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

In re)
)
Telecommunications Relay Services and Speech to) CGB Docket 03-123
Speech Relay Services for Individuals with Hearing)
and Speech Related Disabilities)
)
To: The Commission)

***PETITION FOR DECLARATORY RULING
AND COMPLAINT CONCERNING THE PROVISION OF VIDEO
RELAY SERVICE BY SORENSON COMMUNICATIONS, INC.***

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TABLE OF CONTENTS

I. Sorenson’s VI contracts contain a broad non-compete clause. 2

II. Petitioners have standing to raise this matter. 3

III. The VRS market 5

IV. Sorenson’s restrictive covenant is inimical to the public interest 10

V. The Commission has jurisdiction over Sorenson’s restrictive covenants 24

VI. Conclusion. 31

Exhibits

1. Sorenson Video Interpreter Agreement
2. Declaration of Renee Hinson
3. Declaration of Ronald E. O Bray
4. Report of John S. Sanders

Summary

Petitioners seek a declaratory ruling that Sorenson Communications, Inc.'s practice of requiring its video interpreters ("VIs") to enter into restrictive covenants prohibiting them for a one year period after termination of their employment from working in any capacity for a competing video relay service ("VRS") provider is contrary to the public interest and, therefore, any such restrictive covenant is void as against public policy.

Petitioners have standing to raise this issue because each is harmed as a direct result of Sorenson's unreasonable and anti-competitive practice of requiring the non-competition agreements. The effect of these restrictive covenants is to artificially restrict the supply of VIs and raise the cost to recruit and hire VIs. Commission action invalidating Sorenson's restrictive covenants will remedy the harm each petitioner is suffering as a result of these agreements.

The VI market is extremely tight as Sorenson itself has told the Commission. Areas where new call centers may be located are limited because of the need to have a sufficient concentration of interpreters to provide both VRS and community interpreting. Actions by VRS providers which serve artificially to remove interpreters from the VI labor pool harms VRS consumers by limiting the ability of VRS providers to serve consumers adequately. Moreover, such action harms the public in general by raising the overall cost of VRS service, which is ultimately borne by the public via increased interexchange telephone service rates.

Sorenson's non-compete agreements are extremely broad and burdensome. They apply no matter how or why a VI's employment is terminated, whether for cause or not for cause, whether by Sorenson or by the VI, whether the VI worked a day for Sorenson or for several years. They apply to any position with another VRS provider, not just to video interpreting; and they apply even to entities contracting with another VRS provider. They appear to be nationwide restrictions on an interpreter's working for a Sorenson competitor. Even if construed to apply geographically only on a state-wide basis, the restrictions are grossly overbroad as an interpreter who worked for Sorenson in El Paso, Texas would be prohibited from working for AT&T in Houston, Texas, some 750 miles away.

Sorenson's restrictive covenants are not justified under traditional non-compete agreement analysis. VIs do not have personal relationships with VRS consumers such that a VI taking employment with another VRS provider could take customers away from Sorenson. VIs do not participate actively or substantially in Sorenson's management. Nor is there any confidential information that necessarily would be threatened by a VI working in any capacity for another VRS provider. In any event, Sorenson's VI agreement contains more than adequate confidentiality and other provisions which adequately protect it without its overbroad non-compete clause.

Nor are Sorenson's VIs given such unique or specialized training that it would be inequitable for them to use their skills in the employ of another VRS provider. In short, Sorenson's non-compete agreements are designed merely to lock VIs into continued employment with Sorenson and to prevent them from working for a Sorenson competitor.

Due to Sorenson's past anti-competitive practices relating to its tie-in of VRS service and equipment, the VRS market is highly concentrated. Allowing Sorenson to place additional competitive restrictions on a necessary instrumentality of VRS service—i.e., video interpreters—threatens further competitive harm, including Sorenson's monopolization of the VRS market.

The Commission plainly has jurisdiction to address Sorenson's overbroad non-competition agreements. In a variety of circumstances, the Commission has acted to protect competitive markets from anti-competitive actions of its regulaties. Likewise, it has exercised its jurisdiction to ensure that the intent of the Act is not frustrated, going so far as to assert jurisdiction over entities not otherwise subject to its jurisdiction. In this case, Commission action is needed to protect the quality of VRS service, preserve viable VRS competition and prevent undue inflation in VRS costs.

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***PETITION FOR DECLARATORY RULING
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SORENSEN COMMUNICATIONS, INC.***

Hands On Video Relay Services, Inc. (“Hands On”), by counsel, and Communication Access Center for the Deaf and Hard of Hearing (“CAC”), CSDVRS, LLC (“CSD”), GoAmerica, Inc. (“GoAmerica”) and SNAP Telecommunications, Inc. (“SNAP”), by their respective officers (collectively “Petitioners”), and pursuant to FCC Rule Section 1.2, petition the Commission to issue a declaratory ruling that provisions in employment contracts for video relay interpreters (“VIs”) which limit the ability of VIs to work for competing video relay service (“VRS”) providers are void as contrary to the public interest/public policy. By this document, Petitioners also submit a complaint against Sorenson Communications, Inc. (“Sorenson”) pursuant to Section 225 of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. Section 225, and FCC Rule Section 64.604(c)(6) concerning Sorenson’s practices with respect to imposing such non-compete clauses on its VIs.¹ In support, the following is shown.

¹We take this opportunity to remind the Commission that it is required by rule to resolve this complaint within 180 days. See FCC Rule Section 64.604(c)(6)(iv).

I. Sorenson's VI contracts contain a broad non-compete clause.

Of the various VRS providers, only one, Sorenson Communications, places its VIs under a non-compete clause. That clause is very broad:²

1.1. Employee hereby agrees that during the time Employee is employed by Employer and for a period of one (1) year from the date Employee's employment is terminated, Employee will not participate in, work or consult for, whether as an owner, independent contractor, or consultant, or be employed by any other video relay service company or any other provider of video relay service or any of its sub contractor/agents working within the markets where the Employee performs services for the Employer. However, the Employee can continue to work and provide interpreting services with community based agencies. Employer and Employee acknowledge and agree that the geographic scope of this covenant is any state in the United States, or in any substantially similar political subdivision of any other country, that Employee helps Employer do business in while Employee is employed with Employer, for the time period set forth herein, in recognition of the worldwide market for video relay services served by Employer.

Although the provision is somewhat ambiguous,³ it is plain that a VI employed in a Sorenson call center at the very least is prohibited from working for another VRS provider anywhere in the same state.⁴ Moreover, Sorenson's non-compete applies regardless of the

²Attached hereto as Exhibit 1 is a retyped copy of an example of the Sorenson VI agreement. It is a copy of an agreement entered into between Sorenson and one of its VIs. The VI has requested anonymity to protect his job and prevent Sorenson from taking retributive action. Attached as Exhibit 2, hereto, is the declaration under penalty of perjury of Renee Hinson, who retyped the agreement in question, attesting that Exhibit 1 is a true and accurate rendition of the original Sorenson agreement, minus the VI's name.

³Sorenson's VI agreement can be read to prohibit working for a Sorenson competitor anywhere Sorenson has a call center or even anywhere in the United States, if not the world. We assume only for the purposes of this petition, however, the more narrow interpretation of a state-wide restriction. Plainly to the extent the restriction in Sorenson's agreement is nationwide or wider the unreasonableness of the provision is even more apparent.

⁴Sorenson has opened call centers in Canada as well. It is assumed that the reach of the agreement in Canada would be at least province-wide.

reason for termination. It applies equally if a VI voluntarily terminates, if Sorenson terminates for cause, or if Sorenson terminates the VI because of a reduction in force (“RIF”). Whatever, the reason for termination, the VI is prohibited from taking another position with a Sorenson competitor, subcontractor or agent anywhere in a state in which he worked for Sorenson. Moreover, the agreement is not limited to work as a VI. The agreement broadly prohibits a VI from taking *any* position with a competitor, subcontractor or agent. The VI cannot work as a scheduler. The VI cannot work as a customer care representative. The VI cannot work in the human relations department. Indeed, the VI cannot even be a contract janitorial employee. As we show below, this restrictive covenant is plainly unreasonable and thus a violation of public policy.

II. Petitioners have standing to raise this matter.

Hands On is an FCC certified VRS provider. It is also the contract provider of VRS to AT&T. Hands On currently operates seven VRS call centers. Hands On has just opened a call center in Tempe, Arizona, and has plans to open additional call centers in both 2007 and in 2008. Hands On is, therefore, actively recruiting and hiring VIs. Hands On needs to open the additional call centers to handle its increasing demand for VRS service. Unless Hands On can recruit VIs to match increased demand for its service, its answer speed performance will suffer and it will fall short of the FCC’s minimum required VRS answer speed.

Sorenson’s non-compete agreements restrict the available work force for VIs. Hands On is prevented from recruiting and hiring VIs who have worked for Sorenson at any time

within 12 months of the VI's termination from Sorenson. This restriction increases the cost Hands On must pay to recruit VIs. It also makes it more difficult generally to hire VIs, and thus risks that Hands On may not be able to meet the FCC's answer speed requirement. Hands On has had discussions with numerous VIs who currently work for Sorenson and who have stated that they would come to work for Hands On but for the Sorenson restrictive covenant.⁵ As such Hands On suffers harm from Sorenson's restrictive covenants. A declaratory ruling that Sorenson's non-compete agreements are void as against public policy will remedy the harm Hands On suffers since it will make it easier for Hands On to recruit and hire VIs. Thus, Hands On has standing to file this petition and this complaint. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967); *Toilet Goods Ass'n v. Gardner*, 387 U.S. 158, 164 (1967); *Gardner v. Toilet Goods Ass'n*, 387 U.S. 167, 170 (1967); *Clean Air Implementation Project v. EPA*, 150 F.3d 1200, 1204 (D.C. Cir. 1995).

CAC, CSD, GoAmerica and SNAP are likewise injured by Sorenson's non-compete agreements. CAC is a provider of VRS pursuant to the State of Michigan's TRS program. CAC operates call centers in Flint, Michigan and Washington, DC. GoAmerica is an FCC certified provider of VRS and IP Relay Service. SNAP is a recent startup provider of VRS certified by the FCC. CSD is a contract provider of VRS to Sprint, operating call centers in several states. CAC, CSD, GoAmerica and SNAP in the regular course of business suffer attrition of VIs for various reasons. Thus, they are constantly seeking to hire qualified VIs

⁵See Declaration of Ronald E. Obray, Exhibit 3, hereto.

to provide VRS. Like Hands On, CAC, CSD, GoAmerica and SNAP have found that VIs who desire to work for them decline to do so because they have previously (within the past 12 months) entered into non-compete agreements with Sorenson. A declaratory ruling that Sorenson's non-compete agreements are void as against public policy will remedy the harm they suffer since it will make it easier for them to recruit and hire VIs. Thus, CAC, CSD, GoAmerica and SNAP also have standing to file this petition and this complaint.

III. The VRS market.

Some 11 VRS providers are authorized to draw from the Interstate Telecommunications Relay Fund ("TRS Fund") pursuant to FCC Rule Section 64.604(c)(5)(F). They are: AT&T, CAC, Hamilton Relay, Hands On, Healinc, GoAmerica, Nordia, SNAP, Sorenson, Sprint and Verizon. Pursuant to FCC Rule Section 64.604(c)(5)(F)(4), the Commission may certify additional VRS providers, as may the several states. FCC Rule Section 64.604(c)(5)(F)(1). The Commission has plainly expressed its policy preference for competition in the interstate and Internet relay markets. *Telecommunications Relay Services*, 37 Comm. Reg. (P&F) 643 (2005).⁶ *See also Telecommunications Relay Services*, 21 FCC Rcd 5442, 5447-48 (2006) ("*Interoperability Decision*"). Moreover, it is beyond dispute that the public, both deaf and hard of hearing, and hearing, have benefitted greatly from competition in VRS. Tangible benefits include,

⁶The Commission saw several benefits from competition in Internet based relay, including potentially lowering the cost of relay service, giving consumers greater choice, bringing "innovation to the provision of VRS and IP Relay, both with new equipment and new service features," and more broadly stimulating greater broadband deployment. *Id.* at para. 22.

but are not limited to, Hands On's video conferencing tool, Video Sign^R, which is a decided improvement over Microsoft's no longer supported Net Meeting software, Hands On's Service to Apple Macintosh users, Sorenson's VP-100 and VP-200 videophones, GoAmerica's web-browser-based i711 VRS software, offering improved picture clarity, and SNAP's Ojo videophone, which is pioneering use of the SIP protocol for VRS.

The VRS market, however, is not at this point freely competitive. One VRS provider, Sorenson Communications, maintains a market share estimated at some 80 percent. That market share was not gained by free competition. Rather, Sorenson's estimated 80 percent market share was obtained by means this Commission found to be contrary to the public interest. *Interoperability Decision*, 21 FCC Rcd at 5454-59. Specifically, Sorenson bundled the provision of a free videophone device with its VRS service. *Id.* Sorenson did this in two ways, first it contractually prohibited VRS users from using its videophone with the services of competing VRS providers; second, Sorenson engineered a block on its videophones to physically prevent, even in an emergency, access by the VRS consumer to competing VRS providers.⁷ In the *Interoperability Decision*, the Commission declared "the practice of restricting the use of VRS to a particular provider — sometimes termed 'call blocking' — [] inconsistent with the TRS regime as intended by Congress."⁸ Petitioners certainly applaud the Commission's *Interoperability Decision*. However, by the time that decision was

⁷Sorenson also at one time required video phone users to use a minimum number of minutes each month, but ceased the practice reportedly after having been told to do so by CGB staff.

⁸*Id.*, 21 FCC Rcd at 5442. The Commission also found that the practice raised serious public safety concerns. *Id.* at 5456,

released, Sorenson had three years to bundle its videophone and its VRS service without regulatory restriction, and thus was able to amass its now dominant market share.⁹ Sorenson now has some 60 call centers, located in virtually every major metropolitan area, and employs an estimated 1,200 to 1,400 video interpreters.

The FCC has no minimum mandatory standard for VI qualifications; however, the de facto industry standard requires interpreters to be certified by either the Registry of Interpreters for the Deaf (“RID”), the National Association of the Deaf (“NAD”) or a state licensing or certifying agency. Hands On requires NAD level IV/V certification or RID CI/CT certified interpreters. See Declaration of Ronald E. Obray, Exhibit 3. Sorenson’s web site states that it requires its VIs to hold one of the following: NAD level IV/V, RID: CI, CT, CI/CT, CSC, a state interpreter certificate at the Intermediate or Master Certificate skill levels, or have other professional interpreting experience acceptable to management. See <http://www.sorensoncommunications.com/company/jobs.php#tse>.

Although there is no definitive listing of ASL interpreters in the United States, the most comprehensive listing is contained on the RID web site. According to RID, there are the following number of interpreters holding the certifications listed:

⁹Since the issuance of the *Interoperability Decision*, there have been numerous reported instances of Sorenson’s continued anti-competitive conduct, including placing a misleading intercept screen on its video phones, locking the address books on public video phones to prevent dialing parity between providers, and various incidents of misbehavior by Sorenson installers.

<i>Certification</i>	<i>Number of Interpreters</i>
RID CSC	785
RID CI & CT	2557
RID CI alone	3136
RID CT alone	3431
NAD IV	651
NAD V	257
Any certificate, RID, NAD or State	6438

Even though not all of the 6,438 certified interpreters would qualify for video interpreting, for example, 781 of the 6,438 interpreters have only a NAD level III certificate, if we assume nevertheless that all 6,438 certified interpreters are the potential labor pool for VRS, it is clear Sorenson currently has some 15 to 20 percent of certified interpreters under contract. However, that does not leave 80 percent of all potential VIs available to serve consumers through providers other than Sorenson.

