

**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 SORENSON COMMUNICATIONS, INC.

I. INTRODUCTION AND SUMMARY

Sorenson Communications, Inc. (“Sorenson”) welcomes this opportunity to comment on the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”)¹ regarding modifications to the TRS-provider certification process. Sorenson supports the Commission’s efforts to ensure that only providers capable of complying with minimum standards are eligible for compensation from the TRS fund. To the extent the Commission concludes national certification is necessary to achieve that end, Sorenson will of course comply.

Sorenson, however, opposes the extensive requirements the Commission proposes to impose, both upon first-time applicants for TRS certification as well as upon entities already certified to provide TRS. The FNPRM proposes to require the production and annual updating of voluminous amounts of information that is unnecessary to meet the Commission’s goals for initial certification. The FNPRM also proposes to impose substantial continuing requirements on certified providers. These proposals far exceed the Commission’s current certification standards, and the Commission has failed to explain why such an expansion is necessary. In particular, it is unclear how such intrusive and burdensome information collection would have

¹ See *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 10-51, FCC 11-54 (2011) (hereinafter “Order” or “FNPRM”).

prevented the fraud that has occurred. As such, this proposed information collection would violate the Paperwork Reduction Act.

Accordingly, the Commission should decline to adopt the unnecessarily burdensome provisions and should instead consider adopting requirements more reasonably tailored to ensuring that TRS providers comply with minimum-standards requirements. In the alternative, the Commission should not apply the proposed certification and annual updating requirements to providers who have (1) been certified (by the FCC or a state PUC) for at least two years and (2) established a track record of compliance with minimum standards. The Commission can always seek additional information in the context of an audit or investigation.

In addition, the FNPRM proposes unduly burdensome outage reporting requirements that extend unnecessarily to outages that do not actually impact service for any customers. Rather than adopt these burdensome rules, the Commission should instead adopt rules that parallel the existing outage reporting requirements in Part 4 of the FCC's rules.

II. IF THE COMMISSION ADOPTS A NATIONAL CERTIFICATION REQUIREMENT, IT SHOULD SCALE BACK BURDENSOME QUALIFICATION AND REPORTING REQUIREMENTS, AT LEAST FOR EXISTING PROVIDERS WITH A TRACK RECORD OF COMPLIANCE

Sorenson recognizes that the FCC, as sole administrator of the TRS Fund, must ensure that only viable, legitimate providers are eligible for compensation.² Sorenson concurs with the FCC's desire that certification be available only to applicants with the "ability to comply with qualifications rules, including speed of answer, facility redundancy, and other operational and technical standards designed to assure provision of a service that is functionally equivalent to voice telephone service."³

² FNPRM ¶ 96.

³ *Id.* at ¶ 97.

Sorenson believes that state-based certification (at least in Utah) meets these goals, but to the extent the FCC concludes that national certification is necessary, Sorenson will of course comply. However, where a provider is transitioning from state-based certification and has a track record of providing service that meets minimum standards, there is no reason for an onerous review, as a history of compliance is the best indicator of continued ability to meet certification requirements.

Sorenson further agrees that, prior to granting certification, the FCC should ensure that each applicant “owns and operates facilities associated with TRS call centers, and employs interpreters, on a full or part-time basis, to staff such call centers at the date of the application.”⁴ As explained in more detail below, however, the Commission should reduce substantially the record production requirements it proposes to demonstrate compliance, while retaining obligations that can provide assurance of providers’ capabilities.

The proposed certification requirements represent a significant departure from the Commission’s own current certification standards, are unduly burdensome, and are unnecessary to meet the worthy goals identified above. The Commission has proposed that applicants and certified providers submit and annually update nine categories of information.⁵ Only three (copies of facilities deeds and leases; employee lists; and licenses and proofs-of-purchase for software and equipment) relate to the stated goals of ensuring that applicants can comply with minimum standards and that they own and operate facilities and employ interpreters.

Even within those three categories, however, the FNPRM proposes unnecessary and unreasonable document productions, when a narrative description will suffice. The Commission does not need actual copies of leases to learn that an applicant owns and operates facilities, nor

⁴ *Id.*

⁵ *Id.*

does it need proofs-of-purchase or software licenses to learn that an applicant has the infrastructure needed to engage in TRS. At most, the Commission needs a representative list of facilities and equipment for the first year of operations. After the first year, minimum-standards compliance need be demonstrated only through the provider's performance and its annual report. Providing the proposed level of documentation would represent an enormous burden on applicants, as well as the Commission personnel assigned to review applications.

The other six information categories (a list of equity investors with a 10% or greater interest; copies of employment agreements with executives and communications assistants; copies of agreements with subcontractors; a list of all financing arrangements; "copies of all other agreements associated with the provision" of iTRS; and a list of all sponsorship arrangements) relate to issues that are at best only tangentially connected to the Commission's stated goals for certification of TRS providers. Requiring the submission and annual updating of voluminous, detailed records that do not directly relate to the Commission's certification goals renders the proposals unduly burdensome, both for applicants and for Commission staff.

