed entire categories of costs submitted by Sorenson and other providers – costs that had previously been deemed to be both compensable and reasonable (including, as explained below, costs associated with marketing and outreach). If the FCC were to adopt a VRS rate that is based on this unsound new methodology, it would violate the APA in at least three ways.

First, adopting the new definitions of marketing and outreach proposed by NECA would violate the notice-and-comment requirements of the APA.[14] In its May 1, 2006 filing, NECA for the first time has proposed to treat "outreach" and "marketing" costs differently for purposes of determining the reimbursement rate. Although NECA traditionally has instructed TRS providers to distinguish between "marketing" expenses and "outreach" expenses in their annual NECA filings, NECA's instructions have defined – and continue to define – the two types of activities in a manner that renders them essentially indistinguishable.[15] Consistent with NECA's instructions, Sorenson has separate Marketing and Outreach departments within the company, but those groups work in tandem to achieve the same general purpose: to plan and execute events to

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13 47 C.F.R. § 64.604(c)(5)(iii)(E). Last year, for example, NECA "accepted all providers' costs except for one unique item." Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, attached to letter from John Ricker, NECA, to Marlene H. Dortch, FCC, CC Docket No. 98-67 (Apr. 25, 2005), at 16 ("2005 NECA Filing"). Even in that case, "the provider accepted NECA's decision." *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 20 FCC Rcd 12237, ¶ 1 n.2 (2005).

14 5 U.S.C. § 553.

15 *Cf.* NECA's Relay Services Data Request Instructions for 2006-07 at 4 (defining "marketing/advertising" as "expenses associated with promoting TRS services within the community")*, with id.* (defining "outreach" as "expense of programs to educate the public on TRS"); *available at*: <http://www.neca.org/media/M200607DataCollection Instructions.DOC>.

promote VRS and IP Relay, to educate the public about these important services, and to recruit interpreters. Sorenson's Marketing department plans, promotes, and organizes each event, while the Outreach division staffs the events and follows up on customer requests for VRS and IP Relay services.

Now, NECA – for the first time and without warning – appears to have a new basis for distinguishing between outreach and marketing: "outreach" is now described as "inform[ing] the user community of the availability of TRS capability," while "marketing" is described as promoting the provider's "own TRS services."[16] Armed with this new distinction, NECA proposes that the FCC disallow all "marketing" expenses in adopting the 2006-07 VRS rate, even though in prior years it allowed all reasonable marketing expenses, as well as all reasonable outreach expenses.[17] Providers did not have prior notice of this distinction (or an opportunity to comment on it) when they submitted their data to NECA for the 2006-07 funding year. As such, the reported costs of Sorenson are not allocated between marketing and outreach based on these new distinctions, and this is likely to be true for other providers as well. It would violate the

[16] Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, attached to letter from John Ricker, NECA, to Marlene H. Dortch, FCC, CG Docket No. 03-123, at 8 (May 1, 2006) ("2006 NECA Filing"). This new distinction is not reflected, however, in NECA's Relay Services Data Request Instructions, which are attached to the 2006 NECA Filing as Appendix A. Instead, those instructions continue to define "marketing/advertising" and "outreach" in the same manner as in prior years, suggesting that the two activities are identical.

[17] NECA does not explain this recommendation, other than to state, "It is our understanding that costs of providers marketing their own TRS services are not includable in the [reimbursement] formulas." 2006 NECA Filing at 8. It is worth noting, however, that often, the best way to demonstrate the functionalities of VRS is for a provider to demonstrate its service. This demonstration is made using a particular provider's service, but it serves to promote VRS generally.

APA for the FCC to rely on this newly minted distinction as a basis for disallowing an entire category of costs (marketing) that were previously allowed.

If the FCC were to adopt the VRS rate or underlying methodology proposed by NECA, it also would be acting in a manner that is "arbitrary, capricious, . . . or otherwise not in accordance with law," in further violation of the APA.[18] The NECA process is patently arbitrary and capricious. As explained above, NECA has announced critical new definitions without prior notice or subsequent explanation. The arbitrariness of this fiat is compounded by the fact that the NECA rate-recommendation process lacks transparency and (at least this year) was not subject to input from the TRS Advisory Council, which was established to ensure that NECA decisions avoid the appearance of bias by taking into account the varied views of providers, contributors, and users.[19] The opaque nature of the NECA process has carried over into the FCC's own comment process: the May 1, 2006 NECA filing does not clearly explain the method NECA used to arrive at recommended rates. This lack of information threatens the integrity of the Commission's process, by making it difficult, if not impossible, to file fully-informed comments on NECA's proposal given the lack of access to the critical data that NECA has continued to withhold.

NECA has also changed course by taking a weighted average of each category of costs, rather than simply taking a weighted average of each provider's total costs for all categories.[20] Not only is this change in methodology inconsistent with prior practice, it

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[18] 5 U.S.C. § 706(2)(A).

[19] NECA even failed to follow the schedule it established at last year's TRS Advisory Council meeting.

[20] *See* 2006 NECA Filing at 9.

also skews the final rate by failing to account for variances in different providers' business models. For example, one provider may focus its efforts on outreach as a way of improving its service; another provider may choose to expend less on outreach but more on another cost category that it believes is likely to help differentiate or improve its service. The fact that only one provider chose to incur substantial costs in a particular category does not create an unreasonable outlier that must be disallowed or reduced (as NECA appears to have assumed). Rather, it is an indication of how robust competition causes providers to seek to differentiate themselves through various investment strategies – the very result the Commission aimed to achieve when it opted for a competitive model for promoting VRS. To the extent the FCC relies on NECA's unsound process to arrive at a VRS reimbursement rate that fails to compensate providers for "reasonable" costs, it would be acting in an arbitrary and capricious manner, in violation of the APA.

If the FCC were to adopt the proposed rates, it also would be acting "otherwise not in accordance with law," giving rise to a third violation of the APA.[21] As explained below, the ADA mandates that 100 percent of ASL users have access to high-quality VRS that is "functionally equivalent" to the phone service available to hearing persons. Despite this mandate, NECA's process has yielded rates that are too low to ensure either 100 percent access or functional equivalency. Accordingly, relying on NECA's proposed methodology, or adopting the rate produced by that flawed methodology, would constitute ratification of a process that violates the ADA, and is therefore "not in accordance with law," in further contravention of the APA.

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[21] 5 U.S.C. § 706(2)(A).

As explained below, the broken NECA process has produced a proposed VRS rate that suffers from at least two substantive errors: (i) the proposed rate fails adequately to reimburse providers for the reasonable costs of marketing and outreach; and (ii) the proposed rate is based on a projected increase in VRS demand but fails to reimburse providers for reasonable costs that necessarily would increase in virtual lockstep with such new demand. If ratified by the Commission, these errors would violate Congress's intent that providers be reimbursed for all reasonable costs incurred in extending high-quality VRS to 100 percent of the deaf ASL population. In her attached declaration, Commissioner Parrino estimates that correcting these two substantive errors would require the FCC to increase the rate proposed by NECA by approximately $0.935, resulting in a VRS rate of $7.073 for the 2006-07 rate year.[22] At this rate, both the size of the Interstate TRS Fund and the total assessments paid by telecommunications carriers could remain approximately the same as last year.[23] The Commission should promptly correct the substantive errors that underlie the rate proposed by NECA for the 2006-07 rate year, and adopt a more predictable, transparent, and stable rate methodology well before providers must submit their estimated costs to NECA for the 2007-08 rate year.