First, a considerable number of ASL interpreters are needed for community interpreting, everything from doctor's visits to trips to the Division of Motor Vehicles.

Second, the nature of VRS requires it to be provided from a call center. Although Petitioners are aware that some VRS providers have experimented with home-based VRS interpreting, Petitioners believe home-based VRS may raise issues of confidentiality. Moreover, the difficulty of supervising home-based VRS and the costs of equipment set-up, suggest that option would be impracticable and/or cost-ineffective.

A minimum cost-effective call center, set up for day-time weekday operation only, requires from 8 to 10 seats and requires from 15 to 20 full time video interpreters.¹⁰ The

¹⁰See Exhibit 3.

problem is only a limited number of area in the country will support such a call center. This is because of the lack of a sufficient concentration of available interpreters in most areas.

In fact, in many states there are not enough certified interpreters to establish even one such call center while still providing for community interpreting needs. For example, according to the RID website, there are only 21 certified interpreters in Vermont, 22 in Nebraska, 23 in Arkansas, 25 in Hawaii, 34 in South Carolina and 37 in Oklahoma.¹¹

This point becomes even more clear when we drill down to individual urban areas. Looking at some of the cities where Sorenson has call centers, shows a similar limited number of certified interpreters. For example, RID shows 22 certified interpreters in Phoenix, AZ; 29 in Tucson, AZ; 24 in Fresno, CA; 45 in Austin, TX and 30 in Indianapolis, IN.

It is certain that not all certified ASL interpreters are listed on RID's web site, especially with respect to states that independently license and/or certify interpreters. Petitioners' attempt to cross reference interpreter sources, however, indicates that approximately 70 to 90 percent of certified interpreters appear to be so listed with RID.¹²

¹¹Sorenson's web site indicates it has call centers in Omaha, NE, and Oklahoma City, OK.

¹²For example, RID indicates there are 21 certified interpreters in Vermont. The Vermont Division of Rehabilitative Services ("VDRS") shows 20, two of whom are not listed on RID. There are in turn three interpreters on RID's list who are not listed on the VDRS site. Thus, it appears 21 of 23 certified interpreters in Vermont are listed on RID's site. As discussed in Exhibit 4 hereto, a study commissioned by Sorenson and filed in this docket confirms RID's indication of some 6,500 certified interpreters.

Likewise, the North Carolina Division of Services for the Deaf and the Hard of Hearing ("DSDHH"), of the North Carolina Department of Health and Human Services ("DHHS") is required by law to "prepare and maintain an up-to-date list of qualified and available interpreters" in the state. (It does not appear that North Carolina's listing requires each interpreter to be certified, however.) That on-line directory shows 172 interpreters spread among seven regions, the largest

In any event, RID's listing serves aptly to illustrate there is generally not a concentration of interpreters in most areas. One state's data is particularly illustrative of this point. As indicated in note 12, North Carolina's deaf service agency is required by statute to maintain a listing of interpreters in the state. It does so by region. Here is how the state's interpreters break down by region: Asheville, 12; Charlotte, 25; Greensboro, 20; Morgantown, 35; Raleigh 47; Wilmington, 8; and Wilson, 25. Sorenson currently has call centers in both Charlotte and Raleigh, N.C.

IV. Sorenson's restrictive covenant is inimical to the public interest.

The Commission has stressed that VRS users should have freedom of choice as to which VRS provider(s) to use. *See Interoperability Decision*, 21 FCC Rcd 5442. Any impediment to that freedom of choice should come to the Commission with a heavy presumption of invalidity. Sorenson's non-compete clause restricts consumer freedom of choice by hampering the ability of VRS providers to respond to consumer demand. If VRS providers are to be able to respond to the demand for their services, they need to be able to hire the interpreters necessary to meet that demand. Sorenson's requirement that interpreters sign one-year non-compete agreements as a condition of their employment as VIs serves to frustrate free consumer choice in VRS providers because it impedes other providers from hiring sufficient staff to meet the demand for service. This is demonstrated by considering a couple of likely scenarios.

being Raleigh with 47, and the smallest being Wilmington with eight. *See* <http://dshh.dhhs.state.nc.us/division/interpreter/interpreter.html>. RID's web site shows a total of 127 certified interpreters in North Carolina, some 74 percent of the definitive North Carolina listing.

Assume Sorenson now has some 80 percent of the market and employs some 20 percent of all ASL interpreters qualified to provide VRS. Assume also that all other VRS providers employ some five percent of available interpreters. Furthermore assume that the remaining 75 percent of interpreters are performing community interpreting, and of that number, some significant percentage, say one-half, are located in rural or small markets which lack a sufficient concentration of interpreters to establish a cost-effective call center.¹³ That leaves at best 37.5 percent of all qualified interpreters -- all of whom are currently providing community interpreting, as the labor pool from which other VRS providers may draw. VRS providers would thus draw from a greatly reduced labor pool.

If there is a significant shift of demand away from Sorenson toward another VRS provider or providers, Sorenson would be left with the choice to either RIF some interpreters, or maintain its staffing at reduced efficiency levels. If Sorenson RIFs some interpreters, those interpreters, as a result of the restrictive covenant, will be unable to continue in the VRS market in their state for a year *in any capacity*. As a result, providers experiencing an increase in demand will be required to bid up interpreter prices to recruit from the remaining pool of community interpreters in those limited areas sufficiently large to support a cost effective VRS call center. In addition, these providers will experience increased costs to train these new interpreters.

¹³The exact numbers are immaterial to this analysis; the estimates given here are provided solely to indicate the approximate magnitude of the problem.

The result will injure the public interest in four ways. First, the increase in interpreter costs and training costs will be reflected in higher VRS rates to be borne by the Interstate TRS Fund and its rate payers. Second, the public will be injured by the inflation in the price of community interpreting caused by the increased competition with VRS for ASL interpreters. Third, the RIFed interpreters will be injured by their inability to practice their chosen profession of VRS for the one-year time period and will therefore be forced out of the VRS labor market altogether or be forced to accept a job not fully suited to their skill set. It is possible, even likely, that some VIs may go back to community interpreting. However, that does not change the fact that these VIs will be out of the available labor pool for VRS for a significant time. Fourth, as VRS demand increases, the reduced supply of VIs will be unable to handle the increased caller traffic and answer speeds will suffer.

Let's assume Sorenson acts beneficently and maintains these VIs on its staff rather than cutting them loose. Sorenson's cost of providing VRS will rise as it spreads fewer minutes over the same number of VIs. However, other providers will still need to bid up VI prices to recruit VIs from community interpreters, and will still have increased training costs. In this scenario, the VRS rate will rise even higher, and the public will be damaged even more because there will be even fewer community interpreters available.

In either scenario then, the result of the restrictive covenant is to increase the overall cost of VRS service and to promote an inefficient market. This is pointedly demonstrated by the attached economic analysis (Exhibit 4, hereto) of John Sanders of the economic consulting firm of Bond and Pecaro.

Mr. Sanders explains that the VRS market is extremely concentrated as a result of Sorenson's estimated 80 percent market share. This is demonstrated by reference to the measure the United States Justice Department Justice often employs, the Herfindahl-Hirshman Index ("HHI"). Mr. Sanders explains that the HHI is calculated by squaring the market share of each participant in a market and summing these results. For example, in an industry with 10 participants each with a 10% market share, the HHI would be 1,000. Markets in which the HHI is in excess of 1,800 are considered highly concentrated. Business combinations that increase the HHI by more than 100 points in a highly concentrated market are considered to raise antitrust concerns and can be presumed illegal. The index approaches zero when many participants have small shares and increases in markets with fewer participants and higher market shares. See Exhibit 4, citing <http://usdoj.gov/atr/public/testimony/hhi.htm>, May 11, 2005.

In this case, Mr. Sanders states, "the estimated 80% reported market share of the VRS market held by Sorenson yields an HHI of 6,400, more than 3.5 times the highly concentrated threshold. This type of concentration, which is in our experience atypical, raises questions as to whether the monopolization of a large portion of the labor pool would distort the marketplace relative to an orderly market."

Mr. Sanders's analysis further supports the proposition of a growing shortage of ASL interpreters. He explains that "this has been fueled by a variety of factors, including the implementation of stricter certification requirements, the advent of VRS, and the need for ASL interpreters in educational institutions, government agencies, medical providers, and

the like.” He points out that the supply and demand imbalances in the ASL interpreter market have been documented in a report by Stax, Inc., which Sorenson itself commissioned in November of 2006. Among the findings of the study, he explains, are:

1. The demand for ASL interpreters has increased dramatically over the past several years, spurred in large part by the growth of VRS, which requires highly qualified interpreters.
2. Wages for ASL interpreters have increased 10%-15% over the past 2-3 years, and are expected to increase at approximately 10% annually over the next few years.
3. In some markets, the increases were even greater. In Georgia, for example, wages increased by 20% over the past 2-3 years, according to the Stax study.

Mr. Sanders concludes that the market for ASL interpreters is characterized by an existing supply and demand imbalance which has resulted in strong pressure on labor costs, particularly in sectors such as VRS, which requires higher levels of certification.

Its effect, would likely be disproportionate on smaller VRS firms which typically have fewer trunking efficiencies and lower margins than larger firms. The net effect of a substantial segment of the interpreter market being subject to a non-compete agreement in favor of Sorenson would be to further limit the supply of interpreters to the smaller VRS firms. Thus, it is likely that such non-competition agreements would discourage additional enterprises from entering the market, would hinder the ability of existing smaller firms to compete, and tend to further entrench Sorenson’s dominant market share.

Exhibit 4.¹⁴ In sum, Mr. Sanders finds that

¹⁴Mr. Sanders also notes that in general, labor markets “generate the greatest benefits and reward workers optimally, when both worker and employer are able to make employment decisions ‘at will.’” He explains that the cost of routine services, such as eye examinations and prescriptions, have been found to be 35% higher in jurisdictions with restrictive commercial practices. He references another study, which concluded that stricter enforcement of non-competition agreements reduces research and development spending and capital expenditures and which suggested that although enforceable non-competition contracts may yield benefits to individual firms, they may

the VRS market is characterized by both an unusually high level of concentration of market share for one competitor and an overheated labor market. To the extent the function of that market is further limited because a large portion of the labor pool is restricted by non-competition agreements, the working of the free market would be impeded. Specifically, it is likely that, with a large portion of the VRS interpreter pool tied up with non-competition agreements with a dominant company, the remaining providers will need to bid even more aggressively for the artificially reduced pool that is not subject to those agreements, increasing costs and placing additional inflationary pressure on the cost of VRS service. Likewise, the cost structure of those smaller companies would likely be significantly higher than Sorenson's, and higher than they would be in the absence of the non-competition agreements. This would suggest that new entry into the market would be hindered and that existing smaller firms may find it impossible to remain in the market. Thus, the net effect of the non-competition agreements would be to lessen competition in the VRS market.

Sorenson's restrictive covenants thus tend to increase the overall cost of VRS and hinder competition in the VRS marketplace. As a direct result these non-compete agreements risk denying consumers their choice of VRS provider. To the extent Sorenson's restrictive covenant renders it difficult or impossible for competing VRS providers to recruit and hire sufficient VIs to serve consumer demand, the right of consumers to choose their VRS provider will be thwarted and the public interest benefits of free competition in the provision of VRS will likewise be thwarted. As a result of inadequate staffing, the answer speeds of competing VRS providers will increase with the result that calls will be dropped and consumers will be forced to go back to Sorenson, not by choice, but because Sorenson

also generate offsetting negative externalities by restricting labor mobility. He further states, "Economic theory indicates that additional social costs may result if the mobility of a large portion of a labor pool is restricted. For example, a likely impediment to the efficiency of the VRS market is that, if a portion of the interpreters are prohibited from employing their skills for a 12 month period, their skills may get rusty and outdated during the non-competition period." Exhibit 4.

has artificially restricted the supply of VIs available to its competitors. Because of these adverse results, Sorenson's non-compete agreements are contrary to public policy and must be held invalid.¹⁵

Sorenson will undoubtedly argue that its restrictive covenant protects its legitimate business interests and is otherwise reasonable. In fact, however, Sorenson's restrictive covenant does not protect its legitimate business interests and the restrictive covenant is not otherwise reasonable as judged in light of the mountain of judicial precedent dealing with non-compete agreements.

Sorenson's VI agreement recites that the various protective covenants in the agreement are necessary to protect confidential information, customer relationships and company goodwill. In the case of VIs, however, the one year restrictive covenant is totally unnecessary to protect any of those items.¹⁶ The protection of confidential information is plainly a legitimate business interest; however, there are a myriad of provisions in the Sorenson agreement directly aimed at protecting that interest, even assuming VIs actually are given access to confidential information -- a dubious assumption at best. It is the subject of whole separate sections of the Sorenson VI agreement (Sections 6 and 7) as well as

¹⁵See *Fumo v. Medical Group of Michigan City*, 590 N.E.2d 1103, 1109 (Ind. Ct. App. 1992); *Blue Ridge Anesthesia & Critical Care, Inc. v. Gidick*, 389 S.E.2d 467, 470 (Va. 1990); *Paramount Termite Control Co. v. Rector*, 238 Va.171, 380 S.E.2d 922, 925 (1989).

¹⁶See, e.g., *National Hearing Aid Centers, Inc. v. Avers*, 2 Mass. App. Ct. 285, 286-87 & 290 (1974) (court refused to enforce non-compete where there was no evidence that employee had used any confidential customer information and ruled employer had no proprietary rights in the sales technique used at the store).

Sorenson's written policy on the use of its email system.¹⁷ Furthermore, Sorenson is protected from disclosure of its trade secrets by the Uniform Trade Secrets Act, which has

¹⁷The Sorenson agreement states that the VI will be given "Confidential Information, as described below." In Section 6.2.1. the agreement recites a redundant laundry list of categories of confidential information, listed as: (A) customer lists and information pertaining to customers; (B) production, business and transmission processes and related know how; (C) Sorenson's and its customers' email; (D) financial and legal information; (E) business information pertaining to Sorenson; (F) proprietary documents; (G) confidential communications; (H) other valuable information; (I) information received from third parties that Sorenson is required to keep confidential; (J) patent applications and processes; (K) sales and marketing strategies; and (L) any and all information regarding the foregoing that the VI may become privy to while employed by Sorenson that is confidential. *See* Exhibit 1.

Although the Sorenson attorney drafting this agreement is to be commended for reciting (if not re-reciting) as confidential every type of business related information that might conceivably exist, in the agreement, doing so doesn't make it so. There is simply no nexus between Sorenson's laundry list of every conceivable type of confidential business information and the position of VI; and for several reasons, there is no basis to conclude that a one-year non-compete is necessary to protect any confidential information to which a VI might somehow have been privy.

First, Sorenson's agreement has a separate provision against soliciting its customers or helping anyone else do so. *See* Exhibit 1. Second Sorenson has a separate provision against soliciting its employees or independent contractors. *Id.* Third, VIs are duty bound by Section 225 of the Act, Section 705 of the Act, and FCC Rule Section 64.604(a)(2) to respect the confidentiality of VRS users and their communications. Fourth, the agreement at Section 6 contains detailed restrictions on the VIs rights with respect to any of Sorenson's so-called confidential information, including restrictions on copying, distribution, use or disclosure. Fifth, the agreement at Section 7 contains detailed intellectual property protections.

