

REDACTED – FOR PUBLIC INSPECTION

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June 3, 2014

Accepted/Filed

JUN - 3 2014

BY HAND DELIVERY AND ECFS

FCC Office of the Secretary

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

Re: Request for Confidential Treatment Pursuant to 47 C.F.R. §§ 0.457 and 0.459;
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123; Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51

Dear Ms. Dortch:

Pursuant to Sections 0.457 and 0.459 of the Commission's rules,¹ Sorenson Communications, Inc. ("Sorenson") respectfully requests that the Commission accord confidential treatment to the attached letter ("SOA Letter") providing details regarding the infeasibility of consistently and predictably meeting a daily speed-of-answer ("SOA") requirement and related data, which is attached as Exhibit A in confidential form and as Exhibit B in redacted form. An original and one copy of each are attached. Sorenson is also filing an electronic copy of the redacted version via ECFS.

Sorenson requests pursuant to Sections 0.457 and 0.459 of the Commission's rules that the Commission withhold from any future public inspection and accord confidential treatment to the highly confidential, business sensitive information contained in the SOA Letter and attachments. All of the Confidential Information has been redacted from the version attached as Exhibit B and filed electronically.

The Confidential Information constitutes highly sensitive commercial information that falls within Exemption 4 of the Freedom of Information Act ("FOIA"). Exemption 4 of FOIA provides that the public disclosure requirement of the statute "does not apply to matters that are . . . (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). Because Sorenson is providing commercial information "of a kind that would not customarily be released to the public," this information is

¹ 47 C.F.R. §§ 0.457 and 0.459.

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“confidential” under Exemption 4 of FOIA. See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

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

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

Sorenson seeks confidential treatment with respect to details regarding the infeasibility of consistently and predictably meeting a daily speed-of-answer (“SOA”) requirement and data regarding the extent to which it would have missed a requirement that 85 percent of calls be answered in 30 seconds—all of which has been redacted from the public version of the filing attached as Exhibit B.

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

As a follow-up to the April 22, 2014 meeting with Consumer and Government Affairs Bureau staff, Sorenson Communications, Inc. (“Sorenson”), by its attorneys, is submitting confidential details regarding the infeasibility of consistently and predictably meeting a daily speed-of-answer (“SOA”) requirement and confidential data regarding the extent to which it would have missed a requirement that 85 percent of calls be answered in 30 seconds.

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

The information described above is protected from disclosure because information regarding the difficulty of meeting speed-of-answer requirements constitutes highly sensitive information about Sorenson’s operations, costs, and strategic decisions, including as they relate to redundancy and the ability to manage variable call volumes. This constitutes sensitive commercial information “which would customarily be guarded from competitors.” 47 C.F.R. § 0.457.

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

The Video Relay Service (“VRS”) market is highly competitive throughout the United States.

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

Disclosure of information regarding the practices Sorenson employs to meet speed-of-answer requirements would provide Sorenson’s competitors with sensitive insights related to

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Sorenson's operations, costs, and strategic decisions, including as they relate to redundancy and the ability to manage variable call volumes—all of which would work to Sorenson's severe competitive disadvantage.

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

Sorenson does not make this information publicly available.

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

Sorenson does not make this information publicly available.

Sincerely,



John T. Nakahata
Mark D. Davis
Randall W. Sifers

Counsel to Sorenson Communications, Inc.

Attachments

Exhibit B



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Secretary
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445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

As a follow-up to the April 22, 2014 meeting with Consumer and Government Affairs Bureau staff, Sorenson Communications, Inc. (“Sorenson”), by its attorneys, hereby submits, on a confidential basis, details regarding the infeasibility of consistently and predictably meeting a daily speed-of-answer (“SOA”) requirement and data regarding the extent to which it would have missed a requirement that 85 percent of calls be answered in 30 seconds, had such a requirement been in place during the first five months of 2014. Sorenson is committed to providing high quality VRS services to the people who are deaf, hard-of-hearing, and speech-impaired that use ASL as their primary language to communicate, including ensuring that they do not suffer intolerable delays when trying to place a call, or when a fully hearing caller is trying to reach them by phone. Sorenson and other VRS providers compete with respect to service quality—including speed of answer—both when consumers select their default providers, but also on a call-by-call basis because a VRS user facing a long delay can “dial-around” to another VRS provider when placing a call.

