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Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: VRS Reform: *Ex Parte* Notice – CG Docket 03-123

Dear Ms. Dortch:

On August 27, 2009, the office of Chairman Genachowski released a blueprint identifying the top priorities for “FCC Agency Reform.”¹ One of the named priorities is the need to reform “Video Relay Service Funds.”² Sorenson Communications, Inc. (“Sorenson”) agrees that this goal is critical and is confident that it can be accomplished quickly. To jumpstart the process, on October 1, 2009, Sorenson filed a Petition asking the Commission to adopt rules that define what types of video relay service (“VRS”) calls are compensable, what steps providers may take to prevent certain calls, and what information the FCC needs to develop data-driven tools for detecting wrongdoing.³ Adopting these reforms will enhance the integrity of the Interstate TRS Fund (“Fund”) by saving millions of dollars per year, and will allow the FCC to refocus on its core mission of ensuring that all deaf, hard-of-hearing, and speech-disabled Americans have access to “functionally equivalent” relay services, as mandated by the Americans with Disabilities Act.⁴

On October 21, 2009, Mike Maddix, Sorenson’s Director of Government and Regulatory Affairs, and Rick Mallen and the undersigned, counsel for Sorenson, met with Sherrese Smith, legal advisor to Chairman Genachowski, to discuss Sorenson’s Petition and the need to put it on

¹ “FCC Agency Reform” (Aug. 27, 2009), presented by Mary Beth Richards, Special Counsel for Reform, Steven VanRoekel, FCC Managing Director, and Austin Schlick, FCC General Counsel, *available at*: <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293108A1.pdf>.

² *Id.* at 10.

³ Petition for Rulemaking of Sorenson Communications, Inc., CG Docket No. 03-123, RM No. 09-__, EB Docket No. 09-__ (filed Oct. 1, 2009) (“Petition”).

⁴ 47 U.S.C. § 225(a)(3), (b)(1).

public notice quickly in order to advance the Chairman's reform agenda. The parties also talked about the need for stable, predictable funding for VRS.

During the meeting, Sorenson emphasized that the industry is currently facing a major challenge arising from the lack of FCC rules delineating the types of calls that are compensable and the types that are not. Although Sorenson and certain other providers have implemented some internal operating procedures to fill this regulatory void, the result is a patchwork of disparate approaches. Furthermore, it appears that some providers – emboldened by the lack of enforceable rules – have begun to manufacture calls of dubious legitimacy, apparently confident that the FCC will have no legal basis to bring enforcement actions against them.

Sorenson explained that the rules proposed in its Petition would go a long way toward solving these problems while also saving the Fund millions of dollars per year. To facilitate the discussion, Sorenson distributed the attached handout, which summarizes each of the new rules proposed by Sorenson and its anticipated effect. Sorenson also emphasized that its proposals would not diminish the ability of deaf, hard-of-hearing, or speech-disabled consumers to place legitimate TRS calls. To the contrary, by ensuring that the Fund is devoted only to compensating legitimate calls, the proposed rules would enhance the Fund's long-term ability to advance the statutory goals of functional equivalence and universal access.

This letter is being filed for inclusion in the public record of the above-referenced proceeding.

Sincerely,

/s/ Regina M. Keeney
Regina M. Keeney

cc: Tom Chandler
Michele Ellison
Greg Hlibok
Rick Kaplan
Jay Keithley
Christine Kurth
Edward Lazarus
Mary Beth Richards
Jennifer Schneider
Christi Shewman
Sherrese Smith
Mark Stone

Attachment

Reforming Compensation for VRS and IP Relay
Summary of Proposed Rules and Their Anticipated Effects

1. Prohibitions on Payments from the Fund

Subject of rule	Key provisions of rule	Anticipated effect of rule
Calls to “podcast” numbers	The Administrator shall not compensate calls to numbers that provide the audio of recorded broadcasts or other events, such as news shows or talk radio programs.	Providers will no longer have an incentive to encourage consumers to place these calls, which do not provide the ability for a deaf person to communicate with a hearing person, as required by the statute. The Fund will no longer have to compensate such calls, each of which can last for hours.
Employee calls	The Administrator shall not compensate calls placed by or to a provider’s employees, agents, or contractors while they are “on the clock,” except that inbound calls to technical support shall be compensable.	Providers will no longer manufacture compensable minutes by, for example, hiring teams of deaf people to place “outreach” calls to hearing people, or conducting spurious “test” calls from or to consumers. Legitimate outreach and other business calls will continue on a non-compensable basis, and providers will continue to be compensated for inbound technical support calls.
Phone-in events	The Administrator shall not compensate calls to phone-in events that can be listened to by relay users, if the event has been created, sponsored, or advertised by a provider or by any entity paid by that provider.	Providers will limit their role to their core mission: handling calls that consumers choose to make. Providers will not attempt to create “events” (such as “Story Time” or weight loss seminars) that stimulate demand, and the Fund will not have to compensate hundreds of calls placed to “listen” to a single event.
Revenue-sharing arrangements	The Administrator shall not compensate calls unless the entity submitting the minutes is eligible to receive compensation and clearly identified itself to the calling parties at the outset of the calls as the TRS provider for those calls.	Schemes in which TRS minutes and payments are “laundered” by an eligible entity on behalf of a non-eligible provider will cease. Non-eligible entities will no longer be able to flout the FCC’s rules against minute pumping.
Calls tainted by a proscribed incentive	The Administrator shall not compensate calls for which a provider has offered or given users or a third party any benefit that would encourage or entice a consumer to place more or longer TRS calls, or reward him or her for doing so.	Providers will cease or curtail efforts to inflate minutes by offering incentives.
Calls tainted by a proscribed contact	The Administrator shall not compensate any call placed by a consumer within one month after a provider has contacted that consumer and urged, required, requested, or suggested that he or she make more or longer TRS calls.	Providers will cease or curtail efforts to inflate minutes by cajoling or threatening consumers, and instead will focus on legitimate outreach, education, and marketing.
International IP Relay calls	The Administrator shall not compensate any IP Relay call in which one of the endpoints is located outside of the United States.	Providers will implement means to determine the locations of IP Relay endpoints, and will not seek compensation for international IP Relay calls.