Sixth, virtually all of the so-called confidential information recited in Sorenson's agreement is wholly inapplicable to VIs. VIs have no personal relationship with VRS users. They take the next VRS user in the queue. A VRS user cannot name the interpreter he or she wants to use. Moreover, there is no secret production or business process in providing VRS from a VI's standpoint, and certainly nothing that a VI would need to know with respect to software codes, etc. Furthermore, there is nothing about Sorenson's email system that requires the protection of a one-year non-compete clause and VIs do not get emails from VRS users as a matter of course. It is even doubtful that Sorenson's some 1,400 video interpreters would be entrusted with confidential business documents or marketing plans, and certainly would know nothing about any patent applications. What VIs would know is how to use Sorenson's equipment and the proper protocol to handle a VRS call. The former would be inapplicable to any other VRS provider, and the latter is far from a trade secret.

been adopted in virtually all the states in which Sorenson has call centers. Thus, a one-year restrictive covenant is totally unnecessary to protect whatever confidential information -- if any¹⁸ -- Sorenson may have made available to its VIs.

Protecting customer relationships is another legitimate business interest. However, the concept implicit in Sorenson's VI agreement, that the one-year restrictive covenant is necessary to protect customer relationships, is facially fallacious. VIs are a communications conduit. They do not solicit VRS users. They do not have a relationship with VRS users. They take calls in the order they are received. They are supposed to be transparent. VRS users do not request VIs by number or name. VIs answer calls in the queue and have no role in acquiring "customers" for Sorenson or for any other VRS provider.

The idea that Sorenson's restrictive covenant is necessary to protect Sorenson's "goodwill" fails for the same reasons. Goodwill refers to the quality or character of a business that may cause a customer to choose one competitor over another.¹⁹ Although courts generally will enforce an otherwise reasonable non-compete agreement designed to protect the goodwill acquired through the efforts of an employee, *Alliance Metals, Inc. of Atlanta v. Hinely Industries, Inc.*, 222 F.3d 895 (11th Cir. 2000), a VI cannot build up any appreciable goodwill for Sorenson because the VI does not have a relationship with the VRS

¹⁸See *Richmond Brothers, Inc. v. Westinghouse Broadcasting Co.*, 357 Mass. 106, 106-08 (1970) (nature of the broadcast business is such that talk show host was not in possession of any of plaintiff's trade secrets or confidential information).

¹⁹See Powers et. al, *Non-Compete Agreements: A Proposal for Fairness and Predictability* (at <http://www.theemploymentlawyers.com/Articles/Noncompetition.htm>), citing *Minet Ins. Brokers v. Rooney*, No. 97-0675-C (Mass. Sup. Ct. Feb. 14, 1997).

user, other than servicing the VRS user's call. VRS users do not know the names of VIs. VRS users would not even know if a VI left Sorenson to take a position with another VRS provider unless that VRS user decided on his or her own to use another VRS provider, fortuitously had his or her call answered by the VI in question and then recognized the VI -- a highly unlikely scenerio. At that point Sorenson would have by definition no goodwill with respect to that VRS user because that user had voluntarily chosen to make a call through another VRS provider.²⁰

The only other possible business interest Sorenson could advance -- although not even recited in the VI agreement -- is avoiding incurring the additional costs of recruiting and training VIs: in other words, an interest in locking the employee down and preventing his or her movement to a better (in the employee's eyes) job. As discussed below, judicial precedent shows this is *not* a legitimate business interest non-competes may protect.

Judicial precedent convincingly shows the overall unreasonableness of the Sorenson restrictive covenant. The rule at common law was that non-compete agreements generally were held to be invalid as restraints on trade. *See Mitchell v. Reynolds*, 1 P. Wms. 181, 186, 24 Eng. Rep. 347 (Q.B. 1711) (reviewing early cases); *Colgate v. Bachelor*, Cro. Eliz., 872, 78 Eng. Rep. 1097 (Q.B. 1602). Gradually, that rule softened so that non-compete

²⁰In this respect, this case is similar to *Folsom Funeral Service, Inc. v. Rodgers*, 6 Mass. App. Ct. 843 (1978) where the court rejected the goodwill claim advanced in support of a non-competition clause for a funeral home employee. The court found the funeral home's goodwill was unlikely to be damaged by the employee not only for the obvious reason that there were "few" repeat customers, but because there was a lack of evidence that the plaintiff derived its customers from persons with whom the employee had contact.

agreements entered into in connection with the sale of a business or as part of a partnership agreement are enforced if otherwise reasonable, since they are supported by independent consideration, i.e., the proceeds of sale of the business or the joining of partners in the partnership entity. *See, e.g., Pierce v. Woodward*, 23 Mass. 206, 208 (1928) (oral non-competition agreement in connection with sale of store and land). With respect to employee non-competes, courts, and sometimes state legislatures,²¹ take a more stringent view. Virtually all jurisdictions hold that covenants not to compete, being in restraint of trade, are disfavored.²² Courts, therefore, require employee covenants not to compete to meet a reasonableness test: they must be no broader than necessary to protect an employer's legitimate business interests, not impose undue hardship on the employee, or adversely affect the public interest.²³ Undue hardship to the employee is measured with respect to the time, territory and capacity in which the employee is prohibited from competing.²⁴

²¹California Business and Professions Code Sec. 16600 flatly prohibits employee non-compete clauses. *See Kolani v. Gluska*, 64 Cal.App.4th 402 (1998); *Morris v. Harris*, 127 Cal.App.2d 476 (1954). Colorado allows non-compete agreements in the case of executive and management personnel only. *See Colo. Rev. Stat. Sec. 8-2-113*.

²²*See, e.g., Calhoun v. Brendle, Inc.*, 502 So.2d 689 (Ala. 1987); *Amex Distrib. Co. v. Mascari*, 150 Ariz 510, 724 P.2d 596 (1986); *Beckman v. Cox Broadcasting Corp.*, 250 Ga. 127, 296 S.E.2d 566 (1982); *Orkin Exterminating Co. v. Foti*, 302 So.2d 593 (La. 1974); *Sermons v. Caine & Estes Ins. Agency, Inc.*, 275 SC 506, 273 S.E.2d 338 (1980).

²³*See Kroeger v. Stop & Shop Cos.*, 13 Mass. App. 310, 432 N.W.2d 556, app. denied, 386 Mass 1102, 440 N.E.2d 1175(); *Paramount Termite Control Co. v. Rector*, 238 Va. 171, 380 S.E.2d 922; *Ackerman v. Kimball Int'l*, 652 N.E.2d 507 (Ind. Ct. App. 1994).

²⁴*See, e.g., Mixing Equip. Co. v. Philadelphia Gear, Inc.*, 436 F.2d 1308, 1312-13 (3rd Cir. 1971); *American Broadcasting Cos. v. Wolf*, 52 N.Y.2d 394, 403, 420 N.E.2d 363, 367, 438 N.Y.S.2d 482, 486 (1981).

Sorenson cannot meet the legitimate business interest test. As discussed above, Sorenson is adequately protected by other restrictions in its VI agreement, by FCC confidentiality rules, and by the Uniform Trade Secrets Act from the disclosure of any -- if any -- confidential information it might have imparted to its VIs. VIs do not need to utilize any Sorenson confidential data to work for a VRS competitor to Sorenson and it is difficult to comprehend how any such information relevant to a VI's performance for Sorenson would be helpful to a VI working for a Sorenson competitor or the competitor itself.

Perhaps as suggested above, Sorenson would submit that its investment in recruiting, hiring and training VIs justifies its broad non-compete provision. Absent some very unique and special training, however, the courts have soundly rejected that view.²⁵ Preventing an employee from leaving because he or she has gained experience or skill valuable to his employer -- by way of special training or otherwise during the period of his employment -- is not a valid basis to support a non-compete agreement. *Clark Paper & Mfg. Co. v. Stenacher*, 236 N.Y. 312, 140 N.E. 708, 29 A.L.R.1325, *reh. denied*, 236 N.Y. 638, 142 N.E. 316 (1926); *Mutual Loan Co. v. Pierce*, 65 N.W.2d 405 (Iowa 1954); *Grace v. Orkin Exterminating Co.*, 255 S.W.2d 279 (Tex. Civ. App. 1953) (even complex and extensive training is not a basis to enforce non-compete agreement).²⁶

²⁵See *National Employment Service Corp. v. Olsten Staffing Service, Inc.*, 761 A.2d 401 (N.H. 2000) (costs associated with recruiting and hiring employees was not a legitimate interest protectable by a restrict covenant); *Carolina Chem. Equip. Co. v. Muckenfuss*, 322 S.C. 289, 471 S.E.2d 721 (Ct. App. 1996); *Brunner v. Hands Industries*, 603 N.E.2d 157 (Ind. Ct. App. 1992).

²⁶See also *Silver v. Goldberger*, 231 Md 1, 188 A.2d 155 (1963); *Ram Products Co., Inc. v. Chauncey*, 967 F.Supp. 1071 (N.D. Ind. 1997) (applying Michigan law, court held that employee's

As the New York Court of Appeals cogently explained in *Reed, Roberts Associates, Inc., v. Strauman*, 40 N.Y.2d 303, 307-09; 353 N.E.2d 590, 593-94; 1976 N.Y. LEXIS 2889; 386 N.Y.S.2d 677:

Undoubtedly judicial disfavor of these covenants is provoked by “powerful considerations of public policy which militate against sanctioning the loss of a man’s livelihood” [citation omitted]. Indeed, our economy is premised on the competition engendered by the uninhibited flow of services, talent and ideas. Therefore, no restrictions should fetter an employee’s right to apply to his own best advantage the skills and knowledge acquired by the overall experience of his previous employment. This includes those techniques which are but “skillful variations of general processes known to the particular trade” (Restatement, Agency 2d, § 396, Comment b; *see, also*, Customer List -- as Trade Secret-Factors, Ann., 28 ALR3d 7).

Of course, the courts must also recognize the legitimate interest an employer has in safeguarding that which has made his business successful and to protect himself against deliberate surreptitious commercial piracy. Thus restrictive covenants will be enforceable to the extent necessary to prevent the disclosure or use of trade secrets or confidential customer information (*e.g., Lepel High Frequency Labs. v Capita*, 278 N.Y. 661; *Carpenter & Hughes v De Joseph*, 10 N.Y.2d 925). In addition injunctive relief may be available where an employee's services are unique or extraordinary and the covenant is reasonable (*e.g., Lumley v Wagner*, 42 Eng. Rep. 687; *Frederick Bros. Artists Corp. v Yates*, 271 App Div 69, *affd* 296 N.Y. 820).

* * *

Apparently, the employer is more concerned about Strauman's knowledge of the intricacies of their business operation. However, absent any wrongdoing, we cannot agree that Strauman should be prohibited from utilizing his knowledge and talents in this area (see Restatement, Agency 2d, § 396, Comment b). A contrary holding would make those in charge of operations or specialists in certain aspects of an enterprise virtual hostages of their

knowledge, skill or facility acquired during employment does not by itself give employer sufficient interest to support restrictive covenant even though the on-the-job training had been extensive and costly); *Century Personnel, Inc. v Brummett*, 499 N.E.2d 1160 (Ind. Ct. App. 1st Dist 1986); *Raven v. A. Klein & Co., Inc.*, 195 N.J. Super. 209, 478 A.2d 1208 (App. Div. 1984).

employers. Where the knowledge does not qualify for protection as a trade secret and there has been no conspiracy or breach of trust resulting in commercial piracy we see no reason to inhibit the employee's ability to realize his potential both professionally and financially by availing himself of opportunity.²⁷

VIs are plainly not unique employees sufficient to justify restrictive covenants against their working for Sorenson competitors.²⁸

In the case of VIs, they come to a VRS provider with years of special training gained on their own. The extent of training provided by VRS providers is very limited compared to the VI's years of special training necessary to become a certified ASL interpreter. Whatever training Sorenson might give a VI, hardly gives Sorenson the right to limit for one year a VI's right to work anywhere in the VRS field with a Sorenson competitor. *See Vencor, Inc. v. Webb*, 33 F.3d 840.

Sorenson's restrictive covenant also raises reasonableness concerns in three other respects. First, Sorenson's imposition of what appears to be a nationwide or broader

²⁷*Accord BDO Seidman v. Hirshberg*, 712 N.E. 2d 1220 (N.Y. 1999). *See also Marine Contractors Co. v. Hurley*, 365 Mass. 280, 287-88 (1974); *All Stainless, Inc. v. Colby*, 364 Mass. 773, 779-80 (1974); *Jet Spray Cooler, Inc. v. Crampton*, 361 Mass. 835, 840 (1972).

²⁸*See Ticor Title Ins. Co v. Cohen*, 173 F.3d 63 (2d Cir.1999) (senior executive and rainmaker held unique because of special relationship with clients); *Hekimian Labs, Inc. v. Domain System, Inc.*, 664 F. Supp. 493 (S.D. Fla 1987) (applying Maryland law that restrictive covenants may be enforced only against employees who provide unique services, or to prevent future misuse of trade secrets, client lists or customer solicitation); *Vencor, Inc. v. Webb*, 33 F.3d 840 (7th Cir. 1994) (sustained trial court's determination that under Kentucky law, 12 month non-competition agreement was unreasonable where employee had not disclosed confidential information, where employee had no use for such information, where the information was not unique or proprietary and where the employee was employed in a different position with the competitor); *Robbins v. Finley*, 645 P.2d 623 (Utah 1982) (employee's knowledge was not a trade secret and there was nothing special, unique or extraordinary about his services).

restriction on employment goes well beyond any interest it would have in protecting from competition the local call center where a VI was employed. Even if the restriction could be construed as a statewide restriction, it would still be overbroad. For example, why should a former Sorenson VI who worked in its Charlotte, NC call center be prevented from working for CSD in Morgantown, NC, where Sorenson does not have a call center? Second, Sorenson's application of the non-compete even if it fires or lays off its at will VI employees is an unreasonable restraint on the VIs ability to practice his or her trade.²⁹ It gives Sorenson tremendous financial leverage over its VI employees. Third, the scope of Sorenson's non-compete, applying to any position with a competing VRS provider, goes substantially beyond what would otherwise be necessary for its protection. *See APAC Teleservices, Inc. v. McRae*, 985 F. Supp 852, 868-69 (N.D. Iowa 1997) (enforcement denied where employee left technical position to take a managerial position). For all of these reasons, Sorenson's non-competition agreement is contrary to public policy. It hinders competition and free entry into the VRS market. It serves artificially to inflate the cost of VRS. It does not protect a legitimate business interest of Sorenson. It is unreasonable in terms of geographic coverage, the reach of the restriction and the scope of the activity limited.

V. The Commission has jurisdiction over Sorenson's restrictive covenants.

The Commission has ample authority to address Sorenson's unreasonable and anti-competitive practice of requiring its VIs to enter into these overly broad non-compete

²⁹*See Insulation Corp. of America v. Brobston*, 667 A.2d 729 (Pa. Super. Ct. 1995); *SIFCO Indus. v. Advanced Plating Techs.*, 867 F.Supp. 155 (S.D.N.Y. 1994); *Oxman v. Sherman*, 239 S.C. 218, 122 S.E.2d 559 (1961); *Somerset v. Reyner*, 233 S.C. 324, 104 S.E.2d 344 (1958).

agreements. Section 2(a) of the Act, 47 U.S.C. Sec. 152(a), extends the jurisdiction of the Commission to all persons engaged in interstate and or foreign communication by wire or radio. Section 201(b) of the Act declares any unreasonable practice to be unlawful. Moreover, Section 225 specifically give the Commission broad regulatory authority over TRS. Any of these three provisions provides the Commission with jurisdiction to declare the restrictive covenants at issue void as against public policy.

