

May 2, 2013

VIA ELECTRONIC FILING (ECFS)

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

Re: **WRITTEN EX PARTE PRESENTATION**
Misuse of Internet Protocol (IP) Captioned Telephone Service; Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for Rulemaking Filed by Sorenson Communications, Inc. Regarding Cost Recovery Methodology for Internet Protocol Captioned Telephone Service
CG Docket Nos. 13-24, 10-51, and 03-123

Dear Ms. Dortch:

Hamilton Relay, Inc. ("Hamilton"), by its counsel, hereby submits this written *ex parte* to respond to reply comments submitted by Sorenson Communications, Inc. and its wholly owned subsidiary, CaptionCall, LLC (collectively, "Sorenson"), in connection with Sorenson's proposal for changes to the Internet Protocol Captioned Telephone Service ("IP CTS") rate methodology.¹ As Hamilton and Sprint noted in their initial comments, the existing Multistate Average Rate

¹ See Reply Comments of Sorenson Communications, Inc. and CaptionCall, LLC, CG Docket Nos. 13-24 and 03-123 (filed Apr. 4, 2013) ("Sorenson Reply Comments"). The Federal Communications Commission's ("Commission") Consumer and Governmental Affairs Bureau ("CBG") sought comment on the Sorenson's petition for rulemaking on March 8, 2013. See *Request for Comment on the Petition for Rulemaking Filed by Sorenson Communications, Inc. Regarding Cost Recovery Methodology for Internet Protocol Captioned Telephone Service*, Public Notice, CG Docket Nos. 13-24 and 03-123, DA 13-368 (rel. Mar. 8, 2013) ("Notice"); *Petition for Rulemaking of Sorenson Communications, Inc. and CaptionCall, LLC*, CG Docket No. 03-123 (filed Feb. 20, 2013) ("Petition"). Hamilton submitted comments in the proceeding on March 25, 2013. See *Comments of Hamilton Relay, Inc.*, CG Docket Nos. 13-24 and 03-123 (filed Mar. 25, 2013) ("Hamilton Comments").

Marlene H. Dortch
May 2, 2013
Page 2

Structure (“MARS”) plan for calculating IP CTS rates is superior to any price cap plan because the former is competitively-based.²

Sorenson’s reply comments, as with Sorenson’s initial pleading, fail to overcome the significant burden of demonstrating that the MARS rate produces a rate that is unreasonable or unrepresentative of the cost of providing IP CTS.³ Sorenson instead focuses on the growth of the interstate Telecommunications Relay Services (“TRS”) Fund rather than the causes of that growth.⁴ As discussed further here, the growth in IP CTS funding is predominantly due to increased IP CTS use, not IP CTS rate increases, and ironically the IP CTS growth curve has been significantly driven by Sorenson’s marketing practices, many of which the Commission now prohibits. The Commission has several options at its disposal to reduce the growth of the TRS Fund without harming the competitively-based MARS rate methodology, and without rendering TRS less accessible to the users who rely daily on these critical services.

I. THE GROWTH IN IP CTS FUNDING IS DUE TO INCREASED IP CTS USE, NOT RATE INCREASES

Sorenson has failed to demonstrate that the use of MARS to establish IP CTS rates is contributing to the growth of funding for IP CTS. In fact, Sorenson could not make such a

² Sorenson’s push for a price cap plan is at odds with its own recent statement that the Commission “should strive to establish rates that emulate a competitive market.” Sorenson ex parte letter, CG Docket Nos. 03-123, 10-51 (filed Apr. 22, 2013). Certainly there is no better method to emulate a competitive market than to use an average of rates derived from a competitive market – just as MARS does. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, ¶ 18 (2007) (“We believe the MARS plan, because it is based on competitively bid state rates, produces a rate that better approximates providers’ reasonable costs, and therefore promotes the efficient recovery of all costs.”).

³ Comments of Sprint Nextel Corporation, CG Docket Nos. 13-24 and 03-123, at 2-3 (filed Mar. 25, 2013) (“Sprint Comments”); Hamilton Comments at 6-7. Having failed its burden to prove why the Commission should depart from the successful MARS methodology in the Petition, Sorenson attempts to shift the burden to other commenters to explain why Sorenson’s proposal – and the speculative benefits Sorenson claims it would yield – is unreasonable. *See* Sorenson Reply Comments at 3.

⁴ Sorenson Reply Comments at 2. Sorenson asserts that “no commenter squares its position with the Commission’s interest in slowing the growth in IP CTS compensation.” *Id.* This assertion is demonstrably false. *See* Hamilton Comments at 7 (“Hamilton believes that a decision to make the interim IP CTS rules permanent, and to enforce those rules vigorously, is more likely to decrease pressure on the TRS Fund size than any rate reform effort, given that the Commission’s concerns in the [IP CTS Emergency Order] are limited to the *growth rate* of IP CTS as opposed to the *per-minute rate* for IP CTS.”) (emphasis in original). Hamilton supports making two of the three interim IP CTS rules permanent, but joins consumers in opposing the default captions off requirement on a permanent basis. *See* Hamilton Reply Comments, CG Docket Nos. 13-24 and 03-123, at 3-4 (filed Mar. 12, 2013).

