

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

<i>In the Matter of</i>)	
)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	
Structure and Practices of the Video Relay Service Program)	CG Docket No. 10-51
)	
Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate for the July 2013 Through June 2014 Fund Year)	

COMMENTS OF SORENSON COMMUNICATIONS, INC. AND CAPTIONCALL LLC

Sorenson Communications, Inc. and its wholly owned subsidiary, CaptionCall LLC, (collectively “Sorenson”) submit these comments in response to the *Public Notice* issued on May 17, 2013 by the Consumer and Governmental Affairs Bureau (“CGB” or “Bureau”) in which the Bureau seeks comment on the compensation rates and funding requirements for various forms of interstate Telecommunications Relay Services (“TRS”), and the associated TRS contribution factor, for the rate year running July 1, 2013 through June 30, 2014.¹ RLSA’s proposed contribution factor sets off a false alarm and would dramatically overfund the TRS fund for the coming year. RLSA radically over-projects the IP CTS demand—particularly in light of the

¹ See *Rolka Loube Saltzer Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for July 2013 Through June 2014 Fund Year*, Public Notice, DA 13-1137, CG Docket Nos. 03-123 & 10-51 (rel. May 17, 2013) (“*Public Notice*”). Rolka Loube Saltzer Associates (“RLSA”), the TRS Fund Administrator (“Administrator”), submitted the proposed rates in its May 1, 2013 filing. See *Rolka Loube Saltzer Associates LLC, Interstate Telecommunications Relay Service Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123 and 10-51 (filed May 1, 2013) (“*2013 TRS Rate Filing*”).

changes made by the Commission's interim rules—and that over-projection accounts for most of the substantial increase in the proposed contribution factor. Unless the Commission scales back the estimated amount of IP CTS compensation, thus lowering the contribution factor, it will over-collect by several hundred million dollars.

With respect to the various rates proposed: First, for IP CTS, while RLSA's computation on the MARS-based rate appears to be correct, that rate could be lower both in 2013-14 and in future years if the Commission implements Sorenson's proposed price cap methodology. Second, with respect to VRS rates, Sorenson has already filed extensive comments in response to the Bureau's October 2012 *Public Notice* detailing why the Administrator's rate proposals are flawed and would destroy VRS. Those comments apply equally to the nearly identical proposals in RLSA's 2013 *TRS Rate Filing*, and the Commission must therefore reject the Administrator's proposals with respect to VRS rates. The Commission should continue to address VRS rates as part of its overall VRS reform proceeding.

I. RLSA'S IP CTS DEMAND PROJECTIONS ARE SIGNIFICANTLY OVERSTATED.

The Commission seeks comment on RLSA's projection of IP CTS demand for the upcoming funding year. RLSA's proposal dramatically over-projects IP CTS demand, causing an unnecessary increase in the TRS contribution factor. The industry has projected 181,429,401 minutes for the upcoming funding year.² Because both the industry and RLSA under-projected last year, however, RLSA has rejected that proposal and instead presents three alternative IP CTS demand scenarios, each of which relies on historical IP CTS growth trends that—RLSA

² See 2013 *TRS Rate Filing* at 24.

makes clear³—do not take account of the changes the Commission made in its interim rules adopted in January 2013. RLSA’s alternatives are 290,319,247 minutes, 409,268,995 minutes, and in excess of 825,000,000 minutes,⁴ and RLSA concludes that the second figure is a “valid projection of demand for the 2013-14 funding year.”⁵ While the Commission should not repeat last year’s under-projection of IP CTS fund demand, it should also not overcorrect and vastly overestimate IP CTS fund demand this year.

Even RLSA’s most conservative projection significantly overstates demand. The RLSA Proposal references the recent order implementing new rules for IP CTS, but assumes that it will have negligible impact on demand—an assumption that is inconsistent with the real-world impact of the new order. Setting aside the question of whether the interim rules were necessary, prudent, or consistent with the ADA’s mandate of functional equivalence (which they were not), the reality is that the interim rules have dramatically slowed subscriber additions and have reduced the number of minutes of IP CTS calls placed by users. As a result, RLSA cannot rely on historical trends in subscriber and minutes-of-use growth. Rather, growth in the upcoming year will, in all likelihood, be dramatically lower than it has been in the past. Thus, the industry’s demand projection—181,429,401 minutes—is likely to be the more accurate of the RLSA projections, and, as it was derived before the IP CTS order’s effects were felt, may itself overstate demand. In no event, however, is it remotely likely that IP CTS minutes will approach 400,000,000 in the upcoming year.