The Commission has previously acted vigorously against anti-competitive conduct of its regulatees. In *AT&T Communications (800 Service Discounts for SDN Customers)*, 67 Rad. Reg. 2d (P&F)1314 (Com. Car. Bur. 1990), the FCC held it was an unreasonable practice to condition the availability of a discount on 800 service upon a customer's use of the carrier's software defined network. By linking the availability of the discount to use of another service, the carrier was leveraging its competitive advantage in the 800 market. The Bureau held such leveraging violative of Section 201(b) of the Act even if it did not constitute a classic product tie-in under antitrust principles.³⁰ This was in keeping with the Commission's decades old view that it has an obligation to consider relevant antitrust matters in the exercise of its functions. See *Connecticut Water Co.*, 17 Rad. Reg. (P&F) 960 (1958). Here, Sorenson's non-compete is designed to and does limit the ability of other providers to compete against it by restricting the supply to those providers of an essential element necessary to provide VRS service, video interpreters.

³⁰See also *E. O Roden & Associates, Inc.*, 12 Rad. Reg. 2d 489 (1968) (policy of a broadcast station to refuse advertising from out of town automobile dealers held contrary to the public interest as it operates to restrain trade and competition).

Finding that such agreements restricted competition and new entry, the FCC, in *Promotion of Competitive Networks in Local Telecommunications Market*, 15 FCC Rcd 22983 (2000), prohibited the enforcement of exclusive access arrangements for telecommunication services in commercial multiple dwelling units (“MDUs”). The FCC noted that “Section 201(b) expressly authorizes the Commission to regulate ‘[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service,’ to ensure that such practices are ‘just and reasonable.’ 47 [U.S.C.] §201(b)” and pointed out that “the D.C. Circuit recently held, the Commission thus has undoubted power to regulate the contractual or other arrangements between common carriers and other entities, *even those entities that are generally not subject to Commission regulation. See Cable & Wireless v. FCC*, 166 F.3d 1224, 1230-32 (DC Cir 1999).” *Id.* at n. 85 (emphasis supplied). If the Commission can prohibit restrictive agreements between carriers and MDU owners, it can surely prohibit restrictive agreements between TRS providers and video interpreters.

Moreover, the Commission recently released a *Notice of Proposed Rule Making*, examining the slightly different situation of exclusive video services contracts with MDUs. *See Exclusive Service Contracts for Provision of Video Services*, FCC 07-32 (March 27, 2007). This item contains a discussion of the Commission’s jurisdiction to regulate contracts that “may impede competition and impair deployment of ... services [under the FCC’s jurisdiction].” Among the bases suggested for FCC jurisdiction is Section 706 of the 1996 Telecommunications Act, which “charges the Commission to ‘encourage the deployment of

... advanced telecommunications capability to all Americans.” *Id.* at para. 10. That provision is strikingly similar to Section 225(d)(2) of the Act, which directs the Commission to ensure that its regulations of TRS “do not discourage or impair the development of improved technology” for relay services.³¹

In *Beehive Telephone, Inc. v. BOCs*, 78 Rad. Reg. 2d (P&F) 1376 (1995) the FCC held that services incidental to common carrier services were subject to the Commission’s Title II regulation, in that case, access to SMS 800 service. (The SMS is a computer database used for call routing. It thus does not directly involve the transmission of information over wire or radio.) Moreover, *Beehive* held that since SMS service was offered indifferently to all entities which qualified for the service, that it itself was a common carrier service subject to Title II regulation. VRS qualifies on both of these counts. First, it is offered incidental to common carrier telephone service. Second, it is offered indifferently to all persons qualified to make use of it, deaf and hard of hearing persons. Thus, the Commission plainly has Title II authority to regulate the practices of VRS providers.

VIs are plainly an instrumentality of VRS. Access to a VI for a deaf or hard of hearing person is equivalent to access to dial tone. *Interoperability Decision*, 21 FCC Rcd at 5446. Precedent is clear that the Commission has jurisdiction over “all instrumentalities ... incidental to ... transmission” and may regulate any charge or practice associated with a

³¹The Commission also explained it had exercised its authority over MDU “home run” wiring to regulate the disposition of such wiring upon termination of service. *Id.* at para. 12.

common carrier service. *Second Computer Inquiry*, 47 Rad. Reg. 2d (P&F) 669 (1980).³² Thus, but for the First Amendment, the Commission was found to have authority to prohibit cable TV/telephone cross ownership. *See Eagle Telecommunications*, 54 Rad. Reg. 2d (P&F) 1124 (1983).³³

The FCC has exercised its jurisdiction under Sections 201 and 202 in a variety of circumstances. For example, the FCC has asserted jurisdiction over fraudulent and deceptive telemarketing practices of common carriers. *See Business Discount Plan, Inc.*, 23 Comm. Reg. (P&F) 483 (2000). *Accord NOS Communications, Inc.*, 28 Comm. Reg. (P&F) 1223 (2003).

In *AT&T Corp. and WorldCom, Inc. ("Whipsawing" on U.S. Philippines Route)*, 28 Comm. Reg. (P&F), 820 (2003), the Commission explained that while it does not have authority to regulate foreign telecommunications markets, it does have the authority *and responsibility* to oversee and regulate rates that authorized United States carriers agree to pay foreign carriers to the extent those rates affect U.S. competition and consumers, despite the

³²See also *Global Crossing Tele., Inc. v. Metrophones Tele., Inc.*, ___ U.S. ___ (slip op. April 17, 2007). The Supreme Court has previously specifically blessed the FCC's exercise of its ancillary jurisdiction. In *United States v. Southwestern Cable Co.*, 392 U.S. 157, 13 Rad. Reg. 2d (P&F) 2045 (1968), the court explained that in the absence of explicit statutory authority, the FCC has ancillary jurisdiction to regulate cable systems. It may do so, said the court, not only to protect broadcast service, but to further statutory policies relating to the enhancement of broadcasting objectives. In exercise of that authority, the Commission has held it can regulate such things as subscription programming over cable television. *See Subscription Programming*, 33 Rad. Reg. 2d (P&F) 367 (1975). The Commission now has explicit authority to regulate cable television. *See* 47 U.S.C. Sec. 152(a), 47 U.S.C. Secs. 601 et seq.

³³The holding of this case was subsequently overruled on first amendment grounds by *Chesapeake & Potomac Tel. Co. of Va. v. United States*, 42 F.3d 181 (4th Cir. 1994).

indirect effect on a foreign market. Here, the FCC plainly has jurisdiction over Sorenson's non-compete provision because it affects the rates paid for VRS service and competition over which it plainly has jurisdiction pursuant to Section 225 of the Act.

In adopting rules to implement Section 255 of the Act, the FCC has gone so far as to find that it has ancillary jurisdiction under Title I to non-carrier providers of voice mail and interactive menu services and to the manufacturers of the equipment that perform these services. The Commission held that "these services and their related equipment are not less 'incidental' to the 'receipt, forwarding and delivery of communications,' [and thus no less subject to the agency's ancillary jurisdiction simple] because the services may be provided by non-carriers in some instances. Indeed, Sections 1-3 of Title I of the Act are broadly worded and not limited in scope to communications by carriers." *Access to Telecommunications Services, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, 17 Comm. Reg. (P&F) 837, 869 (1999).

Similarly, the Commission has held that it has ancillary jurisdiction to require equipment manufacturers to incorporate a redistribution control descriptor to prevent the unauthorized redistribution of digital broadcast programming content. The Commission reasoned that the potential threat of mass indiscriminate redistribution will deter content owners from making high value digital content available through broadcasting outlets absent some content protection mechanism. Therefore, the creation of a redistribution control protection system, including compliance and robustness rules is essential for the Commission to fulfill its responsibilities under the Act and achieve long-established regulatory goals in

the field of television broadcasting. *Digital Broadcast Content Protection*, 30 Comm. Reg. (P&F) 1189 (2003).

The D.C. Circuit has also agreed with the Commission's broad ancillary jurisdiction, holding, for example, that its ancillary authority is sufficient to impose separate subsidiary requirements on AT&T for enhanced services and customer premises equipment. *See Computer and Communications Industry Association v. FCC*, 52 Rad. Reg. 2d (P&F) 1021 (D.C. Cir. 1982).

With respect to relay service in particular, the Commission has exercised its authority (1) to prohibit relay providers from awarding affinity points for VRS use, *see Telecommunications Relay Services*, 20 FCC Rcd 1466 (CGB 2005); (2) to prohibit any minimum usage requirement associated with VRS, *Id.*; and (3) to require that equipment distributed by relay providers be operable with competing providers, *Interoperability Decision*, 21 FCC Rcd 5442.

Undoubtedly, then the FCC has authority to proscribe the overbroad Sorenson restrictive covenant. The Commission is also the best forum to consider this matter. The Commission has ongoing proceedings looking at VRS rate elements. It is charged with protecting the Interstate TRS Fund and it has primary jurisdiction to regulate the provision of all TRS services. Furthermore, as even Sorenson agrees,³⁴ market stability for video interpreters is vitally necessary to ensure that the mandate of Section 225 of the Act, to ensure functionally equivalent telephone service for deaf and hard of hearing persons, is met.

³⁴See Exhibit 4.

Were the Commission not to act on this matter, it would be left to hundreds, if not thousands of individual legal actions brought in the several states to deal with this matter. That would risk the danger of many conflicting decisions which would create uncertainty in the VRS and interpreting industries. Moreover, it would leave individual VIs to fight lengthy court battles with a very well-heeled and profitable corporation. This situation thus cries out for Commission resolution.

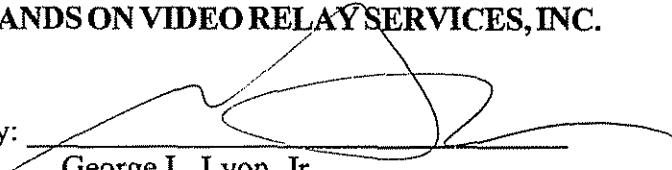
VI. Conclusion.

So that our position is clear, Petitioners see no impediment to reasonable non-compete clauses involving corporate officers, executive or other management level employees. However, with respect to VIs, the Commission should declare such non-compete agreements, and certainly the overbroad Sorenson non-compete agreements, contrary to public policy and prohibit them.

Petitioners therefore requests the Commission to declare that VRS providers may not place video interpreters under non-compete clauses, that all such existing clauses are void as against public policy, and to issue an order declaring the Sorenson non-compete clauses invalid, and to take all other actions necessary and proper to redress Sorenson's violation of Section 201(b) and Section 225 of the Act.

Respectfully submitted,

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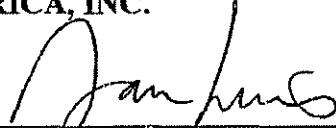
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-33-

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By: _____
Matthew Keigcr, CFO

1 Blue Hill Plaza, 14th Floor
P.O. Box 1626
Pearl River, N.Y. 10965

May 18, 2007

EXHIBIT 1

DECLARATION OF RENEE HINSON

Renee Hinson, under penalty of perjury, deposes and states as follows:

1. My name is Renee Hinson. I am an executive assistant employed by Hands On Video Relay Services, Inc. I am making this declaration to be submitted to the Federal Communications Commission as Exhibit 2 to Hands On's Petition For Declaratory Ruling And Complaint Concerning The Provision of Video Relay Service by Sorenson Communications, Inc. ("Petition"). In this connection I have been provided a copy of the Petition and am familiar with it.
2. This will affirm that I retyped a document entitled Employment Agreement that purposed to be between Sorenson Communications, Inc. and VRS video interpreter. I retyped the agreement verbatim with the exception that I omitted identifying information with respect to the video interpreter. Exhibit 1 to the Petition is the document I retyped.
3. The above information is true and correct to the best of my knowledge, information and belief and is made in good faith.



Renee Hinson

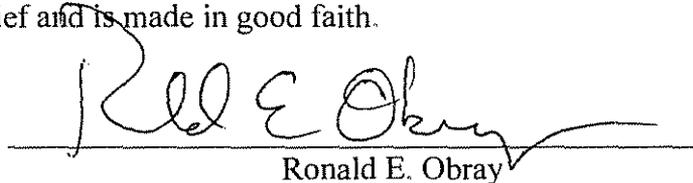
April 10, 2007

EXHIBIT 2

DECLARATION OF RONALD E. OBRA Y

Ronald E. O Bray, under penalty of perjury, deposes and states as follows:

1. My name is Ronald E. O Bray. I am an the Chief Executive Officer of Hands On Video Relay Services, Inc. ("Hands On"). I am making this declaration to be submitted to the Federal Communications Commission as Exhibit 3 to a Petition For Declaratory Ruling And Complaint Concerning The Provision of Video Relay Service by Sorenson Communications, Inc. ("Petition").
2. Hands On is in the process of opening an additional call center in the southwestern United States to handle its increasing call volume. In fact, Hands On projects it will be required in the next two years to open several new call centers. In the course of recruiting video interpreters to be employed in these new call centers, I have personally had discussions with a many current video interpreter employees of Sorenson. These persons have expressed to me a desire to go to work for Hands On and Hands On would offer employment to many of these persons. However, these video interpreters have informed me that they have signed non-compete agreements with Sorenson and that but for the non-compete agreements, they would be willing to and desire to come to work for Hands On, but they do not feel they can do so because they do not want to risk being sued by Sorenson.
3. The existence of the Sorenson non-compete agreements have therefore made it difficult to open the southwest call center and call centers in other locations as well. A cost effective call center, set up for day-time, weekday operation only, requires from 8 to 10 seats and requires from 15 to 20 full-time video interpreters. There are only a limited number of places in the country where such a call center may be established due to a shortage of interpreters. Finding that many interpreters in a single metropolitan area is therefore difficult by itself. Sorenson currently has some 60 call centers. With Sorenson placing so many interpreters under non-competes, we are finding it very difficult to locate areas to build additional call centers.
4. The above information is true and correct to the best of my knowledge, information and belief and is made in good faith.


Ronald E. O Bray

April 25, 2007

EXHIBIT 3

EMPLOYMENT AGREEMENT

This Employment Agreement (this “*Agreement*”) is by and between SORENSON COMMUNICATIONS, INC, a Utah corporation, with corporate offices located at 4393 South Riverboat Road, Suite 300, Salt Lake City, Utah 84123 USA (and referred to in this Agreement as “*Employer*” or the “*Company*”), and _____, with an address at _____, _____ and referred to in this Agreement as “*Employee*”). For good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, Employee accepts employment with Employer upon the following terms and conditions

1. DEFINITIONS

1.3 The “*Effective Date*” shall mean the date Employee signs this Agreement.

2. NATURE OF EMPLOYMENT RELATIONSHIP: “AT WILL.”

2.3 Employee hereby expressly acknowledges and agrees that Employee’s relationship with the company may be terminated at any time, by the Company or by the Employee with or without notice and for any reason that is not unlawful or for no reason.

3. DUTIES OF EMPLOYEE

3.1 Employee shall be employed in the position of VRS ASL Interpreter and shall perform interpreting services for the hearing impaired in connection with the Employer’s video relay services and related products offered to customers by the Company. In this capacity Employee will render special, unique, personal services based on his or her specialized knowledge, experience, connections, and intellect, and as an interpreter shall be entrusted with private, confidential information of customers of the Company.

3.2 Obligation Of Loyalty To Employer. During the time Employee is employed by Employer, Employee agrees to devote his or her best efforts to the interests of the Employer and will not engage in other employment or in any activities in conflict with the duties of providing video relay interpreting services without the prior written consent of the Company. Employee shall perform video relay interpreting services exclusively for the business of Employer and no other video relay service business. Employee agrees to first offer to the Employer any corporate opportunities learned of as a result of Employee’s service as an employee of the Company. Further, Employee will not discuss with any existing or potential customer, supplier, vendor, or creditor of the Employer the present or future availability of services or products provided by a business that competes or may compete with Employer’s video relay service business.

