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Via Electronic Filing

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

Re: *Ex Parte* Notice – CG Docket Nos. 03-123, 10-51

Dear Ms. Dortch:

On April 30, 2010, the National Exchange Carrier Association ("NECA"), as administrator of the Interstate TRS Fund, submitted to the Commission four rate alternatives to govern video relay service ("VRS") for the 2010-11 rate year.[1] On the same day, the Consumer and Governmental Affairs Bureau released a public notice seeking comment on these proposals, focusing particularly on whether the Commission should adopt VRS rates "based on the 2009 average actual historical cost data submitted to NECA by VRS providers."[2]

On May 3, 2010, I spoke by phone to Eddie Lazarus, Chief of Staff for Chairman Genachowski, to express the concerns of Sorenson Communications, Inc. ("Sorenson") about NECA's rate proposals, and to emphasize that a decision to base the VRS rate on providers' "historical costs" would have a devastating impact on the VRS business and on deaf individuals who use American Sign Language. I emphasized that the so-called "costs" that providers are permitted to report to NECA grossly understate the real costs of providing VRS and should not be the basis for setting VRS rates.

The FCC should not adopt either of NECA's proposals for basing rates on providers' historical costs. Both of these proposals would result in bankruptcy, chaos, and devastation for the deaf. One of these proposals prescribes rates so low that they would immediately drive all VRS providers out of business, forcing deaf consumers to revert to the laborious process of

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1 National Exchange Carrier Association, Inc., Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket No. 03-123 (April 30, 2010).

2 "National Exchange Carrier Association Submits the Payment Formula and Fund Size Estimate for the Interstate Telecommunications Relay Services Fund for the July 2010 Through June 2011 Fund Year," CG Docket No. 03-123, Public Notice, DA 10-761 (rel. April 30, 2010).

typing their relayed communications, and both of the historic-cost proposals would drive Sorenson out of business, stranding tens of thousands of deaf consumers and making it uneconomic for them to be served by any other provider. The Commission lacks authority under the ADA to adopt any VRS rate that would wreak such devastation.

In 2007, the Commission unanimously chose to replace an annual approach to setting VRS rates, which was based on providers' projected "costs," with a three-year incentive-based rate plan that was designed to align providers' incentives with the four principal goals of the Americans with Disabilities Act ("ADA"): functional equivalency, maximum efficiency, improved technology, and nationwide access.[3] The three-year plan has succeeded in promoting these goals to a far greater extent than was possible under the old approach, and it has vastly simplified the annual rate-setting process, thereby reducing the inefficient expenditure of time and money by consumers, NECA, the FCC, and providers in what had previously been a perennially complex and contentious process of rate setting.

If the Commission were now to revert to a "cost"-based approach to rate setting, it would subvert the nascent progress that has been made under the incentive-based plan. Instead, the Commission should adopt another multi-year incentive-based rate plan that ensures that high-quality VRS remains available to deaf consumers on a nationwide basis, while also giving providers strong incentives to achieve efficiency gains. Adopting such a plan will benefit deaf consumers, drive broadband adoption among the deaf, and ensure that providers continue to promote the goals of the ADA.

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

Sincerely,

<u>/s/ Regina M. Keeney</u>
Regina M. Keeney

cc: Edward Lazarus

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