Sorenson supports the idea that VRS users are entitled to high service quality standards. The problem is not high service quality standards in and of themselves, but the fact that on any given day, events beyond a VRS provider’s control can put a provider in jeopardy of missing the 85th percentile standard—even with the best of staffing planning. Sorenson has only been able to meet the daily 60 second standard for 85% of calls through extraordinary measures, and would have missed the 30 second standard by **** BEGIN CONFIDENTIAL**** ****END CONFIDENTIAL**** days in the first four months of 2014 alone. The extreme penalty imposed for failure to meet the speed-of-answer standard on that day (loss of all compensation) means that providers are driven to extreme measures to try to meet the standard. This puts extreme stress on the interpreters—stress which is not consistent with retaining interpreters in VRS. As

explained below, three reasons largely explain why a daily SOA requirement tied to compensability of all of a provider's VRS traffic on that day creates significant unpredictability for providers, from exogenous factors against which they cannot feasibly protect themselves through prudent planning and staffing.

- First, call demand and volume on any given day can fluctuate unpredictably from even the most sophisticated predictions based on historical data, including but not limited to telemarketing campaigns, political campaigns, extended hold times with government agencies or other large recipients of VRS calls (such as wireless carriers), school or local government announcements, or holidays or other special event days.
- Second, the supply of available video interpreters ("VIs") also is subject to significant daily variability, due to exogenous factors outside a provider's control or reasonable ability to predict, including but not limited to weather conditions, locally significant disasters, time of day (*e.g.*, during or after school hours), or whether a significant number of VIs might have other preferences as to how to spend their time that day (*e.g.*, the afternoon and evening of Valentine's Day).
- Third, the pool of available VIs is extremely small and VIs generally work part time, both for their own preferences and because of other needs in their communities for ASL interpreting, such that it is not possible to overstaff VRS at the levels necessary reliably to ensure that a provider could meet a 60 second for 85% of calls requirement, calculated on a daily basis—let alone a 30-second requirement.

In addition, the declining VRS rates—now codified in rule—were not set contemplating any increase in labor costs from increased staffing levels, which would preclude the necessary overstaffing even if sufficient VIs were available (which they are not).

Difficulties Meeting a Daily Speed-of-Answer Requirement. A daily speed-of-answer requirement that makes no allowance for any misses is inherently problematic because on any given day, VRS call demand and video interpreter supply are subject to unpredictable fluctuations that previously were smoothed out when compliance was measured over a month. While Sorenson is meeting the current SOA requirement, which took effect January 1, 2014 (at a level of 60 seconds for 85 percent of calls), as explained below, it has done so only by taking extraordinary measures that cannot be sustained over the long term. For these reasons, Sorenson urges the Commission to rescind its all-or-nothing penalty, and reinstate the monthly measurement period or adopt a bi-weekly metric. It is not reasonably feasible to attempt to catalog the myriad of different exogenous events that can cause a VRS provider to miss speed of answer on a given day—and thus be denied compensation for the entire day. Moreover, attempting to address this through a "back-end" administrative waiver process is unlikely to be sufficiently timely or predictable to permit reasonable business operations.

- **Limited Availability of Qualified Interpreters for VRS Interpreting.** As a result of the lack of qualified interpreters, Sorenson's call centers cannot be staffed at a level necessary to ensure meeting a daily speed of answer requirement. Each week, Sorenson calculates the number of interpreter-hours that will be required to meet the speed-of-answer requirement based on historical demand. But for any given week, Sorenson is

