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May 19, 2008

Via Electronic Filing

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

Re: *Ex Parte Notice: Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities – CG Docket No. 03-123*

Dear Ms. Dortch:

On May 16, 2008 Alan Amann of the FCC's Consumer and Governmental Affairs Bureau contacted the undersigned, counsel for Sorenson Communications, Inc. ("Sorenson") to discuss the proposed slamming rules for relay services that Sorenson submitted to the Commission on May 15. Specifically, Mr. Amann asked why sections XX.XX 00(c), XX.XX00(d) and XX.XX50(a) of the proposed rules included references to "carriers." I explained that the term "carrier" in the last sentences of proposed rules XX.XX 00(c) and (d) refers to the underlying carrier providing the telephone numbers to the relay provider, and that those provisions are intended to make the underlying carrier culpable for any unreasonable delays it causes in submitting or executing a request to port a subscriber's telephone number to a different relay provider. Similarly, in proposed rule XX.XX50(a), the intent was to require executing carriers that learn of unauthorized provider changes to inform providers so that the providers can take appropriate action.

As a result of Mr. Amann's inquiries, however, Sorenson realized that there was an inadvertent reference to "carrier" in the proposed rule XX.XX90(c)(3). The text submitted to the Commission on May 15 referred to "[w]ritten authorization to impose a preferred carrier freeze." The corrected text, which is attached to this letter, refers to authorization to impose "a preferred provider freeze."

Marlene H. Dortch
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Pursuant to the Commission's rules, this letter is being submitted for inclusion in the public record of the above-referenced proceeding.

Sincerely,

/s/ Ruth Milkman
Ruth Milkman

Attachment

cc: Alan Amann

Proposed Slamming Rules for TRS
Part XX, Subpart X – Changes in Preferred TRS Providers

§ XX.XX00 Definitions.

(a) The term *provider* is generally any provider of TRS that meets the requirements of 47 C.F.R. § 64.604(c)(5)(iii)(F) for eligibility to receive payments from the TRS Fund and that provides a form of TRS for which there is number portability.

(b) The term *preferred provider* is generally any provider that a subscriber has selected to be the preferred provider of TRS for calls to a telephone number assigned to the end user subscriber.

(c) The term *submitting provider* is generally any provider that requests on the behalf of a subscriber that the subscriber's TRS provider be changed, and seeks to become the subscriber's preferred provider. A carrier may be treated as a submitting provider, however, if it is responsible for any unreasonable delays in the submission of provider change requests or for the submission of unauthorized provider change requests, including fraudulent authorizations.

(d) The term *executing provider* is generally any provider that effects, or directs another entity to effect, a request that a subscriber's preferred provider be changed. A carrier may be treated as an executing provider, however, if it is responsible for any unreasonable delays in the execution of provider changes or for the execution of unauthorized provider changes, including fraudulent authorizations.

(e) The term *authorized provider* is generally any provider that submits a change, on behalf of a subscriber, in the subscriber's selection of a preferred provider with the subscriber's authorization verified in accordance with the procedures specified in this part.

(f) The term *unauthorized provider* is generally any provider that submits a change, on behalf of a subscriber, in the subscriber's selection of a preferred provider but fails to obtain the subscriber's authorization verified in accordance with the procedures specified in this part.

(g) The term *unauthorized change* is a change in a subscriber's selection of preferred provider that was made without authorization verified in accordance with the verification procedures specified in this part.

(h) The term *subscriber* is any one of the following:

(1) The party identified in the account records of a provider as having been assigned a telephone number by that provider or having chosen that provider as a preferred provider;

(2) Any adult person authorized by such party to change providers; or

(3) Any person contractually or otherwise lawfully authorized to represent such party.

(i) The term *TRS* shall refer to telecommunications relay services, as that term is defined in 47 CFR 64.601(14).

(j) The term *telephone number* is a ten-digit geographic North American Number Plan number assigned to a subscriber by a provider.

