

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

In the Matter 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
	)	

**PETITION FOR RECONSIDERATION**

Pursuant to Section 1.106 of the Commission’s rules,<sup>1</sup> Sorenson Communications, Inc. (“Sorenson”), hereby seeks reconsideration of the *Waiver Order* adopted by the Acting Chief, Consumer and Governmental Affairs Bureau (the “Bureau”) on June 24, 2014, in the above-captioned proceeding,<sup>2</sup> which defers for six months the effective date of the new 30-second standard governing how quickly a video relay service (“VRS”) provider must respond to a consumer’s request to make a VRS call.<sup>3</sup> While the waiver as granted will defer the issue for the next six months, that thus is appreciated, what was granted in the *Waiver Order* was notably different than what was requested. VRS providers and consumer groups had asked the Bureau to waive the July 1, 2014 speed-of-answer requirement of 30 seconds for 85 percent of calls, measured daily, subject to the condition that VRS providers—for the interim until the

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<sup>1</sup> 47 C.F.R. § 1.106.

<sup>2</sup> See *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 Nos. 10-51, 03-123, Order, DA 14-878 (released Jun. 24, 2014) (“*Waiver Order*”).

<sup>3</sup> The new standard, which was to take effect July 1, 2014, required that VRS providers answer 85 percent of consumers’ VRS call attempts within 30 seconds, measured daily.

Commission can review data, consider and adopt an alternative—meet a standard of 60 seconds for 85 percent of calls, measured monthly.<sup>4</sup> The Bureau also denied the VRS providers’ request to modify the Commission’s approach to withholding compensation for speed-of-answer violations.

In its decision, the Bureau explained that it believed the temporary delay in the transition to a faster speed-of-answer “will benefit consumers and serve the public interest by ensuring that quality of service is maintained, avoiding undue disruption in the supply of interpreters, and allowing providers more predictability and stability in their operations during the transition to faster speed-of-answer requirements.”<sup>5</sup> The *Waiver Order* appears to contemplate that the many, very difficult operational work and management issues—*i.e.*, maintaining quality of service, avoiding undue disruption in the supply of interpreters, and allowing more predictability and stability in providers’ operations— which Sorenson addressed in the record— can be addressed through a backend waiver process.<sup>6</sup>

Sorenson is skeptical that a workable and timely backend waiver process can address the range of issues presented by the unpredictable variations in either VRS calling or interpreter availability that occur on a day-to-day basis. On any given day, variation deviates significantly

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<sup>4</sup> See, e.g., Letter from Angela Valcarcel-Roth, CEO/President, ASL Services, Everett Puckett, CEO, CAAG, Jeff Rosen, General Counsel, Convo, Sean Belanger, CEO, CSDVRS, John Goodman, Chief Legal Officer, Purple, and Michael Maddix, Director, Government and Regulatory Affairs, Sorenson, to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 03-123, 10-51 (Apr. 24, 2013) (“All Providers Letter”); Letter from Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc., Howard Rosenblum, Chief Executive Officer, National Association of the Deaf, Brenda Estes, Past President, Association of Late-Deafened Adults, Inc., Mark Hill, President, Cerebral Palsy and Deaf Organization, Randall Pope, President, American Association of the Deaf-Blind, and Sheri Farinha, Vice Chairperson, California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc. (Consumer Groups) to Marlene Dortch, FCC Secretary, CG Docket Nos. 03-123, 10-51 (filed Dec. 30, 2013) (“Consumer Groups Letter”).

<sup>5</sup> *Waiver Order* ¶ 1.

<sup>6</sup> See *Wavier Order* ¶ 23.

from an expected average level. Sorenson, however, believes that the Commission and providers can work together to reach a mutual understanding about the breadth of these issues and formulate a workable path toward resolution that ensures that consumers receive a high standard of service, while at the same time providing providers with reasonable business planning certainty and flexibility. If that can be done through an expeditious backend waiver process, that would, of course, be a suitable alternative; this petition for reconsideration is filed in case backend waivers do not prove to be sufficient, and threaten more harm to consumers than good.<sup>7</sup>

