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**REDACTED FOR PUBLIC INSPECTION  
REQUEST FOR CONFIDENTIAL TREATMENT  
PURSUANT TO 47 C.F.R. §§ 0.457 AND 0.459**

June 27, 2014

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street SW  
Washington, D.C. 20554

Re: *Request for Confidential Treatment of Sprint Information; In the Matters of 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 Exemption 4 of the Freedom of Information Act (“FOIA”) and the rules of the Federal Communications Commission (“FCC” or “Commission”),<sup>1</sup> Sprint Corporation (“Sprint”) hereby requests confidential treatment for the information contained in the attached written *ex parte* letter (“letter”). This information relates to Sprint’s IP Relay labor costs. As explained below, the data and information being provided in the letter contain company-specific, confidential and/or proprietary commercial information and financial data that are protected from disclosure by FOIA Exemption 4<sup>2</sup> and the Commission’s rules protecting information that is not routinely available for public inspection and that would customarily be guarded from competitors.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. § 552(b)(4); 47 C.F.R. §§ 0.457(d) and 0.459; *see also* 18 U.S.C. § 1905 (prohibiting disclosure “to any extent not authorized by law” of “information [that] concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association”).

<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> 47 C.F.R. §§ 0.457(d) and 0.459.

1. *Identification of the specific information for which confidential treatment is sought.* Sprint requests that all of the redacted information contained in the letter be treated as confidential pursuant to Exemption 4 of FOIA and Sections 0.457(d) and 0.459 of the Commission's rules, which protect confidential commercial, financial, and other information not routinely available for public inspection. The letter contains company-specific, competitively-sensitive, business confidential and/or proprietary commercial information concerning Sprint's IP Relay labor costs that would not routinely be made available to the public, and customarily would be guarded from competitors. If such information were disclosed, Sprint's competition could use it to determine Sprint's competitive position and performance, and could use that information to gain a competitive advantage over Sprint.

2. *Identification of the Commission proceeding in which the information was submitted or a description of the circumstance giving rise to the submission.* This information is being submitted pursuant to the Public Notice issued in the above referenced proceedings seeking comment on the proposed compensation rates for TRS providers, and as a follow-up to Sprint's recent meetings with the FCC.<sup>4</sup>

3. *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.* The letter contains company-specific, competitively-sensitive, confidential and/or proprietary, commercial, financial and operational information. This information can be used to determine information about Sprint's operations and financial position and is sensitive for competitive and other reasons. This information would not customarily be made available to the public and customarily would be guarded from all others, especially competitors. Data submitted by telecommunications relay service providers as part of the annual rate-setting process are routinely treated as highly confidential.<sup>5</sup> If this information were not protected, Sprint's competition could use it in an effort to determine how best to undercut Sprint's business.

4. *Explanation of the degree to which the information concerns a service that is subject to competition.* The confidential information at issue relates to the provision of Internet-based TRS, which is subject to competition. If the information is not protected, Sprint's competition will be able to use it to gain a competitive advantage.

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<sup>4</sup> *Rolka Loube Saltzer Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2014-2015 Fund Year*, Public Notice, DA 14-627, CG Docket Nos. 03-123 & 10-51 (May 9, 2014); Letter from Scott R. Freiermuth, Sprint Corporation, to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 03-123 & 10-51 (June 20, 2014).

<sup>5</sup> For example, the Commission's rules require that NECA "shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form." 47 C.F.R. § 64.604(c)(5)(iii)(I).

5. *Explanation of how disclosure of the information could result in substantial competitive harm.* Since this type of information generally would not be subject to public inspection and would customarily be guarded from competitors, the Commission's rules recognize that release of the information is likely to produce competitive harm. Disclosure could cause substantial competitive harm because Sprint's competition could assess aspects of Sprint's operations, finances, procedures, business plans and strategies and could use that information to undermine Sprint's competitive position.

6.-7. *Identification of any measures taken by the submitting party to prevent unauthorized disclosure, and identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.* The confidential information in the letter is not available to the public, and has not otherwise been disclosed previously to the public. Sprint routinely treats this information as confidential and/or proprietary. Sprint assiduously guards against disclosure of this information to others.

8. *Justification of the period during which the submitting party asserts that the material should not be available for public disclosure.* Sprint requests that the information be treated as confidential indefinitely, as it is not possible to determine at this time any date certain by which the information could be disclosed without risk of harm.

9. *Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.* The confidential information contained in the letter would, if publicly disclosed, enable Sprint's competition to gain an unfair competitive advantage. Under applicable Commission and federal court precedent, the information provided by Sprint on a confidential basis should be shielded from public disclosure. Exemption 4 of FOIA shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question clearly satisfies this test.

