

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

In the Matter of	)	
	)	
Telecommunications Relay Services and	)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals with	)	
Hearing and Speech Disabilities	)	
	)	
E911 Requirements for IP-Enabled Service	)	WC Docket No. 05-196
Providers	)	

**PETITION FOR DECLARATORY RULING OR LIMITED  
WAIVER OF THE COMMISSION'S RULES**

SORENSEN COMMUNICATIONS, INC.

Michael D. Maddix  
Regulatory Affairs Manager  
Sorenson Communications, Inc.  
4192 South Riverboat Road  
Salt Lake City, UT 84123

Regina M. Keeney  
Richard D. Mallen  
Lawler, Metzger, Milkman, & Keeney, LLC  
2001 K Street NW, Suite 802  
Washington, DC 20006  
(202) 777-7700  
rmallen@lmmk.com

*Counsel for Sorenson Communications, Inc.*

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**I. INTRODUCTION AND SUMMARY**

When a consumer selects Sorenson Communications, Inc. (“Sorenson”) as his or her default provider of video relay service (“VRS”) or IP Relay service, Sorenson is required to assign that user a ten-digit North American Numbering Plan (“NANP”) number that is “geographically appropriate” for the rate center in which he or she resides.<sup>1</sup> For reasons beyond its control, however, Sorenson cannot always accomplish this task.

Sorenson, through its carrier partner, has been able to procure numbers that are geographically appropriate for thousands of rate centers, serving over 83 percent of households nationwide.<sup>2</sup> It is not economically or operationally feasible, however, for Sorenson or any other provider of Internet-based relay services to obtain numbers for rate

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<sup>1</sup> 47 C.F.R. § 64.611(a)(1)(ii).

<sup>2</sup> See “Level 3® VoIP Enhanced Local Service” at 2, *available at*: [http://www.level3.com/downloads/VoIP\\_Enhanced\\_Local\\_ebrochure.pdf](http://www.level3.com/downloads/VoIP_Enhanced_Local_ebrochure.pdf).

centers serving the entire population. As a result, the thousands of users who live in unserved rate centers either may not be able to register with a default provider before the June 30, 2009 deadline established by the Commission, or are at risk of having prior registrations annulled because they were assigned local numbers that are not geographically appropriate. Such broad disenfranchisement of deaf consumers, if allowed to materialize, would endanger the safety of affected users and sow widespread confusion, doubt, and anger about the registration process and the new numbering regime.

To ensure that consumers are not harmed, the Commission should permit providers to assign temporary “guest” numbers from nearby rate centers to users who register with an Internet-based TRS provider but live in a rate center for which geographically appropriate numbers are not available. Sorenson describes below a Policy that could govern the assignment of such “geographically approximate” guest numbers, and requests that the Commission declare that Policy to be lawful.<sup>3</sup> In the alternative, Sorenson asks the Commission to grant a temporary waiver of relevant requirements for the limited purpose of permitting the assignment of temporary guest numbers when geographically appropriate numbers are unavailable.<sup>4</sup> Granting Sorenson’s petition will ensure that all VRS and IP Relay consumers – regardless of where they live – will be able to obtain functionally equivalent access to NANP telephone numbers and 911/E911 emergency services without delay.

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<sup>3</sup> See 47 C.F.R. § 1.2.

<sup>4</sup> See 47 C.F.R. § 1.3.

## **II. THE FCC’S NUMBERING ORDERS, IF STRICTLY INTERPRETED, COULD PREVENT OR ANNUL THE REGISTRATION OF THOUSANDS OF DEAF CONSUMERS**

### **A. The FCC Has Mandated that Internet-based TRS Providers Assign Geographically Appropriate Numbers to All Users by June 30, 2009**

