

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

In the Matter of )  
 )  
Telecommunications Relay Services And )  
Speech-to-Speech Services for Individuals )  
with Hearing and Speech Disabilities ) CG Docket No. 03-123  
 )  
Petition for New Rule on VRS Number Porting ) WC Docket No. 05-196

To: The Commission

***COMMENTS ON AND COUNTERPETITION FOR RULEMAKING ON VRS  
EQUIPMENT PORTING***

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### *Summary*

Purple Communications, Inc. agrees with the Petition filed by several providers that the FCC's requirement that providers must facilitate the porting of provider supplied videophones is unworkable and counterproductive. Because the FCC has sanctioned the defeaturing of ported videophones, consumers have absolutely no incentive to port their device and therefore lose important features craved by deaf and hard of hearing users. As a result, requiring providers to spend time and money to be able to port and control ported devices is wasteful. However, adopting the Petition's suggestion to simply eliminate porting creates even more harm since it will strengthen the near monopoly position of the dominate VRS provider, Sorenson Communications, Inc. Because Sorenson has an estimated 95 percent share of the VRS equipment market, the Commission must fashion a temporary transition measure to ameliorate competitive harm. Accordingly, Purple proposes that the Commission require Sorenson to continue to manage ported videophones for a two year period in order to allow a competitive market to develop for VRS CPE.

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Purple Communications, Inc. (“Purple”) hereby comments on the Petition for Rulemaking (“Petition”) filed by four video relay service (“VRS”) providers, CSDVRS, LLC, Snap Telecommunications, Inc., Sprint-Nextel, and Viable, Inc. on April 14, 2009. That petition seeks to eliminate the FCC’s requirement for providers of video relay services (“VRS”) to enable the porting of video customer premises equipment (“CPE”) from one default provider to another. Petitioners argue that the porting requirement is unworkable and ineffective. As shown herein, we agree that in its current form the requirement is unworkable and ineffective. Moreover, in its current form the porting requirement serves unfairly to consolidate the VRS market in the dominant VRS provider, which has distributed some 100,000 video phones to consumers. However, adoption of Petitioners’ proposal would have the deleterious effect of intensifying the consolidation of the VRS market in the dominant provider’s hands. We propose, therefore, that the dominant VRS provider be required to continue to manage ported videophones for a limited period while other providers develop and distribute competing video equipment in the marketplace.

## ***I. Background.***

As the Petitioners note, the FCC released its Report and Order governing the implementation of ten digit numbering for Internet Protocol (“IP”) and VRS providers on June 24, 2008.<sup>1</sup> Paragraphs 60 and 61 of that order, together with FCC Rule §64.611(e), require that when a relay user ports a number from one provider to another, providers who distribute CPE must ensure that their devices continue delivering routing information to the user’s new default provider to enable that new default provider to provision routing information to the central database. In addition, the rule prohibits providers who have given out devices, but who are no longer acting as the user’s default provider, from acquiring routing information from that user.<sup>2</sup>

Petitioners further note that since issuance of these rules, the FCC has received several petitions to reconsider, waive or revise the equipment porting obligations. These filings explain various problems with the porting requirement. For example, one petition explained that the user’s new default provider did not have any way to collect routing information from a device supplied by another provider in order to update the database without the assistance of the provider who had given that device to the user,<sup>3</sup> and explained that the only way for the new provider to be able to begin updating the database “would be for the device’s original provider/distributor to re-program *every* single device that it has distributed to make it work with the network of *every* current and future VRS provider.... This would inappropriately force providers to accept responsibility for video devices that they had no role in developing and which have no relationship with their own signaling platforms.” Other filings that are

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<sup>1</sup> *Telecommunications Relay Services*, 23 FCC Rcd 11591 (2008) (June Numbering Order); Petition at 2.

<sup>2</sup> 47 C.F.R. §64.611(c)(2)(i); Numbering Order at ¶61.

<sup>3</sup> Petition for Reconsideration and Clarification by CSDVRS, LLC, GoAmerica, Inc., Viable, Inc., and Snap Telecommunications, Inc., CG Dkt. No. 03-123 & WC Dkt. No. 05-196 (August 15, 2008).

catalogued in the Petition and do not need to be repeated here have raised similar concerns. See Petition at 2-4.