- consistently unable to staff ****BEGIN CONFIDENTIAL**** of its total forecasted hours, which assumes that service will be provided at a level sufficient to meet the current 60 second SOA requirements for projected call volume. Multiple factors contribute to this continuing dilemma.
- First, the typical qualified interpreter is only willing to devote ****BEGIN CONFIDENTIAL**** hours of her work week to VRS. This is due to several factors. To begin with, the interpreting community is largely female (approximately 85%). And most interpreters have school-age children, which often limits their work schedule to school hours— typically 9 a.m. to 1:50 p.m. This makes staffing more difficult at other times. If an interpreter wants to work more hours, she typically chooses to devote additional time to serving other segments of the deaf and hard-of-hearing community that need sign language interpreting, such as K-12 and post-secondary schools, medical and mental-health settings, direct government services, and community events. In addition, the interpreting community at large often pays ****BEGIN CONFIDENTIAL**** more than what VRS providers can afford to pay. Finally, interpreters report that VRS interpreting can be significantly more stressful and intense than other segments. As a result, most interpreters are either not able, or not willing to add additional hours to the amount of VRS work they currently do.
 - Second, the pool of qualified interpreters that may want to work simply cannot because, while otherwise qualified, they do not meet certain requirements that cannot be overcome by the VRS provider. For example, the states of Arizona and Pennsylvania require RID certification to work as a paid interpreter in any venue outside K-12.
 - **Severe Shortage of Qualified Video Interpreters**. To meet the 30-second SOA requirement on a daily basis at forecasted volume (which is increasing each month), Sorenson needs to add to its pool of available VIs another ****BEGIN CONFIDENTIAL**** individuals. The ****BEGIN CONFIDENTIAL**** new interpreters must be available to work in the VRS industry segment a minimum of 10 hours per week at the times when call volume warrants, including when the system has high loads, which typically occurs in the morning and late afternoon, and when the system is hit with exogenous occurrences. Even this quantity of new VIs would not be sufficient to meet a 30-second SOA requirement in all cases; but in any event the pool of applicants is not large enough to yield the requisite number of qualified interpreters:
 - The Registry of Interpreters for the Deaf (“RID”), which certifies sign language interpreters, simply cannot certify enough interpreters to meet the growing demand of both the VRS industry and the community at large, because of the extraordinarily limited supply. The interpreting field is largely dependent on new graduates from the approximately 150 interpreter training programs (“ITPs”) of

the national system of colleges and universities that offer an interpreting degree program. Of the 150 program offerings, approximately 35 are four-year bachelor's degree programs, four are master's degree, and the rest are two-year associate's degrees. Graduation rates are low, and the number of qualified individuals that can meet state standards to work in any venue is limited by rule. Many states are adopting a new mandate, based on changes made by RID, that an applicant must hold a bachelor's degree or higher and be nationally credentialed by RID before she can be licensed or certified as an interpreter. Every other year, each program on average graduates 10 new graduates, meaning that the entire community can depend on having only about 750 potential new graduates entering the interpreter pool each year.

- Only about half of new graduates remain in the industry in the first year after graduation, which reduces the number of new interpreters potentially eligible for hire each year to approximately 375-400. To be eligible to sit for the national exam for interpreters, which is required in certain states, the candidate must hold a bachelor's degree or higher. But since almost three quarters are graduates from an associate's program, depending on the state in which hiring takes place, instead of having a potential pool of 375-400 new interpreters, the number is down to 175 or fewer per year.
 - VRS users want nationally or state certified VIs operating at the highest levels of proficiency with a skill set that represents all facets of life, subject matter, and language exposure encompassing the breadth of the ASL signing deaf population. From Sorenson's experience, it takes an ITP graduate at least ****BEGIN CONFIDENTIAL**** to build basic exposure to the content and language skills they will be expected to know in order to work as interpreters in VRS. During this time, the interpreter may exit the field because of personal reason, or lack of opportunity. If they do remain in the field, they may not develop the required skill, and if they do, there is no guarantee they will be interested in working in the VRS setting.
 - Finally, pass rates of interpreters applying to work at Sorenson is very low – more than ****BEGIN CONFIDENTIAL**** percent of all applicants, notwithstanding whether they are certified, fail Sorenson's proficiency screening. These factors highlight the tremendous challenges faced by Sorenson in hiring a sufficient number of interpreters, without regard to SOA requirements.
- **VRS Daily Call Volume and Interpreter/Call Center Supply Can Vary Significantly From the Best Projections Due to Exogenous Events**

