

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Structure and Practices of the Video Relay)	CG Docket No. 10-51
Service Program)	

**COMMENTS OF
SORENSEN COMMUNICATIONS, INC.**

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Sorenson Communications, Inc. (“Sorenson”) hereby submits these comments in response to the Federal Communications Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

Under the FCC’s leadership, great strides have been made in bringing “functionally equivalent” telecommunications relay services (“TRS”) to all deaf, hard-of-hearing, and speech-disabled Americans. Video Relay Service (“VRS”) in particular has enjoyed tremendous success as the most functionally equivalent form of relay available today for deaf Americans who use American Sign Language (“ASL”) to communicate.

With the success of VRS has come challenges. Although the vast majority of VRS calls are legitimate, some callers and providers have used VRS in unlawful or questionable ways that result in illegitimate minutes being billed to the Interstate TRS Fund (“Fund”). To its credit, the Commission has taken aggressive steps to address this problem, including releasing the May 27,

¹ *Structure and Practices of the Video Relay Service Program, Declaratory Ruling, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 6012 (2010) (“NPRM”).*

2010 NPRM seeking comment on a number of measures that would aid in the detection and deterrence of waste, fraud, and abuse in the VRS program.

Sorenson has already submitted comments on several of those proposed rules,² and now is pleased to submit additional comments to address the remaining proposals under consideration in the NPRM. In particular, Sorenson supports the following measures:

- adopting procedures for the Fund Administrator to follow in delaying or suspending payments;
- taking steps to deter providers from billing for video relay calls that neither originate nor terminate in the United States;
- permitting video interpreters (“VIs”) to disconnect hearing-to-hearing voice carryover (“VCO”) calls and VRS calls where the VI is confronted with a blank screen or an unresponsive party for two minutes;
- prohibiting compensation for remote training calls;
- requiring automated recording of session and conversation time to at least the nearest second;
- requiring electronic filing of call data and speed-of-answer compliance data;
- requiring quarterly reporting of call center data;
- prohibiting certain revenue sharing schemes;
- pursuing more frequent and comprehensive provider audits;
- requiring preservation of call record data for a minimum of five years;
- permanently instituting the rule requiring a senior VRS provider executive to certify, under penalty of perjury, to the veracity of minutes submitted for compensation; and
- prohibiting VRS providers from offering financial incentives for users to port (or refrain from porting) to another provider.

Sorenson also renews its support for certain additional rules that it proposed in its October 1, 2009 *Call Practices Petition*,³ but that were not addressed in the NPRM (e.g., requiring VRS providers to use computerized algorithms to detect anomalous calling patterns

² Comments of Sorenson Communications, Inc., CG Docket No. 10-51 (Sept. 7, 2010).

³ Sorenson Communications, Inc. Petition for Rulemaking, CG Docket No. 03-123 (Oct. 1, 2009) (“*Sorenson Call Practices Petition*”).

that may indicate illicit minute-pumping schemes). The FCC should not, however, require public disclosure of VRS providers' individualized cost and demand data. Disclosure of aggregate provider data has enabled the public to comment on VRS rate issues, and forcing providers to publicize highly sensitive provider-specific information would only harm competition without benefiting the public. Also, the FCC should not bar providers from contracting with a certified state program as a means of obtaining eligibility to collect from the Fund. Providers operating through a certified state program are already subject to the FCC's authority and oversight, and eliminating the ability to contract with a state program would only cause disruption without any countervailing benefit.

The rules proposed herein will give the Commission, the Fund Administrator, and providers the clarity they need to identify non-compensable calls, and the Commission and Enforcement Bureau the clarity they need to penalize providers that seek compensation for illegitimate calls. In addition, the proposed rules will require providers to maintain professional work environments that are inhospitable to minute-pumping or other illicit schemes that could artificially inflate a provider's call volume. The rules also will give VIs narrow but important discretion to disconnect or interrupt certain calls that likely do not meet the statutory definition of TRS and that therefore should not be compensated.

Sorenson estimates that the proposed rules, once adopted, will save the Fund millions of dollars per year and, more importantly, will ensure that the Fund remains dedicated to compensating providers for deaf-to-hearing and hearing-to-deaf calls that advance the statutory goals of functional equivalence and universal access. Sorenson urges the Commission to adopt these rules expeditiously.

II. THE COMMISSION SHOULD ADOPT PROCEDURES FOR THE SUSPENSION OF PAYMENTS AND TAKE DECISIVE ENFORCEMENT ACTION IN RESPONSE TO FRAUDULENT AND PROHIBITED PRACTICES.

