

**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)	RM 11512

REPLY COMMENTS OF SORENSON COMMUNICATIONS, INC.

As the record in this proceeding¹ makes clear, the Commission should continue to permit legitimate subcontracting in the provision of Internet-based relay services but clarify that two illicit revenue-sharing arrangements are unlawful. Taking this step will protect consumers and prevent certain firms from continuing to bloat the size of the Interstate Telecommunications Relay Service (“TRS”) Fund (“Fund”) by operating outside of the proper ambit of the FCC’s rules.

The first illicit scheme is a minute-laundering arrangement in which a provider that is not eligible to collect from the Fund provides a relay service under its own brand name but arranges for an eligible entity to submit the TRS minutes for reimbursement in exchange for a portion of the remuneration. The second scheme is a misleading marketing arrangement whereby an eligible TRS provider makes payments to a non-eligible entity in return for the right to brand relay service under the non-eligible entity’s name and to offer service through the non-eligible entity’s Internet site.

¹ Petition for Rulemaking of GoAmerica, Inc., CG Docket No. 03-123 (Jan. 23, 2009) (“Petition”); *Pleading Cycle Established for Comments on Petition for Rulemaking Filed by GoAmerica, Inc. Concerning Internet-Based Telecommunications Relay Service (TRS) Provider Certification Requirements*, Public Notice, CG Docket No. 03-123 & RM-11512, DA 09-675 (rel. March 25, 2009). Sorenson refers to GoAmerica by its new name, Purple Communications.

These schemes confuse customers, interfere with enforcement of the Commission's TRS rules, and inflate the size of the Fund. The Commission has ample authority to declare these schemes to be unlawful under its existing rules and therefore need not initiate a rulemaking on this matter as Purple proposes. The Commission also should dismiss Purple's proposals to make it more difficult for prospective Internet-based relay providers to obtain federal certification and to eliminate contracting with a state program as a means of obtaining eligibility to collect from the Fund. These proposals are anticompetitive, unnecessary, and bereft of factual support. The Commission therefore should dismiss Purple's Petition in its entirety, and adopt the declaratory relief requested in Sorenson's initial comments.²

I. THE COMMISSION SHOULD CONTINUE TO ALLOW LEGITIMATE CONTRACTING BUT DECLARE THAT CERTAIN REVENUE-SHARING ARRANGEMENTS ARE UNLAWFUL

As the initial comments make clear, the Commission should continue to allow legitimate contracting in the provision of IP-based relay services.³ Indeed, section 225 of the Communications Act of 1934, as amended ("Act"), expressly allows contracting in the provision of TRS,⁴ and no commenter has proposed eliminating legitimate arrangements such as those between AT&T and Purple, and Sprint and Purple. In those

² See Comments and Petition for Declaratory Ruling of Sorenson Communications, Inc. at 3-10 ("Sorenson Comments"). (Except where otherwise indicated, all comments cited herein were filed in CG Docket No. 03-123 on April 24, 2009.)

³ See Comments of Hamilton Relay, Inc. at 1-2 ("Hamilton Comments") (expressing concern that GoAmerica's proposal could be misconstrued to effectively prohibit all subcontracting of relay services); Sorenson Comments at 3-4.

⁴ 47 U.S.C. § 225(c); see also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order on Reconsideration, 20 FCC Rcd 20577, ¶ 4 & n.19 (2005) ("*FCC Certification Order*") (TRS providers that offer TRS through a certified state program may "subcontract with other vendors to assist them in their provision of TRS").

arrangements, the relay service is provided under an eligible entity's brand name, ensuring that the public knows which entity is legally responsible for the provision of TRS and that the Commission can hold that entity fully accountable under its TRS rules.

Such legitimate contractual arrangements stand in stark contrast to the two more troubling revenue-sharing practices described above – the minute-laundering scheme, and the misleading marketing scheme – both of which allow firms to avoid adequate accountability and evade enforcement of the Commission's rules.⁵ For example, under the minute-laundering scheme instituted by some providers, if the service provided by a non-eligible entity fails to comply with the Commission's rules, users do not know which, if any, entity should be the subject of a complaint to the Commission or state relay service regulatory body. The non-eligible firm that provides the service is not subject to the FCC's regulation,⁶ and the eligible entity that obtains payment from the Fund is unknown to users, making it impossible for them to register a complaint.⁷

⁵ See *supra* at 1-2; see also Comments of American Network, Inc. at 3-4 (“American Network Comments”) (“all of the FCC's protections are meaningless if the entity that is providing service is not the same entity” as the one “authorized to seek reimbursement from the TRS Fund”); Comments of Viable Communications, Inc. at 4 n.12 (Apr. 23, 2009) (“Viable Comments”) (opposing marketing arrangements in which non-TRS providers lend their domain names in exchange for compensation from the certified provider); Sorenson Comments at 4-10.