³ See *id.* at 25.

⁴ See *id.* at 26-27.

⁵ *Id.* at 28.

RLSA now has better data than it had when made its projections, and should use that data to refine its projections. Specifically, RLSA now has IP CTS data from March and April 2013, from which it can observe the slowing of growth in telephone numbers served, as well as the reduction in average usage per telephone number for those consumers for which “default off” was implemented.⁶ Even if the Commission then inflates those estimates to provide a margin of error, the result will be far below 400 million minutes.

RLSA’s over-projection of IP CTS demand results in a serious overestimation of the funding required by the TRS Fund, raising the carrier contribution level to a needlessly high rate. RLSA estimates that the funding required for the 2013-2014 funding year is \$1,543.6 million and that the corresponding carrier contribution factor must be 0.0233.⁷ Even stepping back from RLSA’s projection of 409.3 million IP CTS minutes to its alternative of 290.3 million minutes would reduce TRS fund size by over \$200 million—and would reduce the proposed contribution factor to approximately .02006. And 290 million minutes is still larger than what Sorenson expects to be industry-wide IP CTS usage for the 2013-2014 rate year. Indeed, if RLSA adopted a contribution factor based on the demand projects of IP CTS providers, 181.4 million minutes, the contribution factor would be approximately .0172.⁸

II. WHILE AN IP CTS RATE OF \$1.7877 FOLLOWS THE MARS METHODOLOGY, THE COMMISSION COULD REDUCE IP CTS FUNDING REQUIREMENTS FURTHER BY ADOPTING CAPTIONCALL’S PRICE CAP PROPOSAL.

The Commission also seeks comment on adopting RLSA’s proposed IP CTS per-minute rate of \$1.7877 on an interim basis while the Commission evaluates CaptionCall’s price cap

⁶ Sorenson’s data filed with RLSA for April 2013 segregates the minutes from phones that met the “default off” requirement from those that did not.

⁷ See 2013 TRS Rate Filing at 34.

⁸ *Id.* at Exhibit 1-4.

proposal. Sorenson agrees that RLSA's proposed rate of \$1.7877 follows the prescribed MARS methodology, but urges the Commission to adopt CaptionCall's price cap proposal as quickly as possible. Adopting CaptionCall's price cap proposal will immediately save the Fund more than ten cents per minute and begin a progressive de-escalation of the per-minute IP CTS rate.⁹ CaptionCall's proposed price cap plan would not only incentivize providers to offer high quality services at a more efficient level; it will also relieve significant pressure from the TRS Fund and the corresponding carrier contribution factor. For this reason Sorenson believes the Commission should transition from RLSA's proposed interim IP CTS rate to CaptionCall's price cap proposal as soon as possible.

It is important to note that any price cap that the Commission adopts for IP CTS must properly incentivize providers to lower their rates by creating rate stability and predictability. This rate stability and predictability will allow providers to make investments in efficiency and recoup those investments. The price cap methodology that CaptionCall has proposed tracks the Commission's successful price caps for IP Relay and ILECs.¹⁰ The historic use of those price caps have led to lower expenditures by the TRS Fund and consumers and more efficient service from providers. To the extent that RLSA proposes or the Commission considers an altered price cap formula, Sorenson urges the Commission to adopt an IP CTS price cap rooted in historic success rather than one based on RLSA conjecture. The well formulated price cap that CaptionCall proposes will result in lower costs to the Fund, more efficient service from providers, and the highest quality of service to IP CTS users.

⁹ See Sorenson Petition for Rulemaking, at 2, CG Docket No. 03-123 (filed Feb. 20, 2013).

¹⁰ See *id.* 7-8.

