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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:

Sorenson Communications, Inc. hereby files the attached corrected version of an *ex parte* letter that was filed in the above-referenced dockets on May 24, 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: Paul de Sa
Joel Gurin
Gregory Hlibok
Diane Mason
Andrew Multz
Jose Rodriguez
Mark Stephens
Mark Stone

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Corrected Version

May 24, 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 May 21, 2010, Paul Kershnik, Chief Marketing Officer of Sorenson Communications, Inc. (“Sorenson”), Mike Maddix, Sorenson’s Director of Government and Regulatory Affairs, and Richard Metzger, Rick Mallen and the undersigned, counsel for Sorenson, met with the following staff of the Consumer and Governmental Affairs Bureau (“Bureau”): Joel Gurin, Chief; Mark Stone, Deputy Chief; and Attorney Advisors Andrew Multz, Greg Hlibok (via teleconference), and Diane Mason. Also attending the meeting were Mark Stephens, Chief Financial Officer of the FCC, Jose Rodriguez, Special Assistant to the Chief Financial Officer, and Paul de Sa, Chief of the Office of Strategic Planning and Policy Analysis.

During the meeting, Sorenson distributed a copy of a June 24, 2008 letter in which Sorenson’s outside counsel described the outcome of an earlier audit of Sorenson by the FCC’s Office of Inspector General (the “Audit”). A copy of this letter is attached hereto.¹

Sorenson also voluntarily² distributed two confidential documents (the “Documents”): a chronology summarizing the activities of the Audit, and a letter showing Sorenson’s audited costs for 2008 and 2009 (the “Letter”).³ Redacted versions of the Documents are attached hereto.

¹ Letter from Michael B. DeSanctis, Counsel for Sorenson Communications, Inc., to Curtis Hagan, Office of Inspector General, Federal Communications Commission (“FCC”) (June 24, 2008).

² See 47 C.F.R. § 0.459(e).

³ These documents were submitted under a request for confidential treatment, pursuant to sections 0.457 and 0.459 of the FCC’s rules. See 47 C.F.R. §§ 0.457, 0.459.

Ms. Marlene Dortch
May 24, 2010
Page 2

Sorenson's presentation primarily focused on the Letter and on the process by which the Bureau would set an appropriate VRS rate for the period after June 30, 2010. Sorenson also asked what categories of "costs" might be deemed compensable and how the FCC might determine the reasonableness of "costs" incurred within each category. Sorenson's statements were consistent with its comments and reply comments in this proceeding.⁴

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: Paul de Sa
Joel Gurin
Gregory Hlibok
Diane Mason
Andrew Multz
Jose Rodriguez
Mark Stephens
Mark Stone

⁴ 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).

JENNER & BLOCK

June 24, 2008

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VIA ELECTRONIC AND REGULAR MAIL

Mr. Curtis Hagan
Assistant Inspector General - Audits
Office of Inspector General
Federal Communications Commission
445 12th Street, SW, Room 2-C478
Washington, DC 20554

Re: TRS Audit

Dear Mr. Hagan:

The purpose of this letter is to record in writing the following facts: The Office of the Inspector General cancelled KPMG's on-site visit to Sorenson's corporate headquarters, which was set to begin June 16, 2008, even though Sorenson was ready, willing and able to accommodate that visit and make substantial data available to your auditors.

As Bill Garay will confirm, I personally inquired at least a dozen times over the last 15 months into when OIG planned to conduct the on-site portion of the audit. On May 27, 2008, Mr. Carnahan told me that he and his staff were ready to visit Sorenson's offices to conduct the on-site portion of the audit of Sorenson's recordation and reporting of VRS minutes. I had a telephonic conversation with Mr. Carnahan on June 3, 2008 in which I confirmed that Sorenson would be available and would welcome the KPMG audit staff beginning Monday, June 16, 2008.

We discussed what his team would need in terms of office space and equipment, and I assured him that we would provide him and KPMG with whatever they needed. We also discussed substantively that we would begin first thing Monday morning by having key employees walk his team through Sorenson's processes and procedures for the recording and reporting of VRS minutes, and that his team would let us know how they wished to proceed from there. He asked Sorenson to reserve a full week, though he did not know whether KPMG would need all of that time.

Following up on my call with Mr. Carnahan, I sent a confirming letter to you on June 5, 2008, in which I stated "We remain committed to cooperating with OIG in the interests of having the audit completed in a timely manner. To that end, I am writing to confirm that Sorenson has agreed to host Terry Carnahan and his KPMG staff, commencing June 16, 2008, for the on-site component of the portion of the audit involving Sorenson's systems and procedures for the recording and reporting of VRS minutes."

Mr. Curtis Hagan
June 24, 2008
Page 2

JENNER & BLOCK

In response, you informed me that you had decided to cancel the on-site visit. You asserted that you and Mr. Carnahan read my June 5 letter as *not* confirming our willingness to host the on-site audit. In fact, the letter states the exact opposite. Moreover, on June 12, I told you that we still were ready, willing and able to host your audit commencing on June 16. Indeed, I called you that day from Salt Lake City, where I was involved in the preparations for KPMG's visit. You made it clear at that time that KPMG would not visit on June 16, and that you were not interested in rescheduling for a later date.