The Commission has previously sought comment on proposed changes in the methodology used to determine the reimbursement rate for VRS, and the time has come to address this important issue.[24]

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22 Attached Declaration of Cheryl L. Parrino, ¶¶ 5, 36-44 ("Parrino Decl.").

23 *See* Summary, *supra* pp. 9-10.

24 *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, 19 FCC Rcd 12475, ¶¶ 234-240 (2004) (*"2004 TRS Order*").

B. NECA's Proposed Rate Does Not Adequately Reimburse VRS Providers for the Reasonable Costs of Marketing and Outreach

1. Outreach Is Critical to Fulfilling the Congressional Mandate that 100 Percent of ASL Users Have Access to VRS

Congress's paramount goal in enacting section 225 of the Act was to ensure that all deaf, hard-of-hearing, and speech-disabled persons have access to telecommunications relay services that are functionally equivalent to the voice services available to hearing persons. As Chairman Martin recently explained, "the Commission's work [is] to ensure that all Americans have full access to communications . . . services."[25] Nothing provides deaf ASL users with greater functional equivalency than VRS.[26] Therefore, it is critical that all deaf ASL users have access to VRS at home, at work, and in public locations – anywhere that a hearing person would be expected to have access to voice telephone services.[27]

Yet, less than 10 percent of ASL users currently have such access. This is far lower than the 93 percent of the hearing population that has access to traditional telephone service.[28] It is also significantly lower than even the most underserved segment of the hearing population recently addressed by the FCC – the Eastern Navajo

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25 *Martin Statement*; *see also*, *e.g.*, *VRS Interoperability Order* ¶ 3.

26 As Commissioner Adelstein recently noted, "VRS more vividly conveys emotion than traditional relay services" and "opens a world of new communications opportunities." *Adelstein Statement*; *see also VRS Interoperability Order* ¶ 11 (VRS "provides a degree of 'functional equivalency' that is not attainable with text-based TRS").

27 *See VRS Interoperability Order* ¶¶ 4-5 & nn.13, 17 (citing legislative history of ADA).

28 "FCC Releases New Telephone Subscribership Report," News Release (May 12, 2006), *available at*: <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-26535A1.pdf>.

Agency, which has a 33 percent telephone penetration rate.[29] In fact, the FCC has felt compelled to take action to promote deployment and increase subscribership even in communities where the penetration rate was as high as 85 percent.[30] As the Commission has recognized, "[g]iven the importance of telephone service in modern society, it is imperative that the Commission take swift and decisive action to promote the deployment of facilities to unserved and underserved areas and to provide the support necessary to increase subscribership in these areas."[31]

As the Commission has further recognized, achieving the goal of universal access to VRS depends on effective outreach to all segments of the public:

> It is crucial for everyone to be aware of the availability of TRS for it to offer the functional equivalence required by the statute. As Congress has stated, TRS was designed to help bridge the gap between people with hearing and speech disabilities and people without such disabilities with respect to telecommunications services. The lack of public awareness prevents TRS from achieving this Congressionally mandated objective.[32]

If the Commission were to cease reimbursing reasonable outreach and marketing costs incurred by providers, it would not only thwart the "mandated objective" of section

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[29] *Federal-State Joint Board On Universal Service; Smith Bagley, Inc., Petition for Waiver of Section 54.400(e) of the Commission's Rules*, Memorandum Opinion and Order, 20 FCC Rcd 7701, ¶ 11 (2005).

[30] *Extending Wireless Telecommunications Services to Tribal Lands*, Third Report and Order, 19 FCC Rcd 17652 (2004) (raising the telephone penetration rate at which tribal lands are eligible for a bidding credit from 70 percent or less to 85 percent or less).

[31] *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, ¶ 2 (1999).

[32] *2000 Improved TRS Order*, ¶ 105; *see also Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996*, Notice of Inquiry, 12 FCC Rcd 1152, ¶ 45 (1997) ("consumer education, training and outreach are essential to the success of TRS"); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Statement of Commissioner Michael J. Copps, 20 FCC Rcd 13195, 13207 (2005) ("There is the need always for more outreach and education" regarding TRS).

225 but also harm the public interest. As Congress made clear when it enacted the ADA, the nation's interest is best served by eliminating discrimination against *all* persons with "disabilities" in *all* facets of society, including access to the telephone system.[33] In adopting Title IV of the ADA, "Congress recognized that persons with hearing and speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services."[34] The advent of VRS promises to remove such barriers by allowing deaf persons, for the first time in history, to make phone calls in their own language, ASL. It would be a tragic mistake if the Commission were to thwart the availability of this new technology just as its promise is beginning to be realized. Yet that is precisely what will happen if the FCC disallows reimbursement for reasonable VRS outreach expenses.

VRS is still a relatively new technology. Without additional education, many deaf and hard-of-hearing individuals will not learn about this important service that allows ASL users to communicate with their family, friends, doctors, employers, governmental officials, and others in a manner that comes closest to being functionally equivalent to the voice service used by hearing individuals.[35] The need for outreach is particularly pressing for ASL users who live in rural areas, as explained below. Outreach also is needed to educate the hearing community about VRS and to ensure that hearing users accept calls from VRS users and are more willing to make calls to ASL users via

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[33] *See* 42 U.S.C. § 12101(b)(1); *2004 TRS Order* ¶ 3 n.17 (citing legislative history of ADA).

[34] *2004 TRS Order* ¶ 3.

[35] *See*, *e.g.*, *VRS Interoperability Order* ¶ 3 (quoting House Report).

VRS.[36] Finally, outreach affords VRS providers additional avenues to recruit interpreters – a result that is particularly welcome given the shortage of interpreters in today's market.[37]

None of the foregoing benefits will be realized, however, if the Commission fails to fund the reasonable costs of outreach. Instead, VRS is likely to stagnate and fall far short of its potential, leaving in place the barriers that Congress sought to eradicate with passage of the ADA. The Commission has a duty to avoid these results by adopting a VRS rate that reflects the full costs of reasonable outreach.

2. Sorenson's Outreach and Marketing Efforts Are Designed to Increase the Public's Awareness of VRS, in Furtherance of the Congressionally Mandated Goal of 100 Percent VRS Penetration

Sorenson has worked hard to increase public awareness in the manner required to achieve the goal of achieving 100 percent access to VRS for individuals who are deaf or hard-of-hearing, or who have speech disabilities. During the first years it provided VRS (from April 2003 through 2005), Sorenson planned and implemented a robust outreach campaign, focusing primarily on events in major cities with large deaf populations. These events enabled Sorenson to educate large groups of deaf consumers (typically, from 400 – 1000 people per event) about VRS and its capability to provide functionally equivalent service.

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36 *2004 TRS Order* ¶ 95 ("Those who rely on TRS for access to the nation's telephone system, and thereby for access to family, friends, businesses, and the like, gain little from the mandate of Title IV if persons receiving a TRS call do not understand what a relay call is and therefore do not take the call, or if persons desiring to call a person with a hearing or speech disability do not know that this can easily be accomplished through TRS"); *2000 Improved TRS Order* ¶ 104 ("Callers using a relay service experience an alarming number of hang-ups by people receiving the TRS call who are not familiar with" TRS).

37 *See* Section II.E *infra*.

