

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In The Matter of)	
)	
Structure and Practices of the Video Relay Service Program)	CG Docket No. 10-51
)	
Telecommunications Relay Services and Speech- to-Speech Services for Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123

PETITION FOR ONE-DAY WAIVER OF 47 C.F.R. § 64.604(b)(2)

Sorenson Communications, Inc. (“Sorenson”) hereby petitions the Federal Communications Commission (“FCC” or “Commission”) for a retroactive one-day waiver of the speed-of-answer requirement in 47 C.F.R. § 64.604(b)(2) as applied to Sorenson’s IP Relay service. Sorenson requests a waiver of the rule for May 26, 2011—a day on which Sorenson was unable to meet the speed-of-answer requirement for its IP Relay service due to a temporary technical issue resulting from a third party’s unannounced actions that Sorenson could not reasonably have addressed.

It is Sorenson’s understanding that on the evening of May 25, 2011, AOL Inc. upgraded the AOL Instant Messenger (AIM) “bot” system software that transfers AIM messages from the AIM platform to IP Relay service providers like Sorenson. While Sorenson understands that the main AIM system was not impacted, the new software caused an outage on the “bot” system and then, once service was restored, AOL began delivering IP Relay calls to Sorenson in batches from the “bot” system rather than in real time as they were placed by end users. Since the incoming instant messages were held by the AOL “bot” platform prior to being delivered to Sorenson, Sorenson was unable to meet the speed-of-answer requirement for IP Relay calls

because Sorenson's Communications Assistants were overwhelmed by call volumes at the moments when the large batches of instant messages arrived. Sorenson detected the impact of this unannounced change at around 8:00 am Mountain Time on May 26, 2011. Sorenson contacted AOL about the problem immediately, and timely call delivery from the bot system was restored by about 1:00 pm Mountain Time that same day, although sporadic issues were still seen in call delivery from the AOL "bot" system until around 4:00 pm Mountain Time. Measured over the course of the entire day on May 26, fewer than 85 percent of Sorenson's IP Relay calls were answered within ten seconds. In spite of these technical difficulties, Sorenson IP Relay still managed to answer over 77.5% of calls within the 10 second speed-of-answer requirement.

The FCC may waive its rules when there is "good cause" to do so.¹ Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than would strict adherence to the general rule.² Moreover, it is arbitrary and capricious to enforce requirements that are impossible to satisfy.³ Here, performance within the minimum standard was rendered impossible because messages arrived in bunches, rather than spread out as call participants sent messages. Waiver is appropriate in this instance because Sorenson's speed-of-answer was affected by the actions of a third party which rendered compliance temporarily impossible through no fault of Sorenson's, because Sorenson took immediate action to address the problem, and because fully compliant speed-of-answer was restored promptly thereafter.

¹ 47 C.F.R. § 1.3.

² See *Ne. Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

³ See *Alliance for Cannabis Therapeutics v. DEA*, 930 F.2d 936, 940 (D.C. Cir. 1991).

Respectfully submitted,

/s/

Christopher Wright
John Nakahata
Charles Breckinridge
WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036
T: (202) 730-1300
cwright@wiltshiregrannis.com

Counsel to Sorenson Communications, Inc.

Michael D. Maddix
Director of Government and
Regulatory Affairs
SORENSEN COMMUNICATIONS, INC.
4192 South Riverboat Road
Salt Lake City, UT 84123

June 1, 2011