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

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| In the Matter of | ) | |
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| Structure and Practices of the Video Relay Service Program | ) | CG Docket No. 10-51 |
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## REPLY COMMENTS OF SORENSON COMMUNICATIONS, INC.

## I. THE RECORD SUPPORTS VARIOUS REFORMS THAT WILL ENHANCE THE INTEGRITY OF THE VRS PROGRAM

The initial comments in this proceeding reveal a broad consensus on the need for the Commission to reform the video relay service ("VRS") program in ways that will help detect and deter waste, fraud, and abuse.[1] Sorenson Communications, Inc. ("Sorenson") briefly summarizes areas of major agreement below, while also noting certain issues on which it disagrees with particular parties or where further FCC attention should be directed.

*Suspension of payment.* In order to afford VRS providers due process, the FCC should adopt transparent procedures for the Interstate TRS Fund ("Fund") Administrator to follow in suspending questionable payments to VRS providers, including clear timelines.[2] Sorenson

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1 *Structure and Practices of the Video Relay Service Program*, Declaratory Ruling, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 6012 (2010) ("*NPRM*"). The *NPRM* adopted a two-track pleading cycle, giving parties 14 days to comment on some issues and 21 days on others. These reply comments address only the "slow track" 21-day issues.

2 *See, e.g.*, Comments of AT&T, Inc. at 6-7 (Sept. 7, 2010) ("AT&T"); Comments of Telecommunications for the Deaf and Hard of Hearing, Inc., *et al.*, at 6-8 (Sept. 7, 2010) ("TDI"); Comments of Snap Telecommunications, Inc. at 8 (July 22, 2010) ("Snap"); Comments of Hamilton Relay, Inc. at 2-3 (Sept. 13, 2010) ("Hamilton"); Comments of Convo Communications, LLC, at 8-11 (July 28, 2010) ("Convo"); Comments of PAH! VRS and Interpretel, LLC, at 14-15 (June 23, 2010) ("PAH"); Comments of GraciasVRS at 2 (June 17,

agrees that the FCC should publicly disclose, in advance, any types of calls for which the Administrator will routinely withhold payments,[3] and that the Administrator should withhold payment only for questionable calls, and not for all VRS calls included in a provider's monthly submission.[4] In addition, in order to be lawful, any Administrator decision to withhold payment should be subject to timely Commission review, on a *de novo* basis, for the purpose of making a final determination as to whether the minutes in question will be compensated.[5]

The FCC should reject CSDVRS's proposal that the Administrator be given authority to issue notices of apparent liability ("NALs") as part of the payment withholding process.[6] Even if such a function were delegable,[7] it would not be wise to add this task to the Administrator's portfolio. Issuance of an NAL is appropriate only when the Commission determines that an entity apparently has violated an FCC rule or order, in a "willful or repeated" manner, and is otherwise subject to a forfeiture under section 503 of the Communications Act of 1934, as amended.[8] As Sorenson explained in its comments, the mere fact that a VRS provider has sought compensation for video relay calls that turned out to be non-compensable does not mean that the provider willfully or repeatedly violated any FCC rule or order. Instead, it is often the case that the provider itself was the victim of fraudsters or pranksters who skillfully placed calls that mimicked compensable VRS calls. A post-hoc determination that a call is not compensable

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2010) ("Gracias"); Comments of Sorenson Communications, Inc., at 4-6 (Sept. 13, 2010) ("Sorenson"). (All comments cited herein were filed in CG Docket No. 10-51.)

3 *See* Snap at 11; TDI at 7.

4 *See* AT&T at 7; TDI at 7.

5 *See United States Telecom Ass'n v. FCC*, 359 F.3d 554, 565-66 (D.C. Cir. 2004) ("*USTA II*"); Sorenson at 5.

6 Comments of CSDVRS, LLC, at 11 (June 10, 2010) ("CSDVRS").

7 *See USTA II*, 359 F.3d at 565-66.