Nevertheless, the FCC in the Second Report and Order in this proceeding, upheld the requirement that CPE provide routing information to the user's default provider, even if that provider is not the one that originally gave out the CPE.<sup>4</sup> In addition, the FCC stated that such CPE, after porting to the new provider, must be able to: (1) accept a URI or IP address that the new provider uses so that the new provider can direct the CPE to send routing information to one IP address and outgoing video connections to another IP address; (2) automatically forward dialed numbers to the new default provider so that consumers are able to dial numbers without finger-spelling those numbers; and (3) continue to provide point-to-point calling using ten digit dialing. The Commission rejected, however, a request for a rule requiring the original CPE provider to ensure that the device's various features remain fully usable after the consumer ported his or her number to a new provider, but granted a one year waiver for compliance with these requirements for default providers that did not have access to technical information about the user's CPE needed to update the database and continue providing service to the consumer through that CPE.<sup>5</sup>

As the Petition further explains, despite the many objections to the porting rule, the FCC continues to require providers to support porting of VRS CPE. Yet, to date, the technical feasibility and practical effectiveness of such a mandate remains questionable. No practical means exists to enable providers to accept routing information from end user equipment distributed by other providers. And while Sorenson has proposed an interface that would allow other providers to update the database for customers continuing to use Sorenson

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<sup>4</sup> *Telecommunications Relay Services*, FCC 08-275, \_ FCC Rcd \_ (2008) (December Numbering Order) at ¶¶63-64.

<sup>5</sup> December Numbering Order at ¶68.

CPE, that interface per the FCC's last numbering order, would only transfer the bare calling features of that CPE to users of a new provider leaving the consumer with little more than a videophone that would make and receive calls.<sup>6</sup> No interface that would transfer more consumer friendly features – such as speed dialing, has been presented to or accepted by the VRS marketplace, and no such interface is likely to be developed.<sup>7</sup> Current industry discussions have bogged down as the industry realizes that this effort will only result in an end user product no one will want to use. *See* Petition at 4-5.

As Petitioners cogently explain, the FCC should revise the requirement for VRS providers to equate routing information to a phone number for every device that it *or other VRS providers* have issued, because such a requirement is ineffective, will not achieve the desired result of functional equivalency for relay consumers, and will strengthen the market dominance of the dominant VRS provider, Sorenson Communications, Inc.

## ***II. The Equipment Porting Ruling is Unworkable and Ineffective.***

As Petitioners point out, the purpose of the FCC's number portability rule is a good one: it is to ensure that, like hearing individuals, relay users need not acquire a new telephone number every time they switch providers. However, as written, the VRS porting rules fail to accomplish this laudable objective. Instead, they merely strengthen the dominant market position of one VRS provider while causing the entire VRS industry to expend wasted effort in developing a standard to port devices that no one would care to have. Thus, as shown below, the irony is that this laudable attempt to benefit consumers will end up providing consumers with inferior products that do not meet their needs and which they simply will not

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<sup>6</sup> Sorenson Ex Parte containing proposed Relay Provider Interface (February 13, 2009).

<sup>7</sup> Nor is there an industry standard for VoIP devices to interface with each other. For example, a subscriber to Vonage receives a Vonage device that only works with Vonage. If that subscriber ports his number to Verizon, he will need Verizon end user equipment.

use with the result that the dominance of the VRS market by Sorenson will continue unabated and in fact be strengthened. *See* Petition at 5.

Petitioners are correct that although the FCC desires to ensure that each VRS provider's CPE works with every other VRS provider's network, there is no similar FCC requirement for all wireless phones to work with all wireless carriers or for all phones specifically created for VoIP services to work with all VoIP networks. We agree with Petitioners that video relay service is more akin to the wireless and VoIP markets which have multiple networks to which end user equipment must be designed. And we agree that the FCC's rules go beyond merely requiring that a consumer be able to port his or her number, as is the case for wireless and VoIP users, to direct that VRS users continue being able to use the equipment they received from former providers, but only to a certain extent, with important features that the customer demands eliminated from the equipment. *See* Petition at 5-6.

Because of this, Petitioners are correct that the FCC's proposed implementation of equipment portability in the VRS market is neither feasible nor practical. Because the FCC's ruling does not require providers to support features on devices they have distributed which are necessary for consumer acceptance, including for example, speed dialing/address books, etc., when consumers port their numbers to a new default provider, they will lose CPE features upon which they have become dependent for their communication needs. Such features, including the device's address book (used for speed dial functionality), last numbers called, frequently called numbers, and missed calls, are commonplace on telephone devices used by hearing individuals. Disengaging them from a relay user's CPE takes away the very functional equivalency the consumer now enjoys. *See* Petition at 6-7. The Petitioners thus urge the FCC to abandon this approach as wasteful and ineffective.

