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ATTORNEYS AT LAW

April 22, 2013

VIA HAND-FILING AND ECFS
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Supplementary Declaration in Support of Emergency Petition for Waiver filed March 7, 2013, by Sorenson Communications, Inc. and CaptionCall, LLC, CG Docket Nos. 13-24 & 03-123; request for Confidential Treatment Pursuant to 47 C.F.R. §§ 0.457 and 0.459

Dear Ms. Dortch:

Sorenson Communications, Inc. and its wholly owned subsidiary, CaptionCall, LLC (collectively "CaptionCall") file the attached declaration, which supplements CaptionCall's Emergency Petition for Waiver filed March 7, 2013.[1] CaptionCall is filing a confidential and publicly available version of the attached declaration.

As reflected in the attached declaration, CaptionCall will complete its implementation of new firmware on or before August 19, 2013. Accordingly, CaptionCall hereby revises its petition to seek a waiver that extends the deadline for implementing a default-on captions feature until August 19, 2013.

CaptionCall requests pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457, 0.459, that the Commission withhold from any future public inspection and accord confidential treatment to the sensitive business information it is providing—all of which has been redacted from the publically available version of the CaptionCall's comments. The redacted data constitutes sensitive commercial information that falls within Exemption 4 of the Freedom of Information Act ("FOIA"). Exemption 4 of FOIA provides that the public disclosure requirement of the statute "does not apply to matters that are ... (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5

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1 *See Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CaptionCall Emergency Petition for Waiver CG Docket Nos. 13-24; 03-123 (filed March 7, 2013).

U.S.C. § 552(b)(4). Because CaptionCall is providing commercial information "of a kind that would not customarily be released to the public" in its Emergency Petition for Waiver, this information is "confidential" under Exemption 4 of FOIA. *See Critical Mass Energy Project* v. *NRC,* 975 F.2d 871, 879 (D.C. Cir. 1992).

In support of this request and pursuant to Section 0.459(b) of the Commission's rules, CaptionCall hereby states as follows:

1. Identification of the Specific Information for Which Confidential Treatment Is Sought (Section 0.459(b)(1))

CaptionCall seeks confidential treatment of detailed information regarding operational procedures and customer usage data—each of which has been redacted from the publically available version of the attached declaration.

2. Description of the Circumstances Giving Rise to the Submission (Section 0.459(b)(2))

CaptionCall is submitting this information in support of its Emergency Petition for Waiver in response to the Commission's new requirement that IP CTS providers implement a captions-off default setting.

3. Explanation of the Degree to Which the Information Is Commercial or Financial, or Contains a Trade Secret or Is Privileged (Section 0.459(b)(3))

The information described above is protected from disclosure because it constitutes highly sensitive information about CaptionCall's operational procedures and customer usage data. This constitutes sensitive commercial information "which would customarily be guarded from competitors." 47 C.F.R. § 0.457.

4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition (Section 0.459(b)(4))

The IP Captioned Telephone Service ("IP CTS") market is highly competitive throughout the United States.

5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))

Disclosure of this information would provide CaptionCall's competitors with sensitive insights related to CaptionCall's operations and customer data—both of which would work to CaptionCall's severe competitive disadvantage.

6. Identification of Any Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))

CaptionCall does not make this information publicly available.

7. Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))

CaptionCall does not make this information publicly available.

Sincerely,

John T. Nakahata

Counsel to CaptionCall.

Attachments

cc: Kris Monteith
Karen Peltz Strauss
Gregory Hlibok
Eliot Greenwald
Robert Aldrich
Elizabeth Andrion
Christine Kurth
Angela Kronenberg
Priscilla Argeris
Nicholas Degani

DECLARATION OF BRUCE PETERSON

I, Bruce Peterson, do hereby, under penalty of perjury, declare and state as follows:

1. My name is Bruce Peterson. I am the Senior Director of Marketing for CaptionCall, LLC, which is a wholly owned subsidiary of Sorenson Communications, Inc. and is based in Salt Lake City. I have held this position since February, 2012. I have served as Senior Director of Marketing for Sorenson Communications, Inc., and I have held a variety of marketing positions with Samsung, Ericsson and IBM. I received a B.A. in Organizational Communications from the University of Utah and an M.S. in Integrated Marketing Communications from Northwestern University.