The Commission has also proposed that providers update their applications as part of their annual reports.⁶ Given the breadth of the nine categories of documentary evidence listed in the FNPRM, and in light of the many changes providers can experience in facilities, employees, equipment, software, financing, etc., the Commission's proposal would represent an enormous recurring burden for TRS providers, as well as for Commission staff.

Further, the FNPRM appears to presuppose the adoption of cost-of-service regulation, when that issue is currently pending in this docket. The Commission should not require cost-of-

⁶ *Id.* at ¶ 99.

service information until it has decided that it will adopt cost-of-service regulation, notwithstanding its steady shift away from cost-of-service regulation over the last twenty years.

The Commission’s proposal also far exceeds its own current certification requirements. Although the Commission has identified purported problems with the current menu of certification options,⁷ it has not identified any problems with its *own* current TRS provider certification process, where applicants need submit only a narrative description of their operations.⁸ Yet, the FNPRM indicates—without explanation—that “mere attestations” are “inadequate”⁹ and seeks to require applicants to produce a burdensome list of records that lack any apparent connection to fraud that has actually occurred.

Indeed, the Order cites several examples of fraud in TRS: manufacturing and billing of illegitimate calls; requests that CAs not relay calls; minutes billed for voice-to-voice calls; calls initiated from international IP addresses; implementation of double privacy screens; CAs calling themselves; calls with no participants; and payment of callers to make TRS calls.¹⁰ But none of the records the FCC proposes to require have any bearing whatsoever on whether a provider has engaged in such conduct in the past or has the capability or incentive to do so in the future.

A more appropriate solution would be to maintain the Commission’s current narrative-based certification process—buttressed by a requirement that applicants certify the truth of their submissions under penalty of perjury—while the Commission could reserve the right to request any of the specific evidence listed in the FNPRM as needed to resolve any specific issues that arise with specific providers. That way, TRS providers would be on notice to retain the

⁷ *Id.* at ¶ 96.

⁸ *See* 47 C.F.R. § 64.606(a)(2).

⁹ FNPRM ¶ 97.

¹⁰ *Id.* at ¶ 4.

necessary documents, without the need to collect and produce them as part of their applications, or as part of their annual reports.

Sorenson also urges the Commission to eliminate the proposed requirement that all TRS providers demonstrate their status as common carriers in order to receive certification.¹¹ Common-carrier status is unnecessary to ensure that TRS providers can comply with minimum standards. Furthermore, TRS providers are not necessarily telecommunications carriers,¹² and the requirement is inconsistent with Section 225, which requires only that common carriers provide TRS service, not vice versa.¹³ To address any enforcement-related concerns, the Commission could require that any non-common carrier TRS provider waive citations prior to receipt of a Notice of Apparent Liability, as well as be held to constructive notice of all Commission decisions and rules.

As a result of all the issues identified above, the FNPRM's proposed information collection appears to violate the Paperwork Reduction Act, which directs the Commission to minimize information collection burdens.¹⁴ Considering the administrative burden the certification requirements would impose, and considering that most of the requirements bear little relationship to applicants' ability to provide TRS and the prevention of fraud, the proposal is simply not demonstrably necessary to advance the FCC's stated goals.¹⁵ Accordingly, the PRA bars the Commission from adopting it.

¹¹ *Id.* at App. D.

¹² *See Telecomms. Relay Servs. and Speech-to-Speech Servs. for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 15 F.C.C. Rcd. 5140, 5174-75 at ¶ 81 (2000) (“Because TRS providers do not provide telecommunications services, they are not telecommunications carriers....”).

¹³ 47 U.S.C. § 225(c).

¹⁴ *See* 44 U.S.C. § 3501 *et seq.*

¹⁵ *See* 44 U.S.C. §§ 3506(c)(1) (requiring agencies to conduct a review of any proposed collection of information, including evaluating the need for the collection of information and

Furthermore, the FNPRM proposes to collect information that is exempt from production under the Freedom of Information Act (“FOIA”). Contrary to statements in the PRA Notice for the Fraud Order, which requires nearly identical information submissions for a temporary waiver of the white label prohibition,¹⁶ the FNPRM seeks collection of personally identifiable information (“PII”) from individuals, such as employee lists and contracts with interpreters and management. All of this information is subject to FOIA’s personal privacy exemption.¹⁷ All of the information sought also appears subject to protection as confidential business information.¹⁸

Should the Commission decide to adopt the certification requirements as proposed in the FNPRM—which it should not—it should waive the certification and annual updating requirement for providers who have been certified TRS providers, by any currently allowed method, for more than two years, and who have an established track record of compliance with the Commission’s minimum standards. Such providers have clearly demonstrated that they maintain adequate facilities and infrastructure and employ CAs, as well as their ability to comply with minimum standards. Accordingly, it would be unnecessary to require such providers to engage in the proposed burdensome and intrusive application process.

