

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

In the Matter of

Structure and Practices of the Video Relay
Service Program

Telecommunications Relay Services and
Speech-to-Speech Services for Individuals
with Hearing and Speech Disabilities

CG Docket No. 10-51
CG Docket No. 03-123

**REPLY COMMENTS OF
SORENSEN COMMUNICATIONS, INC.,
AND CAPTIONCALL, LLC**

Michael D. Maddix
Director of Government
and Regulatory Affairs
SORENSEN COMMUNICATIONS, INC.
4192 South Riverboat Road
Salt Lake City, UT 84123

John T. Nakahata
Christopher J. Wright
Timothy J. Simeone
Steven A. Fredley
Mark D. Davis
Walter E. Anderson
Peter J. McElligott

WILTSHIRE & GRANNIS LLP
1200 18th St., N.W., Suite 1200
Washington, D.C. 20036
(202) 730-1336
jnakahata@wiltshiregrannis.com

September 18, 2013

*Counsel for Sorenson Communications, Inc.,
and CaptionCall, LLC*

TABLE OF CONTENTS

Table of Contents	i
I. Introduction and Summary	1
II. Argument	7
A. The Commission Should Adopt Market-Based Compensation.	7
1. The Potential Harms from an Auction-Based System Are Avoidable.	10
a. A Properly Designed Auction Will Preserve Customer Choice, Thereby Preserving Providers’ Incentives to Provide High-Quality Service and Innovative Technology.	10
b. A Properly-Designed Auction Will Enhance Competition.	12
i. There Is No Danger of Predatory Pricing.	13
ii. Even Low-Volume Carriers Will Be Able to Bid.	15
iii. Comparisons to State Auctions Are Faulty.	16
c. Auctions Do Not Threaten Consumer Privacy.	17
d. Auctions Need Not Result in Unqualified Providers.	17
2. The Commission Should Reject Purple’s Proposal to Auction <i>All</i> Minutes.	18
3. The Commission Should Not Rely on the Price of the Neutral Benchmark Platform to Set Prices.	18
B. The Comments Universally Recognize That the New Rules Will Impose Significant Exogenous Costs That Should Be Recoverable.	19
C. The Comments Demonstrate the Futility of Budgeting for an Ill-Defined Centrally Planned Research-and-Development Program.	21
D. The Commission Should Transition to Quarterly Contribution-Factor Adjustments.	24
E. The Commission Should Allow Hearing Users to Obtain Ten-Digit Numbers.	25
F. The TRS Fund Administrator Does Not Need the Advice of an Expanded TRS Advisory Council.	27
G. The Commission Should Not Blindly Apply VRS Rules to Other Forms of TRS.	29
H. The Comments Confirm That the Commission Should Not Disaggregate VRS Emergency-Call Handling.	32
I. The Commission Should Abandon Its 10-Second Speed-of-Answer Proposal.	34
J. The Commission Should Not Adopt Further Burdensome Administrative and Oversight Rules.	37

K. The Commission Should Restructure the Code of Federal Regulations.....	38
L. No Commenter Explains How the Commission Could Lawfully Prohibit TRS Providers from Using CPNI to Contact Users for Political or Regulatory Advocacy Purposes.....	39
M. The Commission Should Adopt Concrete Rules of Conduct, Not a Vague “Unjust and Unreasonable” Standard.....	40
N. The Comments Confirm Widespread Support for Eliminating the Guest-User Period.	41
O. The Commission Should Continue to Encourage Competition Through “Enhanced Features.”	42
P. The Commission Should Not Discourage Investment in Interpreter Training by Banning the Use of Reasonable Non-Compete Agreements.....	44
Q. The Commission Should Not Allow Interpreters to Work At Home.....	46
III. Conclusion.	47

I. INTRODUCTION AND SUMMARY

The record in this proceeding firmly establishes that in order to avert the destruction of Video Relay Service (“VRS”) the Federal Communications Commission (“Commission” or “FCC”) must move quickly to implement market-based compensation for VRS through a limited auction. Sorenson’s warning that the June 2013 *VRS Reform Order*¹ will push VRS rates unsustainably low was echoed again by CSDVRS in its *ex parte* letter of September 9, 2013, in which it warned that “ZVRS cannot sustain its level of service after 2016 due to the decreased and inadequate rate set for that time.”² Those rate levels that CSDVRS finds inadequate are ones that will apply to Sorenson no later than January 2015, because the Commission’s interim rate schedule reduces Tier 3 rates faster and to lower levels than Tier 2. No one should be surprised: in its incredible hubris, the Commission ignored all actual evidence that its rate-of-return methodology yielded unsustainably low rates when applied to labor-intensive VRS providers, rather than capital-intensive telephone companies. But the Commission should not make deaf consumers prisoners to its “we-know-better” rate-setting arrogance. A prompt auction of a small percentage of minutes in order to establish market-based VRS compensation rates is the only way to get a real-world test and to avoid destroying the most functionally equivalent form of TRS available to the ASL-speaking deaf and speech-disabled.

There is no reason for the Commission to delay holding an auction of a limited number of minutes to establish a market-based compensation rate. If the Commission thinks that its

¹ Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 8618 (rel. June 10, 2013) (“FNPRM” or “*VRS Reform Order*”).

² CSDVRS Ex Parte at 1, CG Docket Nos. 10-51 and 03-123 (filed Sep. 9, 2013) (noting that “ZVRS cannot sustain its level of service after 2016 due to the decreased and inadequate rate set for that time”) (“CSDVRS Ex Parte”).

“market structure” changes could lead to lower future rates, then it should hold an auction now to set rates for the next few years. Then, once the Commission has completed all of its market-structure changes, it can hold a subsequent auction to re-set rates going forward. The minimum conditions for an auction to establish a market-based compensation rate should be: (1) the auction is limited to a small percentage of minutes; (2) the Commission preserves consumer choice by allowing users to opt out of using the winning provider; (3) the Commission ensures that only qualified providers bid, as explained in Sorenson’s opening comments; (4) the Commission eliminates tiers and uses the auction to set a “unitary” rate; and (5) the auction-based system is phased in by the summer of 2014.

Although many of the filed comments object to auctions, those commenters do not distinguish an auction of a small number of minutes with the sole purpose of establishing market-based compensation rates from an auction that seeks to allocate the entire market to or among providers. There is a fundamental difference between these two concepts. An auction simply to establish a market-based compensation rate can be undertaken without sacrificing any significant degree of consumer choice, and raises no possibility of foreclosing competition for a substantial portion of the market. An auction to choose a single or few providers for all of VRS, or, as Purple proposes, to allocate market share among providers, significantly infringes on consumer choice and, at least to some extent, competition and quality of service.

As Sorenson explained in its opening comments, in an auction solely focused on setting a market-based VRS compensation rate, the Commission can—and should—ensure consumer choice by auctioning only a small percentage of minutes and by allowing consumers to opt out of using the auction winner. By guaranteeing consumer choice, the Commission would ensure that providers continue to compete for customers by providing high-quality service and innovative

technology—just as they do today. Nevertheless, a number of commenters oppose even these auctions, asserting that they would eliminate consumer choice, lower the quality of service, or reduce competition. But these concerns are either avoidable or imaginary—consumer choice is not eliminated if consumers have the option to select another provider by dialing around.

Concerns that an auction of the type proposed by Sorenson would reduce competition or lead to provider “lock-in” are simply meritless. In the first instance, because the auction only addresses a small number of minutes, it cannot reduce competition or “lock-in” consumers with respect to the vast majority of the market that is not subject to auction. Moreover, by forcing providers to compete on both quality *and* price, an auction-based system could increase competition.

Nor have opponents of auctions provided any reason to delay auctions for any amount of time, rather than holding them forthwith. Although some commenters, such as CSDVRS, suggest that it would be premature to implement auctions until the Commission has finished implementing the other reforms established by the *VRS Reform Order*, waiting that long will only result in the collapse of VRS. Indeed, delaying an auction until after all “market structure” reforms are completed, including building the reference platform and the neutral communications provider, could easily push a rate-setting auction past the end of 2014, or even 2015. After all, if the Commission implements its Lifeline-duplicates database on schedule, the Commission will have taken nearly two years from first ordering the creation of that database to finally putting it in place.³ There is nothing here that should give anyone confidence that the Commission will be speedier in creating commercial products (the reference platform and neutral

³ See Letter from Julie Veach, Wireline Competition Bureau, Chief, to D. Scott Barash, Acting Chief Executive Officer of the Universal Service Administrative Company, DA 13-1881 (rel. Sept 11, 2013).

communication service provider) than it was in implementing a database simply to catch duplicate Lifeline subscribers—a much less complex task.

Therefore, the Commission should hold an auction immediately, and if necessary, it can hold a second auction after the other reforms have occurred.

Regarding the other questions raised in the FNPRM:

- The comments unanimously confirm that the *VRS Reform Order* will impose significant new costs, and the Commission should provide a streamlined process for the recovery of those exogenous costs. *See infra* at II.B.
- The comments confirm that the proposed speed-of-answer requirement would require providers to hire a massive number of new interpreters at an exorbitant cost for minimal benefits. Moreover, the requirement would be impossible to meet because providers would be unable to hire enough new interpreters to meet the standard. *See infra* at II.I.
- The Commission should not require Sorenson to degrade its innovative video-mail system in order to interoperate with providers that have designed inferior video-mail systems. The comments demonstrate that providers are attempting to use the regulatory process to reduce competition on the merits, and the Commission should not indulge such a request. *See infra* at II.O.
- The Commission should continue to allow providers to use “non-compete” clauses in the employment agreements of Video Interpreters (“VIs”) within the limits of employment and antitrust laws. As Sorenson pointed out in its opening comments, Sorenson invests substantial resources in training its interpreters, and non-compete agreements are necessary to prevent competitors from free-riding on

this training by poaching interpreters after they have been trained. While many providers want to free-ride on Sorenson’s investment in training its workforce, no commenter seriously addresses these points, particularly with respect to the six-month term of Sorenson’s non-compete agreements. *See infra* at II.P.

