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April 15, 2010

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Re: *Ex Parte* Notice – CG Docket No. 10-51

Dear Ms. Dortch:

On April 15, 2010, Mike Maddix, Director of Government and Regulatory Affairs of Sorenson Communications, Inc. ("Sorenson"), and Richard Mallen and the undersigned, counsel for Sorenson, met with Christi Shewman, legal advisor to Commissioner Baker. We noted that video relay service ("VRS"), as a form of Telecommunications Relay Service ("TRS"), is governed by Title IV of the Americans with Disabilities Act ("ADA") and that the ADA mandates four primary goals: functional equivalency, maximum efficiency, improved technology, and nationwide access.[1] We urged the Commission to adopt a multi-year incentive-based, price cap methodology rather than a cost-based, rate-of-return methodology for the next VRS rate cycle as the best means of advancing these statutory goals. As the Commission recognized when it adopted price cap regulation in 1990, "rate of return does not provide sufficient incentives for broad innovation in the way firms do business."[2] It would be contrary to the ADA for the Commission now to saddle VRS – the most advanced form of TRS available today – with discredited rate-of-return rules that have not applied to many hearing services for decades.

We contrasted the failings of the cost-of-service approach that used to govern VRS rates with the successes of the three-year incentive-based plan that the Commission adopted in 2007. As anticipated, the new plan has caused innovation and outreach to flourish: for example, hold times have dropped, and providers have introduced new technology and vastly improved service to the deaf.

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1 47 U.S.C. § 225(a)(3), (b)(1), (d)(2).

2 *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, ¶ 32 (1990), *aff'd, Nat'l Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

Although the current plan is a vast improvement over the old "cost"-based approach, it also retains some vestiges of the old regime and therefore has not achieved its full potential. We explained that this mixed approach has undermined the very incentives that the FCC sought to create by moving to a price cap methodology – and the very incentives to provide service efficiently, as required by the statute. We urged that the Commission remedy this problem in its forthcoming proceeding by abandoning any residue of rate-of-return regulation and wholeheartedly committing to a multi-year incentive-based VRS rate plan as the best means of advancing the statutory goals of the ADA. In particular, we urged the Commission to encourage investment and promote universal access and technological advances by adopting a five-year incentive-based rate plan. To promote efficiency, we suggested that the Commission decrease the VRS rate in each of the five years.

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: Christi Shewman