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May 12, 2009

Via Electronic Filing

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

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

Dear Ms. Dortch:

On November 19, 2008, the National Association of State Relay Administration (“NASRA”) filed an *ex parte* identifying four marketing practices that seem to violate the Commission’s decisions prohibiting relay providers from offering consumers any incentive or reward to make relay calls.¹ NASRA asked the FCC to evaluate these practices and, to the extent appropriate, to clarify the impermissibility of certain practices and bring “swift” and “strict” enforcement action against their perpetrators.² On November 25, 2008, Sorenson Communications, Inc. (“Sorenson”) filed an *ex parte* strongly supporting NASRA’s request, and suggesting that the Commission “once again . . . clarify [marketing] practices that are impermissible, either by publishing enforcement decisions or by issuing another declaratory ruling.”³

Even though almost six months have passed since NASRA filed its letter, the Commission has yet to take any public step to put an end to the egregious marketing practices identified in that filing. These practices artificially bloat the size of the Interstate Telecommunications Relay Service (“TRS”) Fund, erode the public’s confidence in TRS,

¹ *Ex Parte* Comments of the National Association for State Relay Administration, CG Docket No. 03-123 (dated Nov. 10, 2008; filed Nov. 19, 2008).

² *Id.* at 4, 9.

³ Letter from Ruth Milkman, Counsel for Sorenson, to Marlene H. Dortch, FCC Secretary, CG Docket No. 03-123, at 3 (Nov. 25, 2008) (attached hereto).

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and distort competition. Sorenson reiterates its belief that all relay providers should be competing on the quality of their service and not on their ability to inflate usage through illicit incentive schemes. The Commission should promptly issue a public notice clarifying that the practices identified by NASRA are impermissible under Section 225 of the Act⁴ and the Commission's no-incentives decisions.

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

Sincerely,

/s/ Regina M. Keeney
Regina M. Keeney
Counsel for Sorenson

cc: Catherine Seidel
Thomas Chandler

⁴ 47 U.S.C. § 225.

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November 25, 2008

Via Electronic Filing

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

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

Dear Ms. Dortch:

On November 19, 2008, the National Association of State Relay Administration (“NASRA”) filed an *ex parte* identifying four marketing practices that seem to violate the Commission’s decisions prohibiting relay providers from offering consumers any incentive or reward to make relay calls.¹ NASRA asks the FCC to evaluate these practices and, to the extent appropriate, to clarify the impermissibility of certain practices and bring “swift” and “strict” enforcement action against their perpetrators.²

Sorenson strongly supports NASRA’s request. The four practices identified by NASRA are being used today by one or more providers of video relay service (“VRS”). In particular, certain VRS providers are:

- paying an entity that is not eligible to receive compensation from the Interstate TRS Fund 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;³

¹ Ex Parte Comments of the National Association for State Relay Administration, CG Docket No. 03-123 (dated Nov. 10, 2008; filed Nov. 19, 2008) (“Petition”).

² *Id.* at 4, 9.

³ *See id.* at 5-6. For example, CSDVRS apparently has made such payments, which may be styled as “contributions,” to at least two entities: VRSFLA and TexanVRS. *See* <http://www.vrsfla.com>; <http://www.texanvrs.com>.

- paying full-time teams of deaf salespersons to place telemarketing calls through the providers' VRS;⁴
- paying independent marketing firms to have deaf employees place marketing calls through the providers' VRS;⁵ and
- requiring consumers to use the provider's VRS in order to receive a free videophone.⁶

Sorenson believes that each of these practices is an egregious violation of the FCC's longstanding ruling that "providers seeking compensation from the Fund may not offer consumers financial or other tangible incentives, either directly or indirectly, to make relay calls."⁷ As the Commission clarified last year, a financial or other incentive program is not permissible "even in circumstances where the benefit goes to a third party."⁸ The first three of the practices identified by NASRA confer an impermissible benefit on third parties, while the fourth directly rewards consumers for making relay calls. As a result, all four practices are plainly unlawful.⁹ They also harm the public in various ways. For

⁴ See Petition at 6-7.

⁵ See Petition at 7.

⁶ See Petition at 8. We do not read the FCC's orders as making it unlawful for a provider to reward consumers simply for referring possible new videophone users to the provider. As long as the reward is not conditioned on a usage requirement, the reward is consistent both with the statutory mandate that TRS be made available to the greatest extent possible, *see* 47 U.S.C. § 225(b)(1), as well as with the FCC's no-incentives decisions.

⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, ¶ 92 (2007) ("2007 Declaratory Ruling"); *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 20 FCC Rcd 1466, ¶ 9 (CGB 2005) (prohibiting providers from using "any kind of financial incentives or rewards, including arrangements tying the receipt of equipment to minimum TRS usage, directed at a consumer's use of their TRS service"); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 20 FCC Rcd 12503, ¶ 6 (CGB 2005) ("Programs directed at giving the consumer an incentive to make a TRS call in the first place, or to place a longer TRS call than the consumer might otherwise make, are prohibited . . .") (collectively, the "no-incentives decisions").

⁸ *2007 Declaratory Ruling* ¶ 93.

⁹ In addition to the no-incentives decisions, NASRA suggests that the four practices violate consumer-database restrictions set forth in paragraphs 95 and 96 of the *2007 Declaratory Ruling*. Petition at 4. Sorenson respectfully points out that those paragraphs

example, by artificially inflating certain providers' compensation, the practices undermine the integrity of the Interstate TRS Fund, erode the public's confidence in TRS, and distort competition. Sorenson believes that all VRS providers should be competing on the quality of their service and not on their ability to gin up usage through incentive schemes.

Sorenson joins NASRA in urging the Commission to investigate these practices and to put an end to them quickly and decisively. Since each of the practices already violates clear FCC rulings, the Commission has a solid legal basis to institute enforcement proceedings against all perpetrators. In addition, it may be useful for the Commission once again to clarify practices that are impermissible, either by publishing enforcement decisions or by issuing another declaratory ruling, in order to ensure compliance by all providers with Section 225 of the Act¹⁰ and the Commission's no-incentives decisions.

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

cc: Catherine Seidel
Nicole McGinnis
Thomas Chandler

(as well as the FCC's *May 28, 2008 Declaratory Ruling* clarifying the language in those paragraphs) were recently stayed by the U.S. Court of Appeals for the Tenth Circuit and therefore are not in effect today. *See Sorenson Communications, Inc. v. FCC*, Nos. 08-9503, 08-9507, 08-9545 (10th Cir. Nov. 3, 2008) (order staying declaratory rulings); *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 23 FCC Rcd 8993 (2008) ("*May 28, 2008 Declaratory Ruling*"). The fact that paragraphs 95-96 of the *2007 Declaratory Ruling* and the *May 28, 2008 Declaratory Ruling* are not currently in effect, however, in no way undermines NASRA's arguments. The practices cited by NASRA violate paragraphs 89-94 of the *2007 Declaratory Ruling* and the prior no-incentives decisions adopted in 2005, *supra* note 7, all of which remain in effect.

¹⁰ 47 U.S.C. § 225.