- The comments nearly uniformly recognize that the Commission should not blindly transfer the VRS reforms to other forms of TRS. *See infra* at II.G.
- The Comments reveal a lack of support for the Commission’s proposal to apply Section 201(b)’s “unjust and unreasonable” practices standard to TRS. As Sorenson pointed out in its opening comments, such a vague rule raises fundamental problems of due process, and the comments confirm that the Commission cannot implement a more precise rule until the new structural rules are implemented. *See infra* at II.M.
- The comments confirm that disaggregating VRS emergency-call handling would lead to higher costs with little added benefits. Indeed, it could lead to less timely and less reliable handling of the most important VRS calls—those placed to 911. *See infra* at II.H.
- The comments confirm that the Commission cannot prohibit relay providers from using CPNI to contact users for political and regulatory purposes. This is just the 21st-century version of anti-bill-stuffer rules that some state Public Utility Commissions tried to pass over thirty years ago—and it is just as unconstitutional. As multiple commenters pointed out, this would violate the First Amendment, and the commenters who supported this prohibition failed to explain how such a prohibition could pass First Amendment scrutiny. *See infra* at II.L.

- The comments confirm that the Commission should allow hearing users to obtain ten-digit numbers for placing point-to-point calls, but because VRS providers do not have billing relationships with end users, the Commission should explore ways in which other entities—local exchange carriers, VoIP providers, etc.—can perform the number-assignment functions. *See infra* at II.E.
- The comments confirm that the Commission should transition from annual to quarterly contribution-factor adjustments. The majority of commenters support this change, which would allow providers to make more accurate revenue projections. And these benefits clearly outweigh the downsides cited by some commenters, including slightly increased administrative costs for TRS Fund contributors and slightly increased bill variability for consumers. *See infra* at II.D.
- The comments confirm that the Commission should continue to ban at-home interpreting. This proposal raises serious dangers to call quality, privacy, and reliability of VRS, and no commenter provides a satisfactory explanation for how these concerns could be addressed. *See infra* at II.Q.
- The comments demonstrate the futility of outsourcing private research-and-development functions to the National Science Foundation (“NSF”). While the private sector has generated numerous innovations that have made VRS successful, central planning is unlikely to generate the same level of innovation. Significantly, the Commission has failed to explain who will answer fundamental questions such as what technology to develop and what features to prioritize. As

nearly every commenter notes, the Commission should compensate providers, rather than NSF, for research and development. *See infra* at II.C.

- As Sorenson explained in its opening comments, the guest-user period has outlived its rationale and is inconsistent with the rules adopted by the *VRS Reform Order*. Every commenter supports elimination of the guest-user period. *See infra* at II.N.
- The comments confirm that there is no need for an advisory council to advise the TRS Fund Administrator about issues that have nothing to do with the Fund. Moreover, there is no need to create an advisory council to advise the *Commission* on these issues, most of which are better addressed through vigorous competition. *See infra* at II.F.
- The comments reflect unanimous support for restructuring Part 64.604 of the Commissions' regulations. Restructuring these rules will make it simpler for providers to determine what rules apply to them and eliminate the uncertainties caused by the present code. *See infra* at II.K.

II. ARGUMENT

A. The Commission Should Adopt Market-Based Compensation.

The Commission's current rate-setting process has put the VRS program on the road to disaster, setting rates on a path below *every provider's* actual costs of doing business. This has happened both because the Commission has selected a poor ratemaking methodology, an antiquated rate-of-return system that was designed for regulating the Bell monopolies rather than a highly competitive industry such as VRS, and because the Commission has misapplied the methodology—for example, by disallowing numerous necessary costs like ten-digit telephone numbers, E911 call routing and handling, and necessary equipment and taxes and by refusing to

allow providers to markup labor even though labor is the primary product being sold. In short, the Commission’s rate-of-return methodology is economically unsustainable when applied to VRS, and the FNPRM was correct to recognize “the need to replace cost-of-service ratemaking with more market-based approaches.”⁴

The comments confirm that an auction-based system is the best way to put the VRS program back on track to sustainability. As Purple explains, “[t]he transition to a market-based compensation methodology, if structured properly, will ultimately result in lower costs to the Fund and more choice and innovation for consumers.”⁵ Moreover, a properly structured auction would ensure that the Interstate TRS Fund pays market rates for TRS Service—rates that are high enough to cover providers’ expenses and a reasonable profit but no higher than necessary to achieve the goals of the TRS program.

Despite the many potential benefits of auctions, a number of commenters object to an auction-based system, claiming that an auction would lead to a parade of horrors ranging from a loss of consumer choice and lower-quality service to predatory pricing or other forms of monopolization. Some of these supposed harms are extremely unlikely. For example, as explained below, practices like predatory pricing simply aren’t a danger in a highly regulated industry where the Commission sets the price of service. Other purported harms are largely avoidable. For instance, the auction proposed by the FNPRM would involve only a small percentage of total minutes, completely preserving consumer choice for the vast majority of calls. And for the small percentage of minutes auctioned, the Commission can preserve consumer choice by allowing callers to opt out of using the winning bidder. Moreover, if the

⁴ FNPRM, 28 FCC Rcd. at 8707 ¶217.

⁵ Comments of Purple Communications, Inc. at i, CG Docket Nos. 10-51 and 03-123 (filed Aug. 19, 2013) (“Purple Comments”).

Commission preserves consumer choice by limiting auctions to a small fraction of minutes and by allowing consumers to opt out, then auctions should have no impact on quality of service. That is because providers would still compete for customers based on the quality of service and innovative technology—just as they do under the current system. Nor does an auction for a relatively small number of minutes threaten to let any provider “lock-up” the entire market. Claims that Sorenson would have an overwhelming advantage because of either history or current market share completely misapprehend what is being auctioned and its purpose—service to a small percentage of the market that will be used to benchmark compensation for the market as a whole.

Nevertheless, while the potential harms raised in the comments are not a reason to reject an auction-based system, they do illustrate the larger point that an auction will benefit the VRS program only if it meets a number of important criteria. Therefore, Sorenson supports the Commission’s proposal to move to an auction-based pricing system, but only if: (1) the auction is limited to a small percentage of minutes; (2) the Commission preserves consumer choice by allowing users to opt out of using the winning provider; (3) the Commission ensures that only qualified providers bid, as explained in Sorenson’s opening comments; (4) the Commission eliminates tiers and uses the auction to set a “unitary” rate; and (5) the auction-based system is phased in by the summer of 2014. An auction that does not meet these criteria will not save VRS and could, in fact, make the situation worse—and an auction that is implemented later than the summer of 2014 will be too late to stop rates from dropping below levels that no provider can sustain.

On the other hand, a properly designed auction-based compensation system implemented rapidly *does* have the potential to save VRS, and despite some commenters’ reservations about

such a system, no commenter proposes a viable alternative to an auction-based system. The majority of commenters who oppose auctions simply criticize a market-based system without offering any solution. To the extent the anti-auction commenters offer any “proposal” of their own, it is to maintain the current rate-of-return-based system. But as explained already, maintaining a rate-of-return-based system for VRS makes no sense—especially when the Commission has abandoned that system in every other context and when it results in rates at which no provider can sustain service. In short, the Commission should not let the perfect become the enemy of the good: even if an auction-based system is not perfect, it is the best solution to the problems currently faced by the VRS program. The Commission should therefore move quickly to adopt an auction-based system before the unsustainable rates yielded by the current rate-setting process cause an irreversible mass exodus from the VRS industry.

1. The Potential Harms from an Auction-Based System Are Avoidable.

The comments opposing auctions raise objections that fall into four main categories: (1) auctions will eliminate consumer choice, thereby eliminating providers’ incentives to offer high-quality service and innovative technology; (2) auctions will destroy competition by entrenching the winners of the auction or preventing the non-winners from offering service; (3) auctions will threaten consumer privacy; and (4) auctions will result in unqualified providers. Each of these objections is misplaced.

a. A Properly Designed Auction Will Preserve Customer Choice, Thereby Preserving Providers’ Incentives to Provide High-Quality Service and Innovative Technology.

The most common objection to an auction-based system seems to be that it would eliminate consumer choice and that without consumer choice, providers would have no incentive

to provide high-quality service or innovative technology.⁶ But while this is an important reason to reject Purple’s proposal—which would auction off *all* VRS minutes⁷—it is not an objection to the system advocated by Sorenson or proposed by the Commission. Any auction should include only a very small percentage of minutes, leaving consumer choice unconstrained for the vast majority of minutes. Moreover, because only a small portion of minutes would be auctioned, claims that auctions would lead to Sorenson dominating VRS are simply wrong: even if Sorenson were to win the auction, it would win the right to be the default provider only for a limited set of calls, not for anything close to all or a substantial portion of VRS. And for the small percentage of minutes that are subject to the auction, consumers should be able to opt out of using the winning bidder, ensuring that consumers continue to have choice over the provider they use for *all* calls.

Because a properly structured auction would preserve consumer choice, a second common objection to the auctions is also incorrect—that auctions would somehow lead providers to offer lower-quality service or less-innovative technology. The proponents of this theory concede that VRS has flourished historically because the system has encouraged providers “to differentiate [themselves] from each other with service or technology enhancements which expanded the availability and utility of VRS to the public.”⁸ But because the form of auction

⁶ See Comments of Telecommunications for the Deaf and Hard of Hearing, Inc. National Association of the Deaf, Association of Late-Deafened Adults, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Cerebral Palsy and Deaf Organization, American Association of the Deaf-Blind, California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc., and Speech Communications Assistance By Telephone, Inc. at 7-11, CG Docket Nos. 10-51 and 03-123 (filed Aug. 19, 2013) (“Consumer Groups Comments”); Comments of CSDVRS, LLC at 12-14, CG Docket Nos. 10-51 and 03-123 (filed Aug. 19, 2013) (“CSDVRS Comments”); Purple Comments at 4.

⁷ Purple Comments at 4.

