

080000-01

RECEIVED-FPSC

08 JAN 29 AM 9:24

IN THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JAN 29 AM 7:31

COMMISSION
CLERK
 _____)
 SORENSON COMMUNICATIONS, INC.,)
)
 Petitioner,)
)
 v.)
)
 FEDERAL COMMUNICATIONS COMMISSION and)
 UNITED STATES OF AMERICA,)
)
 Respondents.)
 _____)

Case No. _____

PETITION FOR REVIEW

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342 and 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, Sorenson Communications, Inc. (“Sorenson”) hereby petitions this Court for review of Paragraphs 95 and 96 of the Declaratory Ruling contained in the Report and Order and Declaratory Ruling issued by the Federal Communications Commission (“FCC” or “Commission”) in *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, FCC No. 07-186 (released Nov. 19, 2007), 73 Fed. Reg. 3197 (published Jan. 17, 2008) (“TRS Order”).¹

A copy of the complete TRS Order containing the Declaratory Ruling is attached as Exhibit 1 to this Petition. This Petition for Review is filed within 60 days of publication of the TRS Order in the Federal Register.² Venue is proper under 28 U.S.C. § 2343.

¹ The FCC issued an Erratum amending certain parts of the Order on December 21, 2007. This Erratum does not affect Paragraphs 95 and 96 of the Order, which are the subject of this Petition for Review. A copy of the Erratum is included in Exhibit 1 to this Petition.

² Sorenson first filed a Petition for Review in this matter on January 16, 2008. That Petition was docketed as Case No. 08-9503. As noted in that Petition, it is unclear under the FCC’s regulations

DOCUMENT NUMBER DATE

00702 JAN 29 8

The Commission's TRS Order contains two parts. The first part is an Introduction, Background, and "Report and Order." In this Report and Order, the Commission established cost recovery methodologies and then set specific compensation rates that govern the compensation of telecommunications relay providers such as Petitioner from the Interstate TRS Fund. In the instant petition, Petitioner does not seek to challenge, overturn, or delay implementation of any aspect of the Report and Order.

The second part of the TRS Order is a "Declaratory Ruling." In Paragraphs 95 and 96 of the Declaratory Ruling, the Commission, *sua sponte* and without any opportunity for notice and comment, imposed a series of severe speech restrictions on TRS providers such as Petitioner. Among other things, the Commission declared that "a provider may not contact its customers, by automated message, postcards, or otherwise, to inform them about pending TRS compensation issues and urge them to contact the Commission" (§ 95); may not "use a customer database or call database to contact TRS users for lobbying or any other purpose" (§ 95); and "may not use consumer or call data to contact TRS users or to in any way attempt to affect of influence, directly or indirectly, their use of relay service" (§ 96).

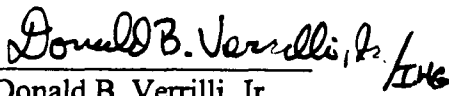
Petitioner seeks relief from the Declaratory Ruling on the grounds that Paragraphs 95 and 96 are procedurally flawed, contrary to the United States Constitution and the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, *et. seq.*, outside the Commission's jurisdiction, and are arbitrary, capricious, and otherwise contrary to law. *See* 5 U.S.C. § 706. Petitioner requests that this

whether the Declaratory Ruling became final for purposes of judicial review on the date of release (Nov. 19, 2007), or on the date of publication in the Federal Register (Jan. 17, 2008). *Compare* 47 C.F.R. § 1.4(a) *with id.* § 1.4(b). To ensure that this Court has jurisdiction over Petitioner's challenge, this Petition is being filed within 60 days of Federal Register publication, while Sorenson's first Petition was filed within 60 days of release.

Court hold Paragraphs 95 and 96 of the Declaratory Ruling unlawful, and that it enter an order vacating, enjoining, and setting aside these paragraphs of the Declaratory Ruling. *See* 5 U.S.C. § 706.