Sorenson applauds the Commission's recent efforts to ensure that the Fund compensates only legitimate TRS calls.⁴ As part of this initiative, the Commission should adopt detailed procedures permitting the Administrator to suspend or withhold payment for questionable TRS minutes.⁵

As the Commission notes, the Administrator has already suspended payments to various VRS providers, but without the benefit of rules that would create consistent treatment of all cases while protecting providers' due process rights.⁶ Any such rules should, at a minimum, include the following provisions:

- The Administrator must give timely notice (the "Notice") to a provider of the minutes for which payment is being withheld. The Notice must be sufficiently detailed to allow the provider to investigate the minutes in question and, where appropriate, respond with a showing that those minutes were in fact compensable. At a minimum, the Notice must identify with specificity the calls in question and state the reason(s) why those calls are suspected of being non-compensable. Each such statement must include the relevant FCC rule(s) or order(s), or provision(s) of section 225 of the Communications Act of 1934, as amended ("Communications Act" or "Act"), that allegedly renders the calls non-compensable, as well as an explanation as to why the cited rule, order, or statutory

⁴ See, e.g., Letter from Anthony Dale, Managing Director of FCC, to Bill Hegmann, President and CEO of the National Exchange Carrier Association, Inc. ("NECA") (Oct. 30, 2008), available at: <http://www.fcc.gov/omd/trs-letters/2008/2008.Oct.30-Internal_Controls-TRS_Fund_Administration.pdf>.

⁵ See NPRM ¶ 24.

⁶ *Id.* ¶¶ 22-24.

provision is applicable. If the minutes in question have been identified as part of an anomalous calling pattern (see below), the Administrator also must describe that anomaly in detail, including how it was calculated and the extent to which it deviates from the baseline.

- The Notice must afford providers an opportunity to show why they believe the withheld minutes are in fact compensable. Providers should have at least two weeks to make this showing in writing, on a confidential basis.
- Within three months after issuance of the Notice, the Administrator must send providers a final written decision (the “Decision”) of whether payment will be made for the disputed minutes, with a supporting explanation.⁷ This Decision must be subject to timely Commission review on a *de novo* basis.⁸
- The Decision should make clear that a determination to deny payment for certain minutes does not necessarily mean that the provider acted improperly in seeking compensation for those minutes. Providers themselves can be victims of schemes that simulate a legitimate VRS call; often, these schemes are hard to detect, and in such circumstances there would be nothing improper about a provider’s seeking compensation for a call that appeared to be legitimate.⁹ Of course, if, after analysis, the Administrator

⁷ See *id.* ¶ 24.

⁸ See *United States Telecom Ass’n v. FCC*, 359 F.3d 554, 565-566 (D.C. Cir. 2004) (agency subdelegations to outside parties are assumed to be improper absent an affirmative showing of congressional authorization).

⁹ For instance, as the Bureau has previously explained, some individuals place VCO calls through VRS providers for the purpose of enabling two hearing persons to converse without having to pay long distance charges. *Structure and Practices of the Video Relay Service Program*, Declaratory Ruling, 25 FCC Rcd 1868, ¶¶ 7-8 (CGB 2010) (“*CGB Declaratory Ruling*”). Although such calls constitute a misuse of VRS, the fault lies with the calling and called parties, and not with the VRS provider.

believes that certain non-compensable minutes are the result of waste, fraud, or abuse on the part of a provider (including unlawful minute-pumping schemes or prohibited incentive practices), the Administrator should promptly refer the matter to the FCC's Office of Inspector General or Enforcement Bureau for further investigation and, if warranted, appropriate remedial action.

The NPRM also asks whether there are types of information that providers should submit to assist the Administrator in effectively and efficiently overseeing the Fund.¹⁰ Sorenson recommends requiring Internet-based relay providers to use computerized algorithms on a monthly basis to detect anomalous calling patterns that might be the result of minute-pumping schemes or other illicit practices designed to inflate the provider's minutes.¹¹ Each provider periodically would submit its algorithms confidentially to the FCC and the Administrator, thereby giving those entities additional tools to evaluate any provider's submitted minutes.¹² Since no provider would know what algorithms its competitors had submitted, any provider inclined to submit non-compensable minutes would face a heightened deterrent to doing so.¹³ This requirement would provide an additional mechanism that providers, the Administrator and the Commission could use to detect and prevent fraud.¹⁴

¹⁰ NPRM ¶ 26.

¹¹ *See Sorenson Call Practices Petition*, Appendix A at 6.

¹² The FCC or NECA independently would be permitted to use any of these algorithms and methods to detect illegitimate calls, but would be prohibited from sharing them with, or disclosing them to, providers or the public.

¹³ These algorithms should include a method by which providers track the percentage of all calls handled by a provider that are calls to or from the provider's employees, contractors, or agents. If an unusually large percentage of calls are employee calls, that anomaly may be a sign that the provider (or some rogue employees of the provider) are attempting to engage in a minute-pumping scheme.

¹⁴ *Sorenson Call Practices Petition* at 18-19 & Appendix A at 6.

III. THE COMMISSION SHOULD ADOPT RULES AND MECHANISMS TO ADDRESS SPECIFIC FRAUDULENT CALLING PRACTICES.

A. International Calls

Because the Americans with Disabilities Act (“ADA”) mandates that TRS be made available for individuals “in the United States,”¹⁵ it has long been the policy of the Commission and NECA to compensate only those VRS calls that either originate or terminate in the United States.¹⁶ In its February 2010 Declaratory Ruling, the Consumer and Government Affairs Bureau reaffirmed this standard, reminding providers that TRS calls that both originate and terminate outside the United States are not compensable.¹⁷ Notwithstanding the clarity of this standard, the Commission expresses concern in the NPRM that some providers continue to seek compensation for VRS calls that may both terminate and originate outside the United States, perhaps reflecting minute-pumping schemes.¹⁸ Sorenson urges the Commission to implement reasonable solutions that will prevent or detect such schemes without undermining the ability of consumers to make legitimate international calls.