On June 24, 2008, the FCC adopted permanent numbering and emergency calling rules for providers of Internet-based TRS.<sup>5</sup> These rules became effective on December 31, 2008. One of the adopted rules, section 64.611(a)(1), states that each VRS or IP Relay provider must, “[u]pon a user’s registration” with that provider, either facilitate the user’s request to port a number to the provider, or “[a]ssign that user a geographically appropriate North American Numbering Plan telephone number.”<sup>6</sup> As part of the June order, the FCC noted that in “unusual and limited circumstances,” Internet-based TRS providers could encounter difficulty obtaining truly local telephone numbers for their users.<sup>7</sup> The FCC stated that in such circumstances, providers could “temporarily employ suitable workarounds,” such as assigning a user a telephone number reasonably close to the user’s rate center, but only until a geographically appropriate number became available (unless the user chose to retain the originally assigned number).<sup>8</sup>

On December 19, 2008, the FCC adopted additional requirements relevant to the new numbering regime that was about to take effect.<sup>9</sup> On the issue of how to register

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<sup>5</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 223 FCC Rcd 11591 (2008) (FCC 08-151) (“June Order”).

<sup>6</sup> 47 C.F.R. § 64.611(a)(1).

<sup>7</sup> *June Order* ¶ 41.

<sup>8</sup> *Id.*

<sup>9</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled*

users when no local number is available, the FCC adopted two requirements that are difficult to reconcile. On the one hand, the FCC on its own motion reconsidered the workaround approach that it had endorsed six months earlier:

[W]e reconsider our prior suggestion that Internet-based TRS providers can use workarounds in instances where they cannot obtain geographically appropriate numbers, such as assigning a non-local but “close” telephone number or using remote call forwarding. We anticipate that the instances in which geographically appropriate numbers will be unavailable from wholesale carriers will be rare, but in those rare instances we now require Internet-based TRS providers to bring the situation to our attention, and we will work with the carriers in that area and other entities to resolve it so that *all* users of Internet-based TRS service will have truly local geographically appropriate ten-digit numbers. To be clear, Internet-based TRS providers must assign to each user a locally-rated, ten-digit, geographically appropriate number. We delegate to the Wireline Competition Bureau the authority necessary to work with the Internet-based TRS providers, the carriers, and the numbering administrators to resolve any such situations.<sup>10</sup>

On the other hand, the FCC required providers to enable “newly registered users to place calls immediately”:

The TDI Coalition recommends that once users register with a default provider, they should be able to place relay calls immediately, at least on a temporary basis, through, for example, the assignment of a temporary “guest” or application number/identification system. . . . [W]e agree with the TDI Coalition and conclude that to the extent technically feasible, Internet-based TRS providers must allow newly registered users to place calls immediately.<sup>11</sup>

The FCC did not attempt to reconcile these competing pronouncements, leaving providers uncertain as to what steps, if any, they may take to ensure that users who live in

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*Service Providers*, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791 (2008) (FCC 08-275) (“December Order”).

<sup>10</sup> *Id.* ¶ 28 (emphasis in original).

<sup>11</sup> *Id.* ¶ 25.

rate centers where local numbers are not available can “place calls immediately” using temporary “guest” numbers.

**B. Sorenson and Other Providers Are Unable to Assign Geographically Appropriate Numbers to Thousands of Users**

Under FCC rules, the NANP administrator (“NANPA”) may distribute ten-digit local numbers for a particular rate center only to entities that have been certified as local exchange carriers (“LECs”) by the state in which the rate center is located, and that are capable of providing service to that rate center.<sup>12</sup> Sorenson and most other Internet-based TRS providers do not meet either of these requirements in the vast majority of states and therefore must partner with wholesale competitive LECs whose local voice service “footprints” encompass as many users and rate centers as possible.

Sorenson’s numbering partner is Level 3 Communications (“Level 3”), a leading facilities-based provider of both local exchange and Voice over Internet Protocol (“VoIP”) solutions.<sup>13</sup> Level 3 is authorized as a competitive LEC in all fifty states and the District of Columbia.<sup>14</sup> Level 3 serves about 6,600 rate centers nationwide, giving it

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<sup>12</sup> 47 C.F.R. § 52.15(g)(2) (an applicant for initial numbering resources must show that “(i) [t]he applicant is authorized to provide service in the area for which the numbering resources are being requested; and (ii) [t]he applicant is or will be capable of providing service within sixty (60) days of the numbering resources activation date”); *see also id.* § 52.9(a)(1) (limiting availability of numbering resources to “telecommunications carriers”). Typically, NANPA distributes numbers in blocks of one thousand to an eligible LEC.

