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REGINA M. KEENEY

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June 3, 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 June 2, 2010, Mike Maddix, Director of Government and Regulatory Affairs of Sorenson Communications, Inc. ("Sorenson"), and Rick Mallen and the undersigned, counsel for Sorenson, met with Sherrese Smith, legal advisor to Chairman Genachowski; Jose Rodriguez, Special Assistant to the Chief Financial Officer; Diane Holland, Assistant General Counsel, Office of the General Counsel; and the following staff of the Consumer and Governmental Affairs Bureau ("Bureau"): Joel Gurin, Chief; Mark Stone, Deputy Chief; and Attorney Advisors Andrew Mulitz, Greg Hlibok, Michael Jacobs, and Diane Mason (via teleconference). On June 3, I spoke by phone with Mr. Gurin to follow up on issues raised during the meeting.

During the meeting and call, Sorenson voluntarily[1] distributed and discussed documents revealing four categories of highly confidential information.[2]

- *Sorenson's Total Audited Costs of Providing VRS.* Sorenson distributed a letter from Price Waterhouse Coopers, the national accounting firm that audits Sorenson annually. This letter relates to Sorenson's previous submission of its audited total per minute costs of providing VRS, a copy of which was also distributed at the meeting. Partially redacted versions of both of these documents are attached hereto.

- *Sorenson's Financial Statements.* Sorenson distributed financial statements, based on Generally Accepted Accounting Principles, demonstrating categories of costs of providing VRS. These financial statements are confidential in their entirety.

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1 *See* 47 C.F.R. § 0.457(e).

2 *See* attached request for confidential information pursuant to 47 C.F.R. §§ 0.457, 0.459.

- *Covenant Analysis*. Sorenson distributed an analysis of Sorenson's debt covenants, prepared by Moelis & Company, a restructuring and investment banking firm retained by the company. The analysis shows the coverage ratios (the amount of debt over Earnings Before Interest, Taxes, Depreciation and Amortization, or "EBITDA") required by Sorenson's debt covenants. If Sorenson were not to have EBITDA sufficient to keep the ratios under the covenant requirements, Sorenson would be in violation of the covenants. The Moelis analysis describes the results of a covenant violation. A partially redacted version of the Moelis analysis is attached hereto.

- *Detailed Supporting Data.* Sorenson provided detailed information about its total and category-by-category costs. This information is confidential in its entirety.

Although Sorenson's presentation focused on describing the four items described above, Sorenson restated its position that the FCC has – and should maintain – an incentive-based rate methodology, rather than a cost-of-service methodology.[3] Sorenson also emphasized that it makes no sense to attempt to apply to VRS selected aspects of cost-of-service regimes that the Commission has used in the past to regulate the interstate rates of incumbent local exchange carriers ("LECs"). In those instances, the Commission's approach properly recognized that incumbent LECs serve different customers located in different geographic areas. Consequently, there is a sound public policy basis for permitting the service providers to assess rates that, for example, reflect that it is generally more expensive to serve efficiently sparsely populated mountainous areas than densely populated flat lands. VRS providers, in contrast, do not provide service to different areas with different cost characteristics. Indeed, under the "historical cost" proposal now under consideration for VRS rates, if a customer were to use Sorenson rather than a Tier 2 provider to place a call, the Tier 2 provider would be paid over 50 percent more than Sorenson *to serve the same customer*. Such disparate treatment can have no sound basis in law or policy. Instead, as Sorenson emphasized during the meeting, all providers should be subject to the same (non-tiered) rate, and no provider should be given special treatment in the form of disparate tiered rates that reward and encourage inefficiency.

Finally, Sorenson hand-delivered copies of the above-described documents (other than the voluminous detailed supporting data) to the following FCC staff who did not attend the meeting: Jennifer Schneider, legal advisor to Commissioner Copps; Angela Kronenberg, legal advisor to Commissioner Clyburn; Christine Kurth, legal advisor to Commissioner McDowell; Christi Shewman, legal advisor to Commissioner Baker; and Paul de Sa, Chief of the Office of Strategic Planning and Policy Analysis.