(k) Nothing in this subpart shall be construed to limit or reduce the obligations of submitting or executing carriers under §64.1100, et seq.

§ XX.XX20 Verification of orders for TRS telephone numbers.

(a) No provider shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a preferred provider except in accordance with the procedures prescribed in this subpart.

(1) No submitting provider shall submit a change on the behalf of a subscriber in the subscriber's selection of a preferred provider prior to obtaining:

(i) Authorization from the subscriber, and

(ii) Verification of that authorization in accordance with the procedures prescribed in this section. The submitting provider shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(2) An executing provider shall not verify the submission of a change in a subscriber's selection of a preferred provider received from a submitting provider. For an executing provider, compliance with the procedures described in this part shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting provider.

(b) Where a provider is offering more than one type of TRS (e.g., VRS, IP Relay and IP CapTel) for which there is number portability, that provider must obtain separate authorization from the subscriber for each service, although the authorizations may be obtained within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this part.

(c) No provider shall submit a preferred provider change order unless and until the order has been confirmed in accordance with one of the following procedures:

(1) The provider has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of § XX.XX30; or

(2) The provider has obtained the subscriber's electronic authorization to submit the preferred

provider change order. Such authorization must be placed from the telephone number(s) on which the preferred provider is to be changed and must confirm the information in paragraph (a)(1) of this section; or

(3) An appropriately qualified independent third party has obtained, in accordance with the procedures set forth in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, the subscriber's authorization to submit the preferred provider change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number). The independent third party must not be owned, managed, controlled, or directed by the provider or the provider's marketing agent; must not have any financial incentive to confirm preferred provider change orders for the provider or the provider's marketing agent; and must operate in a location physically separate from the provider or the provider's marketing agent.

(i) Methods of third party verification. Third party verification systems and three-way conference calls may be used for verification purposes so long as the requirements of paragraphs (c)(3)(ii) through (c)(3)(iv) of this section are satisfied.

(ii) Provider initiation of third party verification. A provider or a provider's sales representative initiating a three-way conference call must drop off the call once the three-way connection has been established.

(iii) Requirements for content and format of third party verification. Any description of the provider change transaction by a third party verifier must not be misleading, and all third party verification methods shall elicit, at a minimum: The date of the verification; the identity of the subscriber; confirmation that the person on the call is authorized to make the provider change; confirmation that the person on the call wants to make the provider change; confirmation that the person on the call understands that a provider change, not an upgrade to existing service, or any other misleading description of the transaction, is being authorized; the names of the providers affected by the change (not including the name of the displaced provider); the telephone numbers to be switched; and the types of service involved (including a brief description of a service about which the subscriber demonstrates confusion regarding the nature of that service). If the subscriber has additional questions for the provider's sales representative during the verification, the verifier shall indicate to the subscriber that, upon completion of the verification process, the subscriber will have authorized a provider change. Third party verifiers may not market the provider's services by providing additional information, including information regarding preferred provider freeze procedures.

(iv) Other requirements for third party verification. All third party verifications shall be conducted in the same language that was used in the underlying transaction and shall be recorded by the third-party verifier in their entirety. The third-party verifier shall inform both the subscriber and, where applicable, the communications assistant relaying the call, that the call is being recorded. The third-party verifier shall provide the submitting provider an audio record of the verification of subscriber authorization. In accordance with the procedures set forth in XX.XX20(a)(1)(ii), submitting providers shall maintain and preserve audio records of

verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(d) Providers must provide subscribers the option of using one of the authorization and verification procedures specified in § XX.XX20(c) in addition to an electronically signed authorization and verification procedure under XX.XX20(c)(1).

(e) A provider may acquire, through a sale or transfer, either part or all of another provider's subscriber base without obtaining each subscriber's authorization and verification in accordance with § XX.XX20(c), provided that the acquiring provider complies with the following streamlined procedures. A provider may not use these streamlined procedures for any fraudulent purpose, including any attempt to avoid liability for violations under part 64 of the Commission rules.