Even with the benefit of having a substantial amount of historical call data, which makes call volumes fairly predictable over the long term, and sophisticated call volume projection models, call volumes are still quite unpredictable on any given day. Unpredictable events

beyond a provider's control may occur, creating a significant increase in call volume increasing staffing requirements. Moreover, to ensure compliance with the SOA measured on a daily basis would require Sorenson significantly to overstaff its call centers to accommodate the myriad of unpredictable, yet not so infrequent to be inconsequential, fluctuations that occur. But in addition to being economically precluded by declining VRS rates, overstaffing at the level necessary to ensure ongoing compliance is not a long-term option because the interpreter labor pool is simply too small. Examples of unpredictable events include—

- Talk times are increasing because of significant increases in hold times for certain industry segments—for example, the Social Security Administration, the Internal Revenue Service, banks, cell phone companies, and marketplace call centers in many cases now average hold times of 45 minutes. When one large agency or company, such as the IRS or a cell phone company, experiences technical difficulties with their phone system, those delays wreak havoc with the SOA in VRS because interpreters are tied up on hold with existing callers and thus are not available to answer new calls. As an example, a glitch in the IRS phone system can increase their average hold time from 15 minutes to 75 minutes. That alone could make it impossible to meet the SOA for VRS. There is no way to predict when a particular company will experience these difficulties, so there is no adequate way to staff for those circumstances.
- Certain weather events, such as tornados, hurricanes, polar vortexes, floods, and ice storms that cover extended geographical areas (for example, up to half of the country), not only increase call volume but can also have the effect of reducing large numbers of staff at certain call centers (either because the event prevents staff from arriving at work or causes the call center to be closed). These types of events put an additional load on a system that is already trying to compensate for increased call volume occurring as a result of the event, while simultaneously trying to absorb a significant decrease in staffing. These dual and contravening forces have a profound effect on actual SOA times during the event and are likely to create a situation where SOA times are not able to recover for the day, and perhaps many days.
- School closing announcements due to national disasters, winter weather, and shootings always spike call volume to Sorenson customers, which affects Sorenson's ability to meet the SOA requirement.
- Extended Internet outages (ranging from 3 hours to several days) take down VRS centers in large cities that have been set up to handle significant volume, increasing the load on other centers and causing delay because of decreased overall capacity that can only be offset to a limited extent by increasing staff at other centers.
- On Valentine's Day 2014, Sorenson experienced an unanticipated spike in call demand in the afternoon that continued until 11 p.m. that night, which would have

caused the company to miss the 30-second SOA requirement had it been in effect. One of the causes for not being able to meet that call demand, is the simple fact that the interpreting work force was unwilling to work that afternoon and night.

- Campaigns, particularly for local and national elections, frequently use phone banks and robo-calls to call voters. But the campaigns do not provide advance notice of the day and time when calls will occur. As a result, at certain times, Sorenson's call centers have been slammed with calls to VRS users starting as early as 4 a.m. (MST) and running all day following the sun, which increases the likelihood that a 30 second SOA requirement would be missed.
- On the ****BEGIN CONFIDENTIAL**** [REDACTED] ****END CONFIDENTIAL**** March 2014, Sorenson was hit with an unexpected spike in call volume, unsupported by any prior history that this was even a remote possibility. If the 30-second SOA requirement had been in effect, it would have been missed. There is no way to predict unexpected spikes like this one. Analyzing the data may provide the reason, but knowing the cause for this one would not lead to being able to predict another one simply because the timing and nature of each spike is inherently unpredictable.
- Earlier this year, ****BEGIN CONFIDENTIAL**** [REDACTED] ****END CONFIDENTIAL**** held a national campaign to call its customers, including a significant number deaf and hard-of-hearing individuals. As a result, Sorenson's call volume to its VRS customers spiked and it had an extremely difficult time handling the significant numbers of auto-dialed calls originating from this rental company. One company out of millions of companies doing an auto-dial campaign can not only impact, but render impossible the ability to meet the SOA requirement
- When the healthcare.org system website experienced heavy volume our operations were significantly impacted, a surge of calls followed, and Sorenson could not bring in sufficient additional staff on such short notice. This occurrence significantly affected Sorenson's ability to meet even the current SOA requirement.