8 47 U.S.C. § 503.

therefore should not, by itself, give rise to a presumption of wrongdoing by the provider that sought compensation. If, however, the Administrator is aware of evidence indicating complicity by the provider, it should inform the FCC's Enforcement Bureau. It is that entity, and not NECA, that has expertise in enforcing FCC rules and knowledge of whether particular providers are already the subject of ongoing investigations. For these reasons, enforcement actions should remain within the exclusive purview of the Commission's Enforcement Bureau.

*International calls.* The FCC should take steps to deter providers from billing for video relay calls that neither originate nor terminate in the United States.[9] To this end, Sorenson supports the use of geolocation software,[10] and notes that it has used GEO IP lookup since the inception of its service.

*Limited discretion to disconnect.* The FCC should permit video interpreters ("VIs") to disconnect hearing-to-hearing voice carryover ("VCO") calls immediately.[11] The FCC also should permit VIs to disconnect VRS calls where, for more than two minutes, the VI is confronted either with a screen that does not display the face of the video caller or with an unresponsive party, provided such calls are not 911 calls.[12] As Sorenson has explained, these rules would give VIs narrow discretion to disconnect when it was appropriate to do so in their professional judgment.[13] Absent such authority, fraudsters or pranksters could force providers to

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9 *See* Convo at 12; Sorenson at 7-8; TDI at 8.

10 *See, e.g.*, Gracias at 2.

11 *See* Sorenson at 8-9.

12 *See, e.g.*, PAH at 17; Comments of Carol Halley, President of CODA VRS, at 5 (June 10, 2010). Sorenson agrees that VIs should not disconnect from 911 calls, even if the caller is not visible or responsive. *See* Snap at 17.

13 Sorenson at 10-11. Contrary to the suggestion of some – *e.g.*, CSDVRS at 14; AT&T at 9-10; TDI at 9-10 – the rule would not *require* VIs to disconnect after two minutes. Instead, the new rule, as set forth in Appendix C of the *NPRM*, makes clear that a VI "may disconnect" certain calls after two minutes. *NPRM*, App. C, proposed rule 47 C.F.R. § 64.604(a)(7)(i).

handle, for example, interminable video relay calls – lasting hours, days, or weeks – in which neither the calling nor the called party engaged in any communication whatsoever. The FCC has objected to such prolonged "dead air" calls in other TRS contexts,[14] and here, where there are known examples of abuse, it would be especially objectionable to require the handling of such calls.

CSDVRS urges the FCC "to require that no outbound audio call can be placed by a CA until the video connection is fully established with the inbound VRS caller."[15] Sorenson respectfully suggests that this proposal should be modified to prohibit VIs from initiating the outbound audio leg of a call until (i) a video connection has been established of sufficient quality to enable the VI to interpret the call accurately, and (ii) a deaf caller's face is visible on the VI's screen. Alternatively, the rule could specify that if both of those items are not present, but the audio leg of a call is nonetheless connected, a provider must ensure that the resulting minutes are not billed to the Fund.

*Remote training.* The FCC should prohibit compensation for remote training calls, initiated by or on behalf of a VRS provider, in which the calling party attempts to train the called party via a VRS interpreter.[16] Sorenson agrees that remote training calls that are not placed by or on behalf of a VRS provider, and that are otherwise legitimate, should be compensable.[17]

*Recording, filing, and retention of data.* The Commission should require providers to (i) record automatically session and conversation time to at least the nearest second, with more

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14 *See Publix Network Corp., et al.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 11487, ¶ 33 (2002).

15 CSDVRS at 14.

16 *See, e.g.*, Snap at 18; Convo at 15; PAH at 18-19; Sorenson at 10-11.

17 *See* Snap at 18; Convo at 14-15; PAH at 18-19.

precise measurements permissible;[18] (ii) file electronically certain call data and speed-of-answer compliance data, to the extent permitted by law,[19] and preserve such data for a minimum of five years;[20] and (iii) report certain call center data on a periodic basis to the FCC.[21]

Regarding the latter requirement, the Commission should reject Snap's suggestion that VIs working from home be "collectively grouped as one call center."[22] A key purpose of the proposed call center-reporting rule is to ensure that the FCC obtains granular data about VIs' locations that could be indicative of fraudulent or wasteful schemes. Since at-home interpreting arrangements could be more vulnerable to such schemes, it would defeat the purpose of the proposed rule to adopt an exception under which the FCC would receive only vague, aggregate information about VIs who work from home. The best solution would be for the FCC to prohibit at-home interpreting arrangements altogether, but if the FCC is not inclined to take that approach, it should at least require providers that use such arrangements to report them with specificity to the FCC.