4. PROTECTIVE COVENANTS. Employer is in a competitive industry that provides interpretive video relay services. Video Relay Services allows individuals who use sign language to make relay calls on a broadband internet connection or video relay solution through VRS ASL Interpreter who can interpret their calls. The caller signs back to the VRS ASL Interpreter with the use of video equipment and the VRS ASL Interpreter voices what is signed to the called party and signs back to the caller. Employee has been, and in the future, will continue to be given access to a substantial amount of Confidential Information, as described below. In order to protect the Confidential Information of the Company and the goodwill and customer relationships with which the Employee has been entrusted with by the Employer, Employee agrees as follows:

- 4.1. Scope of Covenants. Employee hereby agrees that during the time Employee is employed by Employer and for a period of one (1) year from the date Employee's employment is terminated, Employee will not participate in, work or consult for, whether as an owner, independent contractor, or consultant, or be employed by any other video relay service company or any other provider of video relay service or any of its sub contractor/agents working within the markets where the employee performs services for the Employer. However, the Employee can continue to work and provide interpreting services with community based agencies. Employer and Employee acknowledge and agree that the geographic scope of this covenant is any state in the United States, or in any substantially similar political subdivision of any other country, that Employee helps Employer do business in while Employee is employed with Employer, for the time period set forth herein, in recognition of the worldwide market for video relay services served by Employer.
- 4.2. No Solicitation Of Officers, Directors, Employees, Independent Contractors. Because of and in consideration of Employer's provision of its Confidential Information to Employee, and in acknowledgement of the highly competitive and sensitive nature of the businesses and services, Employee will not, during the time Employee is employed by Employer and for one year immediately following Employee's termination from employment with Employer, directly or indirectly, solicit, induce or entice away any of Employer's officers, directors, employees, independent contractors or interfere with Employer's relationships with any such persons and entities, and Employee shall not authorize or condone or assist any third party in taking any actions described herein that Employee is prohibited from taking.
- 4.3. No Solicitation of Customers. Because of and in consideration of Employer's provision of its Confidential Information to Employee, including but not limited to information concerning Employer's customers and in acknowledgement of the highly competitive and sensitive nature of the business and services, Employee will not, during the time Employee is employed by Employer and for one year immediately following Employee's termination from employment with Employer, interfere with or damage Employer's relationship with its customers nor will Employee, directly or indirectly, approach, contact or solicit business from, or entice away or accept business from any of Employer's customers with whom Employee worked, or about which Employee obtained information because of Employee's work for Employer or because of Employee's access to Employer's Confidential Information. Further, Employee shall not authorize or assist any third party in taking any actions described herein that Employee is prohibited from taking.

For purposes of this Agreement, "*Customer*" means any person or entity that is doing business with the Employer or has an ongoing prospective business relationship with the Employer prior to any act of interference by Employee, if within the preceding two years (i) Employee or someone under her supervision had contact with such person or entity in the course of employment with the Employer, or (ii) Employee received Confidential Information about such person or entity in the course of employment with Employer.

- 4.4. Consideration for Protective Covenant. Employer and Employee recognize and agree that the total consideration provided for herein, are paid in part, to Employee in consideration of this Agreement not to compete, and that if this agreement not to compete were not a part of this Agreement employment would not be granted herein.
- 4.5. Survival of Protective Covenant After Termination of This Agreement. This Agreement not to compete shall survive for a period of one (1) year from the date Employee's employment is terminated, whether such termination is for cause or other reasons.

4.6. Enforcement of Protective Covenant. In the event of a breach of this Agreement not to compete by Employee, Employer may pursue any and all remedies available to it under law or equity. Employee agrees and acknowledges that a breach of the Agreement not to compete by Employee will result in continuing and irreparable harm to Employer for which there would be no adequate remedy at law, and that injunctive relief would be appropriate without the requirement of having to post a bond or other security.

5. COMPENSATION

5.1. Compensation: Employer shall pay compensation to Employee as set forth in the offer letter to Employee not less often than bi-monthly in accordance with the mutual understanding of the parties and the payroll policies of the Employer during the term of employment.

5.2. Reimbursement of Business Expenses: At Employer's option, Employee may be authorized to incur reasonable business expenses in conducting the business of Employer, provided that Employer approves of such expenses in writing in advance. Employer may from time to time adopt policies and procedures specifying the nature and amount of expenses that will be considered reasonable, and the statements contained in such policies and procedures shall be considered conclusive as to such matters, Employer will reimburse Employee for such actual, out of pocket expenses upon the Employee's presentation and itemized account of such expenses in the form required by the then properly adopted policies and procedures of Employer.

5.3. Employee Benefits: During the time Employee is employed by Employer, Employee shall be entitled to participate in all employee benefit plans made available to this class of employees.

6. CONFIDENTIAL INFORMATION

6.1. Acknowledgement: Employee hereby acknowledges that it has been, or may be exposed to, Confidential Information of Employer, as defined herein, and that at all times all disclosures of Confidential Information to Employee shall be governed by the terms and conditions of this Agreement.

6.2. Definition of "Confidential Information"

6.2.1. "Confidential Information" means any Company proprietary information, technical data, trade secrets or know-how, including, but not limited to:

- A. Customer lists and customers (including, but not limited to, customers of the Company for whom Employee provided video relay translating services during the term of employment) and information pertaining to Employer's customers, including but not limited to information related to customer names, conversations, who they communicate with, their communications, and the flow of information.
- B. Production, business, and transmission processes and related know-how software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, which include (1) the Sorenson Software work flow and process for handling VRS and VRI calls; (2) the unique service features of the Video Phone, current and future, such as: signal, VCO, missed calls, phone number pass through, call backs; (3) video interpreter training modules, reference material and process as well as skill set training and technology training;

(4) the evaluation of new features and services; (5) the methodology behind call distribution and call processing in VRS.

- C. Employer's and its customers' in-house e-mail, Internet, security, video relay services and products, and/or other systems.
- D. Financial and legal information and data of a private nature, including but not limited to business plans and other information of a private or sensitive nature pertaining to prospective and current strategic alliances, key employees, independent contractors, suppliers, and vendors.
- E. Business information pertaining to Employer, including but not limited to business plans and other information of a private or sensitive nature pertaining to prospective and current strategic alliances, key employees, independent contractors, suppliers, and vendors.
- F. Works, studies, documents, ideas, and concepts of a proprietary and/or novel nature that have been authored by Employer or by Employee during the time Employee is employed by Employer.
- G. Communications and communications transmittal/retrieval/storage systems of a proprietary, confidential, or private nature.
- H. Other valuable information designated by Employer as confidential and proprietary or by the circumstances in which it is provided to Employee.
- I. Information received by Employer from third parties that Employer is obligated to treat as confidential.
- J. Patent applications, processes, and methods, and manufacturing and marketing know-how.
- K. Sales and marketing strategies and materials, including but not limited to labeling and packaging which could be construed as a trade secret or trade dress.
- L. Any and all information regarding the foregoing that Employee may become privy to while employed by Employer which is of a proprietary, secret, and/or confidential nature

6.3. Commercialization. Employee shall not commercialize the Confidential Information of employer (including but not limited to using such Confidential Information for design or manufacture) unless the Employee has obtained the express prior written consent of an authorized officer of Employer.

6.4. Copying, Distribution, Use and Disclosure.

6.4.1. Employee shall not copy, distribute, use or disclose the Confidential Information (except for purposes necessary to perform Employee's duties and job description for Employer or where expressly authorized by this Agreement) and shall limit the disclosure of Confidential Information to only those persons the Employee reasonably believes are under a written obligation of nondisclosure and non use with respect to Employer's Confidential

Information and such persons require such knowledge in order to carry out the business of Employer. Employee shall further advise such persons upon disclosure to them of a Confidential Information of its proprietary nature and shall use all reasonable safeguards to prevent the unauthorized copying, distribution, use, and disclosure thereof.

- 6.4.2. All Confidential Information of Employer is and shall remain the sole and exclusive property of Employer. By disclosing its Confidential Information to Employee, Employer does not grant to Employee, by implication, estoppel, or otherwise, any express or implied right, title, license, or other interest in Employer's Confidential Information, trade secrets, patents, copyrights, mask work rights, trademarks, and service marks, nor does Employer grant to Employee any right to assert or file registrations and/or applications for intellectual property rights there to in any country, nation, territory, province, and jurisdiction throughout the world.
- 6.5. Proprietary Rights Legend. Employee shall not alter nor remove from any Confidential Information of Employer and proprietary rights or licensing legend, copyright notice, trademark, or trade secret legend, or any other mark identifying the material as Confidential Information of Employer.
- 6.6. Employee agrees to not use in any way the benefits or know how resulting from access to or work with Confidential Information. The term "*benefits of know how*" means information in non-tangible form which may be retained by persons who have had access to the Confidential Information, including ideas, concepts, know how or techniques contained therein.
- 6.7. Employee shall notify Employer immediately upon discovery of any unauthorized use, sell, transfer, and/or conveyance of Confidential Information and Employee agrees to cooperate in every reasonable way to Employee's sole cost and expense to prevent the further unauthorized use, sell, transfer, and/or conveyance of Confidential Information.
- 6.8. Employee agrees, to use the Confidential Information only during the time Employee is employed by Employer and solely for Employee to perform Employee's obligations under his agreement.
- 6.9. This Section of the Agreement will continue to apply after Employee is no longer employed by Employer.

7. INTELLECTUAL PROPERTY

- 7.1. Employee hereby expressly acknowledges and agrees that any and all "*Intellectual Property,*" as defined below, shall without further consideration immediately become the sole and exclusive property of Employer and that Employer's rights under this Agreement are pain in full by Employer's acceptance of the Employee for employment with Employer and the continuation of such employment with Employer and the continuation of such employment until it is terminated by Employee or Employer.
- 7.2. Definition of "*Intellectual Property.*"
- 7.2.1. "*Intellectual Property*" shall mean any and all ideas, inventions, designs of a useful article, other works of authorship, innovations, formulae, algorithms, concepts, trade secrets and the like that Employee may make, conceive, or suggest during the time Employee is employed by Employer, whether made or conceived solely by Employee or with others or

on Employee's own time, and whether or not patentable or copyrightable, or patented or registered for trademark or copyright purposes, *IF such ideas, inventions, designs of a useful article, other works of authorship, innovations, formulae, algorithms, concepts, trade secrets and the like are:*

- A. Related to the actual or anticipated business, services, or research or development of Employer.
- B. Are suggested by or result from any task assigned to Employee or work performed by Employee for or on behalf of Employer.

7.2.2. "*Intellectual Property*" shall not mean any Intellectual property that Employee cannot assign because of a prior agreement with a third party (provided that Employee notifies Employer of such agreement within a reasonable time after Employee becomes employed by Employer and furnishes Employer with a written outline of the terms and conditions of such agreement and/or a copy of the agreement upon Employer's request.)

7.3. Employee's Express Assignment of Intellectual Property.

7.3.1. Employee, by placing its signature below, and consistent with the preceding paragraphs, does fully and forever assign, grant and convey, for itself, and its heirs, executors, administrators, and assigns, any and all of its entire right, title, and interest in and to any and all Intellectual Property (as defined herein) to Employer.

7.3.2. Employee further acknowledges and agrees that the copyright and any other intellectual property right in design, computer programs, and related documentation, and works of authorship created within the scope of this Agreement belong to Employer by operation of law and, at Employer's request, Employee shall, at no increase in the compensation provided to Employee under its employment

- A. Execute patent applications, assignments, re-issue applications, and other papers relating to the Intellectual Property and the improvements thereon that may be necessary or proper to secure and fully protect Employer and preserve its rights thereto and to obtain and maintain Letters Patent therefore in the United States, the United Kingdom, and all foreign countries.
- B. Give affidavits and testimony as to facts within Employee's knowledge in connection with such applications, assignments, re-issue applications, and other papers relating to the Intellectual Property in Patent Office proceedings or other proceedings, or in any litigation, arbitration, hearing, mediation, dispute, or controversy relating thereto.

7.4. This Section of the Agreement will continue to apply after Employee is no longer employed by Employer.

8. REPRESENTATIONS AND WARRANTIES OF EMPLOYEE. Employee represents and warrants to Employer that:

8.3 Employee is under no contractual or other restriction or obligation which is inconsistent with the terms and conditions of this Agreement, the performance of Employee's obligations, hereunder, or the other rights of the Employer hereunder.

- 8.4 Employee shall protect and keep confidential the privacy of conversations between customers using Employer's video relay service except as reasonably necessary to perform its obligations hereunder.
- 8.5 Employee shall not copy and/or tamper with any transmission or communication, whether by voice, non-voice, or data, that Employee shall become privy to as a result of being employed by Employer, nor shall Employer permit them to be monitored or recorded except by Employer in order to enforce Employer's rights under this Agreement and/or monitor any violations of this Agreement or any laws applicable to this Agreement.
- 8.6 Employee shall not allow any unauthorized person to have access to any communication transmitted by customers using Employer's video relay service and this obligation includes not divulging information about who was or is speaking or what was spoken about.
- 8.7 Employee shall not install or permit installation of any device that could enable an unauthorized person to listen to, observe, or copy conversations or communications of any Employer video relay service customer.
- 8.8 Employee shall not use information from any customer communication derived as a result of Employee's employment with Employer, or the fact that a communication has occurred, for Employee's personal benefit or the benefit of others.
- 8.9 Employee shall immediately contact Employer if Employee reasonably believes that the privacy of any communication which Employee becomes privy to or knows about as a result of being employed by Employer has been compromised, or if Employee receives a subpoena, court order, or any other type of request for information from anyone arising as a result of Employee's employment with Employer (including but not limited to law enforcement and governmental agencies.)
- 8.10 Employee shall not make any warranties or representations with respect to Employer, Employer's businesses, services, operations, or products, unless Employer agrees otherwise in a writing signed by an authorized officer of Employer.
- 8.11 Employee agrees to conduct Employer's business and perform its obligations hereunder in a manner that will not negatively affect Employer and Employer's products, services, and/or businesses, including but not limited to the following:
- 8.11.1 Employee shall, refrain from engaging in any action which could be reasonably construed as pornographic, harassing, defamatory, obscene, deceptive, misleading, illegal, unethical, and/or corrupt.
 - 8.11.2 Employee shall comply with all federal, state, and local laws, orders, rules, ordinances, and regulations that apply to the performance of Employee's duties as an employee of Employer (the "*Laws*"), which shall include, but not be limited to:
 - A. The Anti-Kickback Act of 1986, 41 U.S.C. section 51 et seq.
 - B. All applicable export laws and regulations, including those of the USA, as such laws apply to the use, transportation, and/or communication of the Confidential Information, and any products, services and technology of Employer.

8.11.3 Employee shall abide by certain policies and procedures of Employer which, because such policies and procedures are consistent with this obligation, Employee acknowledges and agrees that Employee shall or have read, understood, and agree to comply with certain "Employer Policy Statements" attached to this Agreement as Exhibit A.

8.12 Third Party Confidential and Proprietary Information: Employee represents and warrants that, during the time Employee is employed by Employer, Employee shall not disclose or use any confidential, proprietary, and private information of a third party, including but not limited to persons and entities that Employee has previously worked for, whether as an Employee or independent contractor and, to the extent that any use or disclosure of any third party information is made by the Employee during the time Employee is employed by Employer, Employee represents and warrants that Employee has the full and unrestricted right to use and disclose the same and shall not be in breach of any obligation or agreement with any third party pertaining to any such information and that Employee has no obligation to use or disclose any third party information to Employer or it's affiliated entities.