⁸ CSDVRS Comments at 21.

supported by Sorenson would allow consumer choice, it necessarily would preserve the same incentives that already exist for providers to compete for customers by offering quality service and technological innovation. The only difference is that—unlike in the present system—they will also compete based on price, ensuring that contributors to the Interstate TRS Fund pay the lowest price providers are willing to accept to provide service.

CSDVRS suggests that service quality will drop for a similar but distinct reason—because providers will bid the price so low that none of them will be able to provide the high-quality functionally equivalent service that consumers currently receive. That would certainly be a fair criticism of the current “allowable cost”-based system—which CSDVRS accurately notes will drive rates so low that CSDVRS “cannot sustain its level of service after 2016 due to the decreased and inadequate rate set for that time.”⁹ But there is no reason to believe that an auction would lead to a similar result. Bidding prices below the actual costs of providing high-quality service would be self-defeating in that it would ultimately reduce demand for VRS and prevent providers from meeting the Commission’s mandatory minimum standards that are a prerequisite for compensation. These minimum standards will ensure the providers offer high-quality functionally equivalent service at whatever price they bid—and competition among providers will incentivize providers to offer service that exceeds these standards.

b. A Properly-Designed Auction Will Enhance Competition.

A second common objection to auctions is that they will somehow harm competition. This is an odd objection—transitioning to a market-based system would mean moving from a system where providers compete on quality but not price to a system where they compete on

⁹ CSDVRS Ex Parte at 1.

both. It is difficult to fathom how increasing the elements on which providers compete could be anything but procompetitive.

i. There Is No Danger of Predatory Pricing.

Nevertheless, CSDVRS and a number of other commenters assert that auctions will be anticompetitive because they will result in “predatory pricing.”¹⁰ Predatory pricing, however, makes no sense in a highly regulated market like VRS. Predatory pricing works only if a competitor can price below its actual costs today in hopes of recouping those losses by charging monopoly prices in the future.¹¹ But because the FCC sets the price for VRS, no rational firm could possibly think that it would have the prospect of recouping present losses by charging a monopoly price in the future. In such a world, predatory pricing simply does not make sense. In any event, predatory pricing can work only if the would-be monopolist can prevent competitors from re-entering the market once it raises prices.¹² But of course, nothing would prevent any of the current providers (or any future competitors) from re-entering the market; indeed, now that

¹⁰ See e.g., comments of Communication Access Ability Group at 3, Docket Nos. 10-51 and 03-123 (filed Aug. 19, 2013) (“CAAG Comments”) (asserting that “the very real danger exists that the dominant player will bid at or near a predatory level, being willing to absorb short-term losses in order to enjoy long-range freedom from competition”); CSDVRS Comments at 11.

¹¹ See *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 224 (1993) (“The second prerequisite to holding a competitor liable under the antitrust laws for charging low prices is a demonstration that the competitor had . . . a dangerous probability of recouping its investment in below-cost prices.”); see also ABA Section of Antitrust Law, *Antitrust Law Developments* at 282 (6th ed. 2007) (“The reason for this requirement is that consumers benefit from below-cost prices and are injured only if they will eventually be forced to pay supracompetitive prices when monopoly power is achieved. Moreover, a rational firm would only engage in predatory pricing if it anticipated that it would be able to recover its losses later through monopoly profits.”).

¹² E.g. *Richter Concrete Corp. v. Hilltop Concrete Corp.*, 691 F.2d 818, 824 (6th Cir. 1982) (“The existence of high entry barriers is significant in determining the existence of predatory intent, inasmuch as only where such barriers exist will there be incentive to price predatorily. For where entrance barriers are low, a firm may depress prices and drive competitors from the field only to find its market invaded by a host of new competitors.”).

the Commission is developing a “neutral platform” and end point reference platform, it would be even easier than it has been historically for new providers to enter the market because they will not even need to invest in their own call-handling infrastructure, end point hardware or software technology in order to provide service. In short, concerns about predatory pricing are unfounded.

CSDVRS’s real concern seems to be less about predatory pricing—*i.e.*, about a provider bidding below its *own* cost of providing service—and more about another provider bidding below *CSDVRS’s* current cost of providing service. But that is not an argument against auctions: it is simply an argument that CSDVRS may not currently be efficient enough to provide service at the market rate. This should not be surprising—the current rate-setting system *encourages* providers to be less efficient than they would be in a competitive market because it compensates less efficient providers at higher rates than more efficient providers. But if CSDVRS and other providers were forced to provide service at the market rate (of which there rationally can only be one), there is no good reason why they would not cut their costs of providing service. And if they cannot do so, there is nothing to stop other providers from entering the market. CSDVRS suggests—without any support—that Sorenson is more efficient because of “its superior economies of scale,” thereby preventing other providers from competing in an auction. But the sole evidence in the record actually demonstrates that Sorenson’s superior efficiency does not derive from its size. As the FCC’s former Chief Economist Michael L. Katz has already explained in this proceeding, there are no substantial economies of scale in the VRS industry, and “any economies of scale in the VRS industry are sufficiently small that multiple providers

can operate efficiently.”¹³ Indeed, VRS providers such as Purple and CSDVRS have sufficient minutes to capture virtually all scale economies available.

Nevertheless, to the extent there is concern that only one provider will be able to offer service at the rate offered by the winning bidder, the solution is not to abandon auctions. Rather, the Commission should provide that the auction will have at least two winners, a result that can be obtained by stopping bidding when only two bidders remain or by setting compensation equal to the second-lowest bid. Although there would be multiple ways to allocate market share among the various winners (for example, by using the previous year’s market share), Sorenson submits that the simplest way would be to allocate the auctioned calls (on a default basis) 50%-50% among the two winners.

It bears emphasis, however, that even if there are only two auction winners, that does not mean that there will be only two VRS providers. On the contrary, other providers would still be able to serve as a default provider for the vast majority of VRS traffic. And even for the minutes that were auctioned, unsuccessful bidders would still be able to compete for the users who opt out of using the winning bidder. All of these minutes would be compensated at the same rate for all providers—at the competitive rate that ensures at least two and possibly more viable providers.

ii. Even Low-Volume Carriers Will Be Able to Bid.

ASL/Global asserts that no provider other than Sorenson would bid because ASL is unaware of any provider “who could serve the top 100 called numbers.”¹⁴ This, however, is not an argument against auctions but an argument in favor of auctioning a smaller percentage of call

¹³ See Michael L. Katz, Reply Comments on VRS Policy ¶ 31 (Nov. 29, 2012) (copy attached as Attachment A to Sorenson’s Nov. 29, 2012 Reply Comments).

¹⁴ Comments of ASL SERVICES HOLDINGS, LLC, at 30, CG Docket Nos. 10-51 and 03-123 (filed Aug. 19, 2013) (“ASL/Global Comments”).

volume. As Sorenson explained in its opening comments, it would be better to auction a list of randomly-chosen numbers accounting for a few percent of overall call volume rather than auction the top-called numbers, which may not be representative of overall calling patterns. Doing so will ensure both that the rate established by auction reflects “average” VRS calls and that smaller providers are still able to bid. In addition, smaller carriers will not be shut out of the market. They would be able to compete to serve the vast majority of calls that are not in the auction pool.

iii. Comparisons to State Auctions Are Faulty.

CSDVRS similarly objects to auctions under the theory that auctions for state TRS service have resulted in a single provider. The comparison is a faulty one, however. As a threshold matter, CSDVRS concedes that states have typically auctioned *all* intrastate minutes to a single provider¹⁵—the exact opposite of what the Commission is intending to do here. Unlike the state auctions invoked by CSDVRS, the Commission has not proposed to allocate all minutes to a single provider, and other providers will continue to compete as they do today. Moreover, as Sorenson has already pointed out, there is no reason to prevent users from opting out or dialing around the winner of the auction if they so choose, further ensuring that providers will continue to compete for consumers by offering high-quality service. Nor does CSDVRS make a valid comparison to the auctions run by California, which CSDVRS claims to have been the only state-sanctioned auction that even allowed for multiple winners. Regardless of one’s views about the outcome of the California auction,¹⁶ California’s auction is incomparable to what the FCC has proposed to do here. Although the California auction allowed for more than one winner, it still allocated minutes among the winning providers, thereby ensuring that only

¹⁵ CSDVRS Comments at 12.

¹⁶ *Compare* Purple Comments at 5 (positive) *with* CSDVRS Comments at 13-14 (negative).

auction providers could provide service. The auction proposed by the Commission is very different: it would set rates using an auction-based system, while still preserving the competition that exists today.

c. Auctions Do Not Threaten Consumer Privacy.

The Consumer Groups also express concern about privacy and confidentiality,¹⁷ but the fact that a certain percentage of calls each month go to the Social Security Administration, a large business, or any of the other entities identified by the Commission says nothing about calls by particular individuals and therefore does not seriously intrude on privacy or confidentiality interests. In any event, calls to the entities enumerated by the Commission may be atypical, and it would make more sense to auction a randomly selected group of telephone numbers, which would cure any privacy or confidentiality problem.

d. Auctions Need Not Result in Unqualified Providers.

Finally, a number of providers speculate that auctions could induce collapse of the VRS industry if an inexperienced provider underbids more experienced providers and then finds that it cannot provide service at the rates it bid. This, however, is not a reason to reject auctions. Rather, it is a reason to restrict bidding to the providers that have demonstrated that they are able to provide the capacity that is being auctioned. Thus, as Sorenson proposed in its opening comments, providers should not be able to bid for more minutes than they provided in the previous year. It is important to note, however, that such a limitation does not place any limit on the number of minutes a company can provide outside of the auctioned minutes. As a result, this provision can lead to additional quality competition as firms try to gain customers in the general market so they can increase their ability to bid for more minutes in subsequent auctions.

¹⁷ Consumer Groups Comments at 5-7.