The looming problem with the all-or-nothing rule is demonstrated where Sorenson increasingly experiences unexpected early-morning call surges that so significantly increase the average SOA that it cannot recover—no matter how much it improves SOA for the rest of the day. These surges have occurred at times that historically have not required high staffing—for example, at 4:00 a.m.

Days on Which a 30 second/85 percent of Calls SOA Requirement Would Have Been Missed If In Effect. Attached as Exhibit 1 is a PowerPoint presentation, which presents

information on SOA results at different levels and different time periods, information related to staffing, and information on call center disruptions caused by network and power outages.

Included in the presentation is a narrative statement (page 3) and a graphical presentation (Page 2) that through May 3, 2014, Sorenson has complied with the current 85 percent of calls answered within 60 seconds measured on a daily basis. The presentation briefly discusses the difficulties encountered in moving from a monthly to daily measurement metric.

The presentation also includes graphical and numerical presentations (see pages 5 and 6), showing the number of days through May 3, 2014, that would have been missed if SOA was measured at 85 percent of calls answered within 30 seconds ****BEGIN** [REDACTED] ****END CONFIDENTIAL****. Page 6 contains a listing ****BEGIN CONFIDENTIAL**** [REDACTED] ****END CONFIDENTIAL****.

Page 7 presents numerical and graphical information, by month, for the one year period May 2013 through April 2014, on average speed of answer (in seconds) for each month and the percentage of calls answered within 30 seconds for each month.

Pages 8 and 9 contain graphical information and a narrative on average hours worked on a weekly basis, by month, by part time employees for eleven months of 2011 through 2013, and three months in 2014.

Page 10 is a narrative on forecasted hours contrasted against actual hours by month for twelve months of 2011 through 2013, and four months of 2014.

Pages 11 and 12 contain graphical information and a narrative to illustrative a consistent trend among VIs to cancel hours that were previously committed to work.

Finally, pages 13 and 14 contain graphical information and a narrative to summarize the number of call center disruptions related to power outages and network outages

Exogenous Occurrences From Late December 2013 Through April 2014 That Affect SOA Compliance. Attached as Exhibit 2 is a spreadsheet, which lists exogenous events identified by Sorenson that have created staffing issues which, in turn, have adversely affected compliance with SOA requirements. The spreadsheet lists the name of the call center, the date of occurrence, the event, and the effect (measured in minutes and hours) the event had on call processing because the event closed the call center or prevented calls from being timely processed.

Average Hold Times for Calls to Social Security Administration. Exhibit 3 is a spreadsheet showing the average on hold times, by hour, for calls Sorenson VRS users placed to the Social Security Administration for the months of January through April, and September through December of 2013. The spreadsheet shows that average on hold times often exceed 45 minutes.

Marlene H. Dortch
June 3, 2014
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Please contact us with questions or if you need additional information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John T. Nakahata".