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[3] *See generally* Comments of Sorenson Communications, Inc., CG Docket Nos. 03-123 and 10-51 (May 14, 2010); Reply Comments of Sorenson Communications, Inc., CG Docket Nos. 03-123 and 10-51 (May 21, 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

Attachments

cc: Paul de Sa
Joel Gurin
Gregory Hlibok
Diane Holland
Michael Jacobs
Angela Kronenberg
Christine Kurth
Diane Mason
Andrew Mulitz
Jose Rodriguez
Jennifer Schneider
Christi Shewman
Sherrese Smith
Mark Stone

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REDACTED – FOR PUBLIC INSPECTION
REQUEST FOR CONFIDENTIAL TREATMENT
PURSUANT TO 47 C.F.R. §§ 0.457 AND 0.459

June 3, 2010

VIA ELECTRONIC FILING

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

Re: *Request for Confidential Treatment of Sorenson Information*

Dear Ms. Dortch:

Pursuant to Exemption 4 of the Freedom of Information Act ("FOIA") and the rules of the Federal Communications Commission ("FCC" or "Commission"),[1] Sorenson Communications, Inc. ("Sorenson") hereby requests confidential treatment for the documents containing information that Sorenson provided voluntarily to Commission staff ("Sorenson Information") at the meeting of June 2, 2010. This information relates to Sorenson's costs of providing telecommunications relay services ("TRS"). The data and information being provided in the Sorenson Information contain company-specific, highly confidential and/or proprietary commercial information and financial data that are protected from disclosure by FOIA Exemption 4[2] and the Commission's rules protecting

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1 5 U.S.C. § 552(b)(4); 47 C.F.R. §§ 0.457(d) and 0.459; *see also* 18 U.S.C. § 1905 (prohibiting disclosure "to any extent not authorized by law" of "information [that] concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association").

2 5 U.S.C. § 552(b)(4).

information that is not routinely available for public inspection and that would customarily be guarded from competitors.[3]

1. *Identification of the specific information for which confidential treatment is sought.* Sorenson requests that all of the redacted information contained in the Sorenson Information be treated as confidential pursuant to Exemption 4 of FOIA and Sections 0.457(d) and 0.459 of the Commission's rules, which protect confidential commercial, financial, and other information not routinely available for public inspection. The Sorenson Information contains company-specific, competitively-sensitive, business confidential and/or proprietary commercial information concerning Sorenson's internal operations and finances that would not routinely be made available to the public, and customarily would be guarded from competitors. If such information were disclosed, Sorenson's competitors could use it to determine Sorenson's competitive position and performance, and could use that information to gain a competitive advantage over Sorenson.

2. *Identification of the Commission proceeding in which the information was submitted or a description of the circumstance giving rise to the submission.* This information was submitted at the June 2 meeting described in the accompanying *ex parte* notice. The confidential, unredacted documents are not being filed with the FCC Secretary.

3. *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.* The Sorenson Information contains company-specific, competitively-sensitive, confidential and/or proprietary, commercial, financial and operational information. This information can be used to determine information about Sorenson's operations and financial position and is sensitive for competitive and other reasons. This information would not customarily be made available to the public and customarily would be guarded from all others, especially competitors. Data submitted by telecommunications relay service providers as part of the annual rate-setting process are routinely treated as highly confidential.[4] If this information were not protected, Sorenson's competitors could use it in an effort to determine how best to undercut Sorenson's business.

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[3] 47 C.F.R. §§ 0.457(d) and 0.459.

[4] For example, the Commission's rules require that NECA "shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form." 47 C.F.R. § 64.604(c)(5)(iii)(I).

4. *Explanation of the degree to which the information concerns a service that is subject to competition.* The confidential information at issue relates to the provision of Internet-based TRS, which is subject to vigorous competition. If the information is not protected, Sorenson's competitors will be able to use it to their competitive advantage.

5. *Explanation of how disclosure of the information could result in substantial competitive harm.* Since this type of information generally would not be subject to public inspection and would customarily be guarded from competitors, the Commission's rules recognize that release of the information is likely to produce competitive harm. Disclosure could cause substantial competitive harm because Sorenson's competitors could assess aspects of Sorenson's operations, finances, procedures, business plans and strategies and could use that information to undermine Sorenson's competitive position.

6.-7. *Identification of any measures taken by the submitting party to prevent unauthorized disclosure, and identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.* The confidential information in the Sorenson Information is not available to the public, and has not otherwise been disclosed previously to the public. Sorenson routinely treats this information as highly confidential and/or proprietary. Sorenson assiduously guards against disclosure of this information to others.