2. CaptionCall provides internet protocol captioned telephone service ("IP CTS") for hard-of-hearing Americans. The Americans with Disabilities Act ("ADA") requires the Federal Communications Commission ("Commission" or "FCC") to promulgate rules ensuring "functionally equivalent" communications services for the deaf. 47 U.S.C. § 225(a)(3). IP CTS permits hard-of-hearing persons to use the telephone while viewing captions of what the other party is saying. IP CTS has changed the lives of thousands of hard-of-hearing consumers whose hearing impairment previously prevented them from using the phone, but who can now engage in communications in a manner that is functionally equivalent to the communications in which a hearing person can engage.

3. CaptionCall's customer base is the hard-of-hearing population, which primarily includes elderly Americans. The median age of a CaptionCall customer is 74 years of age, and ***** BEGIN CONFIDENTIAL ****** [redacted] ***** END CONFIDENTIAL ***** In CaptionCall's experience, these customers are far less tech savvy than the general population. Many of them suffer one or many forms of physical and cognitive impairment and, as a result, are more likely to be confused by sudden changes in the way they interact with any form of new technology, including CaptionCall's.

4. On January 25, 2013, the Commission released, and on February 5, 2013, published in the Federal Register an emergency order requiring that all IP CTS providers program their phones to automatically turn the captioning function off at the beginning of each call from an IP CTS phone, which requires the hard-of-hearing consumer to turn captions on for each call they make using the IP CTS phone. Prior to this order, CaptionCall's phones were set to turn captions on by default at the beginning of each call. We viewed this as being the most consistent with functional equivalence, inasmuch as hearing individuals do not need to affirmatively activate their phones for each call, and so that as hearing impaired individuals can then have captions displayed as soon as possible at the start of a call. This is particularly important in an emergency situation, so that a captioned telephone user does not need to press a button or take other steps to initiate

captioning at a time when they may be particularly stressed or physically impaired, and when it is also critical that they understand exactly what the other party is saying immediately. Enabling captioning set-up to start as soon as the hearing impaired individual picks up the handset is also particularly important to functional equivalence with respect to incoming calls or calls that are started on another phone, but which the captioned telephone user joins using the captioned telephone as an extension phone, because in these situations the call is already in progress and delays in starting captioning can mean that the hearing impaired person can miss critical content in the call especially contextual information, including who the calling party is and the purpose for the call.

5. Prior to the Order, CaptionCall had also been developing solutions to notify consumers at the beginning of the call that only qualified users could use IP CTS, with express directions on how to turn captioning off. Therefore, following the Order, CaptionCall had to cease these other efforts and to develop the means to reprogram the user interface for each of its customers' phones to comply with the Commission's emergency order in accordance with the Commission's specifications, which differed from any of the predominant then-existing industry implementations. CaptionCall's engineering department immediately began implementing this change. The Commission's order required that the change be completed thirty days after publication in the Federal Register, which was March 7, 2013—only six weeks after the order was released.

6. The short timeline for compliance meant that CaptionCall had to severely truncate its standard user-interface development, testing, quality assurance, user acceptance testing, and roll-out processes. Under ordinary commercial conditions, when CaptionCall updates a user interface, its standard process requires a bare minimum of **** BEGIN CONFIDENTIAL *** [redacted] *** END CONFIDENTIAL ***, and depending on the nature and magnitude of the change, up to *** BEGIN CONFIDENTIAL *** [redacted] *** END CONFIDENTIAL ***. The typical process includes at least *** BEGIN CONFIDENTIAL *** [redacted] *** END CONFIDENTIAL *** of code design and development for initial development of new software, a minimum of *** BEGIN CONFIDENTIAL *** [redacted] *** END CONFIDENTIAL *** of automated testing to test the reliability of the new software, *** BEGIN CONFIDENTIAL *** [redacted] *** END CONFIDENTIAL *** of alpha testing with hard-of-hearing CaptionCall staff members, *** BEGIN CONFIDENTIAL *** [redacted] *** END CONFIDENTIAL *** of beta testing with customers who volunteer to participate, and *** BEGIN CONFIDENTIAL *** [redacted] *** END CONFIDENTIAL *** for rounds of focus group reviews. Moreover, CaptionCall would not customarily roll out a new firmware upgrade to all of its customers simultaneously, but would stage that rollout incrementally so as to be able to detect and correct any problems on a more limited scale rather than risking disrupting the service and experience of its entire customer base, who depend on captions in order to fully utilize the telephone. Before and while CaptionCall rolls the