9 TERMINATION OF EMPLOYMENT.

9.1 Basis for Termination. Either the Employer or Employee may terminate this Agreement "at will" at any time with or without notice and with or without cause for any reason that is not unlawful.

9.2 Compensation Upon Termination. In the event of a termination this Agreement and Employee's employment with Employer shall be wholly terminated and Employee shall not be entitled to any further compensation, or other benefits provided for herein. However, any of the provisions of this Agreement relating to activities and conduct after the end of the employment relationship between Employer and Employee shall remain in full force and effect and be enforceable as provided herein.

9.3 Obligations Upon Termination.

9.3.1 Employee shall return any and all Confidential Information that is in Employee's possession or control, including all originals, copies, reproductions, and summaries thereof, to Employer within five (5) business days of the date of such termination, and to also completely erase and destroy all copies of all portions of all software comprising the Confidential Information in Employee's possession and/or control which may have been loaded onto the computers of Employee, including but not limited to e-mail and video relay systems. Employee shall provide Employer with all passwords, access tools, and information reasonably necessary for Employer to retrieve all of Employer's Confidential Information and personal property, and shall also disclose to Employer all Employer information and property that is in Employee's possession or control which Employer may not be aware of for the purpose of assisting Employer to retrieve same.

9.3.2 Employee shall immediately return all Employer property that is in Employee's possession or control, including but not limited to: Computers, computer files, computer software, computer hardware, libraries, and accessories; Books, records, documents and files of any nature; Building security cards and any and all ID cards; Keys (including but not limited to all building, desk, and Employer car keys); Equipment of any nature; Phone cards and credit cards, Employer checks and

checking account information and documents; MXP accounts; Network accounts; E-mail and voice mail accounts, Palm pilots, cell phones and pagers; All other property not specified herein which belongs to Employer.

9.3.3 In addition to the above, Employee shall immediately surrender to Employer any and all personal property of Employee, of any nature, which contains Employer's confidential information and/or personal property, and shall fully cooperate with Employer in all efforts reasonable necessary for Employer to access and gain entry to all such Employee personal property for the purpose of enabling Employer to retrieve all such Employer Confidential Information and Employer property (after which Employer shall return to Employee all such property belonging to Employee absent all Employer Confidential Information and property.)

9.3.4 Employee shall immediately submit to Employer all Employee time sheets and expense reports which have not been submitted to Employer as of the date of termination.

10 MISCELLANEOUS.

9.1 Assignment. This Agreement shall not be assignable by Employee. A change in ownership of the stock of Employer shall not affect the validity of the Agreement. In the event of a future disposition of the properties and businesses of Employer by merger, consolidation, sale of assets, or otherwise, then the Employer may assign the Agreement and all of its rights and obligations to the acquiring or surviving entity, provided that such entity shall assume of the obligations of Employer hereunder.

10.1 Construction. This Agreement shall be construed and interpreted fairly in accordance with the plain meaning of its terms, and there shall be no presumption or interference against the party drafting this Agreement in construing or interpreting the provisions hereof. Each party further acknowledges and agrees that they have had the opportunity to consult with, or have consulted with, attorneys of their own choice regarding each term and condition of this Agreement, that they both understand the meaning and effect of each provision contained in this Agreement, and that they have voluntarily and knowingly entered into this Agreement.

Further, Employee expressly represents and warrants that in executing this Agreement he/she has not relied upon any representation or statement not set forth herein made by Employer or by any of Employer's agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise.

10.2 Counterparts. This Agreement may be executed via facsimile, and/or in multiple, original counterparts, each of which will be an original but all of which, when taken together, shall constitute one and the same document. This Agreement, when taken together, bears an authorized signature of Employer and Employee.

10.3 Dispute Resolution.

10.3.1 This Agreement shall be exclusively construed, governed, and controlled by the laws of the State of Utah, USA, without regard to principles of law, including conflicts of law.

- 10.3.2 The parties agree that, except those controversies or claims over which a claims of any nature arising out of or relating to this Agreement or the breach, termination or validity thereof, or upon Employee's employment with Employer, whether based on contract, tort, statute, fraud, misrepresentation, or any other legal or equitable theory, whenever brought and whichever party brings it, and whether between the parties to this Agreement or between one of the parties to this Agreement and the employees, agents, and/or affiliated entities of the other party (a "*Claim*") they shall first attempt in good faith to resolve their dispute informally, or by means of commercial mediation, without the necessity of a formal proceeding.
- 10.3.3 The parties further agree that any Claim which cannot otherwise be resolved as provided by paragraph 10.42, above, shall be exclusively brought and prosecuted only in Salt Lake County, Utah, USA, and shall be resolved solely and exclusively by compulsory and binding arbitration conducted in Salt Lake County, Utah, USA. The parties hereby expressly waive any and all rights to a Trial By Jury, expressly submit to the personal jurisdiction of the arbitration and state and federal courts located in the State of Utah, USA, waive any and all judicial remedies on any matter subject to this part, and agree that the following terms and conditions shall govern all such arbitrations:
- A. Federal law of the USA, including the provisions of the Federal Arbitration Act, shall govern and control with respect to any issues relating to the Employee identity of this agreement to arbitrate and the arbitrability of the claims.
 - B. The arbitration shall be conducted in accordance with the then current rules of the American Arbitration Association (the "AAA") which specifically pertain to the subject matters of the claim(s), except where such rules expressly conflict with the provisions of this Agreement and, in such event, this Agreement shall govern.
 - C. The arbitrator shall have the authority to issue subpoenas and orders, compel reasonable discovery, and all expedited procedures prescribed by the AAA shall apply.
 - D. The arbitrator shall allow discovery as provided by applicable law and AAA procedures, except where such procedures expressly conflict with the provisions of applicable law and, in such event, applicable law shall govern.
 - E. The arbitrator shall also have the power to award legal relief, as well as temporary and permanent equitable relief in accordance with any provision of applicable law.
 - F. Each party shall bear its own expenses, but those related to the compensation of the arbitrator and the costs of using the facility where the arbitration is held shall be appointed as required by applicable law.
 - G. The arbitration proceedings contemplated by this Agreement shall be as confidential and private as permitted by law. The parties shall not disclose the existence, content, or results of any proceedings, a conducted under this section of the Agreement and deem that all materials submitted in connection with such proceedings are for the purpose of settlement and compromise provided,

however, that is confidentiality provision shall not prevent a petition to vacate or enforce an arbitral award and shall not bar disclosures required by law.

H. Notwithstanding anything in this section of the Agreement, each party retains the right to seek judicial assistance, provided that such assistance is filed in the state of federal courts in Salt Lake County, Utah to compel arbitration; to seek injunctive relief in the courts of any jurisdiction as may be necessary and appropriate to protect the unauthorized disclosure of its proprietary or confidential information; To enforce any decision of the arbitrators, including the final award.

10.3.4 If Employee files a judicial or administrative action asserting claims subject to arbitration and Employer successfully stays such action and/or compels arbitration of such claims, Employee shall pay Employer's costs and expenses incurred in seeking such stay and/or compelling arbitration, including court costs and reasonable attorney's fees. Further, in the event that Employee commences litigation or files any type of motion or claim in a forum not in Salt Lake County, Utah, USA and Employer successfully has the venue of such action moved to the State of Utah, USA, Employee shall pay all of Employer's costs and expenses incurred in seeking such change of venue, including but not limited to court costs and reasonable attorneys' fees.

10.4 Entirety of Agreement. The parties have read this Agreement and agree to be bound by its terms, and further agree that it constitutes the complete and entire agreement of the parties with respect to Employee's employment with Employer and supersedes all previous and contemporaneous communications, correspondences, and agreements between the parties, whether such agreements are oral or written, including but not limited to any non-disclosure and confidentiality agreements between the parties. No representations or statements of any kind made by either party, oral or written, which are not expressly stated herein, shall be binding on such party.

10.5 Headings. The headings of the several sections are inserted for convenience of reference only and are not intended to be a part of, or to affect the meaning or interpretation of this Agreement.

10.6 Notices. All notices or other communications pursuant to this contact may be given by personal delivery, or by certified mail, addressed to the corporate office of Employer or to the last known address of Employer. Notices given by personal delivery shall be deemed given at the time of delivery, and notices sent by certified mail shall be deemed given when deposited with the U.S. Post Office.

10.7 Remedies. Except as provided herein, the rights and remedies of the parties set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it, at law and in equity.

10.8 Severability. In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under applicable law and the other provisions of this Agreement will remain in full force and effect.

10.9 Waiver. The failure of either party to enforce any rights hereunder shall not be deemed to be a wavier of such rights, unless such waiver is an express written waiver which has been signed by the waiving party. Waiver of one breach shall not be deemed a waiver of any other breach of the same or any other provision hereof.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed on the dates set forth below by their duly authorized representatives.

“EMPLOYER”

Sorenson Communications, Inc.

Authorized Representative:

Signature: _____

By

Title: _____

Date Signed (Please Print): _____

“EMPLOYEE”

Authorized Representative:

Signature: _____

By

Date Signed _____

EXHIBIT A
COMPANY POLICY STATEMENTS
APPLICABLE TO INTERPRETER
(PURSUANT TO SECTION 8)

1. **The Policy Statement Applicable to the Use of Alcohol and/or Drugs** (outlines the obligation to not use, possess, manufacture, distribute, or be under the influence of illegal drugs and/or alcohol while performing services for the Company, irregardless of the location Interpreter may be performing Services for the Company.)
2. **The Policy Statement Prohibiting Harassment** (outlines the obligation to abide by the Company's Harassment Policy while performing Services for the Company.)
3. **The Policy Statement Applicable To The Use Of The Company's Internet And E-Mail Systems** (outlines certain obligations which apply to using the Company's Internet and E-Mail Systems); and
4. **The Policy Statement Prohibiting The Use of Tobacco In The Workplace** (outlines certain obligations pertaining to the Nonuse of Tobacco in the Company's workplaces.)

EMPLOYEE ACKNOWLEDGEMENT

I acknowledge, by placing my signature below, the following:

- I have read and understand the Sorenson Companies Employee Responsibilities;
- I have read, understand and have received a personal copy of each of the Sorenson Communications Policies for:
 - Drugs and Alcohol
 - Harassment
 - Tobacco Free Workplace
 - Notice Regarding Worker's Compensation
 - Accessing and Using the Company's Internet and E-Mail Systems
- If I have any questions or concerns regarding any aspect of my employment with The Sorenson Communications Policies, I will discuss them with my Human Resource Representative.

AGREED:

Employee: _____ *Company:* _____
Please Print

Signature: _____ Date Signed: _____

IT IS NOT NECESSARY TO RETURN ALL POLICIES; ONLY THIS FIRST PAGE.

EMPLOYEE RESPONSIBILITIES

- A. Conduct such as the following is prohibited and will subject the individual involved to disciplinary action, up to and including termination (see Termination of Employment, 2-12):
1. Dishonesty of any kind—on or OFF the job. Some examples:
 - a. Unauthorized conversion to personal use or removal of company money, product, or other property from company premises, committed alone or with another person(s).
 - b. Falsification of company records –this includes time cards and timesheets
 - c. Representing Sorenson Companies without authorization or making false or other improper statements that could potentially cause serious damage to Sorenson Company’s reputation.
 - d. Misrepresenting facts about work experience or abilities at the time of hire to gain employment.
 - e. Involvement in any illegal action, whether on or off Sorenson Companies property, such as gambling.
 - f. Conviction of a crime either directly or indirectly related to Sorenson Companies, its employees, or its property, or one that AFFECTS THE EMPLOYEE’S ABILITY TO PERFORM HIS OR HER DUTY.
 2. Reporting for work under the influence of alcoholic beverages or unlawful narcotics or drugs. Consuming alcoholic beverages or unlawful narcotics or drugs during your work shift or on company premises.
 3. Negligence that results in a loss of time, equipment, or product to Sorenson Companies
 4. Deliberate destruction of company or employee’s property, or any reckless act that results in a loss of injury to Sorenson Companies, an employee, or to a customer.
 5. Insubordination, such as willfully disobeying the instructions of authorized person-in-charge, or disrespectful conduct toward a supervisor or person-in-charge.
 6. Refusal to submit to required drug testing
 7. Involvement to any degree in any incident of harassment, including but not limited to, improper language, innuendo, allusion, intimation, gesture, or activity.
 8. The possession of firearms or other weapons on Company property.
 9. Other employment-related misconduct determined by Sorenson Companies to be of an equally serious nature. Some examples:
 - a. Failure to wear assigned safety equipment or failure to abide by safety rules and policies.
 - b. Organizing together with the intent of threatening the personal welfare of other individuals or company property.
 - c. Leaving work areas or entering restricted areas without proper authorization.
 10. Failure to perform work as requested or required.
 11. Failure to comply with written company policies and procedures.
 - a. Working “free time” or working overtime without specific approval of the person-in-charge.
 - b. Excessive or repeated improper or inappropriate personal appearance or attire.
 - c. Making false statements to supervisors.
 - d. Smoking is a prohibited area.
 12. Any conduct that otherwise interferes with or obstructs the normal operation of business.
 - a. Excessive tardiness or absenteeism.
 - b. Sharing of confidential information about the business, its owners or employees with unauthorized individuals or accessing confidential information without approval.
 - c. Making or accepting any unauthorized long distance telephone calls.

- d. Consorting with other employees in less than a professional manner while at work. i.e., violent behavior or behavior deemed by Sorenson Companies to be inappropriate in a business environment.
 - e. Consuming food or drink in unauthorized areas.
 - f. Involvement in compromising or illegal business relationships, conflict of interest.
13. Operating or allowing others to operate machinery, vehicles, instruments or technical tools without proper training or permission. (In addition to corrective action, the employee may be liable for the replacement cost of any damages incurred by Sorenson Companies because of their actions.)

The following conduct is regarded and accepted as an employee's voluntary resignation (Quit) of His/Her employment:

- 1. Leaving work during scheduled working hours without prior permission.
- 2. Refusal to work a scheduled shift.
- 3. Failure to personally notify the supervisor of an absence before the scheduled work shift (abandonment after three days.)
- 4. Failure to return to work from an approved leave of absence as scheduled.

DRUGS AND ALCOHOL

I. PURPOSE

To outline Company Policy on maintaining a safe, healthy and productive workplace environment free from the potential adverse effects of alcohol and illegal drugs.

II. POLICY

1. APPLICATION

This policy applies to all individuals performing personal services for the company as an employee, independent contractor or consultant, employee of a temporary employment agency, employee of a leasing company, etc.

2. REQUIREMENTS

1. General

All individuals performing personal services for the company are required to be in a physical and mental condition conducive to performing the services and to maintaining a safe work environment.

2. Supervisors and Managers

- a. Supervisors and managers are to assist the company in enforcing this policy, including documenting the declining and/or unsatisfactory performance of individuals to which this policy applies and advising the Corporate Human Resource Department when any activity in violation of this policy is suspected.
- b. Supervisors and managers must also assure that non-employees to which this policy applies are sufficiently bound by contract. Moreover, the Human Resources Department should be immediately consulted in the event any non-employee is suspected of any violation of this policy.
- c. Whenever an individual is required to undergo "accident or unsafe practices," "reasonable cause," or similar testing, a supervisor or manager must escort the individual to and from the sample collection site.
- d. Each facility should conspicuously and continuously post, in all reception areas, an appropriate sign which will notify visitors, employees, prospective employees, etc., that the facility is a drug-free workplace and that drug testing occurs. (The Corporate Human Resources Department will supply a suggested sign.)

