



December 17, 2013

VIA ECFS

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123

Dear Ms. Dortch:

I write to correct a gross mischaracterization in the December 9 letter filed by Purple Communications, Inc., (“Purple”). In its letter, Purple claims that, based on the Inspector General’s (“IG’s”) audit for fiscal year 2011, Sorenson is “overcompensated” by the iTRS Fund, while all other providers “are being fairly compensated.”¹ This is a distortion highlighting the upside-down Alice-in-Wonderland world that results from a myopic focus on cost-of-service ratemaking. While Purple apparently intends to give the impression that Sorenson has received money from the iTRS Fund to which it is not entitled, this is simply false, and the Inspector General made no such finding. Sorenson provided service and was compensated at the per-minute rates set by the Commission. There is no sense in which Sorenson is “overcompensated” for providing VRS—and if anything, the opposite is true: because the other VRS providers are compensated at average rates significantly higher than Sorenson’s rate, it is the other providers who are “overcompensated” for providing VRS. Moreover, the auditor’s reports implicitly confirm what is usually considered positive: Sorenson provides its VRS at a lower total cost per unit (including “allowable” and all other costs) than all of its competitors, for which it has also received lower average per-unit remuneration than any of its competitors. It is only in the wacky world of cost-of-service regulation that providers with a higher total cost of service per unit can be considered “good” because their higher costs are in the “right” categories, while a provider with a lower cost of service per unit is excoriated because some of its costs fall into the “wrong” categories. These upside-down results are a significant reason why the FCC and many state regulators have largely abandoned cost-of-service ratemaking for telephone services and instead have implemented price-cap regulations that focus on output price, not input costs and fanciful profit calculations.

Purple misleadingly relies on a single sentence in the Inspector General’s report. In that sentence, the auditor noted that the compensation Sorenson received for providing VRS exceeded the reportable costs listed on Sorenson’s Relay Service Data Request (“RSDR”)

¹ Letter from Monica Desai, Counsel to Purple Communications, Inc., to Marlene Dortch, Secretary, FCC, at 2, CG Docket Nos. 03-123, 10-51, and 13-24 (filed Dec. 9, 2013).

form²—an incomplete list of costs that include some, but not all, of the costs of providing VRS.³ These non-reportable categories included the costs of developing new and better video phones and other VRS equipment; the costs of installing necessary equipment in the homes of deaf customers; the costs of purchasing 10-digit phone numbers to be provided to users; as well as the corporate realities of state and federal taxes, interest, the cost of raising capital, and depreciation.⁴ All of these costs are very real; indeed, the IG auditor’s own report conceded that Sorenson had numerous costs that were not included on the RSDR and that all of those costs “were supported by adequate documentation.”⁵ In other words, Sorenson’s total costs—which must be below the “allowable” costs of other VRS providers since the IG found that the other providers’ costs were at levels that reconciled to their higher levels of per-minute compensation—are real, even if some of them do not fall into the “allowable” categories.

Moreover, it is entirely unremarkable that Sorenson’s compensation for providing VRS exceeded the incomplete list of costs that were reportable on the RSDR because *this is exactly what the FCC intended when it set VRS rates*. In the 2010 Order that set rates for the 2011 fiscal year, and which continued through the effective date of the June 2013 Order, the Commission expressly made clear that “the rates we adopt herein exceed the VRS providers’ average actual costs as reported by them” on the RSDR.⁶ It set those rates by averaging the then-existing rates with rates calculated from the RSDR-submitted “allowable” costs of all VRS providers. By definition, this meant that the rates the FCC set were above those that would have been calculated on the “allowable” cost-of-service basis using solely Sorenson’s “allowable” costs.

Furthermore, the FCC has never set VRS rates based solely on “allowable” costs on a provider-specific basis, and since 2005 it has not based rates solely on the industry’s aggregate “allowable” costs, either. In each of those years, the FCC affirmatively adopted rates above the level that would have been dictated by a cost-of-service calculation based solely on “allowable” costs. Indeed, ensuring that rates are higher than cost-of-service levels based solely on RSDR-reportable costs is the only way to keep VRS providers in business. No labor-intensive service-based business could survive on just the RSDR-reportable cost that the auditors used to define “reasonable costs.” As Sorenson has previously explained, the current definition of RSDR-

² Performance Audit Report of Sorenson Communications, Inc.’s Video Relay Service of the Telecommunications Relay Service Fund: Conducted for the Federal Communications Commission Office of Inspector General (For the Fiscal Year Ending December 31, 2011) at 1 (rel. Sept. 27, 2012), *available at* http://transition.fcc.gov/oig/Sorenson_Audit_Report_09272012_Redacted.pdf (“IG Audit Report”).