III. RLSA'S VRS RATE PROPOSALS ARE FUNDAMENTALLY FLAWED AND WOULD DESTROY VRS.

As noted above, Sorenson has already filed detailed comments in response to the Bureau's October 2012 *Public Notice* explaining that the Administrator's rate proposals would essentially eliminate the kind of functionally equivalent VRS upon which VRS users have come to rely. In addition, Sorenson filed an ex parte letter on May 10, 2013, briefly addressing the nearly identical proposals in RLSA's *2013 TRS Rate Filing* and identifying the fundamental flaws in those proposals that will undermine the provision of VRS.¹¹ For the reasons set forth in those filings and below, the Commission must reject the Administrator's proposals with respect to VRS rates.

RLSA proposes an immediate Tier I and Tier II per-minute rate reduction from \$6.24 and \$6.23, respectively, to a unified per-minute rate of \$5.29. The RLSA Proposal further suggests reducing the Tier III per-minute rate from \$5.07 to \$4.51, with a target rate of \$3.40 after a three-year phase in. In October 2012 comment cycle,¹² numerous commenters documented the myriad flaws in RLSA's proposed VRS rate structure.¹³ Most significantly, RLSA relies on an economically infeasible rate-of-return methodology, which was designed for an entirely different service—wireline local exchange service. But the Commission abandoned rate-of-return regulation for large incumbent local telephone companies more than 20 years ago, and

¹¹ Letter from John Nakahata, Counsel, Sorenson Communications, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, CG Docket Nos. 10-51; 03-123 (filed May 10, 2013).

¹² See *Additional Comment Sought on Structure and Practices of the Video Relay Service (VRS) Program and on Proposed VRS Compensation Rates*, Public Notice, DA 12-1644, 27 FCC Rcd. 12,959 (2012) (“VRS Rate PN”).

¹³ See, e.g., Reply Comments of Sorenson Communications, Inc., at 5-15, CG Docket Nos. 10-51; 03-123, (filed Nov. 29, 2012) (summarizing criticisms of RLSA's VRS rate proposal by Consumer Groups, Purple, ZVRS, ASL/Gracias, Convo, NAOBI, and RID).

essentially ended its rate-of-return regulation of small telephone companies in the *Universal Service/Intercarrier Compensation Transformation Order* adopted in November 2011.¹⁴ The Commission has never suggested any reasoned basis for perpetuating the use of this discredited system for VRS, nor has it responded to the criticisms of cost-of-service ratemaking on this record. Clearly, however, reasoned decision making requires such an explanation.

The Commission is considering the appropriate long-term approach to VRS rates in its VRS rulemaking docket. There, rather than here, is the appropriate venue for reasoned decision making as to the level and structure of VRS rates, both on an interim basis and permanently. At this time, the Commission should simply retain the status quo pending issuance of its order, which has already been on the Commission's circulation list since March 28, 2013.

Whenever the Commission next addresses VRS rates, it should reject once and for all the unworkable "allowable costs" methodology. As Sorenson and others have explained repeatedly,¹⁵ that methodology relies on an artificially limited set of costs when calculating the rate proposal, rather than considering all of a VRS provider's costs. There are many sizeable costs—real and non-discretionary costs—that are excluded, ranging from actual taxes paid, to research and development, to actual (not merely "allowed") costs of capital. RLSA's VRS rate

¹⁴ See, e.g., *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, FCC 90-314, 5 FCC Rcd. 6786 (1990); *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd. 17,663 (2011) ("*USF/ICC Transformation Order*").

¹⁵ See Comments of Sorenson Communications, Inc., at 34, CG Docket Nos., 10-51, 03-123 (filed Mar. 9, 2012) ("Sorenson FNPRM Comments"); Letter from Christopher Wright, Counsel, Sorenson Communications, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, Attachment at 7, CG Docket Nos. 10-51, 03-123 (filed Sept. 17, 2012) ("Sorenson Sept. 17 Letter"); Comments of Convo Communications, LLC, at 9-10, CG Docket No. 10-51 (filed Aug. 16, 2010).

proposals are thus based on hypothetical costs, and not on the real world in which deaf and hard-of-hearing customers actually use VRS and VRS providers actually provide service.