At a minimum, the Commission should adopt rules that (i) prohibit VRS providers from assigning ten-digit North American Numbering Plan numbers to individuals who do not reside in the United States or its territories, and (ii) require providers to verify that all assignees of ten-

¹⁵ 47 U.S.C. § 225(b)(1).

¹⁶ See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling on Reconsideration, 21 FCC Rcd 5962, ¶ 9 n.23 (CGB 2006) (TRS calls that either originate or terminate in the United States are compensable, except that IP Relay calls must both originate and terminate in the United States in order to be compensable) (citations omitted).

¹⁷ *CGB Declaratory Ruling* ¶ 9 (the Commission is required to ensure that TRS is available “to hearing-impaired and speech-impaired individuals *in the United States*”) (emphasis in original), citing to 47 U.S.C. § 225(b)(1).

¹⁸ NPRM ¶ 28.

digit numbers reside in the United States.¹⁹ The Commission also should investigate available data, including the iTRS Numbering Directory, to ferret out violations of these rules and, where appropriate, it should institute enforcement actions against providers.²⁰ In addition, the FCC should notify those VRS providers that have assigned numbers to non-United States residents, require those providers to retrieve those numbers so that they cannot be used to make additional VRS calls, and require them to demonstrate satisfactory changes to their verification procedures to prevent the error from recurring.

The NPRM also suggests that some international VRS calls are VCO calls involving two voice telephone users who are communicating through VRS in order to avoid international long distance charges.²¹ Even if these calls include an endpoint within the United States, they are not legitimate VRS calls – and hence are not compensable from the Fund – because they facilitate hearing-to-hearing conversations, rather than deaf-to-hearing conversations as required by the statute.²² In light of the potential abuse of VRS VCO to place international calls between two hearing persons, Sorenson reiterates its recommendation for a rule that would expressly permit VRS communications assistants (“CAs”) to disconnect a call when a deaf caller places a VRS VCO call, but the voice phone is answered or used by anyone other than the deaf videophone

¹⁹ Such rules would reinforce the recent Bureau-level declaration to that effect. *CGB Declaratory Ruling* ¶ 9.

²⁰ In the *CGB Declaratory Ruling*, ¶ 9 n.24, the Bureau indicated that its “analysis of the iTRS Numbering Directory suggests that some ten-digit numbers appear to have been assigned to non-United States residents.”

²¹ NPRM ¶ 28.

²² See 47 U.S.C. § 225(a)(3); *CGB Declaratory Ruling* ¶ 8 (VRS VCO “between two voice telephone users . . . is no longer a TRS call compensable from the Fund”); see also 47 C.F.R. § 64.601(26) (defining “video relay service” and noting that “[t]he video link allows the CA to view and interpret the party’s signed conversation and relay the conversation back and forth with a voice caller.”).

user; absent such codified authority, VIs may feel compelled to treat hearing-to-hearing voice calls as if they were legitimate VCO calls.²³

Although VRS CAs are prohibited from refusing VRS calls,²⁴ this rule applies only to legitimate VRS calls that meet the statutory definition of TRS calls. As the Bureau has indicated, VCO calls between two voice telephone users do not meet this definition because they do not involve a conversation between a deaf caller and a hearing individual conducted with the assistance of an interpreter.²⁵ These types of calls, therefore, are not subject to the rules prohibiting interpreters from refusing or terminating relay calls. In addition, the Commission has recognized that even “the common carrier obligation to provide service is not absolute,”²⁶ and has permitted limited exceptions to its general rules requiring TRS providers to handle all calls.²⁷ Among these exceptions are limitations related to calls for “illegal purposes.”²⁸ Based on these precedents as well, an exception to the general prohibition on refusing TRS calls is warranted in the case of VCO calls that do not meet the statutory definition of TRS. The FCC’s rules therefore should explicitly empower a VI who becomes aware that a VCO call is between two voice telephone users to end the call immediately.

²³ See *Sorenson Call Practices Petition*, Appendix A at 17.

²⁴ 47 C.F.R. § 64.604(a)(3)(i) (“Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls *utilizing relay services.*”) (emphasis supplied).

²⁵ *CGB Declaratory Ruling* ¶ 8.

²⁶ *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802, ¶ 14 (1993).

²⁷ For example, the Commission’s rules permit relay service providers to decline to complete a call because credit authorization is denied. See 47 C.F.R. § 64.604(a)(3)(iii).

²⁸ See 47 C.F.R. § 64.604(a)(2)(ii).