III. A “SUBSTANTIVE” CHANGE OCCURS ONLY WHEN A PROVIDER EITHER DISCONTINUES OR BEGINS OFFERING A PARTICULAR CATEGORY OF TRS SERVICE

Current rules provide a 60-day window for providers to notify the Commission of “substantive changes in their TRS programs.”¹⁹ Through the FNPRM, the Commission seeks

a creating a plan for the efficient and effective management and use of the information to be collected); 3506(c)(2)(A)(iv) (directing agencies to “minimize the burden of the collection of information on those who are to respond”).

¹⁶ Order ¶ 63.

¹⁷ 5 U.S.C. § 552(b)(6).

¹⁸ *Id.* at § 552(b)(4).

¹⁹ 47 C.F.R. § 64.606(f)(2).

comment on how to define the term “substantive.”²⁰ Sorenson believes that “substantive” should refer only to changes that cause a provider either to discontinue providing a particular category of TRS service, or to enter a new category of TRS service. For example, if a VRS provider begins offering IP Relay service for the first time, that provider would be making a “substantive” change to its TRS program.

However, “substantive” should not encompass changes such as modifications to improve existing TRS services, introduction of new facilities, and management turnover. Such changes can occur on a frequent basis, and they generally have no material impact on the TRS services available to consumers. An expansive reading of the term “substantive” that covers such changes would trigger unduly burdensome and unnecessary reporting requirements for TRS providers, which risks further violations of the Paperwork Reduction Act.

IV. PROVIDERS SHOULD BE REQUIRED TO REPORT PLANNED OUTAGES ONLY IF THEY WILL ACTUALLY DISRUPT SERVICE, AND UNPLANNED OUTAGES IN PARALLEL WITH THE REQUIREMENTS IN PART 4 OF THE FCC’S RULES

Sorenson generally concurs with the FNPRM’s proposals regarding voluntary service interruptions.²¹ In concept, Sorenson agrees that consumers should be adequately informed of service interruptions and should face minimal disruption whenever providers knowingly interrupt and restore service. However, Sorenson requests that the Commission clarify this requirement to make clear that reportable planned outages consist solely of those that result in an actual service disruption, as opposed to load-shifting among call centers.

Sorenson further requests that the Commission modify the FNRPM’s proposals regarding service interruptions that are beyond the provider’s control.²² As currently stated, a provider

²⁰ FNPRM ¶ 100.

²¹ *Id.* at ¶ 101.

²² *Id.*

would have a two-day window to notify CGB of *any* call center service disruption, no matter how minimal, and no matter how many (or how few) consumers are affected. Indeed, as written, this requirement could be read to apply to load-shifting among call centers, even if service is not affected at all. As a result, the proposal risks imposing enormous burdens on providers, especially in light of the harsh enforcement provisions contained in the proposal.

Accordingly, Sorenson requests that the Commission modify this proposal to require notification only for material service interruptions, based on both the length and extent of the disruption. Such standards should be no more burdensome than those imposed on wireless and wireline carriers, where outage reporting requirements are generally triggered when an outage extends for more than 30 minutes and affects at least 90,000 user minutes.²³

V. THE COMMISSION SHOULD ALLOW FOR A TRANSITION PERIOD OF AT LEAST SIX MONTHS, AND IT SHOULD ALLOW PROVIDERS TO SEEK TEMPORARY WAIVERS

The Commission seeks comment on requirements providers should meet in order to obtain a temporary waiver of the new certification requirements, as well as how much time providers should be given to comply with the new requirements.²⁴

Ensuring compliance with the new regulations, especially if they are enacted as proposed in the FNPRM—which they should not be—will be time consuming. Sorenson agrees that, once the regulations become effective, providers should be granted temporary waivers until they are able to comply. Sorenson believes that such waivers should be granted to any provider certified under the current rules who is also in good standing. Sorenson further believes that providers should be given, at minimum, six months to comply with the new standards, including FCC certification.

²³ 47 C.F.R. §§ 4.9(e); 4.9(f).

²⁴ FNPRM ¶ 103.

Sorenson disagrees with the proposal that a temporary waiver request must be submitted concurrently with an application for FCC certification, and proposes that a waiver request may be submitted separately from an application for certification, which may take substantially longer to prepare. In the event that a provider does not later file an application, any interim waiver would expire at the end of the specified transition period.

VI. CONCLUSION

Sorenson recognizes the Commission's desire to consolidate authority to certify TRS providers. Sorenson, however, objects to the unnecessary and unduly burdensome information collections that the Commission has proposed. As a result, Sorenson respectfully requests that the Commission either modify the proposed requirements so that they are more consistent with the Commission's current certification procedures, or else waive the proposed requirements for established TRS providers with a track record of compliance. Sorenson further urges the Commission to define "substantive changes" in a way that requires providers to report only entry into and exit from distinct TRS categories. In addition, Sorenson requests that the Commission clarify its outage-reporting proposals to ensure that providers need report only events that cause actual disruption to consumer service, and that the reporting requirements for unplanned outages are no more burdensome than those placed on wireless and wireline carriers. Finally, Sorenson requests that the Commission allow providers six months to comply with any new proposals, and that the Commission allow providers to submit waiver requests separately from their applications.

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