*Revenue sharing.* The FCC should prohibit certain revenue sharing schemes, including "white labeling,"[23] while clarifying that legitimate subcontracting is permitted if the eligible

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18 *See, e.g.*, Hamilton at 3-4; Snap at 19-20; PAH at 19; Comments of Birnbaum Interpreting Services at 2 (June 17, 2010) ("Birnbaum"); Sorenson at 11-12. Sorenson believes that the recording of billable conversation time should be truly automated, and should not depend on a VI's decision to strike a key to determine the start or end of such recordation.

19 *See, e.g.*, Convo at 16; Snap at 20; Sorenson at 13.

20 *See, e.g.*, Comments of Verizon and Verizon Wireless at 4 (Sept. 7, 2010) ("Verizon"); Convo at 21; Snap at 27; Gracias at 4; Sorenson at 20-21.

21 *See* AT&T at 10; Convo at 16-17; Snap at 20-21; PAH at 19-20; Gracias at 3; Sorenson at 13-14.

22 Snap at 20-21.

23 A "white label" firm is one that, although not itself eligible to collect from the Fund, nonetheless provides TRS under its own brand name and then has those TRS minutes submitted for compensation by a separate eligible TRS provider whose sole function is to act as a "billing

VRS provider seeks compensation from the Fund and provides service under its own name.[24] Sorenson agrees with Snap that legitimate subcontractors should not be required to identify themselves to the calling parties in addition to the eligible provider.[25]

The FCC should pay special attention to Convo's claims that "white label" providers pay sizable fees to their "billing partners," ranging from 7-16 percent of the applicable tiered VRS rate;[26] and that the billing partners normally compensate themselves at the higher (Tier 1 or 2) rate but pay the white-label or subcontracted VRS providers the lowest (Tier 3) rate.[27] If these disclosures are accurate, they provide additional evidence that the VRS business is not subject to significant economies of scale.[28] To the contrary, if small white label providers are able to operate profitably in exchange for the low Tier 3 rate, even after paying up to a 16 percent surcharge to their billing partners, it would appear doubtful that smaller providers necessarily have higher per-minute "costs" than larger providers. In any event, the practice described by Convo should be investigated by the FCC for possible enforcement action. There is no sound justification for the Fund to compensate "billing partners" – providers that are not incurring the costs of providing service – at a higher (Tier 1 or 2) rate, when the entity actually providing the service is being paid at the Tier 3 rate. If accurately described, this practice would appear to be a

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agent" (*i.e.*, to obtain payments from the Fund and then remit a portion to the uncertified company that actually provides the service).

24 *See, e.g.*, AT&T at 12; Snap at 21; TDI at 12; Sorenson at 14-15 (specifying two types of revenue-sharing schemes that should be prohibited).

25 Snap at 23.

26 Convo at 19.

27 *Id.*

28 *See* Reply Comments of Sorenson Communications, Inc. at 15-19 (May 21, 2010) and attached Declaration of Dr. Michael D. Pelcovits ¶¶ 9-21 (May 21, 2010).

fraudulent practice or, at a minimum, a wasteful subsidy from the Fund to the white label company's billing partner.

*Accountability.* To ensure that providers are held accountable for any wrongdoing, the FCC should adopt transparent and stringent audit rules[29] and permanently institute the rule requiring a senior VRS provider executive to certify, under penalty of perjury, that minutes submitted for compensation were handled in compliance with section 225 and the FCC's rules and orders, and are not the result of impermissible financial incentives or payments to generate calls.[30]

## II. THE FCC SHOULD NOT ABANDON LONG-STANDING POLICIES THAT HAVE SERVED CONSUMERS WELL

As explained below, the Commission's long-standing policies of protecting the confidentiality of provider cost and demand data, and of permitting providers to obtain eligibility through a state program, have served deaf consumers well without making the VRS program more susceptible to waste, fraud, and abuse. Abandoning those policies would only harm the public, and the Commission therefore should decline to do so.