B. No Display of Video Caller's Face

Sorenson supports the Commission's tentative conclusions to permit a video interpreter to disconnect a VRS call when either (i) the VI is confronted with a blank screen or a screen that otherwise does not display the face of the video caller (including when the caller is using a privacy screen) and the caller's face does not appear or reappear on the screen within two minutes; or (ii) a party to the call leaves the call or becomes unavailable or unresponsive for more than two minutes.²⁹ Granting VIs this limited authority will help limit fraudulent or wasteful calls in which the parties have no intent of beginning or resuming a conversation. Furthermore, through the use of the term "may disconnect," the proposed rule would permit the VI to exercise professional judgment in those rare circumstances where disconnection is not warranted.³⁰ Granting reasonable discretion to the VI is important because, in some circumstances, the disappearance of the caller's face or the idle time may be legitimate (for instance, a deaf caller may be consulting with his or her in-room attorney concerning a lengthy business document, but out of view of the interpreter).

C. Remote Training

The NPRM asks whether the Commission should prohibit compensation for remote training calls initiated or promoted by or on behalf of a VRS provider.³¹ The NPRM does not define "remote training" or describe the activities covered by the term, other than to note that remote training via a VRS CA often is used as a "substitute for in-person interpreting or Video

²⁹ NPRM ¶¶ 31, 32.

³⁰ *See id.*, Appendix C, proposed rule 64.604(a)(7)(i).

³¹ NPRM ¶ 35.

Remote Interpreting (VRI) services” and that such calls are often initiated or promoted by or on behalf of a VRS provider.³²

Although the absence of a definition makes it difficult for Sorenson to comment on the Commission’s proposal, Sorenson here assumes, *arguendo*, that “remote training” is meant to describe any call, initiated by or on behalf of a VRS provider, in which the calling party attempts to train the called party via a VRS interpreter, rather than through an in-person visit. (Such calls would include, for example, a call in which an employee of a VRS provider instructed a deaf individual on how to use a videophone distributed by a provider.) Based on this definition, Sorenson supports a rule prohibiting compensation for remote training calls. Providers are not permitted to generate VRS calls as a source of revenue, nor are providers permitted to use VRS as a substitute for in-person interpreting or VRI. At the same time, however, providers are permitted (and encouraged) to engage in education and outreach. Adopting the proposed rule (along with a definition of “remote training”) would make clear that training is not a rationale that allows providers to skirt the prohibitions on minute-pumping or using VRS as a substitute for in-person interpreting or VRI.

IV. THE COMMISSION SHOULD ADOPT CERTAIN PROPOSED MEASURES TO DETECT AND DETER THE BILLING OF ILLEGITIMATE CALLS.

A. Automated Recording of Call Time

Sorenson strongly agrees with the FCC’s tentative conclusion that the TRS rules should be modified to require VRS providers to automatically capture the conversation and session time, to the nearest second, for each call submitted for payment from the Fund.³³ In addition to automated recording of the duration of each call, the Commission also should consider requiring

³² *Id.* ¶ 34.

³³ *Id.* ¶ 37.

time-stamping for key parameters of each call. Specifically, this proposal would require automatic date and time-stamping of the beginning and ending of the session and the beginning and ending of the conversation. Thus, the specific times of the call components would be automatically recorded in addition to the duration of the call. Sorenson believes this approach would further reduce opportunities for fraud and facilitate effective auditing.

The FCC also should make clear, however, that the one-second threshold is a floor but not a ceiling. That is, providers should be free to use systems that capture conversation and session times in increments smaller than a second. For example, Sorenson's long-standing practice is to track conversation and session times to the nearest thousandth of a second. Permitting Sorenson and other providers to track these times in increments smaller than one second will enhance the accuracy of providers' submissions to the Administrator, thereby promoting the Fund's integrity. Sorenson thus recommends adopting the following revised version of proposed rule 64.604(a)(6)(i): "For each Internet-based TRS call, providers must automatically record session and conversation time to at least the nearest second, with more accurate recordings permitted."

Adopting this rule should eliminate the problems associated with the manual recording of conversation and session times.³⁴ Manual recording is highly susceptible to inaccurate (or fraudulent) reporting and, even in the best of circumstances, could result in the unwitting overstatement of compensable minutes attributable to VRS. Automated measurements, by contrast, provide a more accurate report of compensable minutes, reduce opportunities for fraud, and facilitate auditing by the Administrator.

³⁴ *Id.* ¶ 36, citing CSDVRS Petition for Clarification or Rulemaking on Automated Data Collection, CG Docket No. 03-123, at 1-2 (May 22, 2009).

B. Call Data

The Commission should require providers to file certain call data, described below, as well as speed-of-answer compliance data, to the extent permitted under law. Specifically, in addition to the data identified in the NPRM,³⁵ the Commission should require VRS providers to submit monthly reports to the Administrator containing: (1) the percentage breakdown of deaf-to-hearing and hearing-to-deaf minutes; (2) the average length of call and average monthly minutes by call-type (*i.e.*, deaf-to-hearing or hearing-to-deaf); (3) the total number of monthly minutes billed for the recording of VRS mail by hearing users; (4) the percentage of total users who are responsible for 80 percent of a provider's billed minutes; and (5) the percentage of monthly calls that are not billed to the Fund (*i.e.*, abandoned, busy, no-answer, employee, and international-to-international calls). This data, and the comparison of providers' reports, would provide a helpful tool for detecting and deterring fraud and the billing of illegitimate calls and it would be useful to codify this requirement as a mandatory minimum standard.³⁶ Sorenson also agrees that this data should be submitted electronically and in a standardized format.³⁷

C. Call Center Information

Sorenson also supports the Commission's proposal to require eligible VRS providers to file (i) quarterly reports detailing the name and address of each call center the provider owns or controls (including subcontractors operating call centers and entities operating call centers for a subcontractor), the number of CAs and CA managers at each call center, and manager names and contact information, and (ii) an amendment to the most recent quarterly report each time a

³⁵ NPRM ¶¶ 38-39.