<sup>13</sup> The specific product that Sorenson purchases from Level 3 is VoIP Enhanced Local Service. This product allows Sorenson to provide its VRS and IP Relay end users with local numbers, local number portability, and other features.

<sup>14</sup> Level 3 Communications, Inc., Annual Report (Form 10-K), at 23 (Feb. 27, 2009), *available at*: <<http://www.sec.gov/Archives/edgar/data/794323/000104746909002002/a2190910z10-k.htm>> (“Level 3 10-K”).

the largest competitive LEC footprint in the nation.<sup>15</sup> By partnering with Level 3, Sorenson has been able to provide geographically appropriate numbers to about 90 percent of users who have sought to register with Sorenson to date.

Obtaining geographically appropriate numbers for all new registrants is not reasonably practical, however, because thousands of users live in the more than 11,000 rate centers that Level 3 does not serve. These rate centers tend to be in rural areas whose sparse populations are served only by small incumbent LECs. For the reasons described below, it either is not possible, or is not economically or operationally practical, for Level 3 to serve these rate centers and thereby obtain geographically appropriate numbering resources for users living therein.<sup>16</sup>

As a prerequisite to serving a rate center, Level 3 must negotiate an interconnection or traffic exchange agreement with the relevant incumbent LEC. Under the Act, rural incumbent LECs are permitted to petition a state commission for modification or suspension of the obligation to negotiate reasonable interconnection arrangements with competitors.<sup>17</sup> Due in large part to the regulatory protections given to rural incumbent LECs, Level 3 has largely been unsuccessful in its past efforts to reach

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<sup>15</sup> The United States as a whole contains about 18,000 rate centers. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Eleventh Report, 21 FCC Rcd 10947, ¶ 13 n.20 (2006) (“*Eleventh CMRS Competition Report*”).

<sup>16</sup> As explained below, the Commission avoided a similar problem recently by permitting interconnected VoIP providers to assign numbers that are not geographically appropriate.

<sup>17</sup> 47 U.S.C. § 251(f)(2) (“A local exchange carrier with fewer than 2 percent of the Nation’s subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of [section 251(a),] (b) or (c) . . .”).

commercially reasonable interconnection arrangements with the small incumbent LECs that serve rural rate centers. Absent an express authorization and an interconnection agreement, Level 3 cannot obtain numbering resources from NANPA for the rate centers in the territories of these incumbent LECs or establish the necessary network interconnection to serve the territories.

Even where Level 3 might be able to negotiate a reasonable interconnection arrangement with a small independent LEC, it often is prohibitively expensive for Level 3 to do so. Because of their sparse populations, rural rate centers tend to generate relatively low revenue streams for retail TRS or VoIP providers and, by extension, their wholesale carrier partners. By contrast, the upfront and recurring costs of providing competitive local exchange service to those rate centers are often high:

- As noted, Level 3 must establish an interconnection agreement with the incumbent LEC that serves the rate center. Assuming a negotiated agreement cannot be reached and the incumbent LEC is not entitled to section 251(f) protection,<sup>18</sup> under the best of circumstances, it requires a minimum of one year to negotiate, arbitrate, and finalize an interconnection agreement. This process is not only time-consuming but costly as well.
- Since the Commission does not permit competitive carriers to purchase mass market switching on an unbundled basis,<sup>19</sup> Level 3 must physically collocate and install equipment in rural territories in order to interconnect with the incumbent LEC.<sup>20</sup>

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<sup>18</sup> See 47 U.S.C. § 251(f).