Petitioners are correct that no consumer will want to use a phone that has been “de-featured” in this manner. Rather, it is virtually certain that consumers will simply revert to using the provider that first gave him or her the equipment, or will seek to obtain a new device from the new default provider. *See* Petition at 7. Given the current distribution of CPE in the VRS market – where the overwhelming majority of VRS users have CPE that was distributed by a single dominant provider – the net effect of the current rule is to remove any incentive for consumers to switch from the dominant provider as their default provider notwithstanding customer service, interpreter quality, or answer speed performance.<sup>8</sup> In essence the current rule strengthens Sorenson’s dominance of the VRS market. *See* Petition at 7.

We also agree with Petitioners that unless the FCC’s porting rules are revised to eliminate equipment porting, providers will also be forced to support the CPE of many different providers. We further agree that to meet this requirement, significant capital investment and long hours will be spent for extensive engineering and equipment infrastructure changes that will be needed for each provider to support every other provider’s devices. All of the expenses associated with this effort will initially be borne by providers ultimately to be passed to the TRS Interstate Fund. Yet, the ultimate result of this monumental effort will be unacceptable to every consumer, i.e., an inferior videophone that has few or no features consumer need and desire. As noted above, to get all of the phone’s features functioning again, the consumer will have no choice but to go back to the provider that initially distributed the CPE. That would be Sorenson.<sup>9</sup> *See* Petition at 7-8.

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<sup>8</sup> Some industry observers believe that as many as 95 percent of the videophone devices currently in use by relay providers are those managed by Sorenson.

<sup>9</sup> There have even been rumors that one of the features to be removed from ported devices is the light signaling feature. Without this feature, deaf consumers will even lose the ability to discern when they are receiving incoming calls.

Petitioners are also right that in addition to being a waste of money, the equipment porting rule creates disincentives for VRS providers to engage in innovation and the design of new CPE. With most of the equipment market now controlled by Sorenson and a rule that would reinforce the decision of consumers to stay with that provider, little reason exists for providers to engage in research and development needed to build a better consumer product. Moreover, it is absurd for providers to have to spend time figuring out how to de-feature their own devices so they could be used with the networks of other providers, only to have consumers reject those devices for lack of functionality.<sup>10</sup> Although intended to benefit consumers, by creating disincentives to produce new videophones the rule, leaves consumers with unacceptably inferior video devices and fewer video product choices – thus undermining the intended benefits of the interoperability and numbering orders. *See* Petition at 9.

### ***III. Benefits of Eliminating the Equipment Porting Rule.***

In sum, we agree with Petitioners that eliminating the equipment porting rule is in the public interest. Consumers will be able to choose whether they wish to stay with their current provider and retain the specialized features of the devices that they now have, or port their numbers to a new provider and obtain new, full featured CPE from their new provider (or acquire devices from retail establishments). As Petitioners state, elimination of the rule will also result in avoiding unnecessary costs to the TRS Interstate Fund because providers will not be forced to support ported devices for every other VRS provider, nor expend resources figuring out ways to remove functionalities from their own devices. Most important to consumers, VRS providers will have market incentives and greater resources at their disposal

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<sup>10</sup> Indeed, the previous inconsistent practices and statements of the FCC contribute to this absurdity. On the one hand, the FCC has said it does not compensate providers for furnishing video equipment; on the other it is setting up extremely onerous rules relating to the provision and use of such equipment and is effectively requiring providers to distribute equipment to compete in the market.

to continue developing and enhancing new CPE to meet user needs. *See* Petition at 9-10. Nevertheless adopting Petitioners' proposal without controlling for the current state of the VRS market will result in further strengthening of Sorenson's near monopoly provision. As American Network, Inc. points out in its opposition to the Petition, the net effect of adoption of the Petition as proposed would be anticompetitive and serve to lock users into the providers who distribute non-portable devices, 95 percent of which are Sorenson devices. Opposition of American Network, Inc. (May 11, 2009).<sup>11</sup>

***IV. The Commission needs to establish a transition period to avoid inadvertently enhancing Sorenson's market dominance.***