³⁶ *Id.* ¶ 40.

³⁷ *Id.* ¶ 41.

provider opens a new call center, closes a call center, or changes a call center's management, or each time there are changes to the list of providers whose calls are processed through a call center.³⁸ This information will help the Commission and Administrator track those entities actually handling relay calls, including "white label" or other subcontractors (as discussed below), and take appropriate action to ensure that eligible providers and their subcontractors are held accountable when the Commission's service quality rules are violated.³⁹

D. Revenue Sharing Schemes

Sorenson, on several occasions, has described harmful TRS revenue sharing schemes.⁴⁰ Under one type of arrangement, a so-called "white label" firm that is not eligible to collect from the Fund provides TRS under its own brand name. Those TRS minutes are submitted for compensation by a separate eligible TRS provider whose sole function is to act as a "billing agent" (*i.e.*, to obtain payments from the Fund and then remit a portion to the uncertified company that actually provides the service). Under a second type of revenue sharing scheme, a TRS provider that is eligible to collect from the Fund pays a non-eligible entity for the right to brand relay service under the non-eligible entity's name and to offer service through the non-eligible entity's Internet site.

Both schemes permit the companies to avoid accountability, create customer confusion, and harm the Fund.⁴¹ Sorenson thus urges the Commission to preclude compensation for

³⁸ *Id.* ¶ 43.

³⁹ *Id.* ¶ 42.

⁴⁰ *See, e.g.*, Comments and Petition for Declaratory Ruling of Sorenson Communications, Inc., CG Docket No. 03-123, at 4-9 (April 24, 2009); Reply Comments of Sorenson Communications, Inc., CG Docket No. 03-123, at 2-4 (May 11, 2009); *see also Sorenson Call Practices Petition* at 15.

⁴¹ *See Sorenson Call Practices Petition* at 15.

Internet-based TRS calls unless the entity seeking compensation from the Administrator is eligible to collect from the Fund under the FCC's rules,⁴² and has clearly identified itself to the calling parties at the outset of the calls as the TRS provider for those calls. Sorenson also encourages the Commission to require any entity found to have violated this rule to pay back all compensation for any minutes illegitimately billed to the Fund, and to be subject to an additional forfeiture (*e.g.*, a penalty equal to 25 percent of the improper revenues received from the Fund).

Under any approach, the Commission should continue to allow legitimate contracting in the provision of IP-based relay services. Indeed, section 225 of the Communications Act expressly allows contracting in the provision of TRS.⁴³ By implementing the foregoing measures, the Commission will ensure that the use of subcontractors is legitimate and not simply a means of circumventing the Commission's rules to the detriment of the public.

The Commission should reject Purple's proposal to eliminate contracting with a certified state program as a means of becoming eligible to collect from the Fund.⁴⁴ There is no evidence that providers that participate in a state program are more prone to misconduct than are FCC-certified providers.⁴⁵ To the contrary, all providers, regardless of how they obtain eligibility, are

⁴² See 47 C.F.R. § 64.604(c)(5)(iii)(F).

⁴³ 47 U.S.C. § 225(c); *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order on Reconsideration, 20 FCC Rcd 20577, ¶ 4 & n.19 (2005) ("*FCC Certification Order*") (TRS providers that offer TRS through a certified state program may "subcontract with other vendors to assist them in their provision of TRS").

⁴⁴ See *GoAmerica, Inc. Petition for Rulemaking*, CG Docket No. 03-123, at 7-8 (Jan. 23, 2009); *see also Sorenson Reply Comments* at 6 (May 11, 2009).

⁴⁵ The two most publicized cases of potential fraud or abuse involved a provider seeking FCC certification (Viable) and a provider that had already obtained FCC certification (Purple). *See Department of Justice, News Release, "Twenty-six Charged in Nationwide Scheme to Defraud the FCC's Video Relay Service Program"* (Nov. 19, 2009) (indictments unsealed against Viable Communications, Viable's owner, and three additional Viable executives for fraud),

subject to the federal rules governing TRS, including the mandatory minimum standards established under section 64.604 of the Commission's rules.⁴⁶ If the Commission is dissatisfied with aspects of state TRS programs, it should address those concerns as part of its process for approving those programs pursuant to section 64.606 of the FCC's rules.⁴⁷ In certifying a state TRS program, the Commission must make a determination that the program "meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604."⁴⁸ These are the same performance requirements applicable to providers that are certified under the FCC's federal certification procedures.⁴⁹ The FCC also has authority to suspend or revoke the certification of any state that has authorized a provider that fails to meet these standards.⁵⁰ Therefore, providers that obtain eligibility through a certified state program are already held to

available at: <<http://www.justice.gov/opa/pr/2009/November/09-crm-1258.html>>; Purple Communications, Inc., Current Report (Form 8-K), at 2 (March 2, 2010) (describing subpoenas and letters of inquiry received by Purple from the FCC, as well as demands for repayment of monies billed by Purple to the Interstate TRS Fund); FCC, News Release, "Purple Communications Acknowledges Debt, Begins Payback to Telecommunications Relay Fund" (rel. March 9, 2010), *available at:* <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296758A1.pdf>.