<sup>19</sup> *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, ¶¶ 199, 210 (2005).

<sup>20</sup> In densely populated areas, Level 3 often is able to establish interconnection at an incumbent LEC's tandem, thereby enabling Level 3 to serve multiple rate centers through a single point of interconnection ("POI"). Rural rate centers often are not served through a tandem switch, however, and Level 3 therefore must collocate in each such rate center. Likewise, Level 3 often cannot take advantage of the FCC's POI rule, which some state commissions have found to be applicable only when a competitor is interconnecting with a Bell Operating Company ("BOC"). See, e.g., *Petition of Sprint Communications Co.*

- Level 3 also must purchase backhaul from its POI to the closest point on the Level 3 network. Since rural rate centers tend to be both geographically large and remote,<sup>21</sup> backhaul arrangements from these interconnection points often must traverse long distances, at high cost.<sup>22</sup>

When aggregated, these costs generally make it impractical for Level 3 to initiate service beyond the roughly 6,600 rate centers it already serves. Indeed, if one were to assume, conservatively, that it would cost Level 3 an average of only \$100,000 to serve a new rate center, Level 3 would have to spend more than *\$1.1 billion* in order to achieve a truly nationwide footprint. Neither Level 3 nor any other wholesale carrier is in a position to spend such sums to establish service to more than 11,000 rate centers that collectively serve less than 20 percent of the population.

Other options for obtaining local numbers for rural rate centers are not realistic. For example, it would not make sense for Level 3 to attempt to cobble together a larger national footprint by purchasing wholesale local service (including access to numbering resources) from other competitive carriers. Level 3 maintains over 200 interconnection agreements with other telecommunications carriers, including AT&T, Verizon, Qwest,

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*L.P. for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement with CenturyTel Midwest–Michigan, Inc., Case No. U-15534, at 6-8 (Mich. PSC July 1, 2008), available at: <[http://www.dleg.state.mi.us/mpsc/orders/comm/2008/u-15534\\_07-01-2008.pdf](http://www.dleg.state.mi.us/mpsc/orders/comm/2008/u-15534_07-01-2008.pdf)>.*

<sup>21</sup> See *Eleventh CMRS Competition Report* ¶ 13 n.20 (“Urban rate centers are generally smaller than rural rate centers. The smallest rate centers are a few square miles in size, while some rural rate centers are hundreds of square miles in size.”).

<sup>22</sup> When a hearing person calls a deaf VRS user who has selected Sorenson as his or her default provider, the call is routed via the PSTN to the incumbent LEC central office serving the deaf user’s rate center. From there, the call is routed to the closest Level 3 POI and then backhauled over Level 3’s network (often over long distances) to Level 3’s facilities in either Mesa, Arizona or Cincinnati, Ohio. The call is then transported to Sorenson for delivery to the deaf user via his or her videophone.

Embarq and various other competitive and incumbent LECs.<sup>23</sup> Through these agreements, Level 3 already has established service in virtually every rate center where it is economically feasible to do so, and any marginal extension of its footprint via new wholesale agreements with additional competitive LECs would be more than offset by the costs of negotiating, litigating, implementing, and managing those arrangements.<sup>24</sup> Likewise, it would not make sense for Sorenson to obtain numbers from multiple carrier partners, since doing so would, at most, expand Sorenson's access to numbers by a minuscule extent while necessitating significant costs and burdens associated with entering into and managing new partnership agreements.

Finally, it would not make sense for Level 3 to obtain numbering resources by purchasing retail services, such as Primary Rate Interface ("PRI"), for the rate centers not currently within Level 3's interconnection footprint.<sup>25</sup> The cost of such retail services, combined with the cost of long-haul transport and other unique network architectural expenses associated with such arrangements, is too much to justify economically. For example, if Level 3 were to attempt to purchase PRI service from a small independent LEC in Montana, at a minimum it also would need to purchase transport from the relevant rate center in Montana to the closest Level 3 presence and then to the Level 3 IP switching infrastructure located (in this example) hundreds of miles away in Seattle or

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<sup>23</sup> See Level 3 10-K at 22.

