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February 4, 2011

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Notice of Ex Parte Meeting
Telecommunications Relay Services and Speech-to-Speech Services for
Individuals with Hearing and Speech Disabilities;
Structure and Practices of the Video Relay Services Program
CG Docket Nos. 03-123 and 10-51**

Dear Ms. Dortch:

On February 3, 2011, Claude L. Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI"); Jill Bianco, a TDI intern; Shane H. Feldman, Chief Operating Officer, National Association of the Deaf ("NAD"); Cheryl Heppner, National Advocacy Director, Association of Late-Deafened Adults, Inc. ("ALDA"); Alfred Sonnenstrahl; and Sheri Farinha, CEO of NorCal Services for Deaf and Hard of Hearing, Inc. and Chair of E911 Stakeholder Council (by phone) (collectively, the "Consumer Groups"), and the undersigned counsel to TDI, met with Paul de Sa, Chief, Office of Strategic Planning and Policy Analysis, Karen Peltz Strauss, Deputy Chief, Consumer & Government Affairs Bureau ("CGB"); Gregory Hlibok, Chief, Disability Rights Office ("DRO") and Diane Mason, DRO.

The Consumer Groups strongly urged the Commission not to use competitive bidding or reverse auctions to select VRS providers. These mechanisms would reduce the number of providers, diminish competition, harm consumers, and be inconsistent with the mandate of functional equivalency. Hearing Americans have a choice of communications providers that meet federal and/or state requirements (e.g., incumbent and competitive local exchange carriers, wireless providers, Voice over Internet Protocol ("VoIP") providers, etc.) and VRS consumers should have the same right to choose from a group of providers that meet minimum Commission standards for the provision of VRS. Rather than auctions, the Consumer Groups supported the existing tiered system,

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and further advocated for tighter controls within the existing system, such as mandatory certification by the Commission for all VRS providers, including re-certification every five years. This process will ensure that all VRS providers are meeting the minimum requirements specified in the Commission's rules and increase accountability and responsiveness to consumers. The participants also discussed the positive impact competition has on the introduction of new features, products and services, the importance of interoperability, and consumer expectations with respect to mobile VRS and new technologies.

The attached handout was distributed at the meeting.

Very truly yours,

/s/ electronically signed

Tamar E. Finn

Enclosure

cc (by e-mail):

Paul de Sa
Karen Peltz Strauss
Gregory Hlibok
Diane Mason
Claude L. Stout
Shane H. Feldman
Cheryl Heppner
Alfred Sonnenstrahl
Sheri Farinha

- The Commission should avoid a policy that limits TRS funds to a certain number of competitors in the market for a particular service. Such a policy runs counter to the Commission’s stated policy of promoting competition.
- In promoting competition the Commission has found that effective competition is unlikely to occur in highly concentrated markets.¹
- Historically the Commission has recognized the dangers of “a market dominated by a few firms”² and has actively promoted policies to spare consumers the harmful effects of concentrated markets. One of those risks is “price coordination”³ that can lead to “supracompetitive pricing.”⁴
- This policy of avoiding concentrated markets is consistent with the principles and methods established in the FTC/DOJ Horizontal Merger Guidelines.⁵
- Under these guidelines, a market with [four] competitors is likely to be highly concentrated. The DOJ, for example has stated that its merger review process “starts from the presumption that in highly concentrated markets, consumers can be significantly harmed when the number of strong competitors declines from four to three.”⁶
- Under the Guidelines any market with an HHI above 2500 is considered highly concentrated.⁷ For example, in a four participant market, where each participant has an equal share, the HHI would be $25^2 + 25^2 + 25^2 + 25^2 = 2500$

¹ See, e.g., *Amendment of the Commission’s Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, 10789, ¶ 64 (2003); *Application of EchoStar Communications Corp. (a Nevada Corporation), General Motors Corp, and Hughes Electronics Corp. (Delaware Corporations) (Transferors) and EchoStar Communications Corp. (a Delaware Corporation) (Transferee)*, 17 FCC Rcd 20559, 20624–26, ¶¶ 170–74 (2002); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18325–34, ¶¶ 65-78 (2005); *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, 12 FCC Rcd 19985, 20008–09, ¶ 37 (1997); *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Amendment of the Commission’s Cellular/PCS Cross-Ownership Rule*, 11 FCC Rcd 7824, 7872–73, ¶ 100 (1996).

² *Petition of Qwest Corp. For Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona MSA*, WC Docket No. 09-135, memorandum Opinion and order, FCC 10-113 ¶ 29 (June 22, 2010).

³ *FTC v. Heinz*, 246 F.3d 708, 724 (D.C. Cir. 2001).

⁴ *Id.* at 724, n.23.

⁵ *Qwest Forbearance*, FCC 10-113 at ¶ 37.

⁶ *Ex parte* Submission of the United States Department of Justice, GN Docket 09-51, at p.15 (Jan. 4, 2010) (“*DOJ ex parte*”).

⁷ Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission (August 19, 2010) (DOJ/FTC Guidelines).