Although Sorenson will continue to conduct outreach in large cities, potential users in those areas are, by now, more likely to be familiar with VRS. Accordingly, pursuant to its "Rural Initiative," Sorenson has begun and will continue to expand its outreach efforts to smaller cities as well as rural communities that now have access to high-speed Internet. Deaf persons living in these less populated areas are far less likely to be aware of VRS, even though many such persons – by virtue of their relative isolation – are precisely the ones who could most benefit from the unprecedented degree of functional equivalency that VRS makes possible.

The costs submitted by Sorenson are clearly needed to conduct effective outreach. By necessity, outreach is a labor-intensive and incremental process that must be largely conducted at a local level. It is very difficult for VRS providers to identify or locate ASL users. There is no database that lists deaf people or ASL users, nor is there any other standardized means of identifying them. Although several large-scale events are held each year that are well known to the deaf community, many ASL users do not (or cannot) attend those events. Accordingly, in order to reach out broadly to the deaf community, providers must sponsor and/or attend a number of events in different parts of the country that are reasonably likely to attract ASL users. Sorenson, for example, has budgeted to hold 400 outreach events in various parts of the country in 2006, with a particular focus on smaller urban and rural communities. These events will be varied in terms of their format, ranging from conferences to movies with captioning. Sorenson hopes to attract between 100 and 150 people to each event. In conducting such outreach, Sorenson expects to incur costs for the following items: promotional materials, as well as travel, lodging, and rental car for four Sorenson employees. These items are not only reasonable; they are necessary to the conduct of a successful outreach event.

3. NECA Has Unreasonably Proposed to Disallow All of Sorenson's Marketing Costs and Most of Its Outreach Costs

For each of the past years in which Sorenson received reimbursement from the Interstate TRS Fund, NECA and the FCC treated all of Sorenson's projected expenses for marketing and outreach as reasonable costs that should be reimbursed. And, in each of those years, the per-minute VRS rate approved by the FCC adequately compensated Sorenson and other reasonably efficient providers for the costs incurred in providing VRS, including the costs of providing outreach to the deaf community.

In light of this record, Sorenson was surprised to discover that for the 2006-07 rate year, NECA is recommending that the FCC disallow all of the costs Sorenson budgeted for Outreach Education. These costs – which, as explained above, were intended to fund educational efforts in rural and small urban communities – comprise more than half of Sorenson's entire outreach budget for 2006-07. NECA also recommended that the FCC disallow all of Sorenson's marketing costs.[38] NECA made these recommendations even though Sorenson's total projected outreach and marketing costs for 2006-07 reflect outreach activities that are similar to activities undertaken in prior years, with the sole exception that Sorenson is shifting its efforts to less densely populated areas, as explained above.[39]

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[38] 2006 NECA Filing at 18; Letter from John Ricker, NECA, to Cheryl Parrino, Parrino Strategic Consulting Group (May 2, 2006) (explaining that NECA disallowed all of Sorenson's marketing costs and all of its Outreach Education costs).

[39] As in prior years, Sorenson's projected costs submitted to NECA for 2006-07 do not even account for the costs Sorenson incurs to promote VRS usage by installing end

4. **The Reasonable Marketing and Outreach Efforts of Sorenson and Other Providers Must be Fully Funded**

Consistent with the statutory mandate of the ADA, the FCC has consistently recognized that marketing and outreach costs (as defined in the NECA Data Request Instructions) are compensable categories of costs. Accordingly, the VRS rates approved by the Commission in prior years have adequately funded all reasonable marketing and outreach efforts projected by providers. If the Commission were to depart from this practice by funding only a fraction of reasonable outreach costs, or refusing to fund any marketing costs, it would no longer be promoting VRS availability to new users "to the extent possible," as required by Congress.[40] Rather, the FCC would be limiting such availability to the extent it deemed appropriate. The Commission may not substitute its judgment for that of Congress without violating the express terms of section 225.

A failure to fund reasonable outreach costs also would violate the Commission's rules and prior practice. Section 64.604(c)(5)(iii)(E) entitles providers to receive reimbursement from the Interstate TRS Fund pursuant to formulas "designed to compensate TRS providers for reasonable costs of providing interstate TRS."[41] As the Commission has stated, "consumer education, training and outreach are essential to the success of TRS."[42] Accordingly, TRS providers should be reimbursed by the Interstate

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user VRS equipment (such as the VP-100 or VP-200) or training persons to use such equipment.

40 47 U.S.C. § 225(b)(1).

41 47 C.F.R. § 64.604(c)(5)(iii)(E).

42 *Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996*, Notice of Inquiry, 12 FCC Rcd 1152, ¶ 45 (1997).

TRS Fund for all "costs attributable to reasonable outreach efforts."[43] In the past, NECA and the FCC have treated outreach efforts as reasonable as long as the efforts were reasonably aimed at raising awareness of the existence and/or capabilities of one or more forms of TRS. NECA's most recent proposal, however, unlawfully deviates from established practice by excluding outreach costs that are not wasteful, fraudulent, abusive, or otherwise unreasonable.[44]

5. **Disallowing Reasonable Marketing and Outreach Costs Would Result in Concrete Harms to the Deaf Community**

If the FCC were, erroneously, to disallow reasonable marketing and outreach costs projected by providers, a number of unfortunate results would ensue. Sorenson, for instance, would not be able to conduct approximately 400 "Outreach Education" events that it had budgeted for 2006-07. Those events would have occurred in small cities and rural areas, where outreach previously has not focused, places such as Hickory, North

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43 *2004 TRS Order* ¶ 97; *see also id.* ¶ 90 (citing 47 C.F.R. § 64.604(c)(5)(iii)(E)); NECA Relay Services Data Request Instructions for 2006-07 at 1, 4 (stating that "all reasonable expenses of providing eligible relay services . . . are reportable for inclusion in the development of the reimbursement rate," and asking providers to include expenses for both outreach and marketing/advertising).

44 NECA implies that its decision to exclude all of Sorenson's outreach costs is justified because the FCC, in its *2004 TRS Order*, found that the reasonable costs of providing TRS include only those costs necessary to meet the TRS mandatory minimum standards that have been codified in section 64.604 of the FCC's rules. 2006 NECA Filing at 5, 18 (citing *2004 TRS Order* ¶ 181). NECA and the FCC did not, however, rely on such reasoning for 2005-06, even though the *2004 TRS Order* was adopted almost one year before NECA issued its 2005-06 proposal; instead, for 2005-06, the FCC did not disallow any of Sorenson's projected outreach costs. The FCC and NECA may not selectively choose to enforce prior FCC orders in a manner that varies from year to year, without running afoul of the APA. Further, even if the FCC could act in such an arbitrary manner, it may not lawfully adopt mandatory minimums that conflict with section 225 itself. As explained above, section 225 requires the Commission to ensure outreach that is reasonably targeted to achieving the 100 percent access to TRS by deaf or hard-of-hearing persons, and persons with speech disabilities. Under section 225, therefore, the Commission may not use its mandatory minimums as a pretext for disallowing much of Sorenson's reasonable outreach costs.

Carolina; Wilson, North Carolina; Rapid City, South Dakota; Murfreesboro, Tennessee; and Wausau, Wisconsin. In the absence of such events nationwide, Sorenson estimates that significant numbers of individuals would not gain access to VRS, and significant numbers of VRS usage minutes would not occur in 2006-07. Such consequences cannot be squared with FCC's statutory duty to ensure that 100 percent of ASL users have access to VRS. The hundredths of a percent that NECA proposes to save subscribers on their telephone bills pales in comparison to the life-altering benefits VRS can bring to deaf ASL users – particularly those isolated in outlying areas away from large centers of deaf individuals.