<sup>24</sup> All competitive LECs face the same obstacles to serving rural rate centers. The vast majority of those centers are not economically viable for any competitive LEC to serve. As a result, other competitive LECs tend to serve rate centers that are already served by Level 3, thereby limiting the extent to which Level 3 could cobble together a larger footprint by purchasing wholesale local service from other competitive LECs.

<sup>25</sup> PRI service is a retail product that can be purchased from a LEC. PRI service provides the Integrated Services Digital Network ("ISDN") equivalent of a T-1 circuit, permitting up to 24 concurrent phone calls running at 1,544 megabits per second.

Denver. Similar issues arise in other rural or insular areas, such as Alaska, Hawaii, Maine or even Puerto Rico.<sup>26</sup>

Sorenson does not anticipate that any of the foregoing obstacles will diminish or disappear without FCC intervention, and certainly not before the June 30, 2009, deadline for registration. To the contrary, the problem likely will only grow larger in the forthcoming months. To date, Sorenson has tried to minimize these issues by focusing on assigning numbers to users who live in metropolitan areas. Even so, Sorenson has found that about 10 percent of users seeking to register with Sorenson live in rate centers where numbers are not available. This percentage is likely to rise significantly as Sorenson transitions to assigning numbers to users in more rural areas.

### **III. THE COMMISSION SHOULD ENSURE THAT ALL USERS ARE ABLE TO REGISTER WITH DEFAULT PROVIDERS AS QUICKLY AS POSSIBLE**

Due to the above-described constraints, Sorenson estimates that it and other Internet-based relay providers are currently unable to assign geographically appropriate numbers to thousands of Internet-based users nationwide. At least one provider has already voiced concern about this situation,<sup>27</sup> but Sorenson is not aware of any provider having brought the full magnitude of the problem to the Commission's attention.

Sorenson is filing this petition in an effort to bring this issue to the fore. Sorenson trusts

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<sup>26</sup> In addition, Level 3 has exhausted virtually all of its numbering resources in New Hampshire, and the New Hampshire PUC has refused to provision growth codes. Level 3 has an Emergency Petition pending before the FCC regarding the New Hampshire PUC's refusal. *See* Emergency Petition of Level 3 Communications, LLC, for Assignment of Additional Telephone Numbers in Area Code 603, WC Docket No. 08-154 (July 18, 2008).

<sup>27</sup> *See* Request for Clarification of Hamilton Relay, Inc., CG Docket No. 03-123 & WC Docket No. 05-196, at 6-7 (Dec. 30, 2008) ("Hamilton Request").

that once the Commission appreciates the seriousness of the problem, it will promptly adopt appropriate relief, as described more fully below.

**A. To Remove Uncertainty and Benefit Deaf Consumers, the FCC Should Declare Sorenson's Guest Number Policy to Be Permissible**

The FCC may issue a declaratory ruling to “remov[e] uncertainty.”<sup>28</sup> As explained above, the FCC has created significant uncertainty by directing Internet-based TRS providers to allow new registrants to place calls “immediately” through the assignment of temporary “guest” numbers, while at the same time restricting providers’ ability to assign temporary “workaround” numbers from nearby rate centers and insisting that Internet-based TRS users be assigned geographically appropriate numbers upon registering with a default provider. This uncertainty has been compounded by the fact that geographically appropriate numbers are unavailable in many areas, making the problem less “rare” than the Commission anticipated.<sup>29</sup> Widespread turmoil will likely result if thousands of Internet-based TRS users are denied the ability to register simply because they live in particular rate centers. Sorenson believes the best way to resolve these concerns and remove the existing uncertainties is for providers to assign users in affected rate centers geographically approximate guest numbers, on a temporary basis,<sup>30</sup> upon the users’ registration with a default provider, while also bringing these situations to the Wireline Competition Bureau’s attention in a timely fashion in an effort to hasten the procurement of geographically appropriate numbers for all users.<sup>31</sup>

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<sup>28</sup> 47 C.F.R. § 1.2.