2. Mandatory Minimum Standards

Subject of rule	Key provisions of rule	Anticipated effect of rule
Whistle blower protections	Providers must permit any employee, agent, or contractor to disclose anonymously suspected misconduct; must promptly investigate any such report; and must not discipline any person solely for reporting.	Providers will more quickly learn of root out any misconduct within their ranks, including any schemes to bill the Fund improperly.
Recording of time	Providers must automatically record billable conversation time to at least the nearest second.	CAs will no longer have the means or temptation to inflate compensable minutes by using manual means to record their billable time.
Supervision of interpreters	CAs must work in a call center under direct supervision of a manager. CAs may no longer work in unsupervised locations, such as their homes.	CAs will have less ability to engage in conduct that could result in illegitimate minutes being billed to the Fund.
Random selection of interpreters	CAs must not handle a call where they personally know either party to the call.	CAs will no longer be able to chat with family member, friend, or during a relayed call. Providers will no longer inadvertently bill the Fund for such minutes.
Training of interpreters	All newly hired CAs must receive adequate training on applicable FCC rules, and all CAs must receive additional refresher training thereafter.	CAs will have greater knowledge of what practices are permissible and will behave in a professional manner that protects functional equivalence and the integrity of the Fund.
Dedicated facilities	Providers must ensure that all VRS calls are routed to call centers that are dedicated solely to handling VRS calls. VRI and community interpreting may not be performed in a call center while it is being used to process VRS calls.	CAs will not be able to switch back and forth between handling VRS calls on the one hand, and handling VRI calls or performing community interpreting on the other. This will prevent providers from improperly reporting to the Administrator that the non-compensable costs arising from VRI or community interpreting are attributable to VRS.
Detection of illegitimate minutes	Providers must use algorithms to detect anomalies in calling patterns that likely reflect illegitimate minutes. Providers must confidentially submit these algorithms to the FCC and the Administrator.	The FCC and the Administrator will use the algorithms to look for suspicious calling patterns industry-wide. Since these algorithms will be kept confidential, would-be wrongdoers will not be able to devise “work around” schemes for inflating minutes. All providers will more aggressively self-police their employees and their monthly submissions to NECA.
Calls from customers to a provider	When a consumer calls or emails a provider to seek technical support, the provider must give the consumer a choice in the communication mechanisms that can be used to contact the provider, including at least one non-relay option.	Providers will not be able to force consumers to place a compensable VRS or IP Relay calls when making a tech support inquiry.

3. New Authority to Providers and CAs

Subject of rule	Key provisions of rule	Anticipated effect of rule
Illegitimate IP Relay Calls	Providers may implement criteria for identifying calls in which a hearing person is calling hearing merchants or hearing employees of banks in furtherance of a fraud or scam that benefits the caller financially. When authorized under the criteria, the CA handling the call may interrupt the call to notify the called party to use caution with any financial transactions and to ask if he or she would like to terminate the call.	The incidence of commercial fraud perpetrated via IP Relay will plummet. These calls will no longer be billed to the Fund.
Abusive or obscene calls	A VRS CA may disconnect or interrupt a call in certain limited circumstances when a caller directs abuse, obscene behavior, or threats toward the CA.	The incidence of VRS calls whose purpose is to threaten or harass CAs will plummet. These calls will no longer be billed to the Fund, and CAs will be spared significant psychic trauma.
VRS calls – no face	A VRS CA may disconnect a call if the video caller’s face is not visible on the CA’s screen for two minutes.	Lengthy VRS calls that do not involve a deaf person will no longer be billed to the Fund.
VRS VCO calls	A VRS CA may disconnect a VRS VCO call if the VCO voice phone is answered or used by anyone other than the videophone user.	VRS VCO callers will not be able to “sell” the use of their voice phones to hearing persons who wish to converse telephonically with other hearing persons for free. Such illegitimate calls will no longer be billed to the Fund.