



WILTSHIRE  
& GRANNIS LLP

May 7, 2012

Ex Parte Notice – Via ECFS

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

Re: *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

Dear Ms. Dortch:

On Thursday, May 3, 2012, representatives of Sorenson Communications, Inc. (“Sorenson”) met with Federal Communications Commission (“FCC” or “Commission”) staff to discuss the Commission’s pending *Further Notice of Proposed Rulemaking* related to reform of the video relay service (“VRS”) industry.<sup>1</sup> The Sorenson representatives at the meeting were Paul Kershisnik, Sorenson’s Chief Marketing Officer, Mike Maddix, Sorenson’s Director of Government and Regulatory Affairs, and Chris Wright, Chad Breckinridge, and the undersigned, all from Wiltshire & Grannis LLP. The following FCC staff attended the meeting: Sean Lev, OGC; Nick Bourne, OGC; Henning Schulzrinne, OSP; Karen Peltz Strauss, CGB; Greg Hlibok, CGB; Robert Aldrich, CGB; Eliot Greenwald, CGB; Nicholas Alexander, WCB; Richard Hovey, WCB; Sarah Citrin, EB; and Diane Mason, OMD. The meeting participants discussed several matters related to the pending rulemaking.

We first discussed ways in which, under a per-user compensation regime, discrimination against high-volume users could be detected. The Sorenson representatives suggested that the Commission could monitor a provider’s average minutes of use (“MOU”) of VRS per customer; an average that goes down over time or that is materially lower than other providers’ averages would raise flags and could prompt the Commission to investigate further. The Sorenson representatives suggested further that the Commission could monitor a sample of call detail records for a particular provider; if those records revealed disparate treatment (e.g., a slower speed of answer) for a high-volume user and a low-volume user who made calls at the same time, that would indicate potential discriminatory treatment requiring further investigation. The Sorenson representatives concurred that some providers may try to discourage high-volume users

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<sup>1</sup> See *Structure and Practices of the Video Relay Service Program and Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51 & 03-123 (rel. Dec. 15, 2011) (“FNPRM”).

notwithstanding such monitoring; the Sorenson representatives explained, however, that Sorenson itself would continue providing the same high-quality service to all customers, without discriminating against any, because that is the approach that has fostered Sorenson's success and allowed it to emerge as the industry leader.

We also discussed the penalties that could be imposed in the event that a provider is found to have discriminated against high-volume users. The Sorenson representatives suggested action through the Enforcement Bureau, with varying penalties depending on the severity of the infraction, up to revocation of certification. The FCC representatives suggested that market forces could be used to keep discriminatory behavior in check. For instance, even a provider otherwise willing to violate the rules might comply with non-discrimination requirements out of concern that high-volume users are opinion leaders and discriminating against them would harm the provider's reputation. The FCC representatives suggested further that a publicly accessible consumer ranking system (e.g., a five-star rating system) that weights results based on consumers' usage volumes could ensure that high-volume users have an effective means of expressing displeasure with service. The Sorenson representatives concurred that market forces could promote compliance, but they cautioned that objective data—like monitoring average MOU and call detail records—could provide a more reliable indicator of abuse than subjective inputs like customer reviews.

The FCC representatives asked whether VRS providers should be required to use third-party verification systems to ensure customers are in fact eligible. Sorenson responded that this could be a sensible proposal, but that it may be hard to implement in practice since third-party verification companies typically use interactive voice-recording systems, which would be ineffective for deaf, hard-of-hearing and speech-disabled users. The Sorenson representatives explained that Sorenson is able to verify users' eligibility by sending an installer / trainer to every user's premises at the initiation of service, and the installer / trainer can directly ascertain whether the subscriber is in fact a deaf, hard-of-hearing or speech-disabled ASL speaker.

We also discussed the equipment that Sorenson provides to its VRS customers. The Sorenson representatives explained that the company does not give any of the equipment away but instead retains title while letting customers use the equipment. The Sorenson representatives explained further that a customer who decides to port away from Sorenson can pay a graduated "equipment licensing fee" that declines over time if he or she wishes to keep the equipment to use with another VRS provider, or he or she can return the equipment to Sorenson and avoid any out-of-pocket expense. The Sorenson representatives explained further that the technology (whether hardware and/or software-based) used to access the service is an indispensable component of VRS and, in addition to high-quality interpretation, is an aspect of the overall service package that customers value highly. Off-the-shelf hardware, for example, still needs a software package that allows the user to place VRS calls. While there is certainly a growing demand for off-the-shelf equipment and for applications that run on commercially available mass-market platforms (particularly for mobile and tablets), there is also demand for devices designed specifically for deaf, hard-of-hearing and speech-disabled users.

The Sorenson representatives reiterated the company's long-standing support for interoperability and its support for the development of clear interoperability standards. We concurred with the FCC representatives' views that developing standards will be critical to achieving interoperability and that the critical first step will be getting all industry participants to commit to the standards-setting process. In response to specific questions about challenges to achieving interoperability, the Sorenson representatives explained that interoperability requires the participation of all providers, and that progress has been made through providers' informal interoperability efforts with one another as well as through Neustar's industry-wide interoperability testing event held earlier this year.