(1) Not later than 30 days before the transfer of the affected subscribers from the selling or transferring provider to the acquiring provider, the acquiring provider shall provide written notice to each affected subscriber of the information specified. The acquiring provider is required to fulfill the obligations set forth in the advance subscriber notice. The advance subscriber notice shall be provided in a manner consistent with 47 U.S.C. 255 and the Commission's rules regarding accessibility to blind and visually-impaired consumers, 47 CFR 6.3, 6.5 of this chapter. The following information must be included in the advance subscriber notice:

(i) The date on which the acquiring provider will become the subscriber's new preferred provider;

(ii) The rates, terms, and conditions of the service(s) to be provided by the acquiring provider upon the subscriber's transfer to the acquiring provider, and the means by which the acquiring provider will notify the subscriber of any change(s) to these rates, terms, and conditions;

(iii) The acquiring provider will be responsible for any provider change charges associated with the transfer, except where the provider is acquiring subscribers by default, other than through bankruptcy, and state law requires the exiting provider to pay these costs;

(iv) The subscriber's right to select a different preferred provider for the telecommunications relay service(s) at issue, if an alternative provider is available;

(v) All subscribers receiving the notice, even those who have arranged preferred provider freezes on the service(s) involved in the transfer, will be transferred to the acquiring provider, unless they have selected a different provider before the transfer date; existing preferred provider freezes on the service(s) involved in the transfer will be lifted; and any subscriber wishing to freeze their service(s) with the new provider must arrange a new freeze;

(vi) Whether the acquiring provider will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring provider; and

(vii) The toll-free customer service telephone number of the acquiring provider.

§ XX.XX30 Letter of agency form and content.

(a) A provider may use a written or electronically signed letter of agency to obtain authorization and/or verification of a subscriber's request to change his or her preferred provider selection. A letter of agency that does not conform with this section is invalid for purposes of this part.

(b) The letter of agency shall be a separate document (or an easily separable document) or located on a separate screen or webpage containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a provider to initiate a preferred provider change. The letter of agency must be signed and dated by the subscriber to the telephone number(s) requesting the preferred provider change.

(c) The letter of agency shall not be combined on the same document, screen, or webpage with inducements of any kind.

(d) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's registered name and address and each telephone number to be covered by the preferred provider change order;

(2) The decision to change the preferred provider from the current provider to the soliciting provider;

(3) That the subscriber designates [insert the name of the submitting provider] to act as the subscriber's agent for the preferred provider change;

(4) That the subscriber understands that only one provider may be designated as the subscriber's preferred provider for any one telephone number; and

(5) That the subscriber may consult with the provider as to whether a fee will apply to the change in the subscriber's preferred provider.

(e) Any provider designated in a letter of agency as a preferred provider must be the preferred provider directly serving the subscriber's telephone number.

(f) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current provider.

(g) If any portion of a letter of agency is translated into another language then all portions of the

letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, descriptions or instructions provided with the letter of agency.

(h) Letters of agency submitted with an electronically signed authorization must include the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act.

(i) A provider shall submit a preferred provider change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency. However, letters of agency for business customers with multiple locations and/or multiple telephone numbers that have entered into negotiated agreements with providers to add equipment and/or telephone numbers to their business locations during the course of a term agreement shall be valid for the period specified in the term agreement.

§ XX.XX40 Provider liability for slamming.

(a) Provider Liability. Any submitting provider that fails to comply with the procedures prescribed in this part for a particular subscriber shall be liable to the Interstate Telecommunications Relay Services Fund in an amount equal to 50% of the amount paid to that provider by the Fund for the minutes generated by that subscriber after such violation and shall be liable to the subscriber's properly authorized provider for an amount equal to 100% of the amount paid to the unauthorized provider by the Fund for the minutes generated by that subscriber after such violation. The remedies provided in this part are in addition to any other remedies available by law.