3. PROHIBITIONS

1. Illegal Drugs

The use, possession, manufacture or distribution of an ILLEGAL DRUG, or its presence in the body of an individual to which this policy applies – during working hours, on company property, during use of a company vehicle, at company-sponsored activities, or when conducting company business (regardless of the time or location) – is strictly prohibited.

2. Alcohol

The use of ALCOHOL or its presence in the body of an individual to which this policy applies – during working hours, on company property, during use of a company vehicle, at company-sponsored activities or when conducting company business (regardless of the time or location) – is strictly prohibited.

- a. Exception. When considered necessary to promote business and corporate goodwill, a company President may authorize the limited and controlled consumption of alcoholic beverages by select employees who are conducting company business at an off-site location. However, as a minimum:
 1. The consumption must not take place on company premises or at company work sites;
 2. The consumption and any associated events must be managed and controlled so as to minimize any potential dangers and company liability; and
 3. All such employees must exercise moderation and good judgment and must fully understand the dangers and potential personal and company liability which may arise the consumption of alcohol.
 - b. Alcohol is considered present in an individual's body and his is considered to have failed the alcohol test if he has a test result above 0.04 weight per volume.
- #### 3. Misuse of Company Property or Position

Any use of company property or an employee's position in the company to facilitate any activity which violates this policy is strictly prohibited.

III. PROCEDURES

1. TESTING

1. General

- a. In ways such as the following, all individuals to which this policy applies, including management and officers, are required to cooperate fully in efforts to detect violations of this policy:
 1. By voluntarily furnishing samples and submitting to tests to detect the presence of alcohol or illegal drugs in his body;
 2. By signing an informed "consent to test" statement; and
 3. By providing relevant explanations and medical information, including identification of currently or recently used prescription or nonprescription drugs.
- b. All related information, interviews, reports, statements, memoranda and test results will be kept as confidential as possible.
- c. Testing will be conducted under conditions that will provide the person being tested with an optimum level of privacy and will ensure the accuracy and reliability of the sample.
- d. Testing of company employees must occur during or immediately after the regular work period and the time spent is considered work time. Testing costs, including transportation if necessary, shall be paid by the company, except that any employee who desires to have a positive test result (which has been confirmed by a second test paid for by the Company) validated by a third test shall pay for the costs of such third test.
- e. Whenever feasible and cost-effective, samples will be tested for any evidence of substitution or adulteration.
- f. Refusing to submit a test, unduly and reasonably delaying the submission of a sample for testing, attempting to interfere with testing procedures or to substitute or adulterate a sample, providing false or misleading information in conjunction with a test, etc., shall result in immediate termination of the employee's employment with the Company.

2. Illegal Drugs

- a. Testing for the presence of illegal drugs will normally be conducted by taking a urine sample.
- b. If a test is “positive,” a “verification test” will be conducted by means of a gas chromatography/mass spectrometry assay or similar analytical method.
- c. The current screening and confirmation cutoff levels for certain illegal drugs are as follows (and are subject to change at any time, with or without notice, at the company’s sole discretion):

Name of Drug	Screening Cutoff:	Confirmation Cutoff:
CANNABINOIDS AS CARBOXY-THC (MARIJUANA)	100 NG/ML	15 NG/ML
COCAINE METABOLITES AS BENZOYLECGONINE (CRACK, COCAINE)	300 NG/ML	150 NG/ML
PHENCYLCLIDINE (PCP, ANGEL DUST)	25NG/ML	25NG/ML
OPIATES (CODEINE, MORPHINE) ¹	2,000 NG/ML	2,000 NG/ML
AMPHETAMINES (AMPHETAMINES & METHAMPHETAMINES) ²	1,000 NG/ML	500 NG/ML

[¹ In addition, all opiate samples which test positive shall be analyzed for the heroin metabolite 6-acetylmorphine (6-AM)]

[² MUST ALSO CONTAIN AMPHETAMINES EQUAL TO OR GREATER THAN 200 NG/ML.]

3. Alcohol

In appropriate circumstances, a blood alcohol, breathalyzer or other alcohol test may be conducted to detect the presence of alcohol.

4. Examples of Circumstances in Which Testing May Occur

- a. **“Pre-employment”:** As a condition of being allowed to perform any personal services for the company, an individual must pass a drug test.
 1. Normally within 24 hours of being asked to submit to this type of drug test, an individual must report to the collection site *and* provide a sample for testing.

- b. **“Accident” or “Health or Safety Hazard” Testing:** Testing may be required of any individual involved in a work-related accident or of an individual who is engaged in work which if performed while drug or alcohol impaired could reasonably pose a health or safety risk to himself, others or overall company operations.
 - 1. Normally, an individual must leave for the collection site immediately after being asked to submit to this type of test *and* must provide a sample for testing within a reasonable time after arriving at the site.
- c. **“Reasonable Suspicion”:** Testing may be required in circumstances in which the company has a reasonable belief that violations of this policy may exist.
 - 1. Normally, an individual must leave for the collection site immediately after being asked to submit to this type of test *and* must provide a sample for testing within a reasonable time after arriving at the site.
- d. **“Random”:** Testing of all or any part of the individuals in the workplace may be conducted at any time and place, with or without notice or any reason.
 - 1. Normally within 2hours of being asked to submit to this type of test, an individual must report to the collection site *and* provide a sample for testing.
- e. An individual’s inability or failure to provide a sample for testing, within the time limits designated above, should be properly documented and both the Medical Review Officer and the company promptly notified. Such inability or failure may, depending on the reasons for such inability or failure, result in immediate termination of the employee’s employment with the Company.

2. CONSEQUENCES OF VIOLATIONS

Violations of this policy may result in various measures which include, but are not limited to, the following:

1. Returning To Service After Passing A Test

Normally, individuals who pass an “accident or health or safety hazard,” “reasonable cause,” “random,” or similar test, will be returned to service without delay and the time spent away from service for testing will be paid at their regular rate.

2. Suspension From Employment

- a. Under normal conditions an **employee** who violates the provisions of this policy will immediately be required to stop working and will be immediately suspended from employment, without pay, for a minimum of 5 working days. (The employee should also be driven home.) In addition, the employee may be required to undergo rehabilitation as provided below.
- b. If the violation involves *illegal drugs*, the **employee** may be immediately required to take a drug test. If the violation involves *alcohol*, he may be immediately required to take a blood alcohol, breathalyzer, or other alcohol test.

3. Rehabilitation

Besides suspension, an **employee** may be required to immediately enroll in, successfully complete, and, to the extent the costs are not otherwise covered, pay the cost of an approved rehabilitation program (which normally begins with the company's Employee Assistance Program or "EAP"). Absences for reasons related to rehabilitation are subject to company policies and procedures on leaves of absence and may qualify, in whole or in part, under the Family and Medical Leave Act (see Policy and Procedure 2-21, Absence with Pay, and Policy and Procedure 2-22, Leaves of Absence Without Pay, including its Appendix.)

4. Certain Conditions After Rehabilitation

After successfully completing rehabilitation, the conditions which an **employee** may be required to meet in order to be considered for further employment include, but are not limited to, the following:

- a. To pass another drug and/or alcohol test.
- b. To obtain (and file with the Corporate Human Resources Department) a certificate from the rehabilitation officials certifying that the employee has followed the recommended programs and commits to future compliance with this policy.
- c. In addition to other circumstances in which testing may occur, to undergo periodic testing at any time and without notice during the subsequent twelve-month period.

5. Termination From Employment

All employment with The Sorenson Companies is entirely "at-will" (see Policy and Procedure 1-01, Employment -At-Will) and nothing in this policy should be construed to alter this fact nor is any Company manager or supervisor authorized to modify the at-will employment relationship. However, an **employee** is likely to be terminated from employment immediately if events such as the following occur:

- a. The employee drinks alcohol or consumes illegal drugs while driving a company vehicle, or is involved in the collision of a company vehicle or issued a traffic citation for speeding and/or reckless driving and has alcohol and/or illegal drugs in his possession or present in his body.
- b. The employee drives a company vehicle which the employee is aware contains an opened alcoholic beverage container and/or a passenger who is currently in the process of consuming alcohol or taking illegal drugs.
- c. The employee manufactures, distributes or attempts to distribute illegal drugs on company premises or during working hours, or while in a company vehicle, at a company-sponsored activity, on company business, or while representing company interests.
- d. The employee attempts to alter or substitute his test specimen, or attempts to tamper with the testing procedures.
- e. The employee provides false information in conjunction with a test.
- f. The employee refuses or fails to complete documentation necessary for him to complete a drug or alcohol test.
- g. The employee refuses to take a test or fails to take a test within the required time limits.
- h. The employee refuses or fails to complete required rehabilitation.
- i. The employee fails a test after suspension or rehabilitation.

3. INSPECTION AND CONFISCATION

1. At any time and with or without prior notice, the company may inspect and/or confiscate any personal property brought onto or used in or on company premises. ("Company premises" is any property, real or otherwise, which is owned by or is under the control of the company, such as buildings, parking lots, land, company vehicles, etc.) Personal property subject to inspection and confiscation includes, but is not limited to, briefcases, lunch boxes, sacks, purses, desks, lockers, vehicles, computer storage devices, etc., as well as the contents of any such property.
2. The refusal to consent to an inspection and/or confiscation may result in discipline, up to and including termination of employment.
3. The Human Resources and Legal Departments should be consulted prior to attempting any inspection and/or confiscation.

4. REPORTING CRIMINAL CONVICTIONS

An employee is required to report any conviction which he receives under a criminal drug statute for illegal drug-related activities which occur during working time or while on company property. This report must be made to the Corporate Human Resources Department within five (5) days after conviction.

5. EMPLOYEE ACKNOWLEDGMENT OF RECEIPT

As a condition of employment, all employees are required to sign the form, "Employee Acknowledgement."

SORENSEN COMPANIES' POLICY AGAINST HARASSMENT

It is the Sorenson Companies' policy and goal that all employees of the Companies be able to work in an environment free from harassment by co-workers, including but not limited to *sexual harassment*. The Companies will not permit any conduct which interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

HARASSMENT OF A "NON-SEXUAL" NATURE ("NON-SEXUAL HARASSMENT").

Basic harassment, of a "non-sexual" nature, can take many forms but includes such things as calling fellow-employees derogatory names, or spreading malicious rumors about other employees. While basic harassment may not violate any law, it can disrupt the workplace and, therefore, the Sorenson Companies prohibit any employee from harassing another employee.

HARASSMENT OF A SEXUAL NATURE ("SEXUAL HARASSMENT").

Sexual harassment on the other hand, is a violation of federal law under Title VII of the Civil Rights Act of 1964, as amended, and is also against state law. Therefore, the Sorenson Companies strictly forbid sexual harassment and will take strong disciplinary action against any employee who engages in it, including immediate termination of that employee's employment with the Companies. Sexual harassment may take various forms and may be verbal, physical, or visual. IT may be one of the following:

1. Repeated offensive sexual flirtations, advances or propositions;
2. Continual or repeated verbal abuse of a sexual nature;
3. Graphic verbal commentaries about individuals or individuals' bodies;
4. Degrading words or names.
5. Sexually suggestive displays, pictures or objects in the workplace; and/or
6. A manager's supervisors, or co-worker's threat or insinuation, either explicitly or implicitly, that an employee's refusal to submit to sexual advances will adversely affect the employee's work environment or any conditions of employment.

The above examples do not provide a complete list of what may be harassment so if you feel that you are being harassed, but are not sure, feel free to contact the person who administers the harassment policy of the Companies (Judi Sorenson at 461-9713) who will answer any questions you have about harassment. Also, please note that *you have a DUTY to immediately notify your company personnel officer, a supervisor or manager of your company, the Director of Human Resources, Janice Barson, at 461-9738 if you have been SEXUALLY HARASSED by a co-worker, or if you observe any kind of SEXUAL HARASSMENT at the workplace. You also have a DUTY TO NOTIFY Janice Barson at (461-9738) if you have filed a SEXUAL HARASSMENT complaint and feel like nothing has been done about it within FIVE (5) working days of when you filed it.*

When you file a complaint of harassment, you will be require to either complete the attached "Official Complaint of Harassment" form, or have your personnel officer or other company manager complete it for you. In any event, you shall be required to sign your complaint. Thereafter, your complaint will be investigated and any remedial action which is necessary and appropriate will be taken. While an employee who brings a complaint *in good faith* will not be adversely affected by bringing the complaint, beware that any employee who files a *false harassment claim* against another employee shall be disciplined, which may include immediate termination from employment.

*THE SORENSON COMPANIES' POLICY
ON ACCESSING AND USING THE COMPANIES' INTERNET
AND
E-MAIL SYSTEMS.*

Revised, April 1, 2000

The Sorenson Companies are committed to providing for their employees a workplace environment which encourages productivity and effective communication. For that reason, The Sorenson Companies provide their employees the ability to access and use the E-Mail and Internet Systems provided by the Companies.

I. The Internet.

A. The Following Is NOT acceptable Usage of Company Computers

1. Running or attempting the installation of applications from the internet, games, movies, music, and internet radio, messengers, downloading and streaming video. All of these items have ht potential to weaken or circumvent our network security.

B. General Information.

1. When using the Internet, you are using a completely different physical network of communication. The Internet is maintained independently at thousands of sites around the world. The reliability and types of information you access via the Internet, and the confidentiality of information sent by you through the Internet, is beyond The Sorenson Companies' control and, therefore, you need to affirmatively exercise reasonably prudent judgment when you are accessing and sending any information through the Internet.
2. Further, because files, information, and products you access and download from the Internet file library archives will usually not have been pre-checked by any content manager, you need to exercise reasonable care when you are accessing or downloading from the Internet to ensure that you actually *want* any such files, information, or products, that the files, information, or products will, when applicable work on your equipment and systems, that you have the right to download, copy, or use the files, information, or products and that they do not contain any viruses which could damage or corrupt your equipment or systems, the Companies' equipment or systems, or compromise the Companies' security or systems, or contain any information or materials which could be construed as pornographic, inflammatory, or offensive.

C. General Rules.

1. **Times of Use.** All employees of The Sorenson Companies are required to make effective use of their time in performing their duties as employees during their appointed working hours. Therefore, you are expressly prohibited from accessing and using the Internet during your appointed working hours, *unless such access and use is reasonable required in order to perform your duties as an employee of the Companies, or is done during your Company-authorized meal breaks.*

2. **Pornographic, Defamatory, Harassing, and Other Types of Offensive Information.** You are expressly prohibited from accessing, downloading, publishing, sending, distributing, re-distributing, and copying any information or data which could be construed as pornographic, obscene, inflammatory, defamatory, or harassing. Further, you are required to immediately report all such behavior that comes to your attention to the Human Resource Department of the Companies or to your supervisor.

3. **Proprietary Or Confidential Information Of The Sorenson Companies.**

You are expressly prohibited from passing or distributing information which could be construed as private, proprietary, or confidential information of the Sorenson Companies *unless you have been authorized to do so by your supervisor or an officer of the Companies, or unless reasonably required in order to perform your Job Description, please ask your supervisor.*

- a. Examples of private, confidential, or proprietary information include but are not limited to: Information and details (and all other Information gained by viewing or otherwise analyzing the physical properties of the Information) concerning one or more of the following which are or may be pertinent to the general business of The Sorenson Companies, or which are or may be involved in the development, production and/or marketing of various products of The Sorenson Companies and, which by its nature, is confidential or private:

Trade secrets, ideas, inventions, designs of a useful article, intellectual property registrations and applications, technical manufacturing know-how pertaining to certain inventions and/or patented products, financial data (including pricing), reports and projections, products, computer programs and related documentation (including E-Mail access codes), works of authorship, innovations, formulae, concepts, data, customers, suppliers, vendors, prospective partners in joint ventures or other strategic alliances, prospective employees, information of a private or confidential nature pertaining to Sorenson Company, employees and their officers, directors, and shareholders, and corporate policies and practices.