C. NECA's Failure to Account Adequately for the Relationship Between Demand and Costs Further Skews the Resulting Rate

The flaws in NECA's methodology are further revealed in its internal inconsistencies which artificially drive the proposed rate down below levels needed to reimburse providers for their reasonable costs. For example, NECA has projected an increase in demand for VRS even while eliminating funding for all of the marketing and most of the outreach that would be needed to stimulate the projected increase in demand. In addition, NECA has failed to account for a large part of the increased costs providers are likely to incur as a result of increased demand.

1. Disallowing Outreach Costs Would Be Inconsistent with the Assumption that VRS Demand Will Increase

NECA's proposed VRS rate of $6.138 per minute is based on a flawed methodology that is internally inconsistent and that gives the appearance of being tailored to reduce the size of the Interstate TRS Fund rather than being rationally "designed to compensate [VRS] providers for reasonable costs of providing" VRS, as required by the

FCC's rules.[45] In calculating this proposed rate, NECA ostensibly used the same methodology it used in prior years: specifically, it divided total VRS costs projected for 2006-07 by total VRS minutes projected for that same time period. NECA's calculation for 2006-07 differs from that used in prior years, however, in that it is marred by a serious internal inconsistency. Specifically, by projecting a numerator that is artificially low without making a parallel adjustment to the denominator, NECA created a VRS rate that is substantially lower than it logically should be. On the one hand, NECA's denominator for 2006-07 is 51.7 million minutes – an increase of more than 40 percent over last year's approximately 36 million minutes.[46] On the other hand, NECA's numerator for 2006-07 excludes most of the costs that would be incurred in conducting the outreach activities necessary to produce such a sizeable increase in projected VRS minutes. That is, by disallowing the vast majority of providers' reasonable outreach costs and excluding them from the numerator, NECA effectively assumes that VRS providers will not engage in the very outreach activities needed to achieve the growth in VRS usage projected by NECA. As a matter of logic, NECA may not project a numerator that excludes outreach costs while at the same time projecting a denominator that *includes* the likely effect (greater minutes) of the excluded outreach costs.

2. NECA Has Failed to Adjust Costs Upward to Accommodate the Projected Increase in Demand for VRS

In addition to ignoring the relationship between marketing and outreach and demand, NECA also has failed to account fully for the effect increased demand will have on providers' costs. Unlike traditional telecommunications services, which are

45 47 C.F.R. § 64.604(c)(5)(iii)(E).

46 2006 NECA Filing at 19, 20 & Exh. 2 at 2D.

characterized by significant economies of scale, the costs of VRS vary practically in lock-step with demand. NECA appears to have ignored this reality, making insufficient adjustments to some costs to reflect increased demand and failing to adjust other categories of costs altogether. NECA's mistake is rooted in its treatment of certain categories of costs as fixed costs. Many of these costs are not truly fixed, however. Rather, they vary with demand, even though they are "lumpier" than some of the costs that NECA appears to have recognized as "variable."

For example, as demand increases, Sorenson initially may be able to use its existing call centers more efficiently. After a certain point, however, Sorenson cannot satisfy new demand by relying on its existing call centers. Instead, Sorenson must open new call centers – and incur new costs, such as rent and utilities and interpreter salaries – to meet that demand. NECA's rate formula appears to ignore these and other significant additional new costs associated with increased demand. As discussed in the Parrino Declaration, NECA increased minutes but did not increase costs for Category A (Annual Recurring Fixed Costs), Category D (Annual Depreciation Associated with Capital Investment), and Category F (Capital Investments). Contrary to NECA's apparent assumption, these costs increase proportionally in conjunction with increased minutes.[47] Furthermore, while NECA increased costs for Category B2-B7 (Annual Recurring Variable Expenses), it did not increase those expenses in the proportion they would be expected to grow given the projected growth in demand. As Commissioner Parrino explains, NECA's approach is not reasonable.

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47 In fact, this high proportion of variable costs poses one of the key challenges faced by VRS providers: With few truly fixed costs, increased demand yields relatively small per-minute savings.

Category A includes expenses for rent and utilities. If demand increases, providers will have to hire additional interpreters, lease additional space, and provide the interpreters with a place to sit. These increased costs may be "lumpy" in the sense that they do not rise in a smooth line with increased demand, but rather in a step function. Similarly, additional interpreters require additional managers, support staff, and telecommunications facilities – yet the costs in Category B2-B7, which includes these items, were not increased by an amount sufficient to support the projected increase in demand. Categories D and F include the capital expenditures and associated depreciation for furniture and leaseholds. As discussed above, it makes no sense to project increased demand, and increased interpreter costs, without also increasing the costs of the facilities required by those interpreters.[48] This internal inconsistency between NECA's demand forecast and its cost estimates is yet another example of the flaws in NECA's methodology.

D. NECA's Proposed Rate Does Not Adequately Reimburse VRS Providers for the Added Costs They Will Incur in Meeting New Regulatory Requirements

As NECA itself recognizes, the Interstate TRS Fund is designed to compensate eligible relay service providers "for the reasonable costs" of furnishing interstate TRS, including VRS.[49] Last year NECA concluded that a VRS rate of $6.644 was reasonable. For this year, NECA has proposed a lower rate of $6.138 – even though VRS providers

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48 *See generally* Parrino Decl.

49 2006 NECA Filing at 2.

must comply with costly new regulatory requirements mandated by the FCC.[50] Such a reduction in the VRS rate cannot be "reasonable."

For 2006-07, VRS providers are likely to incur additional costs to meet the following obligations: (i) more stringent speed-of-answer requirements; (ii) new interoperability requirements; (iii) a "24/7" rule (requiring providers to offer service 24 hours a day, every day of the year); and (iv) anticipated new 911 requirements. Sorenson also will incur significant costs to offer ASL-to-spoken Spanish service, consistent with the FCC's recent order approving reimbursement for that service. Each of these new burdens is described more fully below.

Speed-of-Answer Requirements. As of January 1, 2006, VRS providers for the first time had to meet a speed-of-answer requirement, answering 80 percent of VRS calls within 180 seconds. This requirement will become progressively more stringent during the 2006-07 funding year: first, on July 1, 2006, when providers must answer 80 percent of all VRS calls within 150 seconds; and once again on January 1, 2007, when providers must answer 80 percent of all VRS calls within 120 seconds.[51] To meet these escalating requirements, VRS providers will have to incur additional costs, including hiring new interpreters and other support staff (discussed below) and paying increased overhead such as rent, utility, and other costs associated with opening new facilities to accommodate the added staff.

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50 Even in the absence of new requirements, one would expect VRS costs to go up, not down, because of inflation. The inflation rate is currently over 3.3 percent. *See* "Current Inflation Rate," *available at*: <http://www.inflationdata.com/inflation/>.

51 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 20 FCC Rcd 13165, ¶¶ 1, 19 (2005) ("*2005 VRS Order*"). Prior to January 1, 2006, the Commission had waived speed-of-answer requirements for VRS. *See id.* ¶ 9.