⁴⁶ 47 C.F.R. § 64.604.

⁴⁷ See 47 C.F.R. § 64.606(b)(1). Forcing providers to change their method of eligibility could disrupt their operations. If the FCC, erroneously, were to amend its eligibility rules to make FCC certification mandatory, it should grandfather in existing firms that currently provide TRS pursuant to a state program. At a minimum, the Commission should eliminate the requirement that a company be certified as a common carrier before it can receive FCC certification. 47 C.F.R. § 64.606(a)(2)(vii); see also Comments of Pah! VRS and Interpretel LLC, CG Docket No. 10-51, at 26 (Aug. 18, 2010) ("Common Carrier status should not be required for the certification of VRS service providers"). Moreover, it is not clear where the FCC would derive the authority to force VRS providers to become common carriers given that the ADA does not include any such requirement and VRS is not a common carrier service.

⁴⁸ 47 C.F.R. § 64.606(b)(1)(i).

⁴⁹ *Id.* § 64.606(b)(2)(i).

⁵⁰ *Id.* § 64.606(e)(1).

the standards and oversight of the FCC. Accordingly, protecting the integrity of the Fund does not require disrupting the current certification process.

E. Disclosure of Provider Financial and Call Data

The Commission should not make VRS providers' company-specific cost and demand data available for public review.⁵¹ Such data is highly sensitive, and its disclosure exposes rivals' market shares, as well as details indicative of individual business strategies, priorities and allocations of financial resources. Such data is guarded fiercely by rival firms in all competitive industries – including VRS – and appropriately so. Access to individualized data allows companies to predict the competitive strategies of their rivals, inevitably leading to reduced innovation and distinction among the various providers and creating a more homogenous, less competitive playing field. Competition among VRS providers has produced tremendous benefits such as increased outreach, innovation, product and service differentiation, and high-quality service for the deaf.⁵² Mindful of this fact, the Commission consistently has emphasized the critical importance of maintaining the confidentiality of TRS and VRS providers' competitively sensitive data,⁵³ and its rules provide for confidential treatment of providers' data and prohibit

⁵¹ See NPRM ¶ 54.

⁵² See, e.g., Comments of Telecommunications for the Deaf and Hard of Hearing, *et al.*, CG Docket No. 10-51, at 29-30 (August 18, 2010) (“Without [VRS] competition there would be fewer innovations, service would deteriorate in terms of quality and efficiency, and costs would go up.”).

⁵³ See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, ¶ 88 (2007) (“2007 Order & Declaratory Ruling”) (“To the extent we adopt a different cost recovery methodology, however, we will continue to keep providers' submitted cost and demand data confidential, as provided in our rules, except when appropriate in the aggregate or in a way that does not disclose provider specific data.”); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8379, ¶ 43 (2006) (“Historically, the Commission has honored requests by providers submitting projected cost and demand data to

NECA from disclosing such data in company-specific form.⁵⁴ The Commission has committed to “continue to keep providers’ submitted cost and demand data confidential, as provided in our rules, except when appropriate in the aggregate or in a way that does not disclose provider specific data.”⁵⁵ To safeguard the benefits of competition, the Commission should continue to honor this commitment.

Sorenson is aware of no sound reason that would justify the radical policy reversal that would occur if provider-specific data were required to be made public.⁵⁶ For instance, there is no merit to the suggestion that “the ratepayers who pay for the costs of VRS should have a right to know the actual costs of providing this service.”⁵⁷ Putting aside the misleading use of the term “actual costs,”⁵⁸ the public’s interest in reviewing accurate data can be satisfied by disclosure of

treat that information as confidential. As a result, the Commission addresses such data only in the aggregate or in some other way that does not reveal the individual data of a particular provider.”); *see also Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, ¶ 22 (1993); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 19 FCC Rcd 12224, ¶ 39 (CGB 2004).

⁵⁴ 47 C.F.R. § 64.604(c)(5)(iii)(I). Thus, a provider submits its data to NECA with the reasonable expectation that the information will remain confidential.

⁵⁵ 2007 Order & Declaratory Ruling ¶ 88.

⁵⁶ *See National Black Media Coalition v. FCC*, 775 F.2d 342, 355 (D.C. Cir. 1985) (“if the agency wishes to depart from its consistent precedent it must provide a principled explanation for its change of direction”) (citations omitted); *see also Dillmon v. NTSB*, 588 F.3d 1085, 1089-90 (D.C. Cir. 2009) (“where an agency departs from its precedent, it must do so by ‘reasoned analysis’”) (citing *Ramaprakash v. FAA*, 346 F.3d 1121, 1124-25 (D.C. Cir. 2003)).