⁶ Communications Access Center for the Deaf and Hard of Hearing (“CAC”) incorrectly asserts that § 64.606(a)(2) of the Commission's rules was adopted to enable FCC “oversight” of “uncertified providers.” CAC Comments at 2. To the contrary, the rule was adopted to provide oversight of those providers that obtain certification through the FCC's process. *FCC Certification Order* ¶¶ 22-25.

⁷ Healinc claims to be unaware of any consumer complaint that would require FCC action on revenue-sharing arrangements. Response of Healinc Telecom, LLC to GoAmerica, Inc. Petition for Rulemaking at 12 (Apr. 22, 2009) (“Healinc Comments”). Entities that are not eligible to collect from the Fund, however, are not obligated to report consumer complaints to state or federal authorities, so it is not clear where Healinc would expect to find such complaints. Nevertheless, Sorenson's Comments provide specific

The minute-laundering and misleading marketing schemes also inflate the size of the Fund. Legitimate contracting helps to reduce TRS costs by allowing a more efficient or cost-effective entity to provision inputs to an eligible provider's service. The more efficient production of inputs leads to a lower overall cost of service, thereby putting downward pressure on the Fund size. The two schemes described above, by contrast, do not produce these economic benefits. Under the first scheme, the only input provided by the eligible entity is the laundering of minutes, while under the second scheme, the only input provided by the "subcontractor" is access to its web portal and brand name. Neither input increases the efficiency of the underlying relay service. Indeed, since the relay provider must pay for both inputs, the two schemes needlessly increase the cost of providing relay, thereby inflating the size of the Fund without any countervailing improvement in the quality or efficiency of TRS.

Sorenson agrees with Hamilton that the Commission can avoid these problems by clarifying that eligible relay providers may enter revenue-sharing arrangements only if the resulting relay service is branded clearly under the eligible entity's name and the eligible entity assumes legal responsibility for any violation of the FCC's rules.⁸ Any entity that violates this rule should be required to pay back all compensation for any minutes illegitimately billed to the Fund, and should be subject to an additional forfeiture (*e.g.*, a penalty equal to 25 percent of the improper revenues received from the Fund).

examples of revenue-sharing arrangements that appear to violate the Commission's rules. Sorenson Comments at 4-9.

⁸ See Hamilton Comments at 2; Sorenson Comments at 3-8. The Commission also should clarify that, when a company independently provides Internet-based relay under its own brand, that provider must obtain FCC certification before it can independently offer federally-funded VRS or IP Relay to the public. Sorenson Comments at 3-4, 8-10.

Such a penalty would deter eligible entities from entering into minute-laundry arrangements.

II. THE FCC SHOULD NOT MODIFY FEDERAL CERTIFICATION REQUIREMENTS

Neither Purple nor any commenter has provided any facts to support the contention that the Commission's existing certification procedures under section 64.606(a)(2) and (e)(2) are insufficient to safeguard consumer welfare and preserve the integrity of the Fund. Moreover, most commenters agree that the tools already available to the Commission under the existing rules are sufficient to address any of the potential ills imagined by Purple,⁹ and that the draconian approach to certification advocated by Purple would deter competitive entry.¹⁰ Indeed, as Healinc points out, Purple itself would have been ineligible under the criteria it now proposes when it first entered the VRS business as a fledgling provider.¹¹ Now that Purple has become a large provider, however, it apparently seeks to protect its market share by making federal certification more difficult for aspiring entrants. The Commission should reject this and any similar anti-competitive proposal¹² without seeking further public comment.

⁹ See CAC Comments at 3; Healinc Comments at 9-10; Viable Comments at 5.

¹⁰ See CAC Comments at 3; Viable Comments at 6-7.

¹¹ Healinc Comments at 15.