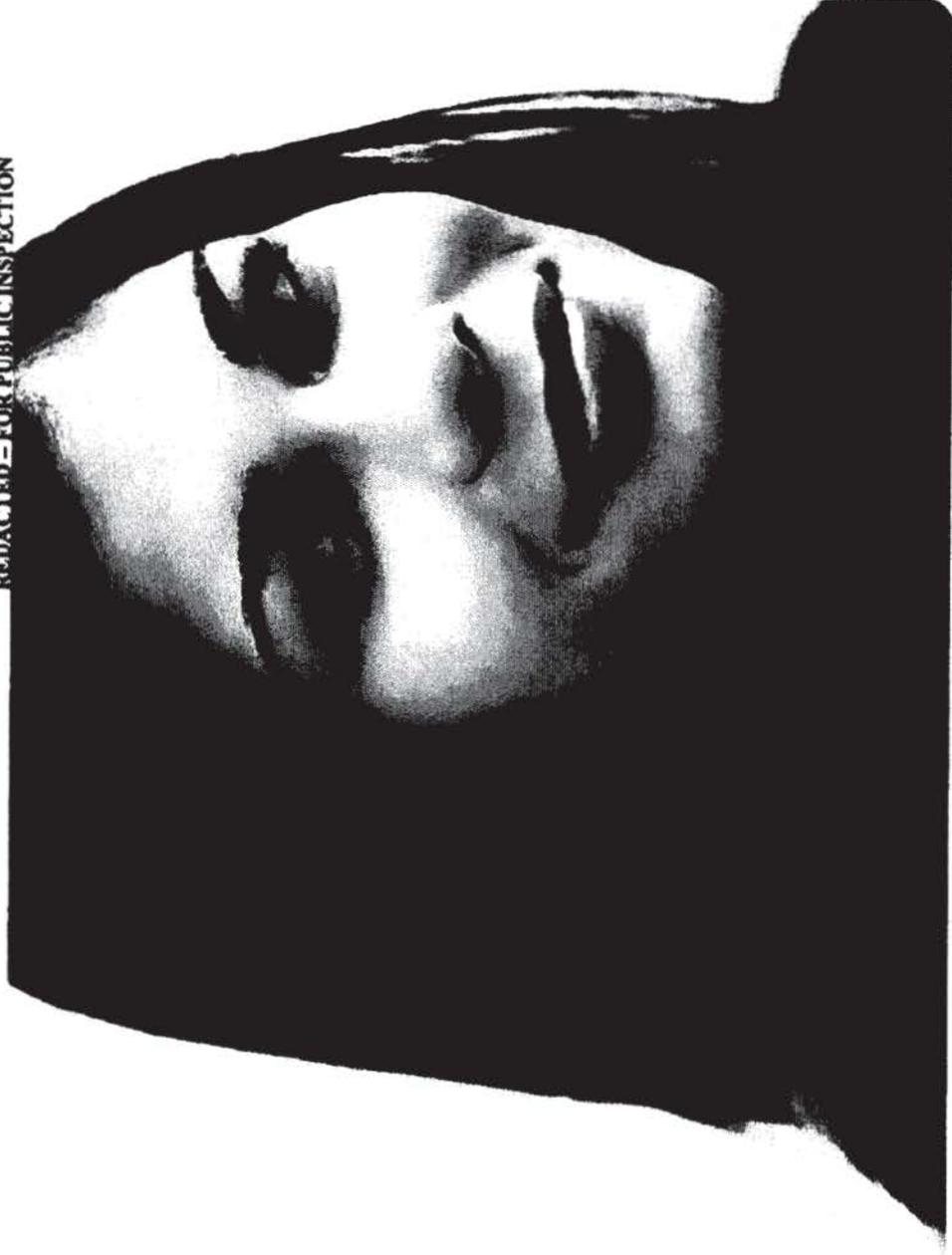
John T. Nakahata
Mark D. Davis
Randall W. Sifers

Counsel to Sorenson Communications, Inc.

Exhibit 1



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Confidential FCC SOA Data



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Connecting You

Daily SOA Breakdown < 60 Seconds (YTD 2014)

****BEGIN CONFIDENTIAL****

**** END CONFIDENTIAL ****

*Connecting You™*

SOA at 85/60 Seconds

- So far in 2014 Sorenson has not missed the 85% under 60 seconds measured daily SOA requirement, but it has been extremely close at times.
- Sorenson was required to take extraordinary measures to ensure compliance with the 60 seconds daily SOA requirement, while hoping that no unpredictable events or significant staffing disruptions occurred.
- Moving from a monthly to daily measurement period has increased staffing level needs by significant and absolute amounts.
- Measurement on a daily basis is problematic because it leaves almost no room for error – unexpected changes in call volume, unexpected changes in call lengths, the inherent range of error within any statistically-based forecast, etc. all can mean that either call volume is larger than anticipated or available interpreters are fewer than were scheduled.



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Connecting You

Impact of a 30 second SOA at 85% of Calls, Measured Daily

****BEGIN CONFIDENTIAL****



****END CONFIDENTIAL****



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Connecting You

Daily SOA Breakdown < 30 Seconds (YTD 2014)

****BEGIN CONFIDENTIAL****

****END CONFIDENTIAL****

YTD 2014 SOA Daily Breakdown

****BEGIN CONFIDENTIAL****



****END CONFIDENTIAL****



Connecting You™

Monthly SOA Measurement and Average Speed Of Answer (ASA) Results

****BEGIN CONFIDENTIAL****

The table content is completely redacted with black bars, obscuring all data points.