³ Response of Sorenson Communications, Inc., to 2012 Performance Audit Report Conducted by CliftonLarsonAllen for FCC OIG at 7 (June 8, 2012) (attached as Exhibit C to IG Audit Report) (“Sorenson Audit Response”); IG Audit Report at 5-6.

⁴ Sorenson Audit Response at 7; IG Audit Report at 5-6.

⁵ *Id.* at 2.

⁶ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 25 FCC Rcd. 8689, 8698 (2010) (“2010 Order”).

reportable costs is woefully incomplete—failing to include actual taxes paid, numbering costs, actual financing costs, actual depreciation on intangibles, and actual costs of designing and providing the equipment that makes VRS a usable and useful service for deaf Americans. The RSDR-reportable costs allows for no profit on expenses, with the only return being to booked capital investment. This is like saying that a law firm may earn a profit only on its computers and desks but that it could not markup the hourly wages of its attorneys and that it could not charge a rate that covered its anticipated taxes or the loans it took out to purchase the business. Prior to 2013, therefore, the FCC has intentionally set rates that *exceed* the rates reported on the RSDR, thus ensuring that providers could afford to provide service.

If anything, the tiered rate system ensures that the less efficient providers such as Purple and CSDVRS, LLC, (“ZVRS”) are overcompensated by paying those providers more than more efficient providers such as Sorenson. The audit reports confirm that Purple’s and ZVRS’s “allowable” costs per unit must necessarily be above Sorenson’s total costs of service per unit, and under the tiered rate system—both as it existed prior to the June 2013 Order as well as under that Order—these providers receive higher average per-minute compensation than Sorenson. Yet as the Commission has recognized, such “inefficient VRS operations requiring higher compensation rates are inconsistent with the sound management of the TRS Fund,”⁷ and there is no “valid reason” to “support indefinitely VRS operations that are substantially less efficient.”⁸

As the Commission recognized in its June 2013 Order, a far better metric for judging “overcompensation” is not a cost-of-service calculation based on only a portion of total costs, but a market-based rate.⁹ The IG audit reports confirm that a market-based rate—*e.g.*, one derived from competitive bidding—would have been *above* the rates Sorenson was actually paid. In a market in which providers have different levels of cost, the market-clearing price can be expected to be the costs of the *second* lowest cost provider. The IG audits implicitly show that all other VRS providers had both total and “allowable” costs above Sorenson’s average per-minute compensation. Thus, IG’s audits confirm that Sorenson’s VRS compensation has been—and continues to be—*below* market-based levels.

Ultimately, however, Sorenson agrees that it is time to end the perennial debate over what costs are “allowable” and whether providers are “overcompensated” or “undercompensated.” As both Sorenson and Purple have pointed out in response to the June FNPRM, the Commission can end this dispute by expeditiously holding an auction to determine the true market rate for VRS. As Sorenson explained in its prior comments, the Commission can ensure that multiple providers

⁷ *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 (2013) (“June 2013 Order” or “June 2013 FNPRM”).

⁸ *Id.* at ¶ 198.

⁹ *Id.* at 8625 ¶ 10.

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are able to offer service by accepting the second- or third-highest bid.¹⁰ Contrary to Purple's proposal, however, the Commission should not cap providers' market share and thereby force consumers to use providers they do not wish to use. Rather, the Commission should auction only a small percentage of overall minutes and allow consumers who do not wish to use the winner's service to opt out of using the winner. Only by pursuing such market-based reform can the Commission ensure that providers receive the market price for VRS while also guaranteeing consumers the same choice of provider that hearing users have come to expect.

Sincerely,



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Mark D. Davis

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¹⁰ Comments of Sorenson Communications, Inc., and CaptionCall, LLC, at 20, CG Docket Nos. 03-123 and 10-51 (filed Aug. 19, 2013) (suggesting multiple winners); Reply Comments of Sorenson Communications, Inc., and CaptionCall, LLC, at 15, CG Docket Nos. 03-123 and 10-51 (Sep. 18, 2013).