¹² See Hamilton Comments at 3 (advocating a new federal certification requirement for all non-common carrier VRS providers); American Network Comments at 5-7 (promoting a mandatory federal certification process for all VRS providers that would require FCC approval of corporate financial structures and regulate a provider's ownership). American Network's proposal to decertify providers using communications assistants (CAs) located outside the United States is particularly ill-conceived. See American Network Comments at 8-9 & n.15. As Sorenson has previously explained, the FCC generally lacks jurisdiction over relay providers' employment and labor practices, see Comments of Sorenson Communications, Inc., CG Docket No. 03-123, at 11-22 (Sept. 4, 2007), and, in any event, American Network's concerns about privacy are

The FCC also should reject Purple’s proposal to eliminate contracting with a certified state program as a means of becoming eligible to collect from the Fund. The two commenters that support this proposal erroneously assume that a variety of certification processes translates into numerous sets of differing VRS service standards.¹³ In fact, there is only a single set of mandatory minimum standards that applies to all eligible VRS providers, regardless of the manner in which they obtained eligibility. Furthermore, if a provider obtains eligibility under a state program, that program itself must be certified by the Commission. In granting such certification, the Commission must make a determination that the state program “meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604.”¹⁴ These are the same performance requirements applicable to providers that are certified under the FCC’s federal certification procedures.¹⁵ Accordingly, the factual assumption underlying American Network’s premise that “consumers are ill-served by inconsistent performance requirements” is erroneous.¹⁶

unfounded: section 705 of the Act, as well as the FCC’s privacy rules, apply with full force to all relay providers regardless of where a particular CA is located. *See* 47 U.S.C. § 605)(a); 47 C.F.R. § 64.604(a)(2).

¹³ *See* American Network Comments at 6; Hamilton Comments at 3.

¹⁴ 47 C.F.R. § 64.606(b)(1)(i). The FCC also has authority to suspend or revoke the certification of any state that has authorized a provider that fails to meet these standards. 47 C.F.R. § 64.606(e)(1).

¹⁵ 47 C.F.R. § 64.606(b)(2)(i).

¹⁶ American Network Comments at 6. Even the certification procedures themselves do not differ markedly. When the Commission established the federal certification process for independent VRS and IP Relay providers, it observed that the new rules “largely mirror the existing certification requirements for state TRS programs.” *FCC Certification Order* ¶ 24.

Similarly, Hamilton alleges a “potential lack of oversight” of VRS providers that are not common carriers and are not certified through the Commission’s federal certification procedures.¹⁷ Hamilton conflates certification processes with the federal mandatory minimum service standards. As noted, the Commission’s mandatory minimum standards do not exempt providers that were certified pursuant to a state program; rather, the FCC’s standards apply to *all* VRS providers eligible to receive compensation from the Interstate TRS Fund regardless of the manner in which the providers were certified. Hamilton Relay’s premise, like American Network’s, is a red herring.

Hamilton compounds its initial error by proposing a complete overhaul of the certification process for non-common carrier VRS providers.¹⁸ Yet Hamilton does not identify any actual harms that its proposal would remedy. That is because there are no such harms: as explained above, non-common carriers that obtain eligibility in partnership with a certified state program are already fully bound by all the FCC’s mandatory minimum requirements, and no purpose would be served by requiring those providers to obtain FCC certification as common carriers.¹⁹ Adopting Hamilton’s proposal would only pervert the purpose of the federal certification process, which was

¹⁷ Hamilton Comments at 3.

¹⁸ *Id.* at 3-4.

¹⁹ Hamilton also suggests imposing section 214 discontinuance requirements on federally certified IP-based relay service providers. Hamilton Comments at 4. As the FCC has found, TRS is not a telecommunications or common carrier service. *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, ¶¶ 122, 123 n.293 (2008). Hamilton does not attempt to explain why a common carrier provision such as section 214 could apply to TRS providers, nor does Hamilton proffer any facts that would require such an extraordinary application. The FCC therefore should reject this proposal.

designed to provide consumers with “a greater choice of VRS and IP Relay providers.”²⁰ Use of the federal certification process to exclude non-common carrier VRS providers from eligibility altogether would turn the process on its head with no corresponding benefit. The Commission should reject this approach.

III. CONCLUSION

As explained herein and in Sorenson’s initial comments, certain minute-laundering and misleading marketing arrangements bloat the size of the Fund, degrade accountability of VRS providers, and impair the Commission’s ability to enforce its VRS rules. The Commission should declare these arrangements to be unlawful under existing FCC rules. The Commission also should deny Purple’s request for a rulemaking to impose greater burdens on obtaining eligibility through the federal certification process and to make FCC certification the exclusive means for obtaining eligibility to receive compensation from the Fund.

Respectfully submitted,

/s/ Regina M. Keeney

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May 11, 2009

²⁰ *FCC Certification Order* ¶ 26.

Certificate of Service

I hereby certify that on this 11th day of May, 2009, I caused a true and correct copy of the foregoing Reply Comments of Sorenson Communications, Inc. to be mailed by first class U.S. mail, postage prepaid, to:

George L. Lyon, Jr.
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/s/ Ruth E. Holder
Ruth E. Holder