8. *Justification of the period during which the submitting party asserts that the material should not be available for public disclosure.* Sorenson requests that the Sorenson Information be treated as confidential indefinitely, as it is not possible to determine at this time any date certain by which the information could be disclosed without risk of harm.

9. *Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.* The confidential information contained in the Sorenson Information would, if publicly disclosed, enable Sorenson's competitors to gain an unfair competitive advantage. Under applicable Commission and federal court precedent, the information provided by Sorenson on a confidential basis should be shielded from public disclosure. Exemption 4 of FOIA shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question clearly satisfies this test.

Additionally, where disclosure is likely to impair the government's ability to obtain necessary information in the future, it is appropriate to grant confidential treatment

to that information.[5] Failure to accord confidential treatment to this information is likely to dissuade providers from voluntarily submitting such information in the future, thus depriving the FCC of information necessary to evaluate facts and market conditions relevant to policy issues under its jurisdiction.

If a request for disclosure occurs, please provide sufficient advance notice to the undersigned prior to any such disclosure to allow Sorenson to pursue appropriate remedies to preserve the confidentiality of the information.

If you have any questions or require further information regarding this request, please do not hesitate to contact me.

Sincerely,

/s/ Regina M. Keeney
Regina M. Keeney
Counsel for Sorenson Communications

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[5] *See National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); *see also Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992) (*en banc*) (recognizing the importance of protecting information that "for whatever reason, 'would customarily not be released to the public by the person from whom it was obtained'") (citation omitted).

PRICEWATERHOUSECOOPERS

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May 27, 2010

Mr. Reed Steiner
Vice President, Finance
SCI Holdings, Inc.
4192 S. Riverboat Road
Suite 100
Salt Lake City, UT 84123

Dear Mr. Steiner:

We have audited the consolidated financial statements of SCI Holdings, Inc. (the "Company") and subsidiaries as of December 31, 2009 and 2008 and for each of the two years in the period ended December 31, 2009.

For purposes of this letter, we have performed the following procedures (amounts are in thousands of dollars):

1. We have compared and recomputed items of revenue of the Company totaling [redacted] for the years ended December 31, 2009 and 2008, respectively, to a corresponding amount in the Company's audited consolidated financial statements and found such amounts to be in agreement.

2. We have compared and recomputed items of expense of the Company totaling [redacted] for the years ended December 31, 2009 and 2008, respectively, not including the benefit from (provision for) income taxes, to a corresponding amount in the Company's audited consolidated financial statements and found such amounts to be in agreement.

Our audit of the consolidated financial statements for the periods referred to in the introductory paragraph of this letter comprised audit tests and procedures deemed necessary for the purpose of expressing an opinion on such consolidated financial statements taken as a whole. For none of the periods referred to therein, or any other period, did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions.

It should be understood that we make no representations regarding questions of legal interpretation or regarding the sufficiency for your purposes of the procedures enumerated in the preceding paragraphs; also, such procedures would not necessarily reveal any material misstatement of the amounts listed above. Further, we have addressed ourselves solely to the foregoing data and make no representations regarding the adequacy of disclosure or regarding whether any material facts have been omitted.

This letter is solely for the information of the Company, and it is not to be used, circulated, quoted, or otherwise referred to for any other purpose, except that reference may be made to it by the Company.

PRICEWATERHOUSECOOPERS LLP

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sorenson communications™

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May 21, 2010

Mr. Joel Gurin
Bureau Chief
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Dear Mr. Gurin:

I am Vice President of Finance of Sorenson Communications, Inc. Sorenson provides Video Relay Service, the most functionally equivalent communications service under the Americans with Disabilities Act, to tens of thousands of deaf who use American Sign Language. I have prepared this information to respond to your request made to Sorenson to demonstrate Sorenson's audited per minute costs for 2008 and 2009.

This information is provided to you based upon your request, and does not suggest that Sorenson supports the view that Video Relay Service rates should be based on "historical" costs. In fact, as Sorenson has amply documented in its filed Comments and Reply in response to your Public Notice, Sorenson, along with virtually every other commenter, believes strongly that a decision based on "historical" costs will virtually destroy VRS as we know it today. The incentive based rate methodology currently in place rewards providers which operate efficiently, encouraging investment in VRS and reducing expenditures from the TRS Fund, while a methodology which uses "historical" costs punishes those who provide VRS efficiently.