Interoperability Requirements. On May 9, 2006, the Commission released a Declaratory Ruling imposing interoperability requirements on VRS providers.[52] Complying with these requirements may impose substantial fixed and recurring costs on some providers.[53] Even providers that were already fully interoperable may experience increased interpreter costs as they gain minutes from users with equipment previously restricted to use with a single provider. These costs may not have been included in the January 2006 cost data submitted to NECA.

Effects of Interoperability and Speed-of-Answer. New speed-of-answer and interoperability requirements will lower interpreter efficiency, at least until providers learn more about demand in the new regulatory environment.

24/7 Rule. In a July 2005 order, the Commission required providers to offer VRS 24 hours a day, 7 days a week, commencing January 1, 2006.[54] Because this requirement was imposed after providers submitted their projected cost data to NECA for the 2005-06 funding year, those projections did not account for the costs of satisfying the new 24/7 requirement. Accordingly, the first time providers submitted projections reflecting the

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[52] Even before the FCC adopted its order, Sorenson had committed to begin unbundling its platform by July 2006 and incorporated the costs of that unbundling into the cost estimates it submitted to NECA. "Sorenson Communications to Allow Users to Call Interpreters of Other Video Relay Service Providers," News Release (Feb. 20, 2006), attached to letter from Ruth Milkman, counsel for Sorenson, to Marlene H. Dortch, FCC, CG Docket No. 03-123 (Feb. 23, 2006).

[53] *See, e.g.*, Letter from Francis Buono, Counsel for Snap Telecommunications, to Marlene Dortch, FCC, CG Docket No. 03-123 (March 31, 2006); *see also* electronic mail from George L. Lyon, Jr., counsel for Hands On Video Relay Services, Inc., to Monica Desai, FCC, CG Docket No. 03-123 (Jan. 27, 2006).

[54] *2005 VRS Order* ¶¶ 1, 30.

new costs of complying with the 24/7 requirement was earlier this year, to assist NECA in developing a proposed rate for the upcoming 2006-07 rate year.[55]

911 Requirements. Sorenson expects that some time this year, the Commission will issue an order requiring VRS and IP Relay providers to implement 911/E911 solutions that would provide end users functionally equivalent access to emergency services.[56] Sorenson would fully support such a decision. As Sorenson explained in its 911 Comments, the provision of functionally equivalent 911 to VRS users is required under section 225, and Sorenson therefore has already begun to develop 911 and E911 solutions for VRS that will ensure that deaf and hard-of-hearing individuals who use ASL have high-quality access to emergency services.[57] However, implementing any functionally equivalent 911 solution will be complicated (both technologically and operationally), and will therefore entail significant new expenditures by providers.

ASL-to-spoken Spanish. All of the foregoing costs are the direct result of new mandatory minimum requirements that became (or likely will become) effective during the 2006-07 year. In addition, Sorenson expects to experience additional increases in costs as part of its effort to offer ASL-to-spoken Spanish VRS – a service the FCC recently approved for reimbursement.[58]

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[55] The 2006-07 year will be the first full rate year during which the costs of providing 24/7 service will be borne by providers.

[56] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Access to Emergency Services*, Notice of Proposed Rulemaking, 20 FCC Rcd 19476 (2005).

[57] Comments of Sorenson Communications, Inc., CG Docket No. 03-123 (Feb. 22, 2006).

[58] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration, 20 FCC Rcd 13140 (2005).

All of these added costs would appear to require an increase in the current reimbursement rate for VRS. NECA, however, has proposed a lower VRS rate, and has not even attempted to explain how such a seemingly illogical reduction can be reconciled with the added regulatory burdens VRS providers will face in 2006-07. The FCC should correct NECA's obvious error by approving a fair VRS rate that permits providers to recover the costs incurred as a result of new regulatory requirements imposed by the Commission.

E. NECA's Shortsighted Approach Threatens the Integrity and Sustainability of VRS

As explained above, NECA's proposed reimbursement rate falls far short of the amount needed to compensate providers for the costs they incur in providing VRS and satisfying the requirements of the ADA and the FCC's rules. NECA's proposal threatens the sustainability of VRS by depriving providers of the funds they need to meet their obligations. In fact, the lack of certainty over rates caused by NECA's inconsistent approaches makes it harder for providers to manage their costs. If NECA were able to give providers greater certainty, it would help alleviate some of the upward pressures on the cost of service.

For example, NECA's proposal to cut the reimbursement rate generally – and to eliminate much of the funding for marketing and outreach in particular – will impede the recruiting and training of interpreters. One of the benefits of Sorenson's marketing outreach – in addition to the obvious benefit of educating people about the availability and functionality of VRS – is to identify potential new interpreters. This is increasingly important as demand for VRS threatens to overtake the supply of qualified interpreters.

Sorenson has forecasted more than 20 new call centers for 2006 and must now reach out to less concentrated markets in an effort to locate untapped sources of new interpreters.[59] The problem is exacerbated by the long lead times required to educate and train new interpreters. It typically takes a minimum of five years for new candidates to be trained as interpreters. And even after interpreters complete the required education, they must undergo additional training to meet Sorenson's qualifications for VRS interpreters.

Without a systematic approach to recruiting and training interpreters, providers can expect to incur significantly higher costs to hire and train new interpreters and retain currently employed interpreters. While NECA's proposal would lower the funding requirements for TRS for a particular rate year, in the long run it would result in significant increases in interpreter costs and a sharp increase in the contribution factor as providers scramble to attract and retain interpreters in the face of increasing demand and dwindling supply.

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59 Parrino Decl. ¶¶ 16-20, 30.

IV. CONCLUSION

For the foregoing reasons, the Commission should reject the VRS rate proposed by NECA for 2006-07, and instead adopt a rate of $7.073 per minute, that would compensate VRS providers for all their reasonable costs.

Respectfully submitted,

/s/ A. Richard Metzger, Jr.

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May 17, 2006

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Relay Services and	)	
Speech-to-Speech Services for	)	CG Docket No. 03-123
Individuals with Hearing and Speech	)	
Disabilities	)	

DECLARATION OF

CHERYL L. PARRINO

I, Cheryl L. Parrino, hereby declare the following:

1. My name is Cheryl L. Parrino. I have been asked to provide an analysis of the forecasts of Video Relay Service (VRS) costs and demand for the 2006-07 rate year that were submitted by Sorenson Communications, Inc. (Sorenson) to the National Exchange Carrier Association (NECA). I am familiar with those estimates and the manner in which they were developed because I have been assisting Sorenson in preparing those forecasts. In particular, I have been involved in assessing the projected impact of new regulatory requirements imposed by the Federal Communications Commission (FCC or Commission) on VRS providers that will take effect during the upcoming rate year.

Qualifications

2. I am the President of Parrino Strategic Consulting Group (PSCG), a consulting firm specializing in telecommunications and energy issues, mediation and arbitration, compliance policies and procedures, audit planning and review, and board governance issues. I received a Bachelor of Business Administration degree with a major in accounting from the University of Wisconsin. My curriculum vita is attached to this Declaration.

3. Previously, I served as the Chief Executive Officer of the Universal Service Administrative Company (USAC), the corporation charged by the FCC with administering the Federal Universal Service Fund for all four universal service support mechanisms: High Cost, Low Income, Schools and Libraries, and Rural Health Care.

4. Prior to joining USAC I spent almost 22 years at the Public Service Commission of Wisconsin (Wisconsin Commission) and the last 7 years as Chairman.