2. The Commission Should Reject Purple’s Proposal to Auction *All* Minutes.

The Commission should reject Purple’s proposal to auction *all* minutes. Unlike the auction system proposed by Sorenson, this proposal *would* implicate many of the objections lodged by other commenters—most importantly by interfering with consumer choice for all calls. Purple’s justification for this proposal is that “[t]here are numerous factors impacting calling patterns, such as the time of day, day of the month, and anomalies such as earthquakes, carrier outages, or weather-related issues.”¹⁸ But this unpredictability is inherent in the provision of VRS—whether 2 percent or 100 percent of calls are auctioned. In most cases, adding a set of randomly chosen numbers to a provider’s pre-existing subscriber base should decrease, rather than increase, the expected variation in call volumes, so Purple’s concerns appear to be misplaced.

3. The Commission Should Not Rely on the Price of the Neutral Benchmark Platform to Set Prices.

Every commenter agrees that reliance on the costs of the neutral-platform provider is, at best, “premature.” The Consumer Groups explain that using the neutral platform as a benchmark may inhibit innovation and argue that the neutral platform should be a floor and not a ceiling.¹⁹ Similarly, CSDVRS fears that using the neutral platform will “dumb down technology,”²⁰ and Purple calls reliance on the price of the neutral platform “premature.”²¹

Sorenson agrees that benchmarking rates to the price of the neutral platform is likely to harm innovation. As the other commenters suggest, there is a real danger that the neutral

¹⁸ Purple Comments at 4.

¹⁹ Consumer Groups Comments at 2-3.

²⁰ CSDVRS Comments at 26.

²¹ Purple Comments at 2-3.

platform will be a stripped-down platform, so that the use of its costs as a benchmark will kill innovation. Accordingly, as Sorenson stated in its opening comments, unless and until the neutral platform achieves marketplace acceptance, its cost should not be used as a benchmark.

ASL supports reliance on cost-of-service principles in setting rates for platform services, noting that “labor costs in Salt Lake City are significantly lower than those in Miami.”²² But this merely illustrates one of the many flaws in cost-of-service ratemaking: ASL ought not be rewarded if it concentrates its labor pool in a particularly expensive market.

B. The Comments Universally Recognize That the New Rules Will Impose Significant Exogenous Costs That Should Be Recoverable.

Under any system that sets rates, the Commission must allow rates to adjust when it imposes additional regulatory mandates that were either not knowable at the time competitive bids were submitted or, in the case of the pre-auction rate schedule, were not factored into the interim rates. For this reason, when the Commission imposed price caps on AT&T and later on the large incumbent local exchange carriers, it provided for adjustments for exogenous costs.²³ The new rules adopted in the *VRS Reform Order* will impose significant new compliance costs—including the extraordinary new costs of complying with a 30-second *daily* speed-of-answer requirement.²⁴ The comments unanimously confirm that, as CSDVRS explains, the costs of complying with the new requirements imposed by the *VRS Reform Order* “will be substantial,”²⁵

²² ASL/Global Comments at 27-28.

²³ See e.g. 47 C.F.R. § 61.45(b)(1)(i) and (d) (discussing the “Z” or exogenous change factor in the formula for price cap incumbent local exchange carriers’ price cap index).

²⁴ Comments of Sorenson Communications, Inc. at 24-28, Docket Nos. 10-51 and 03-123, (filed Aug. 19, 2013) (“Sorenson Comments”).

²⁵ CSDVRS Comments at 44.

and those costs should be compensable.²⁶ Consistent with Commission precedent, the interim rates must be subject to exogenous adjustment for these costs of meeting new regulatory requirements.

The comments also make clear that it will be important not to limit reimbursement for the new compliance costs to a particular rule or set of rules. Rather, as CSDVRS correctly notes, the Commission should allow for reimbursement of *all costs* “reasonably necessary to comply with the new requirements.”²⁷ This is because, as Purple rightly points out, many of the rules involve significant complexity “coupled with a relatively uncertain process and timeframe” for implementation, making it difficult or impossible to predict which requirements will impose additional costs, when those costs will occur, and what those costs will be.²⁸

For this reason, the comments also make clear that the Commission ought not arbitrarily limit the timeframe over which providers can recover exogenous costs. Purple and CSDVRS both make this point, generally agreeing that exogenous costs should be recoverable until the changes mandated by the Commission’s new rules are fully implemented²⁹ or two years after.³⁰ But while these suggestions are sensible for rules that impose one-time compliance costs, it bears emphasis that other categories—such as the new speed-of-answer requirement—will impose

²⁶ Purple Comments at 9 (stating that “given the range of complexity of the newly adopted requirements, coupled with a relatively uncertain process and timeframe for certain of the requirements to be solidified, providers should be able to submit for the exogenous costs involved in adapting to the changes required by the Order through the final date of such transition.”); CSDVRS Comments at 43-44 (noting that ZVRS’ additional costs to comply with the new requirements of the FCC Order “will be substantial” and “[t]he Commission should provide an open category of compliance costs providers can seek reimbursement....”).

²⁷ CSDVRS Comments at 44.

²⁸ Purple Comments at 9.

²⁹ Purple Comments at 9.

³⁰ CSDVRS Comments at 44.

extraordinary additional costs month after month and year after year. For this category of costs, it would be arbitrary to limit the exogenous-cost reimbursement to the costs incurred up to full implementation of the new rule. Rather, the Commission should provide for ongoing recovery of these new costs until the costs of these new requirements are included in the rate-setting process or until the Commission transitions to an auction-based process.

Finally, no matter what guidelines the Commission sets for recovery of exogenous costs, the record demonstrates the importance of a streamlined process for recovering those costs, including timely review and payment by the Fund Administrator. As Purple noted, the review and approval process in connection with the recovery of exogenous costs from the *First Internet-Based TRS Numbering Order* was not well defined and resulted in significant delays in reimbursement. Such delays are unjustified and can be avoided by clearly delineated rules prescribing prompt review and payment. Purple suggests payments be made within thirty days of the invoice submission,³¹ and Sorenson believes this time frame is reasonable and more than sufficient to allow the Fund Administrator to review, approve, and make the payment.

C. The Comments Demonstrate the Futility of Budgeting for an Ill-Defined Centrally Planned Research-and-Development Program.

The FNPRM sought comment on the appropriate budget for a research-and-development program to be conducted by the NSF. But as Sorenson pointed out in its opening comments, it is simply impossible to speculate about the appropriate budget for a program with no end goal, no focus, and no mission.³² The comments demonstrate the utter futility of such an endeavor. As Purple rightly noted, the Commission's proposal simply leaves too many questions unanswered: "[H]ow will the NSF develop priorities and who will drive the decision-making process? What

³¹ Purple Comments at 9.

³² Sorenson Comments at 28-31.

specifically will the NSF tackle beyond listening to consumer input and designing future enhancements accordingly? How much emphasis will be placed on innovation?”³³ Not surprisingly, apart from the Consumer Groups, no commenter even ventured a guess as to whether the proposed \$3 million budget was an adequate budget to meet the NSF’s undefined mission.

These fundamental yet unanswered questions demonstrate the futility of replacing private-sector innovation with Soviet-style central planning. Because the NSF will not be subject to the forces of a free market, questions like what to develop and when to develop it will necessarily be answered by a central planner—someone with no experience in the industry, no day-to-day interaction with consumers, and no financial stake in the outcome of innovations.³⁴ Any such endeavor is doomed to failure.

It should therefore not be surprising that many commenters believe the Commission should compensate providers for research-and-development costs.³⁵ For over a decade Sorenson and other VRS providers have expended considerable resources to create state-of-the-art offerings for deaf and hard-of-hearing VRS users. As the Consumer Groups note, VRS providers’ track record of successful innovation has significantly furthered the Commission’s statutory goal of technological advancement.³⁶ Yet, as Sorenson’s comments point out, the Commission has flagrantly ignored the significant achievements that VRS providers have made

³³ Purple Comments at 10.

³⁴ Indeed, these fundamental problems are symptomatic of a larger problem in which the FCC attempts to solve problems through state-controlled development—for example, by developing a “neutral platform” that will be operated by a government service contractor.

³⁵ ASL/Global Comments at 5-6; CDSVRS Comments at 43-44; Purple Comments at 10.

³⁶ Consumer Groups Comments at 12.

in advancing functional equivalence.³⁷ What is more, commenters agree that providers remain ideally situated to respond to VRS users’ technological demands. As Purple notes, “Providers have a far bigger incentive to develop new products and services and bring them to market faster and more efficiently” than NSF would, and they have “helped close the gap of functional equivalence” with products and services “now considered standard in the industry.”³⁸ The Commission should recognize the successful model for innovation that VRS providers have been offering for years and should, in lieu of its state-run research-and-development program, compensate providers for their research and development.

Of course, as Purple also points out, this provider-focused research and development benefits the industry as a whole—not just one provider.³⁹ Over the past decade, Sorenson’s innovation has significantly enhanced consumer options and has driven other providers to adopt similar offerings. Many of Sorenson’s pioneering offerings have been adopted by other providers, including, but not limited to, video codecs optimized for VRS motion; emergency call routing; and visual caller ID. Additionally, Sorenson’s cutting-edge VP-100 and VP-200 have long driven other providers to offer VRS users equipment that advanced functional equivalence.

In short, the Commission should abandon its ill-conceived plan to fund all research and development through the NSF and should instead compensate providers for their actual research-and-development costs so that providers may continue to offer VRS users ever greater functionally equivalent service.

³⁷ Sorenson Comments at 30.

³⁸ Purple Comments at 10.

³⁹ *Id.* at n.23.

D. The Commission Should Transition to Quarterly Contribution-Factor Adjustments.

The record supports a transition from annual to quarterly contribution-factor adjustments, which will allow more flexibility to address fluctuations in TRS expenditures, and will allow providers to make more accurate revenue projections.⁴⁰ The only opposition comes from CTIA-The Wireless Association (“CTIA”) and the United States Telecom Association (“USTA”),⁴¹ who assert without any explanation that the proposal would “provid[e] no discernible benefits.”⁴² But the benefits of the proposal are obvious. Because demand for TRS fluctuates, it is difficult for the TRS Fund Administrator to predict demand an entire year in advance. As the Administrator explained in its latest report, “RLSA does not expect that any of [the demand projections it submitted to the Commission for IP CTS] will produce an accurate reflection of demand during the 2013-2014 funding year.”⁴³ But the problem is not limited to IP CTS. As ASL/Global explained in its comments, it is “challenging to develop longer term projections on an annualized basis,” and “development of quarterly data will yield more accurate results.”⁴⁴

CTIA and USTA also complain that adjusting the contribution factor each quarter would increase the administrative costs of the TRS Fund Administrator and TRS Fund contributors, and that consumers would suffer because of increased bill fluctuations. But these supposed harms

⁴⁰ See ASL/Global Comments at 40-41; Purple at 12; Consumer Groups at 13-14.