Marlene H. Dortch
May 2, 2013
Page 3

demonstration because IP CTS growth is almost exclusively driven by a significant increase in IP CTS minutes of use (“MOUs”) over the last year. As the Commission noted in its emergency IP CTS Order, IP CTS MOUs for which compensation was requested by providers increased by an average of 11% per month from June 2012 to October 2012.⁵ Further, in October 2012, IP CTS MOUs minutes exceeded the minutes budgeted for IP CTS by the Fund Administrator by 38%.⁶ Clearly, the growth in IP CTS MOUs – and not the MARS methodology, which has been used for years – is responsible for the increase in IP CTS funding requirements.⁷

The ironic factor in this proceeding is that the petitioner, as one of the newer entrants to IP CTS, has been labeled as the root cause of the significant growth in IP CTS.⁸ Through inappropriate marketing practices such as \$50 referral fees which have since been banned, Sorenson has created the problem which it now claims to cure. Through the use of these practices, Sorenson is on the way to a dominant IP CTS market share, just as it has already achieved with respect to Video Relay Services (“VRS”).

Indeed, the Commission should be aware that Sorenson may be seeking a price cap methodology for reasons other than to limit the growth of the TRS Fund. For example, in the Order denying Sorenson’s request for a stay of the interim VRS rates in 2010, the Consumer & Governmental Affairs Bureau (“Bureau”) indicated that during the first two years of the VRS three-year rate cycle, the rates “significantly exceeded the actual costs of providing service.”⁹ The Bureau also noted that Sorenson paid a voluntary \$179 million dividend to a private equity fund and acquired substantial new debt, some of which was apparently acquired to fund the dividend.¹⁰ In contrast to MARS, which is calculated annually, a three-year price cap would likely allow Sorenson to satisfy creditor requirements for predictable multi-year cash-flow, satisfy debt obligations and thus solidify its dominant position in the IP CTS market, just as it did in the VRS market. However, the Commission’s role is not to adopt policies “designed to ensure

⁵ *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order and Notice of Proposed Rulemaking, CG Docket Nos. 13-24 and 03-123, FCC 13-13 ¶ 6 (rel. Jan. 25, 2013) (“*IP CTS Order*” in reference to the Order; “*IP CTS NPRM*” in reference to the Notice of Proposed Rulemaking).

⁶ *See id.*

⁷ The *IP CTS Order* notably makes no mention of the IP CTS rate.

⁸ *See id.* (Separate Statement of Commissioner Pai Approving in Part and Dissenting in Part) (“[T]he interim rules for certification and eligibility are clearly targeted at the practices of one provider—Sorenson. . . .”).

⁹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order Denying Stay Motion, CG Docket No. 03-123, DA 10-1287 ¶ 3 (CGB rel. Jul. 9, 2010).

¹⁰ *See id.* ¶ 21.

Marlene H. Dortch
May 2, 2013
Page 4

that Sorenson can profitably maintain its particular financial structure.”¹¹ Nor does the Commission need to stray from the MARS methodology which, thus far, has not led to any single dominant provider in any form of relay governed by MARS rates.

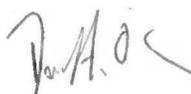
II. THE FCC CAN – AND SHOULD – REDUCE THE GROWTH OF THE TRS FUND

Despite Sorenson’s implication otherwise, Hamilton understands and supports the Commission’s efforts to limit the growth of the TRS Fund. But Sorenson’s rate proposal is, at bottom, a diversion and a distraction from the greater importance of controlling unsustainable TRS Fund growth. The Commission has other means at its disposal, including the federal certification process, to deal with providers that flout Commission rules and TRS Fund eligibility requirements.

The methodology that Sorenson proposes is essentially the same methodology currently under review by the Commission for being beset by waste, fraud and abuse.¹² The Commission should not duplicate the failures of that process by replacing a methodology which works with one that has been demonstrated not to work.

The MARS rate has been tested and proven over time, and is grounded in competition, the most rational of ratemaking approaches. MARS carries with it the added benefit of administrative ease. Sorenson’s proposal would move the Commission away from competitively-based rates towards a self-serving and complicated rate methodology. The proposal should be dismissed or denied.

Respectfully submitted,



David A. O'Connor
Counsel for Hamilton Relay, Inc.

¹¹ *Id.* (“We discern no legal or policy basis for setting rates at a level that is designed to ensure that Sorenson can profitably maintain its particular financial structure.”).

¹² The Commission has before it an open proceeding to re-set the rates for VRS, “which for many years had been beset by waste, fraud, and abuse and by compensation rates that had become inflated well above actual cost.” *Additional Comment Sought on Structure and Practices of the Video Relay Service (VRS) Program and on Proposed VRS Compensation Rates*, Public Notice, CG Docket Nos. 03-123 and 10-51, 27 FCC Rcd 12959, 12959 (2012) (“*VRS Public Notice*”) (footnotes omitted); *see also Structure and Practices of the Video Relay Service Program*, Further Notice of Proposed Rulemaking, CG Docket Nos. 03-123 and 10-51, 26 FCC Rcd 17367 (2011) (“*VRS FNPRM*”).