During my tenure as chairman of the Wisconsin Commission, I was elected President of the National Association of Regulatory Utility Commissioners (NARUC) and served as a member of NARUC's Executive Committee and Communications Committee. Prior to becoming a commissioner, I held various other positions in the agency including Executive Assistant to the Chairman (Chief of Staff) and Director of the Bureau of Utility Audits.

I. Summary

5. In this declaration, I describe the way in which Sorenson's 2006 annual filing was developed, focusing on the categories that were adjusted by NECA in a way that I find to be unreasonable. I then describe those adjustments, and explain where I believe those adjustments should be revised. Specifically, NECA made two types of adjustments that are discussed below. First, NECA excluded all marketing costs and a substantial portion of outreach costs. Second, for a number of categories, NECA projected increased demand but did not project increased costs or did not increase costs proportionately. NECA submitted a VRS rate of $6.138. I estimate that the effect of revising the adjustments would be approximately $.935 and therefore that the VRS rate for 2006-07 should be approximately $7.073.

II. Sorenson's 2006 Annual NECA TRS Filing

6. I worked with Sorenson's controller to develop the 2006 annual filing. The annual filing is based on Sorenson's financial statements and accounting systems which are in compliance with GAAP. Budgets are developed consistent with the financial systems in place and they are the basis for the 2006 projections included in the filing. Financial systems and controls are in place and those systems and controls as well

as Sorenson's financial statements have been audited by an independent audit firm each year. Sorenson has received clean opinions every year.

2005 Actual VRS Minutes and Costs

7. Information included in the filing for 2005 reflects actual minutes from Sorenson's automated reporting system. The actual 2005 cost information provided is generated from the Sorenson financial system and is formatted into NECA-required accounts. The numbers reported are consistent with financial statements with the exception of items not allowed, such as videophones and installations. Sorenson has not sought reimbursement for equipment, installation, or the training of deaf users on the system, and those expenditures are not included in the actual or projected costs.

8. Cost structures and reporting are in place for all functions and departments. Costs are recorded and tracked by department and cost center and costs are directly recorded to cost centers, to the extent possible. Overhead costs, or costs that are general to the company, are allocated by revenue. Approximately 90% of costs are directly allocated. Sorenson employees use cost center codes to record time based on the cost structures in place as discussed above. Sorenson maintains a detailed list of accounts that is used for all departments and cost centers. Actual and budgeted costs are recorded in a consistent manner.

Method used for Forecasting VRS Minutes and Costs

9. Forecasted minutes are determined by reviewing historical data, forecasted number of installations and minutes per install, and major known changes such as implementation of interoperability and speed-of-answer requirements, opening of new interpreting centers, and new approaches to outreach.

10. Forecasted 2006 costs are based on the actual annual budget developed by each department to meet demand and other requirements. VRS providers will face both new and ongoing challenges in providing quality service to deaf Americans in the upcoming rate year, including attracting and retaining qualified interpreters, meeting the FCC's more stringent mandatory answer speed requirements, implementing the FCC's interoperability requirements, implementing an initial E911 capability for VRS, attracting and retaining qualified interpreters for Spanish-speaking VRS, and expanding the penetration of VRS to more of the deaf community. In my opinion, these additional requirements will significantly impact the operations and increase costs in the rate year. The incremental costs associated with these additional requirements were built into the appropriate budget lines.

11. The budgets are reviewed and approved by management and are the basis for the projections included in the filing. As mentioned above, budgeted costs are developed by department and each department uses the same detailed list of accounts used for actual costs. As with actual costs, the projected costs are formatted into the NECA-required accounts with the exception of those costs not allowed, as discussed above.

12. The 2006 demand and cost estimates are then increased upward by 10% for calendar 2007. This approach was used because of the difficulty of projecting more than a year out in a business that has significant growth, has been offering service for only a few years, and is subject to continuing changes in regulatory requirements affecting the provision of VRS.

Forecasted VRS Minutes

13. The Sorenson filing estimated that VRS minutes generated by its customers in calendar 2006 would increase by more than 90% over the VRS minutes generated in calendar 2005. In developing this projection we analyzed the trend in Sorenson's growth in overall VRS minutes since 2003, the annual rate of new installations since 2003, and the historic pattern of minutes of use per videophone. This analysis showed that Sorenson's annual growth in VRS minutes has been attributable almost entirely to the addition of new installations rather than increased use from existing installations. Sorenson's projection of minutes for the 2006-07 rate year is in line with both its past growth as well as NECA's projected total minutes for the industry for the rate year.

14. The Sorenson submission also forecasted that the implementation of VRS interoperability at the beginning of the 2006-07 rate year will reduce Sorenson's share of the compensable VRS minutes generated by Sorenson videophones. In other words, the forecast of 2006-07 VRS costs and demand assumed that deaf users of Sorenson equipment will select the interpreters of other VRS providers for a portion of their VRS usage. Prior to July 1, 2006, Sorenson videophones are not capable of being used to reach other VRS interpreters for outgoing calls. The Sorenson estimates did not project that Sorenson would get an offsetting increase in the usage of its interpreters by the deaf customers of other providers since most other VRS providers already allow deaf customers to select the interpreters of other VRS providers. Therefore, Sorenson's historic demand already reflects demand from the deaf customers of other providers.

15. Sorenson demand is consistent with the growth projected by NECA. This demand, however, as discussed below, is dependent on the level of outreach included in Sorenson's filing. If the FCC were to reduce outreach expenses, it would also need to reduce demand.

Forecasted VRS Expenses

NECA Category A. Annual Fixed Expenses

16. Sorenson includes the costs of rental space for call centers and the utility costs for call centers in this category of expense. These costs are primarily driven by the growth in demand which drives the need for additional interpreters and call centers. Sorenson uses proprietary software to determine the staffing levels needed based on interpreting minutes and estimated efficiency. Based on these forecasts, Sorenson develops a recruitment plan which determines the number of call centers that will be needed.

17. Sorenson uses a national data base to identify the location of qualified interpreters and maps this information. Sorenson selects call center locations that correspond with high concentrations of qualified interpreters, which also generally correspond with high concentrations of deaf consumers. Sorenson has forecasted that it will open over 20 new call centers for 2006.

18. Sorenson and other providers opened call centers first where there were the largest concentrations of interpreters. Those first locations had 50% more seats than those locations more recently opened. As a result of tapping the highest concentrated markets first, the call centers that are being opened in 2006 are in areas where there are lower concentrations of interpreters. Sorenson and other providers are now targeting

smaller cities and rural areas to find qualified interpreters to meet the growing demand, which means fewer seats per call center.

19. Sorenson has opened nine new call centers as of May 16, and six more are scheduled to open in May.

20. Utility costs are based on the rates charged by the utility and the lines needed to provide service for each call center and to meet overall demand.

NECA Category B. Annual Recurring Variable Expenses

21. Sorenson includes the cost of interpreters and their managers (Sorenson managers are also interpreters) in this category of expenses. In addition, this category includes miscellaneous relay center expenses, such as supplies, postage, and repairs and maintenance.

22. Total interpreter costs constitute approximately 70% of the total cost of providing VRS service. Sorenson's assessment of its anticipated interpreting costs during the rate year includes an analysis of the effect of the new interoperability and speed-of-answer requirements on its costs.

23. In addition, Sorenson's submission to NECA estimated the impact of two other changes on its interpreter costs during the rate year: the provision of ASL-to-Spanish VRS service, and the training of all interpreters to handle 911 calls so that all calls can be answered by the first available interpreter. These changes will also increase the costs of Sorenson's VRS service during the 2006-07 rate year, and that impact is reflected in the Sorenson submission to NECA.