⁴¹ See Comments of CTIA-The Wireless Association® at 3-5, CG Docket Nos. 10-51 and 03-123 (filed Aug. 19, 2013) (“CTIA Comments”); Comments of The United States Telecom Association at 4-5, CG Docket Nos. 10-51 and 03-123 (filed Aug. 19, 2013) (“USTA Comments”).

⁴² USTA Comments at 4.

⁴³ Rolka Loubé Saltzer Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate at 28, CG Docket Nos. 03-123 and 10-51 (filed May 1, 2013) (“RLSA May 1, 2013 Rate Filing”).

⁴⁴ ASL/Global Comments at 39.

are overstated. On the issue of administrative costs, the TRS Fund Administrator has already told the Commission that it intends to “continually monitor the demand projections for each of the services throughout the 2013-2014 year” and submit quarterly reports “regarding the accuracy of the demand projection and any anticipated impact on the Fund balance.”⁴⁵ As a result, the Administrator is already voluntarily incurring the majority of the administrative expenses that would be required. Nor have CTIA and USTA explained how a quarterly adjustment would create any substantial new costs for fund contributors, who already make quarterly adjustments for changes in the USF contribution factor. As for the impact on consumers, it bears emphasis that quarter-to-quarter fluctuations would ordinarily be small—and certainly much smaller than the inevitable year-to-year fluctuations that already occur. Moreover, the only consumers to comment in this proceeding actually *support* quarterly contribution-factor adjustments.⁴⁶ In any event, the minor inconveniences invoked by CTIA and USTA are small compared to the great harm that results when the Commission takes drastic actions to correct potential Fund shortfalls that cannot be corrected until the next Fund year. Accordingly, to assure accurate revenue projections and enhance the Commission’s ability to address shortfalls, the TRS Fund contribution factor should be adjusted quarterly, as reflected in the record before the Commission.

E. The Commission Should Allow Hearing Users to Obtain Ten-Digit Numbers.

The record in this proceeding overwhelmingly demonstrates that the Commission should allow hearing users to obtain ten-digit numbers. Indeed, commenters addressing the issue unanimously support this change because it will allow deaf users to communicate with ASL-

⁴⁵ RLSA May 1, 2013 Rate Filing at 29.

⁴⁶ Consumer Groups Comments at 13-14.

fluent hearing users without the need for an interpreter.⁴⁷ As the Consumer Groups note, this change would not only increase functional equivalence, but it would also lower costs to the TRS Fund by replacing compensable VRS calls with non-compensable point-to-point calls.⁴⁸

In implementing this change, however, it will be important to ensure that the costs of serving hearing users are not shifted onto the Interstate TRS Fund. Purple and CSDVRS propose to accomplish this task by allowing VRS providers to assign numbers to hearing users and permitting them to charge hearing users for the costs of assigning a number.⁴⁹ But while this approach would address the problem, it would be woefully inefficient. VRS providers currently do not have billing relationships with any users and therefore have not developed the administrative mechanisms necessary to bill users or collect payments. Setting up such a system would be expensive—and it would unnecessarily drive up the costs of providing numbers to hearing users.

As an alternative to this administrative nightmare, Sorenson urges the Commission to explore ways in which these functions can be performed by the hearing ASL user's current numbering providers—local exchange carriers, interconnected VoIP providers, and wireless providers with existing direct billing and support relationships with the hearing user.⁵⁰ Provisioning numbers through the hearing user's current numbering provider will also allow the TRS Fund Administrator to focus on the Commission's other reforms, rather than overwhelming the Administrator with substantial new information from providers justifying their billings to

⁴⁷ ASL/Global at 40; CAAG Comments at 5; CSDVRS Comments at 35; Purple Comments at 12; Comments of The Registry of Interpreters for the Deaf, Inc. at 11, CG Docket Nos. 10-51 and 03-123 (filed Aug. 19, 2013) (“RID Comments”).

⁴⁸ Consumer Groups Comments at 14.

⁴⁹ Purple Comments at 13; CSDVRS Comments at 38.

⁵⁰ Sorenson Comments at 33-34.

hearing users, as CSDVRS suggests.⁵¹ Further, using a hearing user’s numbering provider will also address CDSVRS’s concern about the “neutral video communication service provider” competing with other providers.⁵²

F. The TRS Fund Administrator Does Not Need the Advice of an Expanded TRS Advisory Council.

There is absolutely no need to create an advisory committee to advise the TRS Fund Administrator on issues like technology, efficiency, outreach, user experience, eligibility, and porting. The TRS Fund Administrator is charged with a single task—administering the Interstate TRS Fund. The Administrator simply does not need advice on a long list of topics that have nothing to do with the Fund. The comments only serve to emphasize that point—in fact, not a single commenter asserts that the TRS Fund Administrator needs advice on any of the issues listed in the FNPRM.

Instead, the majority of the comments address the need of the *Commission* for such advice. For instance, Purple, which wants to “repurpose the existing Council” and have it funded by the Administrator, concedes that the new topics proposed by the Commission mean “the committee should report directly to the Commission, not to the TRS Fund Administrator.”⁵³ CSDVRS similarly advocates for the Advisory Council’s “ability to directly and independently work with the Commission in the oversight and regulation of the VRS program.”⁵⁴ And ASL/Global claims the Advisory Council should “consult with the Commission” and “address issues regarding Commission regulation including interpretive matters, current regulatory

⁵¹ CSDVRS Comments at 38.

⁵² *Id.*

⁵³ Purple Comments at 14-15.

⁵⁴ CSDVRS Comments at 49.

concerns, and informal recommendations for regulatory changes or new regulation to the Commission for consideration through the formalized rulemaking process.”⁵⁵

Unfortunately, these proposals are not much of a change from the *status quo*. Although the current Council was created to advise the *Administrator*, the reality is that the Council has provided advice directly to the Commission in violation of the Federal Advisory Committee Act.⁵⁶ Indeed, the comments of the TRS Fund Advisory Council essentially admit the violation, noting that the Council has already addressed the expanded topics in its meetings and that “letters have been sent to the FCC with input on these topics and others pertaining to the quality of the various Relay services offered presently.”⁵⁷ This reinforces the point Sorenson made in its initial comments that an expanded TRS Advisory Council would have to be chartered under the Federal Advisory Committee Act, subject to its transparency and balanced membership requirements, and could not continue to function under the fiction that it advises the Administrator and not the Commission.⁵⁸

In any event, the record makes clear that there is no need to expand the Council to advise the Commission on these topics. The majority of the areas proposed by the Commission are best addressed through vigorous competition, rather than through a central-planning committee. With respect to many of the issues, such as eligibility, registration, porting, etc., the Commission’s *VRS Reform Order* already addressed those. No commenter explains why vigorous competition and appropriate regulation are insufficient to deal with these issues.

⁵⁵ ASL/Global Comments at 41.

⁵⁶ 5 U.S.C. App. 2 § 9.

⁵⁷ Comments of The Interstate Telecommunications Relay Service Fund Advisory Council at 3, CG Docket Nos. 10-51 and 03-123 (filed Aug. 19, 2013) (“Advisory Council Comments”).

⁵⁸ Sorenson Comments at 35.

Nevertheless, if the Commission determines to expand the Advisory Council, Sorenson does not object to the Consumer Groups' proposal to increase consumer participation.⁵⁹ Nor does Sorenson object to RID's proposal to include interpreters.⁶⁰ Interpreters are a critical part of VRS and their input into the issues that impact this service would be informative. Their participation may be especially valuable in light of the Commission's decision to increase the speed-of-answer requirement and proposal to increase it yet again. Aside from the significant costs these rules will impose on VRS providers, interpreters will likely also be adversely affected as these rule changes will increase their hours of work, limit their community interpreting opportunities, and effect their health and safety.

Finally, if providers are to participate on the Advisory Council, Sorenson concurs with the comments of the Advisory Council that such providers ought not to have a vote.⁶¹ And to the extent that providers participate at all, all providers should have a seat at the table. Equal participation by all providers is the only way to ensure that one provider does not advance its own interests at the expense of the other providers.

G. The Commission Should Not Blindly Apply VRS Rules to Other Forms of TRS.

The FNPRM sought comment on whether the Commission should extend the recently enacted VRS reforms to other forms of TRS. As a general matter, commenters nearly uniformly recognize that TRS technologies and services differ widely, and VRS reforms cannot be

⁵⁹ Consumer Groups Comments at 18.

⁶⁰ RID Comments at 12.

⁶¹ Advisory Council Comments at 2; *see also* Consumer Groups Comments at 18 (stating providers should participate on council but have no voting rights).

transferred blindly to other forms of TRS.⁶² With respect to IP CTS, the record also demonstrates that many of the specific reforms would harm providers' ability to serve their customers.

Regarding application of the TRS-URD to IP CTS, as Hamilton recognizes, it makes no sense to use a database to conduct per-call validation of IP CTS users, as IP CTS numbers are generally assigned by the user's telecommunications carrier and exist outside TRS databases.⁶³ Hamilton's observation also highlights that IP CTS providers have no control over when a call connects, and thus cannot delay connection pending verification. Thus, a delay in captioning pending verification will harm functional equivalence because users will miss the beginning of every call. Furthermore, as Sprint recognizes, placing aggregate user data into a single database presents significant privacy concerns, which are unnecessary in light of the substantial registration requirements the Commission recently adopted for IP CTS users.⁶⁴ Though the Consumer Groups support use of the TRS-URD in the IP CTS context, they also recognize the privacy concerns and vaguely propose that user data "must be afforded the highest level of privacy protection."⁶⁵ They do not, however, suggest how the Commission might go about providing this "highest level of privacy protection" to such an expansive database, nor do they balance the immense privacy risk against (1) the at-best marginal benefit of the TRS-URD in the IP CTS context and (2) the harm per-call validation would cause to functional equivalence.