⁵⁷ NPRM ¶ 53.

⁵⁸ The FCC traditionally has used the term “actual costs” to refer only to that *portion* of the full costs that a VRS provider incurs that the FCC and NECA have deemed to be compensable. NECA-allowed “costs” exclude significant categories of costs that Sorenson (and other providers) actually incur in providing VRS. To disclose publicly individual providers’ NECA submissions as “actual cost data” would paint a highly distorted picture for ratepayers and other members of the public. The publicly disclosed reports would conceal the substantial costs

aggregate data. Such data can, for example, reveal the aggregate expenditures of providers on various areas, such as outreach or labor costs. Disclosure of such aggregate data informs the public about the costs of VRS providers without breaching critical confidentiality protections.

Furthermore, unless the FCC were to adopt provider-specific VRS rates based on each provider's "costs" – an approach that has received strong opposition and no support in the pending NOI proceeding⁵⁹ – there would be no nexus between the provider-specific data at issue and the VRS rate(s) in effect. For instance, if the FCC were to adopt either a single industry-wide VRS rate or a tiered rate scheme, the resulting rate(s) would not reflect each provider's individual "costs." In addition, if the rate(s) were based on a reverse auction, the rate(s) would not be tied to "costs" at all. Likewise, if the rate(s) were based on providers' forward-looking costs (or the forward-looking costs of a hypothetical reasonably efficient provider), the rate(s) would be based on a measure that has little if any relation to provider-specific "costs," whether historical or projected. Simply put, the Commission has never based the VRS rate(s) on provider-specific "costs," and it would be unwise for the Commission to commence to do so now.

Given the irrelevance of provider-specific "costs" to rate-setting, the adequacy of aggregate data for purposes of providing meaningful comment, the misleading incompleteness of the "costs" deemed allowable by NECA and the FCC, and the harm to competition that would be imposed by public disclosure, there is no sound basis for abandoning the well-established policy of preserving the confidentiality of VRS providers' individualized cost and demand data.

incurred by VRS providers – costs incurred to enhance the services provided to individuals who are deaf and hard-of-hearing – that the FCC and NECA refuse to compensate.

⁵⁹ See, e.g., Comments on Notice of Inquiry of Purple Communications, Inc., CG Docket No. 10-51, at 14 (Aug. 18, 2010); see also Comments of Sprint Nextel, CG Docket No. 10-51, at 9 n.6 (Aug. 18, 2010).

Instead, the Commission should continue to afford access to aggregated provider cost and demand data as a means of promoting meaningful comment by consumers and other stakeholders.

F. Provider Audits and Record Retention

The Commission has explained that audits provide an important mechanism for maintaining the integrity of the Fund.⁶⁰ Sorenson agrees and, in its *Call Practices Petition*, encouraged the Commission to use its existing authority to conduct additional and more comprehensive auditing of VRS providers, including their data, practices, and procedures.⁶¹ It also is imperative that the Administrator report to the Commission in a timely manner any discrepancies, errors, or anomalies uncovered in its review of provider data.⁶² The Commission should ensure that it and the Administrator possess the resources they need to carry out these tasks.

In addition, the preservation of complete records for a sufficient period is essential to facilitating a meaningful audit trail and, therefore, to combating waste, fraud and abuse. Sorenson supports the Commission's proposal to require providers to retain their call detail records for five years, a period that is consistent with the record-keeping requirements for eligible entities receiving compensation under the Commission's E-Rate program.⁶³ Although it would assist providers to specify the particular documents that must be retained, those documents – and their descriptive titles or names – are likely to vary from provider to provider.

⁶⁰ 2007 Order & Declaratory Ruling ¶ 86.

⁶¹ *Sorenson Call Practices Petition* at 24-25.

⁶² See Letter from Anthony Dale, Managing Director of FCC, to Bill Hegmann, President and CEO of NECA (Oct. 30, 2008), available at: <http://www.fcc.gov/omd/trs-letters/2008/2008.Oct.30-Internal_Controls-TRS_Fund_Administration.pdf>.

⁶³ NPRM ¶ 57.

Instead, then, the rule should specify that providers should preserve, in electronic form, call detail records that include conversation dates and start and end times, session dates and start and end times, incoming and outgoing telephone numbers or IP addresses for each call, CA IDs for each call, and total monthly conversation minutes and total monthly session minutes. This requirement would not be burdensome. Sorenson, for example, already collects this information and retains those records in electronic form for at least five years.

G. Provider Certification Under Penalty of Perjury

Sorenson supports permanent adoption of the rule requiring a senior executive of a TRS provider to certify, under penalty of perjury, that the minutes submitted for compensation were handled in compliance with section 225 and the Commission's rules and orders, and were not the result of impermissible financial incentives or payments to generate calls.⁶⁴ Adopting this rule will enhance accountability and should, in turn, increase TRS providers' internal scrutiny of their own practices in a manner that is aligned with the statute and the Commission's TRS rules.

H. Other Safeguards

The NPRM asks whether additional safeguards should be adopted to ensure the veracity and completeness of provider submissions, and to help ensure compliance with the FCC's rules.⁶⁵ Sorenson believes that the Commission should consider the following additional measures to detect and prevent waste, fraud, and abuse.