NECA Category D. Annual Depreciation Associated with Capital Investment

24. The filing includes depreciation expense on capital investments reported on Sorenson financial statements and forecasted capital investments with the exception of those investments that are not allowed, such as videophones.

NECA Category E. Other TRS Expenses

Marketing / Advertising Expenses

25. Marketing expense was projected consistent with previous years. The estimated expense for the rate year, however, is slightly below the expenditures in 2005 on a per-minute basis. The Sorenson marketing department is responsible for several activities in addition to traditional advertising, and advertising makes up a very small portion of the marketing department budget.

26. Although Marketing and Outreach are separate departments, they work in tandem to plan and execute events for VRS and IP Relay outreach activities. The events have multiple purposes including recruiting interpreters for VRS and educating and signing up new customers. Marketing plans, promotes, and organizes each event. Outreach managers and trainers staff events and follow up on customer requests for VRS service. Almost all of the marketing department budget is focused on planning, promoting, and organizing events to recruit VRS interpreters and educate and sign up VRS customers.

Outreach Expenses

27. The majority of the projected increase in the outreach budget in 2006 is to cover the costs of a new rural initiative. In the first two plus years, from April of 2003 to 2005, Sorenson outreach managers focused their efforts on and attended events in major

cities with large populations of deaf individuals. These events in major cities enabled Sorenson Communications to affordably and quickly reach large groups of deaf consumers, from 400 – 1000 people per event. Sorenson's costs for these major events were and are projected to be low in 2006 because the events were and are planned, marketed, staffed, organized and paid for in large part by other organizations. For example, the cities reached by these national events included: Chicago, Dallas, New York, Jacksonville, Las Vegas, Providence, Seattle, and Washington, DC. It is important for Sorenson to continue to provide education and information, and ongoing awareness of telecommunications relay services, and these events provide a cost-effective way to do so.

28. Sorenson also plans to reach out to smaller cities and rural communities that now have access to high speed Internet, both upload and download speeds. These areas have smaller concentrations of interpreters and "deaf" consumers, and the costs to reach these consumers are projected to be higher per customer than in urban areas. Expanding outreach events to these less populous areas is a natural next step in Sorenson's overall efforts to reach new customers and interpreters.

29. The costs of the rural initiative are included in the Outreach Education budget for 2006 and 2007. National events are not scheduled for these rural communities, so Sorenson will be responsible for planning, marketing, staffing, organizing and paying for these events. Education is a major thrust of these rural events because many deaf consumers have not heard of VRS. In order to reach more eligible consumers Sorenson must reach out to these communities. These rural events are likely to attract fewer people than Sorenson's other outreach events. For example, plans to hold

events in rural communities such as Wausau, WI; Hickory, NC; Wilson, NC; Murfreesboro, TN; Manchester, TN; Mitchell, SD; and Rapid City, SD, are part of the rural initiative.

30. As mentioned these events are also used to recruit interpreters. Sorenson has established call centers in the larger cities and now must go into some of these smaller cities and rural areas to find additional resources. For example, there are deaf schools in the Hickory and Wilson areas.

NECA Category F. Capital Investments

31. This category includes the capital expenditures for all furniture and fixtures. It also includes the leasehold improvement costs associated with the relay call centers. The filing is consistent with the capital investments reported on Sorenson financial statements and forecasted capital investments, with the exception of those investments that are not allowed, such as videophones.

III. NECA May 1, 2006 Interstate Telecommunications Relay Services Fund Filing

32. I am continuing to analyze the NECA filing to better understand how NECA arrived at its recommended rate for the 2006-07 rate year; however, based on the analysis thus far I would offer the following observations.

NECA Recommended Payment Formula for VRS Service (Proposed Rate)

33. The NECA filing proposed a rate that is lower than the rate that was authorized by the FCC for the 2005-06 rate year. This proposed rate is based on NECA's exclusions of outreach and marketing costs and its projections of increased demand. In my opinion, it is not reasonable to cut the outreach and marketing activities that are necessary to increased penetration of the service, and simultaneously project increased

demand. If significant outreach and marketing costs are excluded, demand projections must similarly be decreased significantly.

34. In addition, in my opinion, the proposed rate is not reasonable given the additional requirements that have been placed on VRS providers since the 2005–06 rate was adopted by the FCC on June 28, 2005. The FCC approved the 2005–06 rate based on the projected rate of the carrier that had the median rate of the individual rates of the seven VRS providers that submitted cost and demand data. In that order the FCC recognized that answer speed and other quality factors impact the cost of providing VRS service. In my opinion, reducing the rate seems to be inconsistent with meeting the additional requirements imposed by the FCC after the 2005-06 rate order was issued. Subsequently, the FCC adopted an order on July 14, 2005 which mandated answer speed requirements and 24/7 service, and allowed compensation for VRS mail. On the same day the FCC adopted an order that provided compensation for ASL-to-Spanish service. On May 3, 2006 the FCC adopted an order mandating interoperability with competing providers.

35. These additional requirements mandated by the FCC will impose additional costs on VRS providers, and Sorenson included its forecast of those additional costs in its filing.

NECA Recommended 2006-07 VRS Expenses

NECA Category A. Annual Fixed Expenses

36. My understanding is that the NECA filing included $0.235 per minute for this category of expenses. NECA did not make any adjustments to Sorenson's forecasted expenses. The amount NECA included for this category of expenses on a per-minute

basis, however, is approximately 40% lower than the per-minute expense included in Sorenson's filing. I believe that the primary reason for this difference is that NECA did not provide any increase in costs for this category of expenses even though it increased demand by approximately 40%. The costs for renting relay facilities and purchasing telecommunications and other utility services will increase with increased demand. I estimate that the effect of including a reasonable increase for this category of expenses is approximately $0.144 per minute. In my opinion, the FCC should increase the costs allowed for this category of expenses by approximately $0.144 per minute to cover the increased costs associated with the increase in demand.

NECA Category B. Annual Recurring Variable Expenses

NECA Category B.2.–B.7. Annual Recurring Variable Expenses

37. My understanding is that the NECA filing included $0.610 per minute for the expenses in this category. NECA did not make any adjustments to Sorenson's forecasted expenses; however, the amount NECA included for this category of expenses on a per-minute basis is approximately 20% lower than the per-minute expense included in Sorenson's filing. My understanding is that NECA increased these costs for increased demand but not in the same proportion. The growth in relay center management as well as miscellaneous supplies and expenses related to the relay centers will increase proportionally with the increase in demand. I estimate that the effect of including a proportionate increase for these expenses is approximately $0.143. In my opinion the FCC should increase the costs allowed for this category of expenses by approximately $0.143 per minute to more appropriately cover the increased costs associated with the increase in demand.

NECA Category D. Annual Depreciation Associated with Capital Investment

38. My understanding is that the NECA filing included $0.105 per minute for this category of expenses. NECA did not make any adjustments to Sorenson's forecasted expenses; however, the amount NECA included for this category of expenses on a per-minute basis is approximately 35% lower than the per-minute expense included in Sorenson's filing. I believe that the primary reason for this difference is that NECA did not provide any increased costs for this category of expenses even though it increased demand by approximately 40%. I estimate that the effect of including a reasonable increase for this category of expenses is approximately $0.054 per minute. In my opinion, the FCC should increase the costs allowed for this category of expenses by approximately $0.054 per minute to cover the increased costs associated with the increase in demand.