Sorenson has also explained that the excluded costs are not trivial. Independent outside auditors have confirmed that Sorenson has significant costs that are not considered “allowable” by the Commission¹⁶—and that are therefore arbitrarily excluded from RLSA’s calculations. These include, *inter alia*, engineering costs, unreportable depreciation costs for expensive equipment without which most consumers could not use VRS services, costs to acquire ten-digit numbers, actual financing costs, and income taxes.

In particular, the persistent failure to treat the costs of providing videophones and similar equipment as “allowable” reinforces that the Commission should reject cost-of-service ratemaking for VRS. According to a recent U.S. Census Bureau Report, America’s deaf population, on average, is considerably poorer and less educated than the general population.¹⁷ At the same time, however, videophones are much more expensive than standard telephones and more comparable to smartphones. As a practical matter, then, the majority of deaf consumers simply would have not been able to afford the equipment to use VRS. And while the TRS Fund might accordingly be smaller, tens of thousands of deaf persons would not have experienced the life-altering advantages provided by VRS, in furtherance of the ADA’s goals.

Pretending that VRS providers’ real-world costs do not exist cannot make them go away—it only results in a rate unmoored from reality. As Sorenson has argued before, in the real world, no one provides VRS at a lower cost per minute than Sorenson—even when

¹⁶ See, e.g., Comments of Sorenson Communications, Inc., at 14, CG Docket Nos. 10-51; 03-123, (filed Nov. 14, 2012).

¹⁷ See Erika Steinmetz, *Current Population Reports, Americans with Disabilities: 2002, Household Economic Studies*, U.S. Census Bureau, available at www.census.gov/prod/2006pubs/p70-107.pdf.

Sorenson's debt costs are taken into account. Yet due to the flawed methodology at work, RLSA has proposed a rate that is far below the costs that Sorenson (and every other competitor) actually incur.

Finally, it bears re-emphasis that there is no justification in the record (or anywhere else) for limiting returns only to booked capital costs in a low-capital, labor-intensive industry like VRS. That is like saying that the only return an office temp agency may legitimately earn is on its investments in desks and office computers, rather than in its workers. It is simply not possible to run any kind of service-oriented business—one that relies on human beings (video interpreters), not equipment or other capital investment, as the core of the product—on the model underlying RLSA's proposal. Moreover, the rate of return on book capital investment—11.25 percent—that RLSA applies is completely arbitrary and indefensible. As Sorenson explained at length in its FNPRM comments, this rate was inexplicably imported from a wholly dissimilar context and inserted without any justification in the VRS ratemaking process.¹⁸ More specifically, the 11.25-percent figure was calculated from data relating to capital-intensive monopoly telephone companies (companies with major infrastructure investments) in the 1980s and the first seven months of 1990. But VRS is not a monopoly industry—any VRS provider can lose any customer to another provider at any time—nor is it dependent on substantial investments in infrastructure or other capital equipment. As a result, data relating to monopoly telephone service from more than 20 years ago clearly has no bearing on the appropriate rate of return for VRS providers. The Commission might as well have plucked the number out of thin air.

¹⁸ See Sorenson FNPRM Comments at 41-45.

The result of the approach underlying RLSA's proposed VRS rates—use of a discredited methodology with grossly understated costs and a miniscule return on investment—is a rate structure that will destroy VRS as we know it. No provider today has actual costs that even approach the \$3.40 per-minute ultimate rate that RLSA proposed in October, for which its current proposal reflects the first step, and no provider claims it could operate at that level in the future. Making such a large one year jump would also be highly destructive, as providers would have no opportunity to restructure gradually in a logical transition. Instead, the Commission would be mandating drastic, immediate cost cutting in an industry in which the largest variable cost is labor—which is the key to providing the service and thus cannot be slashed without affecting service. Thus, the Commission should reject RLSA's VRS rate proposal.

IV. CONCLUSION

The Commission should be realistic in estimating TRS fund demand and in setting the contribution factor. Sorenson certainly does not want to see a repeat of this past year in which the Administrator was concerned about exhausting the TRS Fund. But sound administration also should preclude substantial over-collection—which is what would happen if the contribution factor is set at 2.33% based on unrealistically high projections of IP CTS usage.

Respectfully submitted,



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