<sup>29</sup> See *December Order* ¶ 28.

<sup>30</sup> See Hamilton Request at 6-7 (discussing geographically approximate numbers); *December Order* ¶ 25 (discussing guest numbers).

<sup>31</sup> As noted, Sorenson does not anticipate that providers will be able to procure

Sorenson has already implemented this approach by adhering to the following Policy. Whenever Sorenson is unable to assign a geographically appropriate number to a user, Sorenson attempts to assign him or her a “guest” number from a nearby rate center that is located within the user’s local calling area. Assignment of such a “locally-rated” number ensures that hearing neighbors will not incur toll charges when they dial the user’s guest number.<sup>32</sup> If a number from a rate center within the user’s local calling area is not available, Sorenson attempts to assign the user a guest number from a rate center that is within the user’s area code. Once either type of number has been assigned, Sorenson flags it within its operational systems as a temporary guest number. Sorenson will keep the Wireline Competition Bureau apprised of situations in which geographically appropriate numbers are not available for Sorenson users. As soon as Sorenson – with the assistance of the Wireline Competition Bureau – acquires a new supply of geographically appropriate numbers for a particular rate center, it will offer users in that rate center the ability to replace their geographically approximate numbers with geographically appropriate ones.<sup>33</sup>

Sorenson believes that this Policy is a reasonable effort to accommodate the competing mandates set forth in the December Order, and Sorenson therefore asks the FCC to declare the Policy to be lawful. The Policy threads a reasonable middle course between allowing new registrants to place calls “immediately,” and notifying the FCC of

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geographically appropriate numbers for all users without the active assistance of the Wireline Competition Bureau.

<sup>32</sup> See *December Order* ¶ 28 (users should receive a “locally-rated” number).

<sup>33</sup> Sorenson has already implemented this policy for its videophone users, and will soon be implementing it for its IP Relay users.

instances in which geographically appropriate numbers are unavailable for such users.<sup>34</sup> Moreover, the Policy serves the public interest by ensuring that deaf users of Internet-based relay services are able to obtain NANP numbers and, with them, full access to 911/E911 emergency services. Situations in which geographically appropriate numbers are unavailable have proven to be far more common than the Commission anticipated. As noted, geographically appropriate numbers are not available in over 11,000 rate centers encompassing approximately 17 percent of all households and an estimated 10 percent or more of the deaf population. Prohibiting the assignment of temporary guest numbers therefore would leave thousands of Internet-based users in thousands of rate centers without the means to obtain *any* ten-digit NANP number for the foreseeable future. A problem of this magnitude could easily swamp the Wireline Competition Bureau's ability to devise timely solutions for particular rate centers, thereby endangering providers' ability to register all users by June 30, 2009. Such delay would, in turn, sow disaffection with, and confusion about, the new numbering regime. Even worse, affected users would be left without any of the emergency calling protections conferred by registration. For example, if an unregistered user in Maine were to dial 911 but then become incapacitated, a provider might not be able to ensure that the call would be routed to the appropriate PSAP, since the user (absent registration) would not have given the default provider his or her registered location. Under the foregoing Policy, by contrast, a

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<sup>34</sup> If the FCC were to declare this Policy to be impermissible, such declaration would have prospective effect only because the Policy is a reasonable effort to implement conflicting FCC directives whose precise delineations providers could not determine with "ascertainable certainty" prior to FCC clarification. See *Trinity Broadcasting of Florida, Inc. v. FCC*, 211 F.3d 618, 628-32 (D.C. Cir. 2000) (an agency rule will not be enforced to deprive a regulated party of property where it could not identify, with "ascertainable certainty," the standards with which the agency expects the party to conform).

provider would obtain the user's Registered Location at the time of his or her registration, and any emergency call from a geographically approximate number would route to the geographically appropriate PSAP.