Additionally, where disclosure is likely to impair the government's ability to obtain necessary information in the future, it is appropriate to grant confidential treatment to that information.<sup>6</sup> Failure to accord confidential treatment to this information is likely to dissuade providers from voluntarily submitting such information in the future, thus depriving the FCC of information necessary to evaluate facts and market conditions relevant to policy issues under its jurisdiction.

In the event that the Commission declines to grant this request, disclosure of the redacted information (other than to a Commission employee working directly on the matter) should be

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<sup>6</sup> See *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992) (*en banc*) (recognizing the importance of protecting information that "for whatever reason, 'would customarily not be released to the public by the person from whom it was obtained'") (citation omitted).

permitted only under limited circumstances and with appropriate protections in place. If a request for disclosure occurs, please provide sufficient advance notice to the undersigned prior to any such disclosure to allow Sprint to pursue appropriate remedies to preserve the confidentiality of the information.

If you have any questions or require further information regarding this request, please do not hesitate to contact me.

Sincerely,

/s/ Scott R. Freiermuth  
Scott R. Freiermuth

Attachment



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**REDACTED FOR PUBLIC INSPECTION  
REQUEST FOR CONFIDENTIAL TREATMENT  
PURSUANT TO 47 C.F.R. §§ 0.457 AND 0.459**

June 27, 2014

VIA ELECTRONIC FILING (ECFS)

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

RE: **WRITTEN EX PARTE**  
*In the Matters of 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:

Sprint Corporation (“Sprint”) urges the Federal Communications Commission (“Commission” or “FCC”) to issue an Order adopting Sprint’s Petition for Reconsideration and Suspension<sup>1</sup> of the Commission’s July 1, 2013 *Relay Rate Order*<sup>2</sup> in which the Commission reduced – by over 20% – the IP Relay rate from a level of \$1.28 to \$1.01 per minute. Sprint immediately sought suspension of the reduced IP Relay rate and demonstrated that significant changes in the market necessitated a temporary suspension of the rate reduction in order to allow the Commission an opportunity to re-assess the basis for the new rate. Sprint cannot sustain IP Relay service at below-cost rates and is particularly concerned that these rates are scheduled to be reduced again on July 1, 2014 to \$0.95 per minute.

Recent changes in the IP Relay marketplace make clear that the current IP Relay Rate is inappropriate. In fact, rate decreases have already driven at least three providers out of the IP

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<sup>1</sup> See, *In the Matters of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Petition for Reconsideration and Suspension of Sprint Corporation, CG Docket Nos. 03-123 and 10-51 (July 31, 2013) (“*Petition*”).

<sup>2</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, CG Docket Nos. 03-123 and 10-51, DA 13-1483 (rel. July 1, 2013) (“*Relay Rate Order*”).

Relay business.<sup>3</sup> Ignoring this clear indication that the current rate is too low, RLSA has proposed to lower the rate even further. This proposal threatens to force the two remaining providers out of the marketplace. If Sprint is to continue as an IP Relay provider, it must receive sufficient compensation to allow it to earn a profit while also maintaining its quality of service. Neither the current rate nor the proposed rate meets this basic requirement. For this reason alone, Sprint urges the Commission to grant its Petition for Reconsideration.

Additionally, due to the IP Relay rate-setting methodology, which utilizes a bottoms-up cost approach (rather than a competitive, market-based methodology<sup>4</sup>), the IP Relay rate is skewed towards Sprint's lone, remaining competitor – Purple (which has historically handled much higher volumes of IP Relay traffic). Purple, however, has a very different business model and costs than Sprint. Sprint's IP Relay communications assistants (“CAs”) and call centers, based in the United States, handle federal and state TRS calls – oftentimes with more stringent service level agreements (“SLAs”). Purple also does not provide these traditional Relay services; this skews the costs (used in the rate-setting) downward. And, Purple, even with a lower cost model than Sprint, has alerted the Commission that, “[t]he current rate trajectory for IP Relay is simply not sustainable.”<sup>5</sup>