The purpose of the equipment porting rule is to allow consumers who have received CPE from providers to freely change their default provider without penalty. As shown above, however, the net effect of this rule, assuming it could ever be implemented, will be to penalize the consumer, who is subject to loss of important equipment features, such as address books, speed dial, call history and similar features upon which the deaf and hard of hearing community rely. As such, the rule facilitates the obverse: it penalizes consumers who desire to switch to another provider while retaining their existing videophones. Thus, the rule does

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<sup>11</sup> American Network's theory that the market will resolve itself if the status quo is maintained is simply untenable. Opposition at 8. The deaf and hard of hearing video market is insufficient in and of itself to encourage the widespread production of deaf friendly video equipment. For now and the foreseeable future that market will be driven by provider developed videophones. Given that the FCC has declined to require such provider distributed video equipment to retain their full features upon porting, the suggestion American Network makes that consumers will accept such degraded devices lacks both logical and factual support. *Cf.* Opposition at 4. Likewise we failed to understand American Network's statement that it does not believe that ported devices will lose their functionality. Opposition at 4. Sorenson has made it abundantly clear that it will defeature virtually every feature of its devices if they are ported. If American Network's view is actually that porting of a device does not necessarily require it to loss functionality, Purple fully agrees. However, Sorenson's defeaturing of its device constitutes its willful decision to deny use of its videophones' features to consumers if consumers port away from Sorenson. Apparently, American Network simply does not comprehend the degree to which Sorenson will go to maintain its near monopoly position in this market. We therefore refer American Network to the record compiled in the Commission's TRS Interoperability Proceeding. *Telecommunications Relay Services*, 21 FCC Rcd 5442 (2006).

nothing to provide the consumer a meaningful choice of providers. It merely mandates a wasteful expenditure of resources for providers to port and accept devices which consumers will not want. The rule should be repealed as counterproductive.

Nevertheless, the problem still remains how to facilitate free consumer choice of default providers. That problem cannot be addressed without also addressing the VRS market which has developed and the reasons therefore. As the FCC is well aware, Sorenson dominates the VRS market with an estimated 75-80 percent market share.<sup>12</sup> It obtained that dominant market share through conduct the FCC found to be in violation of Section 225 of the Act. Specifically, Sorenson distributed its proprietary videophones to consumers for free and then contractually and electronically blocked consumers from exercising the right to use those videophones to make and receive calls through other providers. Sorenson engaged in this anticompetitive tie-in arrangement from its initial entry into the VRS market in April of 2003 until the Commission ruled this practice in violation of the Act in May of 2006.<sup>13</sup> Even following that decision, however, Sorenson engaged in practices designed to frustrate consumer's choice of providers. For example, it interposed a confusing intercept screen on its videophones for several months whenever a consumer sought to use another provider. In addition, it continued to operate its closed faux numbering scheme, which prevented users of other providers from calling Sorenson users as easily as Sorenson users could call one another. This latter scheme has only recently been ended through the FCC's adoption of universal North American Numbering Plan 10 digit numbering for Internet based relay users. Even then Sorenson has sought to continue using its faux numbering scheme.

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<sup>12</sup> This is far less than the estimated market share of relay videophones, 90-95 percent — which will only be enhanced if the FCC further strengthens the tie between videophones and relay services.

<sup>13</sup> Declaratory Ruling and Further Notice of Proposed Rulemaking, FCC 06-57 (May 9, 2006).

Those anticompetitive activities continue to date. We and other providers have received numerous reports of Sorenson agents threatening consumers with removal of their videophones if the consumers use other providers. In addition, it is clear Sorenson is exploiting the fact that its videophones will be defeatured if a consumer ports those devices to another provider. Many reports show Sorenson agents blurring the distinction between defeaturing the device and whether the device will work at all. Furthermore, consumers have complained that Sorenson firmware updates to devices result in removing competing provider information from consumer address books. Although all of these activities plainly violate FCC rules and policies, the Commission appears powerless to stem these rampant instances of consumer intimidation and abuse. All of these abuses stem from one essential fact. Sorenson continues to use its dominance of VRS CPE to dominate the VRS market itself.