(1) The unauthorized provider shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized provider, if applicable.

§ XX.XX50 Procedures for resolution of unauthorized changes in preferred provider.

(a) Notification of Alleged Unauthorized Provider Change. Executing carriers who are informed of an unauthorized provider change by a subscriber must immediately notify both the authorized and allegedly unauthorized provider of the incident. This notification must include the identity of both providers.

(b) Referral of Complaint. Any provider, executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing provider of an unauthorized provider change shall direct that subscriber to the Federal Communications Commission's Consumer & Governmental Affairs Bureau, for resolution of the complaint. Providers shall also inform the subscriber that he or she may contact and seek resolution from the alleged unauthorized provider and, in addition, may contact the authorized provider. An executing provider shall also have the right to file a

complaint with the Commission in the event that one of its subscribers is the subject of an unauthorized provider change.

(c) Notification of Receipt of Complaint. Upon receipt of an unauthorized provider change complaint, the Federal Communications Commission will notify the allegedly unauthorized provider of the complaint and order that the provider exclude all minutes attributable to the subscriber for the first 30 days after the unauthorized change from the monthly minutes the provider submits to the Fund Administrator for reimbursement pending a determination of whether an unauthorized change, as defined by § XX.XX00(g), has occurred, if it has not already done so.

(d) Proof of Verification. Not more than 30 days after notification of the complaint, the alleged unauthorized provider shall provide to the Commission a copy of any valid proof of verification of the provider change. This proof of verification must contain clear and convincing evidence of a valid authorized provider change, as that term is defined in §§ XX.XX20 through XX.XX30. The Federal Communications Commission will determine whether an unauthorized change, as defined by § XX.XX00(g), has occurred using such proof and any evidence supplied by the subscriber. Failure by the provider to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

§ XX.XX60 Procedures where the Fund has not yet reimbursed.

(a) This section shall only apply after a subscriber or provider has determined that an unauthorized change, as defined by § XX.XX00(g), has occurred and the Fund has not reimbursed the allegedly unauthorized provider for service provided to the subscriber for 30 days, or a portion thereof, after the unauthorized change occurred.

(b) An allegedly unauthorized provider shall remove all minutes for service provided to subscriber during the first 30 days after an alleged unauthorized change occurred, as defined by § XX.XX00(g), from its monthly submission to the Fund Administrator upon notification that such unauthorized change is alleged to have occurred.

(c) An allegedly unauthorized provider may challenge an allegation that an unauthorized change, as defined by § XX.XX00(g), occurred. An allegedly unauthorized provider choosing to challenge such allegation shall immediately notify the complaining subscriber or complaining provider that: The complaining subscriber or provider must file a complaint with the Commission within 30 days of the date the allegedly unauthorized provider notifies the complaining subscriber of the requirements of this paragraph. No allegedly unauthorized provider shall reinstate charges to the Fund pursuant to the provisions of this paragraph without first providing the subscriber or provider with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this paragraph.

(d) If the Federal Communications Commission determines after reasonable investigation that an

unauthorized change, as defined by § XX.XX00(g), has occurred, an order shall be issued providing that the Fund will not reimburse for any minutes attributable to the subscriber during the first 30 days after the unauthorized provider change occurred, and neither the authorized or unauthorized provider may seek reimbursement from the Fund for those charges.

(e) If the unauthorized provider received payment from the Fund for services provided after the first 30 days after the unauthorized change occurred, the obligations for payments provided for in § XX.XX70 shall apply to those payments. If the Federal Communications Commission determines after reasonable investigation that the provider change was authorized, the provider may seek reimbursement from the Fund for charges incurred.

§ XX.XX70 Procedures where the Fund has already reimbursed.

(a) The procedures in this section shall only apply after a subscriber or provider has determined that an unauthorized change, as defined by § XX.XX00(g), has occurred and the Fund has reimbursed the allegedly unauthorized provider for minutes of service provided to the subscriber.