## I. ARGUMENTS

Sorenson fully supports the Commission’s goal of ensuring that consumers receive quality service and faster speed-of-answer times to deliver a functionally equivalent experience to VRS users. But compliance with the speed-of-answer requirements, measured daily, is not possible for each and every day, even when employing optimal management practices, as demand and video interpreter supply are subject to unpredictable fluctuations that previously were smoothed out when compliance was measured over a month. Moreover, the *Waiver Order’s* conclusion that “providers have been able as a matter of fact to maintain staffing levels and configurations sufficient to ensure full compliance with the current standard which includes a daily measurement requirement, [for the first four months of 2014]”<sup>8</sup> does not recognize that providers, including Sorenson, achieved that compliance with a daily speed-of-answer requirement only through unsustainable measures.<sup>9</sup> As Sorenson explained, meeting the current 85 percent of calls answered within 60 seconds requirement, measured daily, was only able to be

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<sup>7</sup> Sorenson also intends to submit a petition for rulemaking that asks the Commission to initiate a rulemaking proceeding to amend the VRS speed-of-answer rules.

<sup>8</sup> *Waiver Order* ¶ 23.

<sup>9</sup> Letter from John T. Nakahata *et al.*, Harris, Wiltshire & Grannis, LLP, Counsel to Sorenson, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123, 10-51, at 1 (June 3, 2014) (“Sorenson Letter”).

done “by taking extraordinary measures that cannot be sustained over the long term”<sup>10</sup> In other words, achieving these results required Sorenson to execute, over a short period of 4 months, in a manner that resulted in unimpaired perfection. But Sorenson also stated that it does not expect to be able to replicate these results over the long term because sustaining this level of performance goes well beyond the superior level of achievement that Sorenson strives for and meets each day. Of greater concern, however, is Sorenson’s fear that even attempting to achieve such results in the short term will have an adverse effect on the health and well-being of its highly-skilled and dedicated video interpreters. If these scarce and highly talented individuals conclude that VRS is just too demanding, VRS providers, including Sorenson, will not be able to maintain a sufficient supply of video interpreters.

In addition to difficult work and management challenges, withholding reimbursement, even temporarily, for failing to achieve speed-of-answer compliance due to circumstances beyond a provider’s control, and further subjecting the provider to additional administrative burdens to overcome the presumption of non-reimbursement, is unjust. Moreover, using the Commission’s existing waiver process to address instances where a provider, due to circumstances beyond its control, may have good cause for being excused from strict application of the speed-of-answer requirements will put additional strain on the Bureau to act on waiver requests, while at the same time reimbursement will be delayed.

**A. A Six-Month Delay Will Not Remedy the Persistent Severe Shortage of Qualified Interpreters**

The *Waiver Order’s* temporary deferral for six months of the new 30-second speed-of-answer requirement, measured daily, does not sufficiently accommodate the very real concerns Sorenson raised about creating undue disruption in the supply of video interpreters. As Sorenson

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<sup>10</sup> Sorenson Letter at 2.

explained, as a result of the lack of qualified interpreters, Sorenson's call centers are unable to be staffed at a level necessary to ensure meeting a daily speed-of-answer requirement.<sup>11</sup> The most serious factor contributing to a lack of video interpreters is the severe shortage of qualified interpreters. As Sorenson explained in detail, the pool of applicants is simply not large enough to yield the requisite number of qualified interpreters, and a near-term solution is not readily apparent.<sup>12</sup>

While the Bureau acknowledged Sorenson's concerns, it did not explain how granting a six-month deferral will remedy the severe shortage of qualified number of qualified video interpreters. The supposition of the *Waiver Order* is that by deferring for six months the effective date of the 30-second standard, all of the issues raised in providers' comments can be addressed. In fact, as the *Waiver Order* acknowledges,<sup>13</sup> this particular issue was recognized in the *2005 Speed-of-Answer Order* and caused the Commission to decline to adopt a daily measurement period.<sup>14</sup> In making that decision, the Commission reasoned, "[w]e do not want to adopt standards that cannot be satisfied due to factors outside the control of the providers."<sup>15</sup> Unfortunately, the issue persists and is showing no signs of abatement. Moreover, no substantive piece of empirical evidence has been submitted to change the finding that there continues to be a severe shortage of qualified interpreters. Accordingly, until the Bureau, the Consumer Groups, and the providers can find a workable solution around this seemingly intractable issue, which is a nationwide problem affecting all deaf persons needing interpreting

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<sup>11</sup> Sorenson Letter at 3.

<sup>12</sup> *Id.* at 3-4.

<sup>13</sup> *Waiver Order* ¶ 3, n.6.

<sup>14</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 03-123, 98-67, Report and Order, 20 FCC Rcd. 13165, 13174-76, ¶¶ 18-20 (2005) ("*2005 Speed-of-Answer Order*").