⁶² See Comments of Hamilton Relay, Inc. at 6-8, CG Docket Nos. 10-51 and 03-123 (filed Aug. 19, 2013) ("Hamilton Comments"); Purple Comments at 16-17; Comments of Sprint Corporation at 6-7, 9-11, CG Docket Nos. 10-51 and 03-123 (filed Aug. 19, 2013) ("Sprint Comments"); Consumer Groups Comments at 21.

⁶³ Hamilton Comments at 7.

⁶⁴ Sprint Comments at 6-7.

⁶⁵ Consumer Groups Comments at 20-21.

In addition, the record does not support extending the neutral platform to IP CTS. Purple believes doing so is premature and that the Commission should learn from its VRS experience first.⁶⁶ The Consumer Groups raise similar objections, noting that the neutral platform is untested and that the hardware-specific nature of IP CTS would present challenges for integrating the neutral platform.⁶⁷

Regarding a possible national IP CTS outreach coordinator, as Sprint asserts, IP CTS customers have unique communications needs, and IP CTS providers are best positioned to educate the hard-of-hearing population about the benefits of IP CTS.⁶⁸ The Commission should take no action that will diminish the provider's role in outreach efforts. Thus, as Purple recognizes, marketing and outreach must remain compensable costs for IP CTS providers.⁶⁹

With respect to a prohibition against waste, fraud, and abuse, Sorenson reiterates this type of broad, vaguely worded prohibition will be very difficult to enforce without more explicit notice of the acts that are prohibited. Sprint claims that "there is no reasoned basis" to reject this proposal, but Sprint does not address the significant enforceability problems this provision would present.⁷⁰

Finally, regarding the proposal to extend the anti-slamming rules to IP CTS, commenters observe that there have been no documented issues of slamming in the IP CTS context.⁷¹ Indeed, slamming is unlikely because IP CTS providers generally do not assign numbers, and to switch

⁶⁶ Purple Comments at 17-18.

⁶⁷ Consumer Groups Comments at 21.

⁶⁸ Sprint Comments at 9-10.

⁶⁹ Purple Comments at 18.

⁷⁰ See Sprint Comments at 4.

⁷¹ See Hamilton Comments at 8; Sprint Comments at 10-11.

IP CTS providers, a customer typically must obtain new equipment.⁷² Accordingly, there is no need to extend slamming rules to IP CTS providers at this time.

H. The Comments Confirm That the Commission Should Not Disaggregate VRS Emergency-Call Handling.

In its opening comments, Sorenson opposed substantial changes to the way in which VRS emergency calls are currently handled. Sorenson argued that creating a dedicated entity to handle 911 calls from VRS users would be either prohibitively expensive or entirely unworkable. Sorenson also underscored that it is imperative to consult the interpreting industry in contemplating major change to VRS because such a change would have a tremendous impact on a VI labor pool that is in short supply. The comments reinforce these arguments.

Indeed, perhaps the primary point to emerge from the comments is that requiring certain VIs to handle only 911 calls will lead to higher costs. CSDVRS, for example, argues that the “only way to overcome service degradation” likely to result from consolidating all 911 VRS calls in a single provider “would be to compensate VIs at an extraordinary level.”⁷³ CSDVRS further claims that, absent higher pay, “[t]he ongoing high stress” and “arduous and exhausting work” involved in handling emergency VRS calls will “lead to great VI turnover in this environment,” and the “quality of interpreting will suffer as a result.”⁷⁴ Purple similarly notes that “[w]age costs for paying specially-skilled” VIs would “potentially be higher,” and that there is a “high potential for employee burnout and turnover resulting from handling only emergency calls.”⁷⁵ Purple also points out that the “special skills required for handling these calls would need to be clearly defined and additional training required,” and that there “would need to be a sufficient

⁷² See Hamilton Comments at 7-8.

⁷³ CSDVRS Comments at 45.

⁷⁴ *Id.*

⁷⁵ Purple Comments at 19.

number of specially trained CAs to properly schedule 24/7 service, presumably at multiple centers to ensure service availability.”⁷⁶ Of course, additional training and more staffing also mean higher costs.

Notably, while the comments of CAAG and of CWA/NIAN generally support consolidating emergency VRS calls in a single service provider, they nonetheless raise cost concerns similar to those of the VRS providers. CAAG, for example, cautions that handling 911 calls will require “a specialized team of CAs with experience handling . . . these challenging communications.”⁷⁷ Again, such a “specialized team” will, as CSDVRS and Purple point out—and as Sorenson also argued in its opening comments⁷⁸—require not only costly specialized training, but higher wages as well. CWA/NIAN also specifically argue that 911-only VIs will need “specialized training and supportive work environments,” without which “the limited pool of VRS sign language interpreters who would selectively decide to specialize in 911 will inevitably shrink.”⁷⁹ Again, though, there may not be any “pool”—not even a “limited” one—of VIs who will want to specialize in 911 calls without substantially higher pay than VIs now receive. As CWA/NIAN states, these calls are a “significant source of stress on video interpreters,”⁸⁰ and it is unlikely that many VIs will choose—absent substantial financial incentives—to focus exclusively on one of the most stressful aspects of VRS, which is already a particularly stressful job within the broader field of sign language interpreting.

⁷⁶ *Id.*

⁷⁷ CAAG Comments at 6.

⁷⁸ Sorenson Comments at 45.

⁷⁹ Comments of The Communications Workers of America and the National Interpreter Action Network at 5, CG Docket Nos. 10-51 and 03-123 (filed Aug. 19, 2013) (“CWA/NIAN Comments”).

⁸⁰ *Id.*

Of course, not all commenters focused on the higher costs inherent in providing VRS emergency call handling through a single provider. The Consumer Groups, for example, instead emphasize that their “strong reservations” about having one provider handle all emergency calls resulted from the fact that without competition there would be little incentive to provide the best possible service.⁸¹ And ASL/Global points out that the record simply does not appear to demonstrate any “need to have emergency 911 calls processed through a separate provider.”⁸² In short, as RID argues, at a minimum “further dialogue is necessary” with the interpreting community “prior to disaggregating emergency calls to 9-1-1.”⁸³

I. The Commission Should Abandon Its 10-Second Speed-of-Answer Proposal.

Sorenson’s opening comments demonstrated that it will be difficult, if not impossible, for providers to meet the 30-second *daily* speed-of-answer requirement imposed by the *VRS Reform Order*—and outright impossible to meet the FNPRM’s proposed speed-of-answer requirement.⁸⁴ Rather than adopt a *more* stringent speed-of-answer requirement, the Commission should modify the rule it adopted in June to allow providers to measure speed of answer *monthly* rather than *daily*.

The comments only confirm this conclusion. Indeed, the comments submitted by other VRS providers confirm that the proposed reduction would lead to a significant increase in cost and that there simply may not be enough interpreters to provide the staffing required to meet this proposed standard. For instance, CSDVRS notes that even to meet the new 85/30 standard, providers will have to “significantly increase staffing levels,” which will necessary mean

⁸¹ Consumer Groups Comments at 21-22.

⁸² ASL/Global Comments at 43-44.

⁸³ RID Comments at 13.

⁸⁴ Sorenson Comments at 47-53.

significantly higher costs of providing service.⁸⁵ And while Purple notes its support in principle for lowering the speed of answer, it recognizes that “increasing performance standards comes at a corresponding economic cost.”⁸⁶ The Commission, therefore, must adjust the rate to reflect this increased cost. But if the Commission continues to cut rates as proposed, yet further increases providers’ compliance costs with its rules, providers will not be able to continue providing service.

Apart from the significant costs associated not only with the proposed 10-second requirement, there simply are not enough interpreters to meet this standard. As ASL/Global notes, the limited pool of qualified, accredited video interpreters and the challenge that presents for meeting the speed of answer standards.⁸⁷ Indeed, it predicts that with a further reduction in the standard, “the demand for more Video Interpreters could well outstrip supply.”⁸⁸ What is more, given that “call volumes are neither guaranteed nor entirely predictable,” providers will be forced to staff “well in excess of call volumes it predicts.”⁸⁹

Sorenson is sympathetic to the concerns of the Consumer Groups which want to ensure that the speed-of-answer requirement is as low as possible in the name of functional equivalence. But the comments demonstrate that increasing the speed-of-answer requirement may actually harm functional equivalence by reducing the pool of available interpreters and decreasing the quality of interpreting.⁹⁰ CWA/NIAN note that due to increased speed of answer demands, some

⁸⁵ CSDVRS Comments at 29-30.

⁸⁶ Purple Comments at 20.

⁸⁷ ASL/Global Comments at 18.

⁸⁸ *Id.* at 44-45.

⁸⁹ Purple Comments at 20.

⁹⁰ *See, e.g.*, CSDVRS Comments at 29-30; Purple Comments at 20-21.

interpreters are leaving VRS or the profession altogether.⁹¹ Similarly, RID voiced its concern “about the impact a lower ASA will have on interpreters’ ability to provide functionally equivalent interpreting services, including the ability to interpret the call effectively, the availability of a qualified pool of interpreters, and the degradation of the consumer experience.”⁹² Given the increased demand for interpreters caused by the new 30-second standard, the Commission should not further exacerbate the problems of interpreter supply by reducing the speed-of-answer standard to 10 seconds.