**B. In the Alternative, the FCC Should Grant a Waiver Allowing the Temporary Assignment of Geographically Approximate Guest Numbers**

If the Commission does not wish to declare the above-described Policy to be permissible under its existing rules, it should waive such requirements as are necessary to permit providers to assign geographically approximate numbers on a temporary basis whenever a geographically appropriate number is not available for assignment to a new registrant.<sup>35</sup>

Waiver of Commission rules is permitted upon a showing of "good cause."<sup>36</sup> Specifically, the Commission may waive its rules where the particular facts would make strict compliance inconsistent with the public interest, taking into account, *inter alia*, considerations of "hardship, equity, or more effective implementation of overall policy on an individual basis."<sup>37</sup> Waiver is particularly appropriate where "special

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<sup>35</sup> At a minimum, the FCC should waive: (i) section 64.611(a)(1), which states that each VRS or IP Relay provider must, "upon a user's registration" with that provider, either facilitate the user's request to port a number to the provider, or "assign that user a geographically appropriate North American Numbering Plan telephone number"; and (ii) the restriction on temporary "workarounds" in the *December Order*. 47 C.F.R. § 64.611(a)(1); *December Order* ¶ 28.

<sup>36</sup> 47 C.F.R. § 1.3.

<sup>37</sup> *Numbering Resource Optimization; Petition of the California Public Utilities Commission for Waiver of the Federal Communications Commission's Contamination Threshold Rule*, Order, 18 FCC Rcd 16860, ¶ 9 (2003) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) ("*WAIT Radio*"); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”<sup>38</sup>

A waiver is appropriate here for two reasons. First, Sorenson and other providers face special circumstances with respect to compliance with the requirement that all newly registered users be assigned a geographically appropriate number. As noted, contrary to the FCC’s prediction, Internet-based TRS providers are unable to comply with this requirement in a number of rate centers, encompassing thousands of users. Indeed, the obstacles to achieving a nationwide footprint have only grown higher in today’s challenging economic environment. Not only is the magnitude of this problem unexpected, but the problem itself is new. Notably, the Commission sidestepped a similar problem recently by permitting interconnected VoIP providers to assign numbers that are not geographically appropriate.<sup>39</sup>

Second, as noted, insisting on strict compliance with the requirement that all newly registered users be assigned geographically appropriate numbers would harm the public interest by engendering confusion and consternation among users who live in affected rate centers, needlessly endangering those users, and possibly denying them the ability to place non-emergency calls after June 30. Such results would be deplorable as a

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<sup>38</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d at 1166 (referencing *WAIT Radio*).

<sup>39</sup> See *Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, ¶ 34 n.114 (2007) (“interconnected VoIP providers offer telephone numbers not necessarily based on the geographic location of their customers – many times at their customers’ requests”); see also FCC, Voice Over Internet Protocol, Frequently Asked Questions, available at: <<http://www.fcc.gov/voip/>> (“Your VoIP provider may permit you to select an area code different from the area in which you live.”).

policy matter, and could not be squared with the “functional equivalency” mandate of the Americans with Disabilities Act as a legal matter.

#### IV. CONCLUSION

For the foregoing reasons, Sorenson requests that the Commission grant the declaratory ruling or, in the alternative, the limited waiver discussed herein. Taking either step will benefit thousands of deaf consumers, allowing them to participate in the new Internet-based TRS numbering regime without delay while also affording them the full measure of 911/E911 protections conferred by that regime.

Respectfully submitted,

SORENSEN COMMUNICATIONS, INC.

*/s/ Regina M. Keeney*

Regina M. Keeney

Richard D. Mallen

Lawler, Metzger, Milkman, & Keeney, LLC

2001 K Street NW, Suite 802

Washington, DC 20006

(202) 777-7700

rmallen@lmmk.com

*Counsel for Sorenson Communications, Inc.*

Michael D. Maddix  
Regulatory Affairs Manager  
Sorenson Communications, Inc.  
4192 South Riverboat Road  
Salt Lake City, UT 84123

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