Dated: January 23, 2008

Respectfully submitted,


Donald B. Verrilli, Jr.
Ian Heath Gershengorn
Michael B. DeSanctis
Jessica Ring Amunson
JENNER & BLOCK LLP
601 13th Street, NW, Suite 1200 South
Washington, DC 20005
Phone: (202) 639-6000
Fax: (202) 639-6066
E-mail: dverrilli@jenner.com
igershengorn@jenner.com
mdesantis@jenner.com
jamunson@jenner.com

Counsel for Petitioner Sorenson

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 2008, pursuant to Fed. R. App. P. 15(c), I served via first-class mail, postage prepaid, the foregoing Petition for Review (without attachment) and Corporate Disclosure Statement on the following parties admitted to participate in the agency proceedings. Such parties were listed in Appendix A of the TRS Order:

Bob Segalman, Ph.D., President
Speech Communications Assistance by
Telephone, Inc.
515 P Street, #403
Sacramento, CA 95814

Communication Service for the Deaf, Inc.
Attn: Karen Peltz Strauss
3508 Albemarle Street, NW
Washington, DC 20008-4214

Snap Telecommunications, Inc.
c/o Francis M. Buono
Willkie Farr & Gallagher LLP
1875 K Street, N.W.
Washington, DC 20006

Hamilton Relay, Inc.
c/o David A. O'Connor
Holland & Knight LLP
2099 Pennsylvania Ave., NW
Suite 100
Washington, DC 20006

Telecommunications for the Deaf and Hard of
Hearing, Inc.
Attn: Eliot J. Greenwald
Bingham McCutchen LLP
8630 Fenton Street
Silver Spring, MD 20910

Hearing Loss Association of America
7910 Woodmont Avenue, Suite 1200
Bethesda, MD 20814

Communication Access Center for the Deaf
and Hard of Hearing, Inc.
1505 W. Court St.
Flint, MI 48503

GoAmerica, Inc.
433 Hackensack Avenue
Hackensack, NJ 07601

Hands On Video Relay Services, Inc.
c/o George L. Lyon, Jr.
Lukas, Nace, Gutierrez & Sachs,
1650 Tysons Blvd., Suite 1500
McLean, VA 22102

Sprint Nextel Corporation
c/o Michael B. Fingerhut
2001 Edmund Halley Drive
Reston, VA 20191

Florida Public Service Commission
2490 Shurmard Oak Blvd.
Tallahassee, FL 32399 -0850

National Association of the Deaf
Kelby Brick, Esq.
814 Thayer Ave.
Silver Spring, MD 20910

California Coalition of Agencies Serving the
Deaf and Hard of Hearing, Inc.
California Center for Law and the Deaf
J. Kendrick Kresse
14895 East 14th St., Suite 220
San Leandro, CA 94578 -2926

Verizon
Attn: Celia Roudiez
1515 N. Court House Road, Suite 500
Arlington, VA 22201

AT&T Inc.
Attn: Davida Grant
1120 20th Street NW, Suite 1000
Washington, DC 20036

Ultratec, Inc.
Attn: Karen Peltz Strauss
450 Science Drive
Madison, WI 53711

I further certify that pursuant to Federal Rule of Appellate Procedure 15(c), I have provided the Circuit Clerk with enough copies of the foregoing documents for the Clerk to serve each Respondent. For the Circuit Clerk's convenience, I have included the names and addresses of the Respondents below. I have also served Respondents with courtesy copies by hand.

Counsel for the FCC

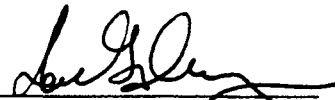
Matthew Berry
Acting General Counsel
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Counsel for the United States

Michael B. Mukasey
Attorney General of the United States
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dated: January 23, 2008

Respectfully submitted,



Ian Heath Gershengorn
JENNER & BLOCK LLP
601 13th Street, NW, Suite 1200 South
Washington, DC 20005
Phone: (202) 639-6000
Fax: (202) 639-6066
E-mail: igershengorn@jenner.com

Counsel for Petitioner Sorenson