1. *Incentive Programs*

The Commission has long prohibited providers from engaging in practices that artificially generate minutes, including financial incentive schemes that could cause users to place more or

⁶⁴ NPRM ¶ 58.

⁶⁵ *Id.*

longer VRS calls than they otherwise would have. The Commission has not, however, prohibited providers from offering financial incentives for consumers to port (or refrain from porting) from one provider to another.

The Commission should prohibit this practice. Under the TRS numbering rules, providers must take all steps necessary to initiate or allow a port-in or port-out on behalf of the user, subject to a valid port request, “without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the number.”⁶⁶ Thus, a VRS provider may not “contract with its customer to prevent or hinder the rights of [a] customer to port its number because doing so would violate the LNP obligations placed on” VRS providers.⁶⁷ The practice described above hinders a user’s freedom to port to a new default provider and therefore is inconsistent with the FCC’s porting rules. To deter these abuses, the Commission should adopt a rule that prohibits providers from offering financial incentives or disincentives for users to port to another default provider.⁶⁸

2. *Additional Proposals from Sorenson’s Call Practices Petition*

In its *Call Practices Petition*, Sorenson recommended several rules that were not included in the NPRM. Some of the practices that Sorenson’s proposed rules sought to prohibit

⁶⁶ *Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis; Numbering Resource Optimization*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, ¶ 32 (2007).

⁶⁷ *Id.* ¶ 33.

⁶⁸ Of course, providers should continue to be allowed to engage in marketing. Indeed, legitimate marketing promotes competition by allowing consumers to make informed decisions about which provider has the offering that best suits their individual needs.

were addressed in the Bureau's Declaratory Ruling.⁶⁹ Sorenson continues to believe that, if adopted, its remaining proposals would help detect and deter provider practices that are wasteful, fraudulent, or abusive.

In particular, the Commission should adopt the following rules:

- *Random selection of interpreters.* CAs must not handle calls where they personally know either party to the call. Callers must not be able to select a particular CA, and vice versa.⁷⁰
- *Training of interpreters.* All newly-hired CAs must receive adequate training on applicable FCC rules. Providers shall have each CA sign an acknowledgment that he or she has read and understood those rules. After their initial training,⁷¹ CAs must receive additional training regarding the rules on an annual basis.
- *Dedicated facilities for VRS.* Providers must ensure that all VRS calls are routed to call centers that are dedicated solely to handling VRS calls. VRI and community interpreting may not be performed in a VRS call center while that facility is being used to process VRS calls.⁷²
- *Calls from customers to providers.* When a consumer calls or e-mails a provider to seek technical support, the provider must give the consumer a choice in the communication mechanisms that can be used to contact the provider, including at least one non-relay option.⁷³
- *Prohibited payments to providers.* The FCC's rules should describe in detail certain types of calls that are non-compensable, including calls to "podcast" or similar numbers that provide the audio of recorded broadcasts or other events; calls to "lectures" or other phone-in events that can be "listened to" by relay users, if those events have been created, sponsored, or advertised by the provider that handled those calls or by another entity paid by or working in concert with that provider; and calls tainted by proscribed incentives.⁷⁴

⁶⁹ *CGB Declaratory Ruling* ¶ 5 (VRS employee calls); *see id.* ¶ 6 (calls made to generate minutes such as calls to podcasts, pre-recorded materials, etc.).

⁷⁰ *Sorenson Call Practices Petition*, Appendix A at 5.

⁷¹ *Id.*

⁷² *Id.*, Appendix A at 5-6.

⁷³ *Id.*, Appendix A at 6.

⁷⁴ *Id.*, Appendix A at 8-9.

- *Employee calls.* The FCC should adopt a rule strengthening CGB's Declaratory Ruling⁷⁵ by explicitly codifying the prohibition on compensation from the Fund for VRS calls to which a VRS provider's employee, or an employee of a provider's subcontractor, is a party. This prohibition should explicitly include outreach, educational, marketing and test calls.⁷⁶
- *Abusive or obscene calls.* The FCC's rules should include guidelines allowing a VI to disconnect abusive or obscene calls under certain limited circumstances.⁷⁷

Adopting the foregoing safeguards, as spelled out in more detail in Sorenson's *Call Practices Petition*, will safeguard the integrity of the Fund, protect the well-being of interpreters, and enhance the quality of VRS interpreting for deaf and hearing Americans alike.

V. CONCLUSION

For the foregoing reasons, the Commission should adopt rules to detect and deter waste, fraud, and abuse, consistent with the proposals described herein.

Respectfully submitted,

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⁷⁵ *CGB Declaratory Ruling* ¶¶ 4-5.

⁷⁶ *Sorenson Call Practices Petition*, Appendix A at 9.

⁷⁷ *Id.*, Appendix A at 16-17.

Certificate of Service

I hereby certify that on this 13th day of September, 2010, I caused a true and correct copy of the foregoing Comments of Sorenson Communications, Inc., to be mailed by electronic mail to:

Best Copy and Printing, Inc.
fcc@bcpiweb.com

/s/ Ruth E. Holder
Ruth E. Holder