



WILTSHIRE
& GRANNIS LLP

June 19, 2009

Ex Parte – Via Electronic Filing

Ms. Marlene Dortch
Secretary, Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: CG Docket 03-123

Dear Ms. Dortch:

On June 18, 2009, Gina Keeney, Rick Mallen, and I met with Acting General Counsel Michele Ellison, Deputy General Counsel Joseph Palmore, and Associate General Counsel Joel Kaufman. With respect to TDI's recent request to review confidential company-specific data regarding the so-called "actual costs" of VRS providers, we pointed out such data has never been made available to third parties and that the FCC has rejected requests to disclose such data in the past.¹ We also responded to an argument that the use of tiers to provide compensation necessitated review of historic company-specific data. To the contrary, we noted, the rate for each tier was established in 2007 by reviewing aggregated projected data: (1) the first tier rate represented a weighted average of the NECA-allowed costs per minute as forecast by VRS providers; (2) the second tier rate was calculated by subtracting twenty-seven cents from the first tier, which represented average projected marketing expenses and certain other projected costs; and (3) the third tier rate was calculated by subtracting an additional twenty cents in order to further encourage efficiency. The key point is that none of these figures was calculated using company-specific or historical data; instead, the figures were based on aggregate projected data.

In addition, we argued that the Commission should not adjust rates in the midst of the three-year plan that it adopted in 2007. We noted that the Commission stated in 2007 that it was important for VRS providers to have stable rates for planning and budgeting purposes and that the Tenth Circuit recently stated that, like any price cap regime, the methodology in place until July 2010 compensates providers without regard to their actual costs of providing VRS.

¹ See *2007 Rate Methodology Order*, 22 FCC Rcd 20140, ¶ 88 (2007) (declining to make provider-specific VRS data public, and stating that the adoption of tiered rates helps to alleviate transparency concerns about such data). The FCC also stated that, "[t]o the extent we adopt a different cost recovery methodology, however, we will continue to keep providers' submitted cost and demand data confidential, as provided in our rules, except when appropriate in the aggregate or in a way that does not disclose provider specific data." *Id.* The Commission should not depart from this approach, adopted in a notice-and-comment proceeding, without giving notice and obtaining comment from all interested parties.

Particularly in light of the cryptic nature of the one-paragraph NPRM issued on May 14, we urged the Commission to issue a superseding NPRM or an NOI to study the issue, with the reasonable goal of reaching a decision before the current three-year plan ends on June 30, 2010. And we reiterated that if the FCC were to make the mistake of reverting to a cost-based methodology, any reassessment of the rates for VRS providers should include reassessment of the disallowance of many important costs, including the costs providers incur by providing VRS equipment to consumers and training them to use it. With respect to any abuses by traffic-pumping providers, we said that the Commission should take appropriate action to end abuses, but that reducing rates was not a reasonable response to such problems.

Finally, we noted that VRS has improved the life of deaf Americans who use American Sign Language, many of whom overwhelmingly prefer VRS to other forms of TRS. The size of the Interstate TRS Fund has increased, but that is because many more consumers now have access to the service that is closest to being functionally equivalent to telephone service for hearing consumers, as Congress ordered in enacting section 225.

Sincerely,

/s/

Christopher J. Wright
Counsel to Sorenson Communications, Inc.

cc: Michele Ellison
Joseph Palmore
Joel Kaufman
Nicholas Alexander
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