software out to its customers, it ordinarily engages in extensive consumer education efforts to ensure that they understand the changes.

7. Despite these limitations, CaptionCall treated the development and deployment of its new firmware with the same rigor and high standards it applies to every firmware deployment. In the short time allowed under the order, CaptionCall Engineering was able to develop a new user interface that turned captions off by default and included a conspicuous, large green bar that instructed customers, "Touch here to caption this call." However, because CaptionCall had only 4 weeks to design, implement, test, and deliver the new user interface, CaptionCall had to curtail its development and rollout processes severely. Instead of ***** BEGIN CONFIDENTIAL ***** [redacted] ***** END CONFIDENTIAL ***** for code design and development, CaptionCall took only ***** BEGIN CONFIDENTIAL ***** [redacted] ***** END CONFIDENTIAL *****. CaptionCall executed automated reliability testing for ***** BEGIN CONFIDENTIAL ***** [redacted] ***** END CONFIDENTIAL *****, in parallel with a shortened alpha test cycle ***** BEGIN CONFIDENTIAL ***** [redacted] ***** END CONFDIENTIAL ***** and eliminated ***** BEGIN CONFIDENTIAL ***** [redacted] ***** END CONFIDENTIAL *****. CaptionCall also had very little time to prepare customers for this change in a fundamental user interface element of the device. CaptionCall distributed materials to its customers explaining the new default-off implementation and how to turn captions on, but because CaptionCall needed time to develop those materials, they were mailed on Wednesday, February 27, 2013, only one week prior to the deadline for implementing default-off captions.

8. CaptionCall began deploying the new user interface to all of its customers' phones on Sunday, March 3, 2013, four days prior to the deadline for implementing default-off captions. Because CaptionCall had ***** BEGIN CONFIDENTIAL ***** [redacted] ***** END CONFIDENTIAL *****. When CaptionCall implemented the new user interface, it inserted a step that had not previously existed—turning captions on individually for each call—into the procedure a user must follow to use the CaptionCall service. Customer backlash demonstrated that the new process was flawed.

9. Anticipating customer calls about the new firmware, CaptionCall provided its customer care center staff with a set of frequently asked questions. The questions and answers described the updates to the firmware, the reasons for the updates and clarification that users cannot set captioning on by default.

10. On March 4, 2013, CaptionCall received ***** BEGIN CONFIDENTIAL ***** [redacted] ***** END CONFIDENTIAL ***** calls to its customer support desk, which is ***** BEGIN CONFIDENTIAL ***** [redacted] ***** END CONFIDENTIAL ***** the average

of ***** BEGIN CONFIDENTIAL ***** [redacted] ***** END CONFIDENTIAL *****. CaptionCall viewed these calls as "canaries in a coal mine," as only a small percentage of customers ever make the effort to complain about problems with the service. Significant jumps in customer-care calls indicate serious problems being experienced by many more users than those few who call.

11. Customers complained about multiple technical glitches, which included (1) a randomly occurring 20-second delay between the time the customer pressed the "captions on" button and the time captions turned on; this bug was present in all phones that received the new firmware, which amounted to ***** BEGIN CONFIDENTIAL ***** [redacted] ***** END CONFIDENTIAL ***** customers; (2) with this new interface element, if a customer experienced network connectively problems, the phone would not display an error indicating a network problem; (3) some customers could not access captions at all; and (4) many complaints of popping and clicking on the CaptionCall phone. In addition, customer complaints indicated that the new "captions on" bar caused significant confusion among CaptionCall's customer base, which as I describe above, is more elderly, may be physically and/or cognitively impaired, and far less accustomed to or comfortable with technology than the general population. Indeed, CaptionCall's decision in early 2012 to switch to captions being on by default was in response to reported customer confusion about how to turn captions on and off, and in the 9 months since, all customers have come to assume that all they need do is pick up the handset and start dialing or speaking to use CaptionCall's service. The very transparency of the current design generates an increased necessity for design testing and consumer education to successfully enable a significant change such as the one mandated in the FCC's emergency order.