****END CONFIDENTIAL****



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Connecting You

Part Time Employee Average Weekly Hours Worked

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****END CONFIDENTIAL****



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Connecting You™

Monthly Hours - Forecast vs. Actual

****BEGIN CONFIDENTIAL****

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|---|------------|
| • | [REDACTED] |
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****END CONFIDENTIAL****



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Connecting You

Total Monthly Hours Cancelled in Less Than 14 Days

****BEGIN CONFIDENTIAL****

****END CONFIDENTIAL****

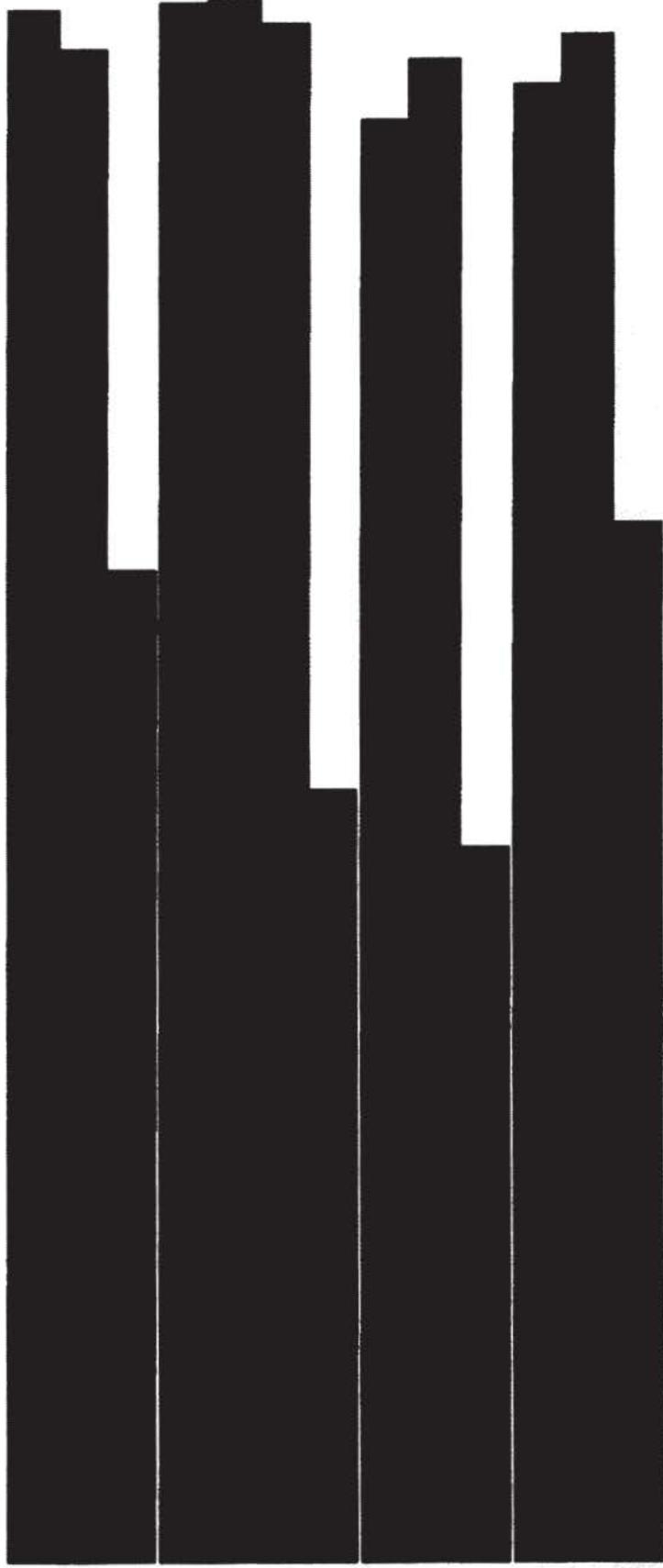


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Connecting You™

Total Monthly Hours Canceled by Staff

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