During our June 12 call, you complained that in my June 5 letter I identified confidential data and information that should not be shared with the public or with other offices or bureaus within the Commission. However, I provided that information in writing to you because you had suggested that I do so in our earlier phone conversation on May 29, 2008. That suggestion was consistent with my previous conversation with David Hunt and Carla Conover, who informed me in an in-person meeting on May 14, 2008, that it is and always has been OIG's policy to keep confidential all non-public information produced by TRS providers during the course of an audit and that such information would not be disclosed to the public or shared with other bureaus within the Commission. See Letter from M. DeSanctis to W. Garay, May 22, 2008.

Under these circumstances, the OIG bears complete and total responsibility for not undertaking the planned on-site minute audit. We did exactly as you had asked in identifying our confidential information and confirming that we would host the KPMG team beginning June 16. Moreover, over the past 15 months, we have now incurred substantial costs for an audit that you apparently no longer wish to hold. We remain willing, as always, to host the on-site minute audit and would be amenable to speaking with you about rescheduling.

Sincerely,



Michael B. DeSanctis
Counsel for Sorenson Communications, Inc.

cc: Kent Nilsson, Inspector General

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Corrected Version

REDACTED – FOR PUBLIC INSPECTION

May 21, 2010

VIA HAND DELIVERY

Joel Gurin
Chief, Consumer & Governmental Affairs Bureau
Federal Communications Commission
445 Twelfth Street SW
Washington, D.C. 20554

Re: *Confidential Treatment of Sorenson Information*

Dear Mr. Gurin:

Sorenson Communications, Inc. (“Sorenson”) hereby voluntarily provides to Commission staff the attached documents (“Sorenson Information”) pursuant to our request that the Sorenson Information will be afforded confidential treatment pursuant to Exemption 4 of the Freedom of Information Act (“FOIA”) and the rules of the Federal Communications Commission (“FCC” or “Commission”).¹

As explained in Sorenson’s request for confidential treatment of the Sorenson Information, a copy of which is attached, this information relates to Sorenson’s costs of providing relay services as well as the audit of Sorenson and the Interstate Telecommunications Relay Service (“TRS”) Fund that the FCC’s Office of Inspector General initiated in 2007. The data and information being provided in the Sorenson

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”).

Joel Gurin
May 21, 2010
Page 2 of 2

Information contain company-specific, highly confidential and/or proprietary commercial information and financial data that are protected from disclosure by FOIA Exemption 4² and the Commission's rules protecting information that is not routinely available for public inspection and that would customarily be guarded from competitors.³

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

Attachments

cc: Mark Stone

² 5 U.S.C. § 552(b)(4).

³ 47 C.F.R. §§ 0.457(d) and 0.459.

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

May 20, 2010

VIA ELECTRONIC MAIL

Joel Gurin
Chief, Consumer & Governmental Affairs Bureau
Federal Communications Commission
445 Twelfth Street SW
Washington, D.C. 20554

Re: *Request for Confidential Treatment of Sorenson Information*

Dear Mr. Gurin:

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 certain documents containing information that Sorenson is willing to provide voluntarily to Commission staff upon assurance that the information will be treated confidentially and will not be disclosed to any third parties (“Sorenson Information”). This information relates to Sorenson’s costs of providing relay services as well as the audit of Sorenson and the Interstate Telecommunications Relay Service (“TRS”) Fund that the FCC’s Office of Inspector General initiated in 2007. 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

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”).

by FOIA Exemption 4² and the Commission's rules protecting 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 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 is being submitted to you pursuant to your request. The attached Sorenson Information is being provided to you directly, and is 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 Additionally, the Commission's rules reflect its longstanding policy of treating information regarding

² 5 U.S.C. § 552(b)(4).

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).

audits as presumed to be confidential even in the absence of a request for confidential treatment.⁵ If this information were not protected, Sorenson's competitors could use it in an effort to determine how best to undercut Sorenson's business.

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.

⁵ 47 C.F.R. § 0.457(d)(1)(iii).

Request for Confidential Treatment
May 20, 2010
Page 4 of 4

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.⁶ 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

cc: Mark Stone

⁶ 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)).

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



May 21, 2010

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

4192 South Riverboat Road, Suite 100
Salt Lake City, UT 84123
T 801.287.9400
F 801.287.9401
W www.sorenson.com

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.

REDACTED – FOR PUBLIC INSPECTION

Joel Gurin
May 21, 2010
Page Two

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,

A handwritten signature in black ink, appearing to read "Reed Steiner". The signature is written in a cursive style with a large initial "R".

Reed Steiner

REDACTED – FOR PUBLIC INSPECTION

REDACTED – FOR PUBLIC INSPECTION

**SORENSEN-OIG TRS PERFORMANCE AUDIT
CHRONOLOGY OF EVENTS**

REDACTED IN FULL