First, the Commission should not require providers to disclose their individualized cost and demand data to the public.[31] As the FCC has repeatedly recognized, such data is competitively sensitive, and keeping such data confidential is critical to fostering pro-consumer competition and innovation. This principle holds true in contexts other than TRS, even for publicly-funded programs. For instance, as AT&T points out, "Eligible Telecommunications Carriers ('ETCs') and Universal Service Fund recipients, both of which receive significant public funding, rightfully have no obligation to publicly disclose sensitive competitive

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29 *See* PAH at 25-26; Birnbaum at 2-3; Verizon at 3-4; Sorenson at 20.

30 *See, e.g.*, Snap at 27-28; Verizon at 5; PAH at 6; Gracias at 7; Sorenson at 21.

31 *See* AT&T at 13-14; Hamilton at 6-7; PAH at 24; Birnbaum at 3; Sorenson at 17-20.

information."[32] Imposing such an obligation here would be particularly inappropriate, given that the Administrator and the FCC already have access to individualized provider data, and no party has offered a plausible explanation as to why the aggregate provider data that has been routinely disclosed to the public is inadequate.

Second, the Commission should continue to allow providers to contract with a certified state program as a means of obtaining eligibility to collect from the Fund. Contracting with a state has long afforded aspiring providers a means of entering the VRS business, and, as Sorenson explained in its comments, those providers have always been subject to the FCC's TRS rules.[33] To the best of Sorenson's knowledge, not a single provider that operates through a state program has been implicated in a management-level scheme to commit waste, fraud, or abuse. By contrast, the two most prominent examples of possible wrongdoing were perpetrated by an FCC-certified provider and an applicant for FCC certification.[34] Given these facts, the Commission would have no compelling basis to require state-authorized providers to apply for

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32 AT&T at 14.

33 Sorenson at 15-17.

34 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), *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>; *see also Hands On Video Relay Services, Inc., Go America, Inc., and Purple Communications, Inc.*, Order, DA 10-1734 (rel. Sept. 20, 2010) (adopting Consent Decree requiring Purple to repay $18.5 million, plus an additional $3.1 million in interest and penalties, to the Interstate TRS Fund; to make a "voluntary contribution" to the United States Treasury of $550,000; and to implement a compliance plan and associated reporting requirements).

FCC certification. If the Commission is so inclined, however, it should grandfather in existing firms that currently provide TRS pursuant to a state program, or, at a minimum, give state-authorized providers sufficient time to prepare and submit an application, and continue to allow those providers to operate and be compensated by the Fund without interruption unless and until the FCC issues a final order denying their application. The Commission also should eliminate the requirement that a company demonstrate common carrier status before it can receive FCC certification.[35] It is not clear where the FCC would derive the authority to force VRS providers to become common carriers given that the Americans with Disabilities Act does not include any such requirement and VRS is not a common carrier service.

Finally, the Commission should reject the proposal to adopt a five-year "provisional" FCC certification for new entrants, with minimum service amounts required for full certification.[36] The Commission's goal in this proceeding should be to act promptly on pending applications for certification and ensure that applicants meet the criteria for providing VRS. Complex new "provisional" schemes will give rise to more opportunities for misconduct and require more oversight by the FCC. Rather than create a new provisional pathway, the FCC should simply streamline the process by which it either grants or denies applications for FCC certification, clear the backlog of pending applications that currently exists, and ensure that would-be providers can meet all the Commission's requirements, including, in particular, the ability to handle 911 calls.

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35 47 C.F.R. § 64.606(a)(2)(vii).

36 *See* TDI at 12-13; Convo at 18-19.

## III. CONCLUSION

For the foregoing reasons, the Commission should take reasonable steps to make the VRS program less susceptible to waste, fraud, and abuse.

Respectfully submitted,

*/s/ Regina M. Keeney*

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**Certificate of Service**

I hereby certify that on this 27th day of September, 2010, I caused a true and correct copy of the foregoing Reply Comments of Sorenson Communications, Inc. to be mailed by electronic mail to:

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*/s/ Ruth E. Holder*
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