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<sup>3</sup> See, e.g., Letter from John T. Nakahata, Sorenson Communications, Inc., to Marlene H. Dortch, FCC Secretary, CG Docket No. 03-123 (July 8, 2013) (explaining that Sorenson's decision to exit the IP Relay business was based on the fact that the rates adopted in the *2013 TRS Rate Order* were “simply too low to sustain a high quality service” and would “not yield functionally-equivalent telecommunications relay service”); see also RLSA Report at Appendix G, Interstate TRS Advisory Council Meeting Minutes, April 15, 2014, at 2 (noting that a Sorenson representative reiterated that “the exit by multiple providers [from the IP Relay market] was the result of a decrease in the rate”); Comments in Support of Sprint's Petition for Reconsideration of Telecommunications for the Deaf and Hard of Hearing, National Association of the Deaf, Association of Late-Deafened Adults, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Cerebral Palsy and Deaf Organization, and California Coalition of Agencies Serving the Deaf and Hard of Hearing, CG Docket Nos. 10-51 and 03-123, at 4 (Dec. 5, 2013) (“There is strong evidence that the Commission's decision to reduce immediately IP Relay rates by nearly 20%, and to mandate further annual six percent reductions for the next two years, has had a dramatic and negative impact on the ability of deaf and hard of hearing consumers to have a choice of multiple providers from which they can obtain high-quality IP Relay services.”) (“Consumer Group Comments”); *id.* at 5 (“... the drastic reduction in IP Relay service providers is the direct result of an unrealistically low reimbursement rate.”).

<sup>4</sup> The TRS Fund Administrator (RLSA) has used the Multi-state Average Rate Structure (“MARS”) methodology, based on the weighted average of competitively bid state rates, to propose compensation rates for interstate traditional TRS, interstate Speech-to-Speech (“STS”), interstate Captioned Telephone Service (“CTS”), and inter- and intrastate Internet Protocol (“IP”) CTS.

<sup>5</sup> Comments of Purple Communications, Inc., CG Docket Nos. 03-123 and 10-51, at 1 (April 17, 2014).

Another drastic change in the market has been the precipitous decline in IP Relay traffic. In January 2011, when the rate was \$1.2985, RLSA recorded a total of 4,589,456 IP Relay minutes of use across all providers. In June 2013, when the FCC adopted the \$1.01 rate, RLSA recorded a total of 1,557,374 minutes of use across all providers. In other words, in just 2 ½ years, the IP Relay market has shrunk by over 3 million minutes – roughly a 67% reduction. Sprint’s experience has been similar. This substantial reduction in IP Relay traffic means that costs – in particular, fixed costs – are spread across fewer minutes.

While Sprint has done its best to control its costs, largely by cutting marketing expenses and controlling administrative and capital costs, Sprint is in a position where it has lost money on IP Relay. This is due largely to increasing labor costs, which is by far the biggest driver of Sprint’s overall IP Relay costs. **[BEGIN CONFIDENTIAL INFORMATION]**

**[END CONFIDENTIAL INFORMATION]**

Again, Sprint urges the Commission to grant its Petition for Reconsideration and to suspend the rate at \$1.28 while these facts are given further consideration.

Alternatively, the Commission could follow RLSA’s recommendation by freezing the current rate of \$1.0147 (effectively foregoing the scheduled 6% productivity gain) while also adding in outreach costs, which RLSA estimates to be \$0.0329 per minute – taking the rate to \$1.0476.<sup>6</sup> Finally, as Sprint has previously suggested, the Commission should allow for some reasonable profit, which the Commission has generally established as 11.25%, resulting in a rate of \$1.1654.

Sprint believes a \$1.1654 rate would also allow for risk that is not otherwise considered within the cost calculation. While a risk factor is difficult to calculate, Sprint has experienced difficulties in getting paid by the Fund administrator in a timely manner. And, Sprint risks non-payment for things that are beyond its control (*e.g.*, missing speed-of-answer due to inclement weather that impacts call centers). The current bottom-up approach leaves no buffer or margin to allow providers to make up these kinds of “cost-of-doing-business” losses.

In conclusion, Sprint urges the Commission to grant its Petition for Reconsideration and to suspend the IP Relay rate at \$1.2855 per minute as originally requested. In the alternative, Sprint believes an interim rate of approximately \$1.16 would be an acceptable level that would permit Sprint to remain in business as an IP Relay provider while the Commission gives further consideration to a new rate and rate structure for long term sustainability of IP Relay.

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<sup>6</sup> In its April 24, 2014 *ex parte* filing, Sprint erroneously suggested using an outreach figure of \$0.0244, but Sprint notes that RLSA has suggested a figure of \$0.0329.

This filing is made in accordance with Section 1.1206(b)(2) of the Commission's rules. In the event that there are any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

/s/ Scott R. Freiermuth  
Scott R. Freiermuth

Cc: Karen Strauss  
Bob Aldrich  
Eliot Greenwald  
Greg Hlibok  
David Schmidt

**REDACTED FOR PUBLIC INSPECTION  
REQUEST FOR CONFIDENTIAL TREATMENT  
PURSUANT TO 47 C.F.R. §§ 0.457 AND 0.459**