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March 29, 2010

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 No. 10-51

Dear Ms. Dortch:

On March 26, 2010, I spoke to or left voicemail messages with Sherrese Smith, Jennifer Schneider, Angela Kronenberg, Christi Shewman, Christine Kurth, Joel Gurin, Mark Stone, and Michael Jacobs explaining that Sorenson Communications, Inc. (“Sorenson”) would be filing an application for review of the Declaratory Ruling (“Ruling”) issued by Consumer and Governmental Affairs Bureau (“Bureau”) on February 25, 2010.<sup>1</sup>

In each case, I noted that Sorenson applauded the Bureau for its initial steps in clarifying what types of video relay service (“VRS”) calls are eligible for compensation from the Interstate TRS Fund. In Sorenson’s view, the Ruling represents a momentous step toward ensuring that the Fund compensates only calls that advance the functional equivalence mandate of the Americans with Disabilities Act (“ADA”). Sorenson hopes that the Commission will build on this foundation by taking other steps needed to extirpate the abuses that have recently plagued the VRS industry and threatened the integrity of the Fund.<sup>2</sup>

Sorenson supports the substance of all four prohibitions announced in the Ruling and does not challenge the prospective application of any of these prohibitions. As I explained, however, one of the prohibitions has a retroactive component that is procedurally infirm, and it is

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<sup>1</sup> *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, DA 10-314 (rel. Feb. 25, 2010) (“Declaratory Ruling”).

<sup>2</sup> See Petition for Rulemaking of Sorenson Communications, Inc., CG Docket No. 03-123, RM No. 09-\_\_, EB Docket No. 09-\_\_ (Oct. 1, 2009) (“Sorenson Petition”) (asking the FCC to adopt rules that define what types of Internet-based TRS 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).

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this retroactive component that Sorenson, regrettably, would be challenging in its application for review.

In particular, the Bureau lacks authority retroactively to prohibit compensation for calls to or from an employee of a VRS provider or its contractor. This prohibition does not clarify an ADA provision or an FCC rule or precedent; rather, it is an entirely new proscription that is at odds with existing rules and precedents. Neither the Bureau nor the full Commission may adopt such a retroactive prohibition. Furthermore, the Bureau was incorrect in claiming that the prohibition was originally authored by the Fund administrator, the National Exchange Carrier Association (“NECA”). Indeed, the Bureau’s evidence for this prior authorship – instructions on a longstanding NECA form – has no probative value: The instructions cannot plausibly be read as prohibiting compensation for employee calls, and even if they could, NECA too lacked authority to issue the prohibition.

For these reasons, equity and law dictate that the Commission not retroactively apply the prohibition as written by the Bureau. Instead, the Commission should narrow the scope of the prohibition to ensure that its retroactive application is consistent with the FCC’s preexisting rules and orders regarding employee calls. In particular, the Commission should clarify that a VRS employee call placed or received prior to February 25, 2010 may be treated as noncompensable if (i) the call was not between a hearing person and a deaf person, (ii) the call did not either originate or terminate in the United States, or (iii) the call was artificially manufactured through unlawful financial incentives or minimum usage requirements. These types of employee calls have long been unlawful, and the Commission should clarify that the Bureau was simply reminding providers of this fact for calls placed prior to the release of the Ruling on February 25, 2010.

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: Joel Gurin  
Michael Jacobs  
Angela Kronenberg  
Christine Kurth  
Jennifer Schneider  
Christi Shewman  
Sherrese Smith  
Mark Stone