



WILTSHIRE
& GRANNIS LLP

December 16, 2011

Ex Parte Letter – Via ECFS

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

Re: Porting, CG Docket 10-51, 03-123

Dear Ms. Dortch:

Sorenson Communications, Inc. (“Sorenson”) files this letter to respond to ZVRS’s unfounded assertions related to Sorenson’s conduct related to customer port requests. ZVRS made the assertions in a meeting with officials from the Consumer and Governmental Affairs Bureau on December 1, 2011, and in its related ex parte notice filed on December 5, 2011.¹ Sorenson has long been a strong supporter of the Commission establishing clear “rules-of-the-road” with respect to provider changes and porting. Sorenson proposed such rules in an ex parte filed on May 18, 2008.² To the extent it is possible to discern ZVRS’ allegations, they are wrong and unfounded.

ZVRS begins its litany of porting-related allegations by stating that “[t]he record is replete with the complaints about Sorenson’s improper tactics to entice back former customers after they choose to port to another default provider.”³ But ZVRS fails to cite to any information contained on the record or anywhere else in support of its bellicose claims. ZVRS asserts that Sorenson sent improper text messages to customers who port away and that Sorenson blamed technical problems with its own service on ZVRS’s practices related to porting. But ZVRS does not include any details in the body of letter, and it has redacted its attached exhibits to the point where Sorenson is unable to identify and investigate any of these purported transgressions.

¹ See Letter from Jeff Rosen, CSDVRS, LLC General Counsel, to Marlene Dortch, CG Docket No. 10-51 (filed Dec. 5, 2011) (“*ZVRS Ex Parte Letter*”). In the same letter, ZVRS also urges the Commission to grant its pending request for a waiver of the prohibition on at-home interpreting, and it levies baseless allegations against Sorenson related to equipment interoperability. Sorenson is addressing those allegations in separate letters.

² See Letter from Ruth Milkman, Counsel for Sorenson, to Marlene Dortch, CG Docket No. 03-123 (filed May 18, 2008).

³ See *ZVRS Ex Parte Letter* at 3.

As ZVRS has made it impossible for Sorenson to even identify the alleged incidents, Sorenson cannot meaningfully respond to them. If ZVRS is able to identify these purported violations with enough detail to allow Sorenson to investigate, Sorenson will assess them and take any corrective actions necessary to ensure full compliance with the porting rules. Faced only with ZVRS's generalized allegations, Sorenson reconfirms its longstanding commitment to adhering the Commission's porting rules, and it denies any assertion that it condones "win back" efforts that violate those rules.

Among its other unsubstantiated allegations, ZVRS contends that Sorenson "defeatur[s] VPs once they learn that the customer has elected to port," and ZVRS attaches photos of screenshots in an effort to document the claim.⁴ There is simply no validity to this allegation, and the screenshots that ZVRS has attached do nothing to substantiate it.⁵ As required by the FCC's rules,⁶ Sorenson does not interfere in any manner during the porting process: It does not contact the customer about selecting Sorenson as his or her default provider (*i.e.*, it does not conduct "winbacks"), and it does not in any way degrade service quality or feature availability while the porting process is ongoing. Only after the port has been completed does Sorenson disable enhanced functionalities, as required by the Commission's rules.⁷ And only after the port is complete does Sorenson commence any "winback" marketing.

⁴ *See id.*

⁵ Sorenson agrees that the screenshots depict a defeatured Sorenson videophone, but nothing in the images suggests that the defeaturing occurred while the customer's port was underway.

⁶ *See Bright House Networks, LLC*, 23 FCC Rcd. 10,704, 10,713 ¶ 22 (2008) ("[W]hen a customer's current carrier obtains carrier-change information from a competing carrier solely because of the current carrier's existing relationship with the customer, the current carrier may not use that information to attempt to disrupt the carrier change . . . until the carrier change is completed.") (aff'd *Verizon California v. FCC*, 555 F.3d 270 (D.C. Cir. 2009)). While the *Bright House* decision rested on the Commission's recognition that Verizon is a carrier providing telecommunications services subject to Title II of the Communications Act, Sorenson believes that the rule's rationale applies in the TRS context as well.

⁷ The Commission has made it clear that "Internet-based TRS providers (and, to the extent necessary, their numbering partners) must take such steps as are necessary to *cease* acquiring routing information from any Internet-based TRS user that ports his or her number to another provider or otherwise selects a new default provider." *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd. 11,591, 11615 ¶ 61 (2008) ("2008 Report and Order") (emphasis added). In other words, when a user ports to a new default provider, the original provider must cease providing services to that videophone. Indeed, upon reconsideration of 2008 Report and Order, the Commission squarely rejected a competitor's suggestion that "a default provider that furnishes CPE to a consumer must ensure that the CPE's enhanced features (*e.g.*, missed call list, speed dial list) can be used by the consumer if the consumer ports his or her number to a new default provider." *See*

ZVRS's unfounded allegations about Sorenson's conduct during the porting process strikes a particularly hypocritical note. Sorenson has learned that ZVRS routinely violates the Commission's porting rules. As reported by customers who have ported to Sorenson from ZVRS, ZVRS levies a termination fee on porting-away customers after the port request has been initiated but before the port is completed. This constitutes clear interference with the porting process in violation of the *Bright House* rule, and Sorenson urges the Commission to clarify that such practices are impermissible.

Finally, ZVRS suggests that it would support a rule establishing "a time period following the port where no marketing by the former default provider is permitted."⁸ Sorenson opposes this request, which is inconsistent with functional equivalence because it would create a different rule for VRS than applies to telecommunications services generally. The Commission considered this issue in its *Bright House* decision and determined that marketing efforts would be prohibited while the port is underway, but "winback" efforts would be permitted as soon as the port is complete.⁹ This rule strikes the most appropriate balance: VRS providers may not interfere with a user's decision to port to another provider, but VRS providers may encourage users to reconsider after they have experience with the other provider.

Sincerely,

/s/

John T. Nakahata
Counsel to Sorenson Communications, Inc.

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Second Report and Order and Order on Reconsideration, 24 FCC Rcd. 791, 819 ¶ 63 (2008) ("2008 *Second Report and Order*").

The Commission further observed that providers "offer such features on a competitive basis," which "encourage[s] innovation." *Id.* Indeed, because VRS providers cannot engage in price competition, the provision of enhanced features is an important means for providers to compete with one another. As the 2008 *Second Report and Order* recognizes, if providers must continue to provide enhanced features once a customer ports, they lose the incentive to attempt to attract providers' customers through innovation. VRS providers would therefore no longer devote resources to the development and deployment of enhanced features and consumers would ultimately suffer. *See also* Letter from Tamar E. Finn to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51 at 1 (filed Feb. 4, 2011) (writing on behalf of deaf consumer groups and noting "the positive impact competition has on the introduction of new features, products and services").

⁸ *ZVRS Ex Parte Letter* at 3.

⁹ *See Bright House*, 23 FCC Rcd. at 10,713 ¶ 22.

Marlene H. Dortch
December 16, 2011
Page 4

cc (by email):

Karen Peltz Strauss
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