It is estimated that there are well over 100,000 Sorenson videophones in the market place, more than 90-95 percent of all VRS CPE. Due to Sorenson's anticompetitive tie-in blocking scheme, Sorenson was able to pay for these devices with the economies of scale it achieved as a result thereby. In essence, and despite the FCC's official policy that the TRS Fund does not pay for VRS CPE, Sorenson's dominance of the equipment market was financed by TRS Fund monies.<sup>14</sup> The Commission has an obligation to consumers and the industry to remedy this situation and level the playing field.

Unfortunately, the current regulatory structure as well as the Petition locks consumers into a limited videophone market without alternatives that are easily accessible and replaceable. Non-relay users can easily go to the nearest corner electronic or big-box store and acquire a replacement phone immediately. Relay users, however, have to wait months or

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<sup>14</sup> This exploitation of the system along with the FCC's apparent reluctance or inability to stop such exploitation has attracted Congressional attention and criticism.

longer to receive a replacement or alternative videophone. Alternative providers, including Purple, are only beginning to come out with videophones and have extensive waiting lists for their videophones. It will take months, if not years, for other providers to penetrate the videophone market at a fraction of what is currently held by Sorenson.

The Consumer Groups make the point well.<sup>15</sup> They support the Petition on the basis that the current rule achieves no beneficial result as it allows providers to defeature ported devices. But they are clear that “consumers are left with astoundingly little choice in CPE or default VRS provider”<sup>16</sup> due to Sorenson’s near monopoly on CPE. They “urge the Commission to undertake the steps necessary to ensure that consumers, in fact, have the ability to obtain VRS CPE from a variety of sources, in a timely manner.”<sup>17</sup> Purple wholeheartedly agrees.

To level the VRS playing field, and provide consumers real choice in providers, providers have to offer consumers videophones, just like Sorenson does. However, the market in consumer videophones is in its infancy. Most certified VRS providers to this day do not offer videophone products. Unless they do, they are practically excluded by the FCC’s numbering rules from the VRS market. Indeed, that may very well have been the reason that one former VRS provider, Hamilton Relay, left the market concurrent with the effectiveness of the numbering rules. Over the next 18 to 30 months, the VRS market should become a more level playing field as several additional providers complete their efforts to bring videophones to market. During that time, to equalize the playing field from Sorenson’s years

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<sup>15</sup> See Comments of Telecommunications for the Deaf and Hard of Hearing, Inc. et al (May 11, 2009) at 7.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

of enjoying the benefits of its conduct held to violate Section 225 of the Act, the Commission must implement a limited transition period.<sup>18</sup>

The transition period the Commission should implement should require that Sorenson continue to manage those devices distributed prior to June 30, 2009, without removing any features of the devices. This limited requirement will afford a brief period for completion of provider developmental efforts so that consumers have an effective choice of providers.

#### ***V. Conclusion.***

For the above reasons, we urge the FCC to eliminate the requirements for each provider to (1) enable the porting of its CPE from one default provider to another and (2) support the CPE of other providers for the purpose of provisioning the numbering database. The end result of both requirements will be CPE that no one wants to use. In addition, we urge the Commission to adopt a transition period to require Sorenson to continue to manage for 24 months VRS CPE distributed prior to June 30, 2009 following a default provider change. Unless the Commission takes both actions it will continue to reward Sorenson for its legacy of past anticompetitive conduct.

Adoption of these requests will support an open and interoperable VRS environment that will (1) guarantee consumers freedom of choice; (2) promote VRS market incentives for competition and technological innovation; (3) eliminate incentives to create inferior CPE with diminished capabilities; (4) reduce TRS Fund expenditures; and (5) eliminate commercially impractical solutions that will not be effective for the user community.

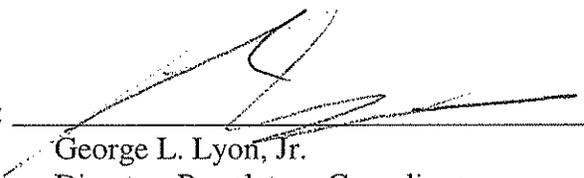
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<sup>18</sup> It is to be emphasized that the requirement to manage imbedded CPE need not be imposed on other providers who have distributed equipment. No other provider has been in the position to nor has attempted to use its distribution of equipment to dominant the market. Nor has any other provider demonstrated a persistent pattern of conduct of attempting to intimidate consumers from freely deciding who to use as their VRS provider. And even without the demonstrated anticompetitive history of the dominant provider, its market dominance itself suggests that remedial action is necessary to assure a competitive VRS market.

Respectfully submitted

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