<sup>15</sup> *Id.* ¶ 19.

services, Sorenson urges the Commission to reconsider its decision and maintain a monthly measurement period.

**B. Skill Levels of VRS Interpreters Differ Markedly from Traditional TRS Communications Assistants**

In declining the providers' request to change the measurement period to monthly, the Bureau postulated that the daily measurement period that applies to traditional TRS calls should also apply to VRS.<sup>16</sup> But the provision of VRS differs markedly from other forms of TRS, in particular, in the role and skill levels of communications assistants ("CAs") for each service. Unlike traditional text relay, VRS providers require interpreters who are highly skilled at translating between ASL and either English or Spanish, not just at re-voicing or typing. Specifically, to satisfy VRS users' expectations, a VRS video interpreter must be able to operate 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 population. A significant challenge for VRS providers is to be able to have sufficient numbers of such interpreters available at operating centers in times of high demand—which are not always predictable. The limited supply of interpreters acts as a significant constraint both in any location and across the country, and because it takes years of training, cannot be easily increased.

Any speed-of-answer requirement should account for the available supply of qualified interpreters and the fact that there are limits as to how fast they can work and still provide high quality interpreting. Moreover, it is not in anyone's interest to make working in VRS unattractive to these highly skilled individuals. Sorenson urges the Bureau to account for the distinct differences between the skill level requirements between VRS video interpreters and

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<sup>16</sup> *Waiver Order* ¶ 19.

communications assistants for other forms of TRS and take that into account when considering this Petition for Reconsideration.

**C. The Bureau Should Adopt a Pre-Determined List of Unpredictable Events That Presumptively Excuse Strict Application of Speed-of-Answer Requirements**

As Sorenson previously explained, certain unpredictable events, which are beyond a provider's control, create a significant increase in call volume increasing staffing requirements. The occurrence of such events may place severe limits on a VRS provider's ability to maintain sufficient staffing at all hours to satisfy a daily speed-of-answer requirement, and, as a result, create good cause for a provider to be excused from strict application of the speed-of-answer requirements.

If the Bureau maintains a daily measurement requirement, Sorenson respectfully requests that the Bureau reconsider its decision and adopt a pre-determined list of reasonable, unpredictable events, which are measurable, the occurrence of which will presumptively excuse a provider for non-compliance with the speed-of-answer requirement for that day. To avail itself of this presumption, a provider would be required to record and retain a documentary record that is duly signed and affirmed by a company official that identifies and explains in sufficient detail the specific event, which falls within the Bureau-approved list of unpredictable events that caused the speed-of-answer requirement to be missed on that day. When seeking reimbursement, the provider would be required to affirm that it has met the daily speed-of-answer requirement, and for any day in which the speed-of-answer requirement was not met and the provider seeks to avail itself of the presumptively excused occurrence of an unpredictable event, submit a copy of the signed and affirmed documentary record. Even if not comprehensive or exhaustive, these presumptive exemptions would reduce the number of backend waivers that

would need to be considered by the Bureau and would improve the timeliness of the backend process.

As a starting point, Sorenson urges the Bureau to consider the following for inclusion on the list of unpredictable events that presumptively excuse non-compliance with the daily speed-of-answer requirements:

- a. Call volume that exceeds a pre-determined standard deviation measurement for trailing average call volume
- b. Any emergency or crisis, such as a bomb threat or fire that impacts wide geographic areas or specific VRS provider call centers
- c. Network outages at the telephone company level or network outages from the ISP that delivers broadband connectivity to the VRS providers and network users
- d. Any act of God, including such events as severe weather conditions, earthquakes, floods, tornados, and polar vortexes
- e. Inability to meet a pre-determined percentage of the scheduling/call volume forecast due to lack of available work force/labor pool

## **II. CONCLUSION**

Good cause exists to grant this Petition for Reconsideration. The Bureau should reconsider the *Waiver Order* as described herein to more fully account for the challenging issues that exist and persist without any foreseeable solution. In so doing, Sorenson believes the Bureau will find it in the public interest to leave in place—until the Commission can review data, and consider and adopt an alternative—the monthly measurement period to ensure that providers continue to make their service available to the greatest extent possible during a period of greater

than forecasted demand while maintaining a minimum requirement of speed-of-answer performance over a defined period of time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John T. Nakahata", is written over a horizontal line.

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