In addition to opposing the 10-second standard, Sorenson disagrees with the Consumer Groups’ proposal to require 90 percent of all 911 calls using VRS be connected to the PSAP within 10 to 20 seconds.⁹³ The Consumer Groups’ proposal is a solution in search of a problem. The Commission has already required VRS providers to prioritize emergency calls, which providers do every day. Nothing in the record suggests that this requirement is insufficient to ensure emergency calls are handled as quickly as possible. Moreover, the Consumer Groups’ proposal ignores two important facts—VRS providers are not the PSAP and do not control the PSAP. There are approximately 6,000 PSAPs nationwide. VRS providers can prioritize 911 calls and connect the calls to the PSAP, but providers cannot control how quickly the PSAP will answer that call. It would be unfair saddle VRS providers with a separate speed-of-answer requirement for 911 calls when the ability to meet that standard is dependent on a third party. The genesis for the Consumer Groups’ proposal appears to be the call answering standard/model recommendation of the National Emergency Number Association (“NENA”). This

⁹¹ CWA/NIAN Comments at 3.

⁹² RID Comments at 16.

⁹³ *See* Consumer Groups Comments at 23.

recommendation, however, was written for the PSAPs, not for VRS specifically or for the TRS industry generally.⁹⁴ In short, the Consumer Groups' proposal is ill-conceived and unnecessary.

J. The Commission Should Not Adopt Further Burdensome Administrative and Oversight Rules.

In response to Section J of the FNPRM, Sorenson's opening comments argued that the Commission should not merely fine-tune its burdensome rate-of-return-based VRS regulation by modifying data collection and oversight rules is misguided.⁹⁵ Rather than weigh minor changes to such rules, the Commission should reject outdated and ineffective rate-of-return ratemaking and the accompanying data collection and oversight rules. At a minimum, however, as a number of other commenters argue, the Commission should not introduce additional administrative burdens on TRS providers.

CSDVRS, for example, "reiterates its concern about the steadily escalating administrative burden of reporting and compliance work."⁹⁶ CSDVRS sensibly "opposes any new requirements regarding the reporting of additional detailed information (such as their financial status), particularly given that the Commission already has access to virtually all corporate information through multiple annual audits which are now occurring for all providers."⁹⁷ Sorenson agrees that the Commission should not impose new reporting or data-collection requirements, but should instead attempt to simplify the current morass of TRS-related rules.

ASL/Global identifies one way in which the Commission could streamline and simplify its oversight and administration of TRS. Specifically, ASL points out that "[w]hat remains needed is a greater degree of transparency between the Commission and providers . . . in the

⁹⁴ See Consumer Groups Comments at 22 n.46.

⁹⁵ Sorenson Comments at 60.

⁹⁶ CSDVRS Comments at 48.

⁹⁷ *Id.* at 49.

form of clear communication of policies and interpretation.”⁹⁸ “[T]he formal process for seeking Commission determination . . . fails in attempting to obtain an understanding of interpretation or policy” in many cases, and “[a]t times policy has . . . evolved informally and has not always been clearly disseminated.”⁹⁹ ASL/Global suggests that the problem could be corrected by giving the “Fund Administrator . . . additional flexibility to discuss Commission interpretation and policy on a given issue,” although the Administrator’s views “would be limited to explanations and not constitute legal counsel or opinion.”¹⁰⁰

Sorenson agrees that clarity is often lacking under the Commission’s TRS rules, and that a process is needed whereby providers can obtain fast and authoritative interpretations of rules that are ambiguous or otherwise unclear. But the Fund Administrator lacks authority over many of these issues. Accordingly, an expedited process for seeking and obtaining rule clarification from the Commission—such as Sorenson has proposed in the past—would be far more helpful than supplying the Fund Administrator the “additional flexibility” suggested by ASL/Global.

K. The Commission Should Restructure the Code of Federal Regulations.

Sorenson’s opening comments argued that the Commission should reorganize the structure of 47 C.F.R. § 64.604 so that the regulations are service- and transmission-specific.¹⁰¹ The comments in this proceeding unanimously supported this proposal,¹⁰² and Sorenson continues to urge the Commission to enact this important change.

⁹⁸ ASL/Global Comments at 45.

⁹⁹ *Id.* at 46.

¹⁰⁰ *Id.* & n.61.

¹⁰¹ Sorenson Comments at 62.

¹⁰² See, e.g., ASL/Global Comments at 48; CAAG Comments at 7; Purple Comments at 21; Sprint Comments at 3.

L. No Commenter Explains How the Commission Could Lawfully Prohibit TRS Providers from Using CPNI to Contact Users for Political or Regulatory Advocacy Purposes.

In its opening comments, Sorenson explained that prohibiting TRS providers from using CPNI to contact their customers and encourage them to participate in the political process would clearly violate the First Amendment. Indeed, it is hard to see how the Commission’s proposed ban is anything more than a 21st century version of the bill-stuffer ban that the United States Supreme Court struck down in *Consolidated Edison Co. of New York v. New York Public Service Comm’n*.¹⁰³ Cloaking this ban on speech in the guise of a CPNI rule does not save it: the Tenth Circuit’s decision in *U.S. West, Inc. v. FCC*, struck down a similar limitation on the use of CPNI even though that rule affected only speech that “‘d[id] no more than propose a commercial transaction.’”¹⁰⁴ The rule proposed by the FNPRM would present a far clearer case of invalidity under the First Amendment than the *U.S. West* rules or *Consolidated Edison* because contacting TRS users to encourage them to participate in the “political and regulatory” process by engaging in “advocacy” is obviously “core political speech” for which the First Amendment’s protection is “at its zenith.”¹⁰⁵

The comments confirm the severe First Amendment problems raised by the Commission’s proposal. As CSDVRS notes, the proposed rule would “exceed the Commission’s legal authority to impose and doing so would run afoul of constitutional law.”¹⁰⁶ In addition, CSDVRS points out that “such a prohibition would degrade rather than advance functional

¹⁰³ 447 U.S. 530 (1980)

¹⁰⁴ *U.S.W., Inc. v. FCC*, 182 F.3d 1224, 1232-33 (10th Cir. 1999) (quoting *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 760 (1976)).

¹⁰⁵ See *Buckley v. Am. Const. Law Found. Inc.*, 525 U.S. 182, 186-87 (1999) (citing *Meyer v. Grant*, 486 U.S. 414, 422, 425 (1988)).

¹⁰⁶ CSDVRS Comments at 51.

equivalency in that it would impose a restrictive condition on VRS consumers inequivalent to what hearing callers experience.”¹⁰⁷ CSDVRS correctly urges that “CPNI rules, to the extent possible, should be identical for deaf and hearing individuals.”¹⁰⁸

Indeed, no commenter even attempts to explain how the Commission’s proposal could square with the First Amendment. While ASL/Global and the Consumer Groups argue that CPNI should not be used for public-policy advocacy,¹⁰⁹ neither ASL/Global nor the Consumer Groups even attempts to address the obvious First Amendment problems with the rule. Accordingly, the proposal must be rejected.

M. The Commission Should Adopt Concrete Rules of Conduct, Not a Vague “Unjust and Unreasonable” Standard.

The comments filed in response to the Commission’s FNPRM reveal a lack of support for the Commission’s proposal to apply Sections 201(b)’s “unjust or unreasonable” practices standard to TRS. This lack of support for the adoption of an amorphous and ill-defined standard is not surprising. As Sorenson pointed out in its comments, the Commission’s proposal raises fundamental problems of due process.¹¹⁰ Such a standard deprives regulated entities of fair notice of what conduct is prohibited and invites discriminatory and selective enforcement. Moreover, as USTA points out, until the Commission’s structural reforms are fully implemented, it will not be clear precisely what areas or practices the Commission needs to address.¹¹¹ Yet before the Commission can impose prohibitions on certain practices, it must specifically identify those problems and explain the parameters of the rule. Anything less would be arbitrary and

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 51-52.

¹⁰⁹ ASL/Global Comments at 48.

¹¹⁰ Sorenson Comments at 68.

¹¹¹ USTA Comments at 2.

capricious. The Commission should defer the adoption of any further rules targeted at preventing waste, fraud, and abuse, until the recently adopted rules are fully implemented. If the Commission concludes, after its new rules are fully implemented, that a need still exists for such rules, it should specifically identify those rules and define in concrete, understandable terms what conduct is prohibited. This process will ensure the fair and uniform enforcement of the rules and provide TRS providers fair notice of the law.

N. The Comments Confirm Widespread Support for Eliminating the Guest-User Period.

The commenters uniformly support the Commission’s proposal to eliminate the guest-user period.¹¹² The guest-user period was created to ease the transition to ten-digit numbering, a justification that has long ago disappeared. And as Purple points out, “there have been no consumer complaints associated with elimination of guest access in IP Relay.”¹¹³

The comments diverge on only one minor point—how quickly to eliminate the guest-user period. Sorenson and Purple support an immediate elimination. CSDVRS, however, suggests that the guest-user period should be “gradual[ly] phase[d] out” to provide VRS providers additional time to develop and implement procedures to ensure the timely verification of users.¹¹⁴ And Convo suggests maintaining the guest-user period until the deployment of the TRS-URD, arguing that the current verification process for some users may occasionally take days, preventing the user from making calls during this period.¹¹⁵

¹¹² Sorenson Comments at 70; Purple Comments at 22; CSDVRS Comments at 48; Comments of Convo Communications, LLC at 3-4, CG Docket Nos. 10-51 and 03-123 (filed Aug. 19, 2013) (“Convo Comments”).

¹¹³ Purple Comments at 22.

¹¹⁴ CSDVRS Comments at 48.

¹¹⁵ Convo Comments at 3-4.

But the arguments for delay or gradual phase-out ring hollow. Sorenson has found that it is able to verify the vast majority of users at the same time it installs equipment, meaning that the delays cited by Convo are rarely an issue. Accordingly, the benefits of eliminating possibly fraudulent calls from unverified users outweigh the small benefits of retaining the guest-user period. Moreover, CSDVRS has failed to explain why it would take more than a few days or weeks to develop a process to “ensure the timely verification of users.” The temporary guest-user period was intended to help facilitate the transition to ten-digit numbers. As the Commission noted, that transition period ended approximately three and a half years ago, surely enough time for providers to implement a timely process for verifying its users.