12. According to CaptionCall's customer-service center staff, some customers thought that if they did not select captioning on for every call, they would either have to give their phone back, or that other telephones in their house would cease to function. Some customers requested to return their phones because of the repeated changes to their service. Some customers reported that the captions-on button on the phone's touch screen was not functioning or that the phone appeared to be "stuck" and non-responsive.

13. CaptionCall's customer response indicated that the firmware's bugs and other flaws degraded the overall user experience, and large numbers of users had substantial difficulty activating the captions that they relied upon and needed. In addition, by rolling out the firmware to all users simultaneously with only mail and e-mail education, CaptionCall could not adequately educate customers about what the firmware change was, why it was required, and, most importantly, how to use their updated phones. Thus, on Tuesday, March 5, 2013, CaptionCall began the process of temporarily restoring its customers' phones to the previous user interface so that customers could continue to use

the service on which they rely while CaptionCall both diagnosed the bugs that were impeding operation and conducted more thorough and orderly development, testing, and rollout processes, with integrated customer education and training.

14. I have reviewed the public submissions of other IP CTS providers, such as Ultraec (reply comments filed March 12, 2013) and Sprint, CapTel, and Hamilton (ex parte letter filed April 16, 2013), as well as hundreds of IP CTS users, describing complaints about the newly mandated default-off feature. The customer feedback CaptionCall has received is consistent with the complaints documented in these filings.

15. Subsequently, CaptionCall worked diligently to fix the bugs in its firmware. From March 6-13, CaptionCall collected feedback through 943 customer interviews. In addition, from March 8-15, CaptionCall conducted face-to-face training with customers. During that process, CaptionCall deployed the default-off firmware to 115 customers, who were users with a minimum of 200 minutes of use from December 2012-February 2013. CaptionCall referred them to the marketing information that had been sent prior to the firmware update, told them that CaptionCall had new firmware for them, and that CaptionCall wanted to explain it to them and install it on their phones. These users were selected because they were high-volume users and presumably quite familiar with captioning. On March 19, 2013, CaptionCall deployed updated firmware—with the bugs presumably fixed—to those 115 customers. CaptionCall is monitoring those customers' usage for any technical issues or complaints. These users have not complained about technical glitches, but nonetheless, CaptionCall did receive complaints at the time of the update. Many customers were confused as to why captions had to off by default if they were the only person using the CaptionCall phone. Other customers had trouble using the touch screen, and had difficulty turning the captions on for every call.

16. CaptionCall has not deployed the debugged firmware to its entire user base. Based on the customer feedback, CaptionCall determined that the captions-on mechanism, a green bar, proved to be confusing for consumers. The bar was too large, did not look like a button or other user-interface control element, and contained too much text within the bar. Thus, the user had to assimilate too much information and likely experienced any number of issues, such as (1) being unable to hit the target for the button because of its size or dexterity limitations; (2) being unable to read the button due to color contrast issues; or (3) thinking the button was already enabled because of the green color.

17. To compound this issue, CaptionCall was not able to provide customers adequate training and support. Upon the initial installation of their phones, ***** BEGIN CONFIDENTIAL ***** [redacted] ***** END CONFIDENTIAL ***** of CaptionCall's customers received customized, in-person training, which is the level of service they expect. A mass rollout of new firmware with an inadequate interface and without that level of support resulted in mass confusion, causing users to (1) feel worried about the

implications of pressing the button (incur charges, etc.); (2) miss the button because they expected things to work as they had before; (3) forget to touch the button because their attention was focused on the telephone call or they were simply unable to remember to push the button to turn on captions; or (4) avoid pressing the button because they felt intimidated by the technology of the touch screen. .