- b. Consistent with the above, please be aware that any searches you may conduct via the Internet could potentially disclose Confidential or Proprietary Information of the Companies so be extremely cautious when conducting such searches.

II. The E-Mail System.

A. General Information

1. Your E-Mail communications with other persons or entities are not private. The people to whom you send messages and from whom you receive messages, the dates and times you exchange messages, and the volume of messages are not private.
2. The Sorenson Companies reserve the right to access and monitor the content of your E-Mail messages, and monitor your use of the E-Mail systems. The Companies also reserve the right to disclose any information it discovers from accessing and monitoring your E-Mail systems as the Companies deem appropriate or necessary in the management of the business or when required by an order or subpoena of a court, or other judicial or administrative body.

3. The reliability, security, and types of information you access and send through the Companies E-mail systems is beyond the Companies' control and, therefore, you need to affirmatively exercise reasonable prudent judgment when you are accessing and sending any information or files via the E-Mail system.

B. General Rules.

1. **Username/Passwords.** Keep your username and password to yourself, and change it frequently. You should use passwords which tend to make it difficult for an intruder to guess. If you use any easy-to-guess password, or, if you allow your username and password to be discovered by others, the privacy of your E-Mail and that of others will be compromised.
2. **Pornographic, Defamatory, Harassing, and Other Types of Offensive Materials or Messages.** You are expressly prohibited from sending, distributing, re-distributing, and receiving any information or data which you reasonably believe could be construed as pornographic, obscene, inflammatory, defamatory, or harassing. Further, you are required to immediately report all such behavior that comes to your attention to the Human Resources Department of the Companies or to your supervisor
3. **Unauthorized Access.** You are expressly prohibited from seeking access to mailboxes other than your own, or seeking to read E-Mail messages not directed to you.

III. Questions About This Policy.

Since you are expected to comply with this Policy beginning on the date that you sign the Employee Acknowledgment form, please contact the Human Resources Department if you have any questions about this Policy at any time.

¹TOBACCO-FREE¹ WORKPLACE POLICY

I. PURPOSE OF POLICY

It is the philosophy of the Sorenson Companies (“Sorenson”) to provide its employees with a work environment that offers the opportunity and resources that will promote their personal health and well being. In accordance with this philosophy, it is Sorenson’s intent that all of its facilities shall maintain a Tobacco-Free environment.

II. EXTENT OF POLICY

- A. The Tobacco-Free Workplace policy will apply to all physical facilities owned or leased by Sorenson, including buildings, office space, research laboratories, manufacturing plants and call centers. Also included under this policy are all company-owned/leased vehicles.
- B. Tobacco use, smoking or chewing, is permitted outside, company facilities, provided that it occurs not less than 25 feet, or any further distance that may be required by local law, of any building entrance. Where Sorenson shares building space with other companies or other tenants, employees shall not be permitted to go to those areas for tobacco use.
- C. This policy shall apply to all employees, visitors, guests, independent contractors or other individuals working or visiting within or on the Sorenson facility premises.

III. IMPLEMENTATION

Sorenson, upon request, will provide appropriate tobacco cessation resources to interested employees.

IV. SUPERVISORY RESPONSIBILITY

Management and supervisory staff will be responsible for ongoing compliance with the Tobacco-Free Workplace Policy within their work areas. They are expected to adhere to standard practices in resolving issues of nonconformance (in addressing employee complaints) and maintaining expected levels of productivity within their workgroups. Policy violation may result in disciplinary action up to and including termination to the offending parties.

V. QUESTIONS?

All questions relating to this policy should be directed to the Corporate Human Resources Director at (801) 461-9738.

¹ Tobacco-Free shall mean **no smoking, no chewing.**

EXHIBIT 4

BOND & PECARO

JAMES R. BOND, JR.	JULIE A. KROSKIN	STEPHANIE M. WONG
TIMOTHY S. PECARO	ANDREW R. GEFEN	NATALIA G. ARAYA
JOHN S. SANDERS	LAURA R. STARK	GREGORY M. HEARD
JEFFREY P. ANDERSON	MATTHEW H. LOCHTE	JAMES T. ULAN
PETER R. GEYER	BENJAMIN K. STEINBOCK	MICHAEL G. FACINI

April 23, 2007

Via Email: GLyon@fcclaw.com

George L. Lyon, Jr., Esquire
Lukas, Nace, Gutierrez & Sachs, Chartered
Suite 1500
1650 Tyson's Boulevard
McLean, Virginia 22102

Dear Mr. Lyon:

You requested that Bond & Pecaro, Inc. provide you with an analysis of economic issues related to the impact of certain non-competition agreement practices employed by Sorenson Communications, Inc. ("Sorenson"), a major provider of video relay services ("VRS") in the United States. We understand that this analysis is being employed in connection with a Petition for Declaratory Ruling and Complaint Concerning the Provision of Video Relay Service by Sorenson Communications, Inc. prepared by your firm.¹ Our analysis is not intended to constitute a legal analysis of the subject non-competition agreements or a detailed calculation of the impact of these agreements on a particular firm. The analysis provides some general observations regarding the agreements in the context of the VRS market and the market for American Sign Language ("ASL") interpreters employed in connection with VRS operations.

Sorenson reportedly employs an estimated 1,300 ASL interpreters, approximately 20% of the total 6,500 certified interpreters nationwide and a substantially higher portion of closer to 75% of those interpreters employed in the VRS industry.² In

¹ In re Telecommunications Relay Services and Speech to Speech Relay Services for Individuals with Hearing and Speech Related Disabilities, Before the Federal Communications Commission, CGB Docket 03-123.

² The actual number of interpreters Sorenson employs is not publicly available.

terms of minutes of use and revenues, Sorenson's share of the VRS market has been estimated to be in the range of approximately 80%.¹

Concentration Matters

In the analysis, we examined Sorenson's position in the VRS marketplace based upon its market share. It is important to note that certain levels of economic concentration are often presumed to be unacceptable purely by virtue of their magnitude.

For example, the US Department of Justice often employs a technique known as the Herfindahl-Hirshman Index ("HHI").² This is calculated by squaring the market share of each participant in a market and summing these results. For example, if an industry had 10 participants each with a 10% market share, the HHI would be 1,000. Markets in which the HHI is in excess of 1,800 are considered "highly concentrated". Business combinations that increase the HHI by more than 100 points in a highly concentrated market are considered to raise antitrust concerns and can be presumed illegal. The index approaches zero when many participants have small shares and increases in markets with fewer participants and higher market shares.

In this case, the estimated 80% reported market share of the VSR market held by Sorenson yields an HHI of 6,400, more than 3.5 times the highly concentrated threshold. This type of concentration, which is in our experience atypical, raises questions as to whether the monopolization of a large portion of the labor pool would distort the marketplace relative to an orderly market.

In other industries where the Federal Communications Commission ("FCC") is authorized to regulate fair competition, a share of 80% has never come close to being sanctioned.³ For example, in the most recent media ownership rules, adopted in 2003, no single company may own more than 3 television stations in a market with more than 18 stations (18% of the total), and only one of those can be among the top four rated stations. Similarly, in a market with 45 or more radio stations,

¹ Petition for Declaratory Ruling, op. cit.

² <http://usdoj.gov/atr/public/testimony/hhi.htm>, May 11, 2005.

³ The FCC also employs an 1800 HHI threshold. 2003 Biennial Regulatory Review, Report and Order of Proposed Rulemaking, Released June 2, 2003.

no single company may own more than 8 stations (18% of the total), and only five of those stations can be in one class (AM or FM).¹

The VRS Interpreter Market

In recent years, there has been a growing shortage of ASL interpreters. This has been fueled by a variety of factors including the implementation of stricter certification requirements, the advent of VRS, and the need for ASL interpreters in educational institutions, government agencies, medical providers, and the like.

The supply and demand imbalances in the ASL interpreter market were well documented in a report by Stax, Inc. which Sorenson itself commissioned in November of 2006.²

Among the findings of the study was that:

The demand for ASL interpreters has increased dramatically over the past several years, spurred in large part by the growth of VRS, which requires highly qualified interpreters.

Wages for ASL interpreters have increased 10%-15% over the past 2-3 years, and are expected to increase at approximately 10% annually over the next few years.

In some markets, the increases were even greater. In Georgia, for example, wages increased by 20% over the past 2-3 years, according to the Stax study.

Clearly, the market for ASL interpreters is characterized by an existing supply and demand imbalance which has resulted in strong pressure on labor costs, particularly in sectors like VRS which require higher levels of certification. This imbalance has been confirmed by a variety of sources.³ Its effect would likely be disproportionate on smaller VRS firms which typically have fewer trunking

¹ The ownership limits in each sector are subject to more detailed formulas and regulations. Ibid.

² Stax, Inc., Demand and Wage Trends for American Sign Language Interpreters, and Their Impact on the Deaf Community, November 2006.

³ See, for example, Midwest Center for Postsecondary Outreach, "The Impact of VRS on Postsecondary Institutions," October 2005.

efficiencies and lower margins than larger firms. The net effect of a substantial segment of the interpreter market being subject to a non-compete agreement in favor of Sorenson would be to further limit the supply of interpreters to the smaller VRS firms. Thus, it is likely that such non-competition agreements would discourage additional enterprises from entering the market, would hinder the ability of existing smaller firms to compete, and tend to further entrench Sorenson's dominant market share.

Typically, non-competition agreements are negotiated with managerial and sales employees with an intimate knowledge of company customers, trade secrets, business plans, and the like, in contrast to the subject agreements involving Sorenson, which potentially restrict all of its rank and file interpreters. These interpreters comprise the majority of the VRS industry and a large portion of the ALS interpreting industry, in general.

In part because this situation is unusual, there is not a large body of literature which directly addresses the impact of a large number of non-competition agreements on a labor market. Economic studies indicate, however, that the impact of such widespread restrictive covenants would be to restrict competition, raise costs, and stifle innovation.

In general, labor markets are seen to generate the greatest benefits and reward workers optimally, when both worker and employer are able to make employment decisions "at will." The cost of routine services, such as eye examinations and prescriptions, have been found to be 35% higher in jurisdictions with "restrictive commercial practices".¹ Another study, concludes that stricter enforcement of non-competition agreements reduces research and development spending and capital expenditures. It also suggests that "enforceable non-competition contracts may yield benefits to individual firms, but may also generate offsetting negative externalities by restricting labor mobility."²

Economic theory indicates that additional social costs may result if the mobility of a large portion of a labor pool is restricted. For example, a likely impediment to the

¹ Morris M. Kleiner, "Occupational Licensing and Health Services: Who Gains Who Loses?", Before the Federal Trade Commission and the Department of Justice, Hearings on Quality and Consumer Protection: Market Entry, June 10, 2003.

² Mark J. Garmaise, "Ties that Truly bind: Non-competition Agreements, Executive Compensation, and Firm Investment", UCLA Anderson, 2006. <http://www.law.virginia.edu/pdf/olin/conf07/garmaise.pdf>.

efficiency of the VRS market is that, if a portion of the interpreters are prohibited from employing their skills for a 12 month period, their skills may get rusty and outdated during the non-competition period.¹

Conclusions

Based upon the foregoing, the VRS market is characterized by both an unusually high level of concentration of market share for one competitor and an overheated labor market. To the extent the function of that market is further limited because a large portion of the labor pool is restricted by non-competition agreements, the working of the free market would be impeded. Specifically, it is likely that, with a large portion of the VRS interpreter pool tied up with non-competition agreements with a dominant company, the remaining providers will need to bid even more aggressively for the artificially reduced pool that is not subject to those agreements, increasing costs and placing additional inflationary pressure on the cost of VRS service. Likewise, the cost structure of those smaller companies would likely be significantly higher than Sorenson's, and higher than they would be in the absence of the non-competition agreements. This would suggest that new entry into the market would be hindered and that existing smaller firms may find it impossible to remain in the market. Thus, the net effect of the non-competition agreements would be to lessen competition in the VRS market.

Bond & Pecaro's Experience

The professional staff of Bond & Pecaro has been retained to appraise over 5,000 media and communications businesses. Members of the firm have extensive experience in the areas of market research, valuation related tax matters, financial and economic analysis, communications engineering, acquisition evaluation, and litigation matters. Senior members of the staff testify routinely as expert witnesses on issues related to the value of communications companies and their assets.

The firm's clients include AT&T, Belo, Cable One, CBS, Citadel, Clear Channel, Comcast, Cox Enterprises, Cumulus, Fox - News Corp., Discovery, Gray Television, The Hearst Corporation, LIN Television, Media General, National Geographic,

¹ See Courtney McGrath, "Don't Sell Yourself Short - Effects on Employability of Non-Competition Agreement as Part of Severance Pay Package", Kiplinger's Personal Finance, August 2001.

George L. Lyon, Jr., Esquire
April 23, 2007
Page 6

NBC/Universal, Newhouse, New York Times, Pulitzer, Radio One, Time-Warner,
Viacom, The Washington Post, Young Broadcasting, and many others.

Sincerely,

BOND & PECARO, INC.

A handwritten signature in cursive script, reading "John S. Sanders", is written over a horizontal line.

By _____
John S. Sanders

EXHIBIT A

QUALIFICATIONS OF JOHN S. SANDERS

PROFESSIONAL EXPERIENCE AND QUALIFICATIONS

JOHN S. SANDERS

John S. Sanders is a principal in the firm of Bond & Pecaro, Inc., a Washington-based consulting firm specializing in valuations, asset appraisals, and related financial services for the communications industry. Prior to his association with Bond & Pecaro, Inc., Mr. Sanders was Manager, Appraisal Group, with Frazier, Gross & Kadlec, Inc. He worked for that firm in various analytical and managerial positions between 1982 and 1986.

Mr. Sanders has been actively involved in both fair market valuations and asset appraisals of over 2,500 television, radio, hardline and wireless cable, radio common carrier, newspaper, technology and related communications businesses. He has also assumed primary responsibility for a number of expert testimony and similar special projects, including economic analyses of specific communications industry issues.

Mr. Sanders has spoken on financial issues for the Cellular Telecommunications Association, the Personal Communications Industry Association, the National Association of Broadcasters (NAB), the Broadcast Cable Financial Management Association, the Telecom Publishing Group, and other organizations. His commentaries have also been published in the trade press, including Cellular Business, PCIA Journal, Open Channels, Broadcasting, and Communications magazines and the Broadcast Financial Journal. He has been interviewed by publications including The Washington Post, The Orlando Sentinel, Boston Business Journal, thetstreet.com, Communications, PCS News, Radio World, Wireless Week, and Telephony.

Mr. Sanders received a B.A. Cum Laude in Economics and International Studies (Honors) from Dickinson College. He also holds a Masters Degree in Business Administration from the University of Virginia in Charlottesville, Virginia.

CERTIFICATE OF SERVICE

I, George L. Lyon, Jr., hereby certify that on this 18th day of May, 2007, copies of the foregoing PETITION FOR DECLARATORY RULING AND COMPLAINT CONCERNING THE PROVISION OF VIDEO RELAY SERVICE BY SORENSON COMMUNICATIONS, INC. was emailed to the following persons:

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Federal Communications Commission
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Washington, D.C. 20554

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/s/

George L. Lyon, Jr.