O. The Commission Should Continue to Encourage Competition Through “Enhanced Features.”

The FNPRM requested comment on its proposal to amend its rules to “require that, if a VRS provider offers a video mail feature to its customers, the provider must ensure that video mail message can be left by point-to-point callers who are customers of other VRS providers and are using access technology provided by such other providers.”¹¹⁶ Although this request clearly implies that interoperability of video mail for point-to-point calls is not currently required, Purple and CSDVRS incredulously claim that video-mail interoperability is already mandated by existing rules and encourages the assessment of enforcement penalties against any provider’s “unlawful” past practices.¹¹⁷ Purple’s and CSDVRS’s comments reveal too much. Rather than compete in an open market, they want the Commission to punish a competitor for having the audacity to produce an innovative product. This is not the Commission’s function, and the

¹¹⁶ FNPRM, 28 FCC Rcd. at 8722 ¶ 275.

¹¹⁷ Purple Comments at 22; CSDVRS Comments at 42.

Commission should reject the invitations of Purple and CSDVRS to interfere with pro-consumer competition among providers.

Indeed, this is precisely what the Commission did when similar demands were made in the context of VRS interoperability.¹¹⁸ And the reason the Commission rejected those demands was its desire that providers “offer such [enhanced] features on a competitive basis” because competition “encourage[s] innovation.”¹¹⁹ There is no reason to reverse course now. If, however, the Commission decides to do just that, it must offer a reason based on record evidence, and the self-serving demands of competitors are not sufficient.

Purple and CSDVRS have offered nothing more than unsubstantiated claims that their systems are better than Sorenson’s. Their systems may be better from Purple’s and CSDVRS’s perspective because they required little innovation, but that does not mean these systems are better for the consumer. If the Commission is going to select one video-mail system over another, it must at a minimum consider which system best meets the needs of consumers. Sorenson maintains that its system is best able to do that. Indeed, its system took into consideration two significant factors not addressed by prior designs: (1) the low bandwidth available to many of its VRS customers and (2) the need for a clear, sharp video image so customers can fully understand the subtle facial expression and finger movements of ASL. Based on a developed record, the Commission would likely conclude that given the technical limitations and ASL requirements of VRS consumers, Sorenson’s video-messaging system is vastly superior to those offered by its competitors. Until that record is developed, there is no

¹¹⁸ *Telecommunications Relay Servs. And Speech-to-Speech Servs. For Individuals with Hearing and Speech Disabilities*, 24 FCC Rcd. 791, 820 ¶ 63 (2008).

¹¹⁹ *Id.*

basis for the Commission to interfere with vigorous competition involving enhanced features—one of the few areas in which providers compete.

P. The Commission Should Not Discourage Investment in Interpreter Training by Banning the Use of Reasonable Non-Compete Agreements.

Several VRS providers continue to use recycled arguments that seek to advance their policies of poaching Sorenson VIs rather than investing in high-quality training and requirements.¹²⁰ Those providers continue to assert that “non-compete” agreements artificially reduce the number of available interpreters for hire.¹²¹ Yet as Sorenson has repeatedly explained, “non-compete” agreements increase the pool of qualified interpreters by allowing Sorenson to invest in identifying and training previously under-qualified interpreters. This is largely because those competitors refuse to expend the resources necessary to train interpreters to meet the high standards required by the FCC and VRS users. Instead, those providers seek a far cheaper method—poaching Sorenson-trained VIs. It is Sorenson’s competitors’ actions, or rather lack of action, that restricts the pool of qualified interpreters. The Commission should not sanction their behavior by banning “non-compete” agreements.

If the Commission is concerned that the pool of qualified interpreters is too limited, it should encourage VRS providers to invest time and resources in developing the skills of under-qualified VIs. Sorenson’s training of these interpreters, who already possess significant interpreting skills, includes additional supervision, mentoring, and skill development in certain areas in order to be able to handle VRS calls. Sorenson is unaware of any other provider that

¹²⁰ Sorenson encourages the Commission to review its 2007 proceeding on “non-compete” agreements, including Sorenson’s comments which discuss non-compete agreements in considerably more detail. *See* Comments of Sorenson Communications Inc., CG Docket 03-123 (filed Sept 4, 2007). (“Sept. 4, 2007 Sorenson Comments.”)

¹²¹ ASL/Global Comments at 50; CSDVRS Comments at 47; Purple Comments at 23; CAAG Comments at 10.

carefully searches for the most promising non- and lower-qualified interpreters and then recruits, hires, and trains them extensively.¹²² Sorenson’s training of some interpreters *prepares* those interpreters for certification while Sorenson’s competitors may only hire already certified interpreters.¹²³ If other providers are concerned that the labor pool of qualified VI interpreters is too small to meet their needs, the Commission should encourage those providers to invest in the identification and training of promising less-qualified interpreters.

Additionally, commenters do not and cannot cite applicable authority for the Commission to ban or nullify non-compete clauses. The clauses are generally governed by, and are lawful under, state law and laws of general applicability such as, in limited cases, antitrust. “Non-compete” employment agreements are lawful and do not violate any provision of the Communications Act or the Commission’s rules. What is more, as Sorenson explains above, Sorenson’s recruitment and training methods actually *increase* the pool of qualified VIs, thereby seriously undermining commenter’s arguments that the Commission should ban “non-compete” agreements because the agreements minimize the labor pool and prevent the Commission from ensuring VRS is available in the most efficient manner.¹²⁴ Instead, the Commission should recognize that Sorenson’s “non-compete” agreements, which are limited to six months, allow Sorenson to increase the pool of qualified interpreters while protecting its financial and

¹²² Sept. 4, 2007 Sorenson Comments, Attachment A at 3 ¶ 7.

¹²³ *Id.* at ¶ 8.

¹²⁴ See Purple Comments at 23. The argument that Purple advances is especially ludicrous given that the Commission’s tiered compensation continues to prop-up inefficient VRS providers such as Purple. See *Structure and Practices of the Video Relay Serv. Program, Telecommunications Relay Servs. and Speech-to-Speech Servs. for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17,367, 17,382, ¶24 (2011).

proprietary interests.¹²⁵ Allowing Sorenson to invest in its state-of-the-art training ensures that VRS users have the best possible service available.

Q. The Commission Should Not Allow Interpreters to Work At Home.

The FNPRM sought comment on whether the Commission should allow interpreters to work from home overnight. Multiple commenters, including at least one interpreter group, recognize the significant dangers at-home interpreting presents for call privacy and reliability.¹²⁶

Those commenters that support at-home interpreting present seriously flawed plans. ASL proposes an elaborate application process that would effectively outsource its HR function to the Commission.¹²⁷ This proposal would drain Commission resources and could not be implemented. RID simply recommends that “guidelines and safeguards must be put in place to protect the health and safety of the interpreter, the experience of the consumer, and the integrity of VRS.”¹²⁸ But RID does not identify any such guidelines or safeguards, and its proposal begs the question. The reason at-home interpreting is not allowed is that there is no adequate way to protect interpreters, consumer experience, and the integrity of VRS. Finally, CSDVRS touts its remote interpreting system.¹²⁹ But this system is still just a proxy for the consumer-protection and service-reliability that a call center ensures. Underlying CSDVRS’s comments is its unwillingness to match Sorenson’s investment in call centers that allow reliable service and provide for interpreter safety. CSDVRS should not be allowed to sacrifice the needs of VRS consumers so that it can avoid its obligation to provide adequate facilities.

¹²⁵ Sept. 4, 2007 Sorenson Comments, Attachment A at 7 ¶ 16.

¹²⁶ See CWA/NIAN Comments at 6; Purple Comments at 24; Consumer Groups Comments at 25.

¹²⁷ ASL/Global Comments at 50-51.

¹²⁸ RID Comments at 21.

¹²⁹ CSDVRS Comments at 33.

Accordingly, there simply is no need to change the status quo with respect to the Commission's prohibition on at-home interpreting. There are no issues with providers' ability to staff interpreters at night, and despite providers' best efforts, there simply is no way for an at-home setup to duplicate the privacy, reliability, support, and training that exists at properly run call center.

III. CONCLUSION.

For these reasons, the Commission should adopt a market-based compensation mechanism as soon as possible and by the summer of 2014. It should also:

- allow providers to recover the costs of complying with the new rules;
- abandon its plans to replace market-based research and development with centralized planning funded through the NSF;
- require RLSA to propose contribution factors quarterly;
- permit hearing individuals to obtain ten-digit numbers while ensuring that providers do not bear the costs of this change;
- reject the proposal to expand the role of the TRS Fund Advisory Council;
- reject the proposal to blindly apply VRS rules to IP CTS;
- reject the proposal to disaggregate emergency-call handling;
- reject the unrealistic ten-second speed-of-answer requirement;
- abandon rate-of-return regulation and ensure a level playing field among VRS providers;
- restructure Part 64.604 of its regulations;
- reject the proposal to prohibit TRS providers from using CPNI to contact TRS users for political purposes;
- adopt clear rules rather than an ill-defined "unjust and unreasonable" standard;

- eliminate the guest-user period;
- reject the proposal to dampen competition by requiring providers to share enhanced

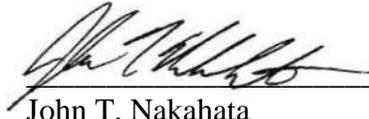
features;

- reject the proposal to eliminate non-competition agreements in VIs' employment

agreements; and

- reject the proposal to allow VIs to work at home overnight.

Respectfully submitted,



John T. Nakahata
Christopher J. Wright
Timothy J. Simeone
Steven A. Fredley
Mark D. Davis
Walter E. Anderson
Peter J. McElligott

WILTSHIRE & GRANNIS LLP
1200 18th St., NW, Suite 1200
Washington, D.C. 20036
(202) 730-1336
jnakahata@wiltshiregrannis.com

*Counsel for Sorenson Communications, Inc.,
and CaptionCall, LLC*

Michael D. Maddix
Director of Government
and Regulatory Affairs
SORENSEN COMMUNICATIONS, INC.
4192 South Riverboat Road
Salt Lake City, UT 84123

September 18, 2013