Sorenson's total pre-tax costs for 2009 were **[begin confidential]** [redacted] **[end confidential]** and for 2008 were **[begin confidential]** [redacted] **[end confidential]** These are Sorenson's audited costs using Generally Accepted Accounting Principles.

These costs include lines of business in addition to VRS. To arrive at VRS costs, since that seems to be the focus of your request, we have further calculated VRS costs by eliminating all operating expenditures directly attributable to non-VRS lines of business. In addition, we have eliminated additional costs not attributable to any specific line of business by applying the same allocation percentage used for VRS in the 2010 NECA filing versus all lines of business and multiplying that percentage times the additional costs, further reducing the costs attributable to VRS. Finally, we have applied a statutory tax rate to pre-tax income in order to cover the cost of federal and state income tax.

We then simply take the total costs for VRS and divide by the number of minutes submitted confidentially by Sorenson to NECA and compensated by NECA **[begin confidential]** [redacted] **[end confidential]**

We have asked for confidential treatment of this sensitive and proprietary information as its release to our competitors would seriously harm Sorenson.

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We are happy to provide you with this information and would be happy to provide any additional information that is necessary for a fair and predictable ratemaking process.

Sincerely,

Reed Steiner

Sorenson Communications, Inc

Consolidated Financial Statements
December 31, 2009

REDACTED IN FULL

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NEW YORK, NEW YORK 10022

MOELIS & COMPANY

T 212.883.3800
F 212.880.4260

Scott Sorensen
Chief Financial Officer
Sorenson Communications, Inc
4192 South Riverboat Road
Salt Lake City, Utah 84123

Dear Scott:

At your request we have prepared the attached analysis of the per minute Video Relay Service rates that will be necessary for the next three years for Sorenson Communications, Inc. to remain in compliance with its debt covenants (the "Minimum Rates"). We have thoroughly examined all of Sorenson's obligations going forward, its expenses and sources of revenue, and have focused particularly on the covenants in Sorenson's debt agreements.

The Minimum Rates we describe are the minimum rates that are necessary for Sorenson to avoid covenant default. We have assumed that Sorenson will continue to provide videophones to deaf customers, will maintain speed of answer at the current level, will continue outreach to the unserved deaf, and will continue to provide service to new deaf customers.

In the attached chart, we show (i) Sorenson's current leverage covenants (Total Debt/EBITDA); (ii) the Minimum Rates necessary for the company to continue operating without violating its covenants; and (iii) the leverage ratios under the proposed Tier III rate of $3.89. To be clear, the Minimum Rates describe the rates necessary to avoid a covenant violation; a prudent management team would be extremely unlikely to operate the business as currently structured because even a minor change outside of management's control could trigger a covenant violation.

As you know, in the event of a default due to rate reductions, it is extremely likely that the Company would end up in bankruptcy. The contractual relationship between the company and its lenders cannot simply be changed; material changes require agreement by 100% of the lenders, something that would be extremely unlikely in the current regulatory climate.

Sincerely,

By: _____
Name: Jared Dermont
Title: Managing Director

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Moelis & Company Overview

Full service investment bank with over 200 investment bankers focused on a wide range of industries

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- Chemicals
- Consumer & Retail
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- Financial Institutions
- Financial Sponsors
- Gaming
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- Homebuilding
- Media & Broadcasting
- Metals & Mining
- Real Estate
- Restaurants & Leisure
- Technology
- Telecom

MOELIS & COMPANY NEW YORK | BOSTON | CHICAGO | LONDON | LOS ANGELES | SYDNEY

- Global investment bank founded in July 2007
- Grown to over 300 employees in 30 months
- Financial advisory services on M&A, capital raises, restructurings and strategic matters
- Integrates advisory and capital markets expertise with merchant banking platform
- Leading U.S. M&A advisor with $160+ billion in announced M&A deals since inception
- Ranked Top 2 Restructuring advisor since 2008
- $2.0 billion of capital to support clients and source unique investment opportunities
- 100+ mandated deals in the pipeline across a number of industries and transaction types

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Three Boxes of Confidential Commercial and Financial Data
Providing Supporting Information Regarding Costs

Redacted in Full