Sorenson also supports full portability of customer-created data—such as contact lists and speed dial lists. Enabling VRS users to easily bring such data with them when they port would mitigate any perceived lock in. The Sorenson representatives made clear, however, that full equipment portability is not an appropriate goal. Sorenson has invested substantial time and resources developing superior videophones that include enhanced features that VRS users value. Requiring full portability even of enhanced features would eviscerate Sorenson's investment (since other providers would benefit from Sorenson's innovations) and it would eliminate any competitive incentive for any provider to innovate in the future. Moreover, there is no economic analysis in the record to show that vertical integration in VRS creates a harm to competition, rather than improving the services available and delivered to the consumer. iTunes and the iPod are but one example of the benefits of a tight integration between a service and the devices used to get the benefits of that service.

In response to questions from the FCC representatives, the Sorenson representatives provided a high-level description of the company's allocation of resources to outreach. Sorenson suggested that an entity other than VRS providers would be best suited to educating the general public about VRS. While Sorenson devotes substantial efforts to working with emergency responders to ensure that they are familiar with relay calls, Sorenson does not have expertise in general public outreach. Sorenson explained further that, until recently, virtually all of its outreach efforts were aimed toward locating new users who had never used VRS before. In recent months, however, as Sorenson's competitors have increasingly targeted their efforts on poaching Sorenson's customers, Sorenson has started devoting some of its outreach efforts to winning back customers who have left for other providers.

The Sorenson representatives stated further that while they continue to target new users, they have no data on the size of the currently unserved market. Sorenson attempts to locate new users by participating in hundreds of events each year across the country that focus on the local deaf, hard-of-hearing, and speech-disabled community. Sorenson noted further that it supports the FCC's proposed TRS Broadband Pilot program, but the company does not have a clear sense of how many potential beneficiaries there may be.

We also briefly discussed the prospect of a national Registry of Interpreters for the Deaf ("RID") certification requirement. The Sorenson representatives explained that the company is firmly opposed to such a requirement because it would arbitrarily result in a large number of highly-skilled interpreters losing their employment qualification overnight. While Sorenson

agrees that certification *can* be an indicator of a good interpreter, it is not foolproof. Sorenson has found that some RID certified interpreters do not meet Sorenson's more rigorous requirements (while many non-RID certified interpreters do meet them). Sorenson, in fact, provides additional training for all its new interpreters, whether or not RID-certified. Rather than artificially and arbitrarily reduce the pool of qualified interpreters, Sorenson suggested that the Commission permit providers to continue using their own evaluation and requirements to identify the most skilled people for the positions.

The FCC representatives asked Sorenson to identify the necessary foundational steps that the Commission would need to take prior to converting to a per-user system. Sorenson believes that the Commission's preparatory steps would need to include the following:

- **Eliminate Tiers.**<sup>2</sup> As the Commission has recognized, tiers are wasteful because they promote and reward inefficiency. Tiers therefore contravene the Americans with Disabilities Act's mandate that VRS be made available in the most efficient manner.
- **Interoperability Standards.**<sup>3</sup> Prior to switching to a per-user regime, the Commission should allow time for the industry to develop and implement interoperability standards, ideally under the auspices of a third-party standards-setting organization.
- **Active User.**<sup>4</sup> Prior to transition to a per-user model, the FCC must adopt an "active user" that ensures that providers are compensated only for bona fide VRS users, but should not be so restrictive so as to deny compensation for consumers who are likely to use the service for point-to-point calling in a month, even if they may have no VRS usage in a given month.. Sorenson recommends a more expansive definition than the one proposed in the FNPRM in order to better recognize that VRS providers provide a platform that must be ready to serve all default users, even when they do not call VRS during that month.
- **One Provider Per User.**<sup>5</sup> At the initiation of a per-user regime, the FCC must implement a rule limiting each residential user to a single provider. (An individual could still have separate providers for workplace and residential VRS.) Otherwise, the TRS Fund might be subject to multiple payments for a single subscriber, which threatens to overburden the fund, creates incentives to push undesired services on users, and creates a thicket of administrative complexities.

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<sup>2</sup> See Sorenson Comments on FNPRM at 25-28.

<sup>3</sup> See *id.* at 62-75.

<sup>4</sup> See *id.* at 49-53.

<sup>5</sup> See *id.* at 53-58.

- **Database.**<sup>6</sup> Prior to transition to a per-user regime, the FCC should develop a VRS User Database to facilitate program administration and reduce waste, fraud and abuse. As the FCC has recognized, the database will require robust privacy protections.
- **Consumer safeguards.**<sup>7</sup> The FCC will need to adopt clear rules barring providers from discriminating against high-volume users in any manner, including speed of answer, interpreter quality, video transmission quality, frequency of interpreter changes, or any other metric that impacts quality of service.
- **Phased Transition.**<sup>8</sup> As the Commission proposes in the FNPRM, the transition to a per-user model must be preceded by an implementation phase (to allow for the development and implementation of standards, and to permit time to develop a VRS User Database), and it must be followed by a growth phase.

The FCC representatives at the meeting also requested that Sorenson provide data related to minutes of use, average call duration, 10-digit numbering, equipment license fee payments, number of certified interpreters, average speed of answer, outreach efforts, and consumer complaints. Sorenson is in the process of gathering responsive information and will file it once compiled.

Sorenson looks forward to discussing these issues and others with the Commission in greater depth in future meetings.

Sincerely,

/s/

John T. Nakahata

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cc (by email):

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<sup>6</sup> See *id.* at 58-62.

<sup>7</sup> See *id.* at 46-49.

<sup>8</sup> See *id.* at 28-37.