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May 7, 2010

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 Telecommunications Relay Services 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 (“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 6, 2010, Ron Burdett, Vice President of Community Relations, Sorenson Communications, Inc. (“Sorenson”), Paul Kershnik, Sorenson’s Chief Marketing Officer, Mike Maddix, Sorenson’s Director of Government and Regulatory Affairs, and Richard Mallen and the undersigned, counsel for Sorenson, met via teleconference with Sherrese Smith, Legal Advisor to Chairman Genachowski, and in person with the following Bureau staff: Joel Gurin, Chief, Mark Stone, Deputy Chief, Greg Hlibok, and Diane Mason. During the meeting, we discussed the mandate of the Federal Communications Commission under the Americans with

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, at 1 (rel. April 30, 2010).

Disabilities Act (“ADA”). We expressed deep concern about NECA’s rate proposals and explained 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. We 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 likely drive all VRS providers into bankruptcy, forcing deaf consumers to revert to the slow, manual process of typing their relayed communications, and the other would drive Sorenson into bankruptcy, stranding tens of thousands of deaf consumers and making it uneconomic for them to be served by any other provider at the ruinous rate of \$3.89 per minute.³ The Commission lacks authority under the ADA to adopt any VRS rate that would wreak such harm.

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 ADA: functional equivalency, maximum efficiency, improved technology, and nationwide access.⁴ 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 of service,” rate of return approach to rate setting, it would undermine 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.

³ During the meeting, Sorenson distributed a letter in which Sorenson’s President and Chief Executive Officer explained that Sorenson would be forced into bankruptcy if a Tier 3 rate of \$3.89 were adopted. This letter was circulated to all of Sorenson’s employees on May 5, 2010 and is attached hereto.

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

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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
Gregory Hlibok
Diane Mason
Sherrese Smith
Mark Stone

Attachment

Dear Fellow Sorenson Employees,

As Sorenson employees committed to providing the highest quality Video Relay Service (VRS) to our deaf customers, we know that the Federal Communications Commission (FCC), in setting the rate for VRS, determines whether VRS will improve and expand, or not.

Unfortunately, the recent news from the FCC is not good, for Sorenson or for VRS. In a Public Notice issued April 30 by the FCC's Consumer and Governmental Affairs Bureau, the FCC has focused on using the historical "allowable costs" of each provider for VRS, which do not include anywhere near all of Sorenson's costs. Despite our repeated efforts over the years to inform the FCC that "allowable costs" do not include many of Sorenson's actual costs of doing business, this Public Notice ignores our real costs.

The FCC's Public Notice focuses on rates for VRS that would force Sorenson to lose money. Inexplicably, the Notice suggests that smaller providers be paid over \$6.00 per minute while Sorenson would receive \$3.89.

As President and CEO of Sorenson Communications, it is my responsibility to tell you that if the FCC adopts the \$3.89 rate, Sorenson will be forced into bankruptcy. I understand that this would be disastrous for our deaf VRS users, and for Sorenson employees. To compound the disaster, it is hard for me to imagine any other provider having the capacity to take over Sorenson's tens of thousands of deaf customers, and other providers would almost certainly resist doing so at \$3.89.

I am at a loss to understand the logic or fairness of punishing Sorenson, which provides the best service, efficiently and honestly, but the FCC's Public Notice proposes just such rates. The FCC has focused on rates that reward the least effective and cost-bloated providers. As a result, the most poorly-managed companies would receive the highest compensation. I am also at a loss to understand why the FCC would want to punish deaf consumers. The FCC proposal would force deaf consumers to revert to the laborious process of having to type their relayed calls instead of conversing in their primary language.

We will continue to make our case to the FCC and we must remain hopeful that the FCC will understand how foolish these proposed rates are. We will work hard to persuade the FCC that Sorenson should be a model for advancing the goals of the Americans with Disabilities Act, not economically excluded from offering this vital service.

I will keep you informed of developments at the FCC as they occur. I will be deeply disappointed if the FCC adopts a rate anything like the rate proposed in the Public Notice because it will destroy all the hard work we have all put into providing the best possible VRS service. If the proposed rate is adopted, this will lead to Sorenson's bankruptcy.

Best regards,

Pat Nola