NECA Category E. Other TRS Expenses

Marketing / Advertising Expenses

39. NECA eliminated all marketing and advertising expenses for all VRS providers. Marketing and advertising expenses were included in NECA's filing last year and also in the rates established by the FCC for the 2005-06 rate. It is my understanding that marketing and advertising expenses have never been eliminated in any previous rate year. The exclusion of all of Sorenson's marketing and advertising costs is not reasonable because the actual expenditures as well as the projected costs for 2006 include costs other than "costs of providers marketing their own TRS services" which NECA states "are not includable in the formulas." As mentioned above almost all of the costs of

the marketing department are to plan, promote, and organize events for the purpose of recruiting interpreters and signing up new customers and for mandated advertisements.

Outreach Expenses

40. My understanding is that the NECA filing included $0.132 per minute for the expenses included in this category. NECA made an adjustment to Sorenson's 2006 and 2007 projected expenses of approximately 55%. Although we do not believe that outreach expenses were reduced for any other provider, the overall expenses for this category of expenses are approximately 75% lower than Sorenson's filed amount. I believe that the primary reason for this overall decrease is that NECA did not provide any increase in costs for this category of expenses even though it increased demand by approximately 40%. If outreach expenses are reduced significantly, demand should also be reduced. I estimate that the effect of the adjustments for marketing and outreach is approximately $0.549 per minute.

41. The expenses eliminated from Sorenson's outreach expenses for 2006 and 2007 entirely support its rural initiative. As mentioned above, the purpose of outreach efforts is not only to sign up more customers but also to recruit interpreters. The elimination of the expenses may result in rural customers not having access to VRS service and will limit Sorenson's ability to attract interpreters. If Sorenson is not able to recruit an adequate number of interpreters from other locations, demand will soon outstrip supply, and interpreter costs will increase.

42. Sorenson's projected minutes are based on these marketing and outreach efforts. As mentioned above, Sorenson's experience shows that the growth of minutes is the result of adding additional customers. If these expenditures are eliminated, customer

growth as well as the growth in minutes will be impacted. Although Sorenson's growth in minutes is consistent with that used in the NECA filing, the growth is dependent on the outreach efforts that are included in Sorenson's projections. If these costs are eliminated, demand will be directly impacted and growth in minutes will be less than NECA included in its filing. In my opinion, the FCC should increase the costs allowed by approximately $0.549 per minute to include marketing and outreach. In my opinion, if the FCC does not reflect any increase for these items, demand must be decreased.

NECA Category F. Capital Investments

43. My understanding is that the NECA filing included $0.054 per minute for a return on capital investments. NECA did not make any adjustments to Sorenson's forecasted expenses; however, the amount NECA included for capital investments is 45% lower than the per-minute expense included in Sorenson's filing. I believe that the primary reason for this difference is that NECA did not provide any increase in costs for capital investments even though it increased demand by approximately 40%. I estimate that the effect of including a reasonable increase for this category of expenses is approximately $0.045. In my opinion, the FCC should increase the costs allowed for a return on capital investment by approximately $0.045 per minute to cover the increased costs associated with the increase in demand.

Summary of Recommended Adjustments to NECA's 2006 Annual TRS Filing

44. The following table summarizes the adjustments discussed above.

NECA Recommended Rate per 2006 Annual TRS Filing	**$6.138**
Increase per minute required to provide a reasonable level of expenses for rent and telecommunications and other utility services associated with relay centers	.144
Increase per minute required to provide a reasonable level of expense for relay center staffing and miscellaneous relay centers supplies and expenses	.143
Increase per minute required to provide a reasonable level of depreciation expense	.054
Increase per minute required to provide a reasonable level of marketing and outreach expense	.549
Increase per minute required to provide an 11.25% return on a reasonable level of capital investment to support demand	.045
Recommended 2006-07 VRS Rate	**$7.073**

Declaration

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on May 16, 2006.

Cheryl L. Parrino

Cheryl L. Parrino

Official Biography

Cheryl L. Parrino

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Education

B.B.A. – University of Wisconsin-Madison, 1976. Major: Accounting.

Professional Positions

President, Parrino Strategic Consulting Group, 2/04 – Present

PSCG is a private consulting firm specializing in telecommunications and energy issues, compliance policies and procedures, audit planning and review.

Chief Executive Officer - Universal Service Administrative Company, 6/98 – 1/04

USAC is an independent, non-profit subsidiary created by the Federal Communication Commission in 1997 to administer, temporarily, the universal service support mechanisms for high cost areas and low-income consumers, and the billing, collection, and disbursement functions for the universal service programs for schools, libraries, and rural health care providers.

As CEO, I have responsibility for overall management and financing. As the first CEO of this company, I am responsible for setting up the corporation.

Chairman – Wisconsin Public Service Commission, 1/92 – 5/98
Commissioner – Wisconsin Public Service Commission, 2/91 – 5/98 and 2/89 – 6/89

Appointed Chairman by the Governor and confirmed unanimously in 1989, 1991, and 1997. As a commissioner, I was responsible for ensuring that all citizens of the state were provided with reliable and safe utility service at reasonable rates. As the chairman, I had the responsibility for all administrative matters including personnel and budget.

Executive Assistant to Chairman Charles H. Thompson – Wisconsin Public Service Commission, 5/87 – 2/89 and 7/89 – 2/91
Executive Assistant to Chairperson Mary Lou Munts – Wisconsin Public Service Commission, 5/86 – 5/87

As Executive Assistant, I was responsible for managing the agency on behalf of the Chairman and for providing technical assistance on policy issues. In 1990, I developed a major reorganization plan for the agency and developed a strategic planning process. The reorganization was completed and a strategic plan was developed. Strategic and organizational planning continues to date.

Director – Bureau of Utility Audits – Wisconsin Public Service Commission, 9/82 – 5/86

As Bureau Director, I was responsible for supervising three energy audit teams, a special fuel audit team, and a holding company audit team.

Auditor 5 – Wisconsin Public Service Commission, 6/82 – 9/82

Auditor 4 – Wisconsin Public Service Commission, 11/81 – 6/82

As an Auditor 4 and 5, I was the lead auditor in charge of the audits of all 100 telephone utilities in Wisconsin along with their affiliated interests.

Current Activities

Member of New Mexico State University, Center for Public Utilities, Board of Directors

Member of TEMPO

Member of the University of Wisconsin-Madison, School of Business, Dean's Advisory Board

Member of the Board of Directors of the Wisconsin Public Utility Institute (WPUI)

Director and Officer of Greenbush Heritage Foundation

Past Activities

President of the National Association of Regulatory Utility Commissioners (NARUC)

Member of SAFO, the top management committee of NARUC

Member of NARUC's Executive Committee

Member of NARUC's Committee on Communications

Member of NARUC's Committee on Communications Ad Hoc Legislative Team

President of the Great Lakes Conference of Public Utilities Commissioners

Member of Bellcore Advisory Council

Member of the Federal/State Joint Board on Separations

Chairman of the Board of Directors of the Wisconsin Public Utility Institute (WPUI)

Member of the Ameritech Regional Regulatory Committee (ARRC)

Member of the Governor's Blue Ribbon Panel on Telecommunications Infrastructure

Member of the Governor's Task Force on Clean Air

Member of the Governor's Alternate Fuels Task Force