

LAWLER, METZGER, KEENEY & LOGAN, LLC

2001 K STREET, NW
SUITE 802
WASHINGTON, D.C. 20006

REGINA M. KEENEY

PHONE (202) 777-7700
FACSIMILE (202) 777-7763

December 4, 2009

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 December 3, 2009, Mike Maddix, Director of Government and Regulatory Affairs of Sorenson Communications, Inc. (“Sorenson”), Paul Kershnik, Sorenson’s Chief Marketing Officer, and Rick Mallen and the undersigned, counsel for Sorenson, met separately with (i) Christine Kurth, legal advisor to Commissioner McDowell, and Rick Kaplan, legal advisor to Commissioner Clyburn, and (ii) Mark Stone, Greg Hlibok, Diane Mason, and Michael Jacobs of the Consumer and Governmental Affairs Bureau to discuss Sorenson’s October 1, 2009 Petition in the above-referenced docket and to reiterate the need to put it on public notice promptly.¹ The parties also talked about the need for stable, predictable funding for video relay service (“VRS”). On December 3, 2009, I also spoke by phone with Tom Chandler about these issues.

In these conversations, we noted that for more than a year, Sorenson and other parties have been warning that the VRS industry is operating in a regulatory void, characterized by the lack of FCC rules delineating the types of calls that are compensable and the types that are not.²

¹ Petition for Rulemaking of Sorenson Communications, Inc., CG Docket No. 03-123, RM No. 09-__, EB Docket No. 09-__ (filed Oct. 1, 2009) (“Petition”); 47 C.F.R. § 1.403 (“All petitions for rule making . . . meeting the requirements of § 1.401 will be given a file number and, promptly thereafter, a ‘Public Notice’ will be issued . . . as to the petition, file number, nature of the proposal, and date of filing.”).

² See, e.g., *Ex Parte* Comments of the National Association for State Relay Administration, CG Docket No. 03-123, at 7 (Nov. 10, 2008; filed Nov. 19, 2008) (“*NASRA Nov. 19 Letter*”) (asking FCC to clarify impermissibility of certain provider practices and to bring “swift” and “strict” enforcement action against their perpetrators); Sorenson *ex parte*, CG Docket No. 03-123 (Nov. 25, 2008) (strongly supporting *NASRA Nov. 19 Letter*); Sorenson *ex parte*, CG Docket No. 03-123 (May 12, 2009) (noting that, even though six months had passed since *NASRA* filed its letter, the FCC had yet to act on it).

We emphasized that a handful of VRS providers have exploited this void by using illicit marketing schemes and other dubious means to generate revenues from the Interstate TRS Fund. Over time, these questionable practices have proliferated, unchecked by any clear FCC rules or enforcement actions.

In a further effort to alert the FCC to this problem, on October 1, 2009, Sorenson filed its Petition, asking the Commission to adopt rules that define what types of 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. As Sorenson explained in the Petition and in subsequent meetings with FCC staff, failure to adopt the reforms proposed in the Petition would only further embolden those actors seeking to generate revenues in ways that do not advance the functional equivalence mandate of the Americans with Disabilities Act (“ADA”).

During yesterday’s meetings, we noted that recent reports have indicated that some VRS providers are generating a substantial percentage of their revenues from handling “internal” (employee-to-employee) calls. We stated that providers and their employees should be dedicated to handling VRS calls, not placing them. Sorenson believes that millions of dollars should not be diverted from the Interstate TRS Fund in order to compensate calls generated by providers; instead, such calls generally should be non-compensable, as explained in Sorenson’s Petition.³ If the Commission fails to act quickly on this and other issues described in Sorenson’s Petition, the integrity of the VRS program will be threatened, thereby jeopardizing the continuing progress toward functional equivalency and access that consumers deserve and the ADA requires.

³ See Petition (“on the clock” employee calls should not be compensated, except for inbound technical support calls).

Ms. Marlene Dortch
December 4, 2009
Page 3

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
Michael Jacobs
Rick Kaplan
Jay Keithley
Christine Kurth
Edward Lazarus
Diane Mason
Mary Beth Richards
Jennifer Schneider
Christi Shewman
Sherrese Smith
Mark Stone
Suzanne Tetreault