(b) If the Federal Communications Commission determines after reasonable investigation that an unauthorized change, as defined by § XX.1100(f), has occurred, it shall issue an order directing the unauthorized provider to refund to the Fund 50% of all payments the unauthorized provider received from the Fund for minutes attributable to the subscriber and to forward to the authorized provider an amount equal to 100% of all payments the unauthorized provider received from the Fund for minutes attributable to the subscriber.

§ XX.XX90 Preferred provider freezes.

(a) A preferred provider freeze (or freeze) prevents a change in a subscriber's preferred provider selection unless the subscriber gives the provider from whom the freeze was requested his or her express consent.

(b) Preferred provider freeze procedures, including any solicitation, must clearly distinguish among telecommunications relay services (e.g., VRS, IP Relay and IP CapTel) subject to a preferred provider freeze. The provider offering the freeze must obtain separate authorization for each service for which a preferred provider freeze is requested.

(c) Solicitation and imposition of preferred provider freezes.

(1) All provider-provided solicitation and other materials regarding preferred provider freezes must include:

(i) An explanation, in clear and neutral language, of what a preferred provider freeze is and what services may be subject to a freeze;

(ii) A description of the specific procedures necessary to lift a preferred provider freeze; an explanation that these steps are in addition to the Commission's verification rules in §§ XX.XX20 and XX.XX30 for changing a subscriber's preferred provider selections; and an explanation that the subscriber will be unable to make a change in provider selection unless the subscriber lifts the freeze.

(2) No provider shall implement a preferred provider freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(i) The provider has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of § XX.XX90(c)(3); or

(ii) The provider has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the preferred provider freeze is to be imposed, to impose a preferred provider freeze. The electronic authorization should confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in §§ XX.XX90(c)(3)(ii)(A) through (C); or

(iii) An appropriately qualified independent third party has obtained the subscriber's authorization to submit the preferred provider freeze and confirmed the appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in § XX.XX90(c)(3)(ii)(A) through (C). The independent third party must not be owned, managed, or directly controlled by the provider or the provider's marketing agent; must not have any financial incentive to confirm preferred provider freeze requests for the provider or the provider's marketing agent; and must operate in a location physically separate from the provider or the provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred provider freeze.

(3) Written authorization to impose a preferred ~~carrier~~-provider freeze. A provider may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred provider selection. Written authorization that does not conform with this section is invalid and may not be used to impose a preferred provider freeze.

(i) The written authorization shall comply with §§ XX.XX30 (b), (c), and (g) of the Commission's rules concerning the form and content for letters of agency.

(ii) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(A) The subscriber's registered name and address and the telephone number(s) to be covered by the preferred provider freeze;

(B) The decision to place a preferred provider freeze on the telephone number(s) and particular

service(s). To the extent that the Federal Communications Commission allows the imposition of preferred provider freezes on additional preferred provider selections (e.g., for VRS, IP Relay and IP CapTel), the authorization must contain separate statements regarding the particular selections to be frozen; and

(C) That the subscriber understands that she or he will be unable to make a change in provider selection unless she or he lifts the preferred provider freeze.

(d) Procedures for lifting preferred provider freezes. All providers that offer preferred provider freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred provider freeze:

(1) A provider administering a preferred provider freeze must accept a subscriber's written or electronically signed authorization stating his or her intent to lift a preferred provider freeze; and

(2) A provider administering a preferred provider freeze must accept a subscriber's authorization stating her or his intent to lift a preferred provider freeze and must offer a mechanism that allows a submitting provider to conduct a three-way conference call with the provider administering the freeze and the subscriber in order to lift a freeze. When engaged in an authorization that does not involve a subscriber's signed authorization to lift a preferred provider freeze, the provider administering the freeze shall confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the subscriber's intent to lift the particular freeze.