18. Based on the problems identified in the two preceding paragraphs, CaptionCall concluded that its default-on interface was insufficient, and that a deployment of even the debugged version created an unacceptable risk of customer alienation. Thus, CaptionCall has developed a robust implementation plan to ensure that it develops and deploys firmware that is helpful and easy to understand for hard-of-hearing consumers, and that customers are adequately educated prior to deployment. No implementation of a default-off feature, however, will cure all associated issues, particularly with respect to emergency or incoming calls.

19. During the month of April, CaptionCall has been, based on customer feedback regarding changes needed to the user-interface design, developing two alternative firmware versions to help it understand the best option for customers. CaptionCall has already performed some limited field testing of redesigned user-interface elements, and CaptionCall is currently running the new firmware through automated and live regression testing, which assures that the new firmware meets minimum functional reliability requirements. On May 6, 2013, CaptionCall will begin alpha testing of the competing firmware versions. During this process, CaptionCall plans to visit 30-40 customers to show them the two different interfaces running on two different phones, to obtain feedback. As soon as possible, and by June 3, 2013, CaptionCall will begin deploying the software to its beta-testing group, which involves approximately 800 actual customers outside the company, divided into six to eight groups of approximately 100 each. CaptionCall will train beta testers using face-to-face, phone calls, mail, and e-mail. CaptionCall will then observe customers' usage for approximately five weeks to gain a reliable measurement of customer behavior with the firmware.

20. Following beta testing, CaptionCall will select the best firmware option. As soon as possible, and by July 1, 2013, CaptionCall will begin a general rollout of the firmware to its customer base, with a deliberate deployment plan to ensure that it can smooth out any bugs as the process progresses. CaptionCall will organize the deployment according to usage tiers, based on the assumption that those with the most ingrained habits and behaviors will require the most support. Approximately ***** BEGIN CONFIDENTIAL ***** [redacted] ***** END CONFIDENTIAL ***** customers in the first rollout tier will receive face-to-face training. Approximately ***** BEGIN CONFIDENTIAL ***** [redacted] ***** END CONFIDENTIAL ***** customers in a second tier will receive training and education through a phone call. Approximately ***** BEGIN CONFIDENTIAL ***** [redacted] ***** END CONFIDENTIAL ***** customers in a third tier, who are generally

casual or incidental users, will receive direct mail and email support. Each outreach method has a different timing requirement due to the resources involved in each. Face-to-face contacts can be completed at a rate of *** **BEGIN CONFIDENTIAL** *** [redacted] *** **END CONFIDENTIAL** *** each week. Outbound calling capability also allows *** **BEGIN CONFIDENTIAL** *** [redacted] *** **END CONFIDENTIAL** *** upgrades each week. Direct mail and email can be deployed within a few days to large groups. Deployment to these tiers will be carried out simultaneously which will result in a broad deployment to the third tier of *** **BEGIN CONFIDENTIAL** *** [redacted] *** **END CONFIDENTIAL** *** users the first week of the general rollout. Based on the allocation among the tiers, full deployment will take approximately 8 weeks. Thus, CaptionCall intends to complete its general rollout on our before August 19, 2013.

21. This timeline, which covers approximately six and a half months from the time CaptionCall first begin developing the new firmware, represents an aggressive timeline to deploy a complex update to the firmware compared to CaptionCall's standard development, testing, and deployment timelines. For example, CaptionCall recently released a less complex firmware update in December 2012. That project, which included all of the elements development and testing I described above, began in June 2012, which means it took approximately the same amount of time CaptionCall plans to use to deploy the default-on firmware.

22. Today, all CaptionCall trainers are required to verify that new customers have a medically recognized hearing disability necessitating their use of the service. CaptionCall also verifies the customer's identity. In addition, all CaptionCall customers received a newsletter in January 2013 informing them that IP CTS is a federal program and is funded by the federal government. CaptionCall's website also informs customers about the presence of the CA on captioned calls, as well as other details about the program. CaptionCall is further updating its materials supporting customer training to further address these points.

23. This concludes my declaration.

Executed on April 22, 2013.

Bruce Peterson
Senior Director of Marketing
CaptionCall, LLC
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