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UNITED STATES COURT OF APPEALS JUL -1 AM 9: 29
FOR THE
TENTH CIRCUIT

COMMISSION
CLERK

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

Case No. _____

080000

PETITION FOR REVIEW

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. § 2342(1), 28 U.S.C. § 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, Petitioner GoAmerica, Inc. ("GoAmerica"), hereby respectfully petitions the Court for review of the May 28, 2008 Declaratory Ruling issued by Respondent Federal Communications Commission (the "Commission") in *In re Telecommunications Relays Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, FCC No. 08-138 (released May 28, 2008) ("*2008 Declaratory Ruling*"), which purported to clarify Paragraphs 95 and 96 of the Report and Order and Declaratory Ruling issued by the Commission on November 19, 2007 in *In the Matter of Telecommunications Services for the Hearing and Speech Disabled*, Report and Order and Declaratory Ruling, CG Docket No. 03-123, FCC 07-186 (rel. Nov. 19, 2007) 73 Fed.

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Reg. 3197 (pub. Jan. 17, 2008) (the “*TRS Marketing Ruling*”).¹ A copy of the *2008 Declaratory Ruling* is attached as Exhibit 1.

GoAmerica petitions for review of, and relief from, the Commission’s *2008 Declaratory Ruling* (just as it has from the *TRS Marketing Ruling*) on the grounds that the Commission: (1) circumvented the rule making procedures mandated by the Administrative Procedure Act, 5 U.S.C. § 553, by creating new telecommunications relay services rules under the guise of issuing a Declaratory Ruling; (2) violated the First Amendment to the Constitution of the United States

¹ On March 17, 2008, Petitioner GoAmerica filed a petition for review of Paragraphs 89-96 of the *TRS Marketing Ruling* in the United States Court of Appeals for the District of Columbia Circuit. (*GoAmerica v. FCC*, No. 08-1121 (D.C. Cir.)) (Exhibit 2 (without attachment)). Previously, Sorenson Communications, Inc. (“Sorenson”) had sought review from this Court of only Paragraphs 95 and 96 of the *TRS Marketing Ruling* in two now-consolidated petitions for review. (See *Sorenson v. FCC*, Nos. 08-9503 and 08-9507 (filed Jan. 17 and Jan. 24, 2008) (“Sorenson Petitions”).) On February 7, 2008, in response to a motion by Sorenson, the Commission stayed the enforcement of Paragraphs 95 and 96 of the *TRS Marketing Ruling* in order to reconsider the constitutional and statutory objections raised by Sorenson and other TRS providers. This Court then stayed the Sorenson Petitions pending the Commission’s reconsideration of Paragraphs 95 and 96. On April 1, 2008, the Commission moved to transfer GoAmerica’s petition for review of the *TRS Marketing Order* from the D.C. Circuit to the Tenth Circuit under 28 U.S.C. § 2112(a)(5). GoAmerica opposed the Commission’s motion to transfer on the ground that it was premature because the Commission was reconsidering Paragraphs 95 and 96, the Sorenson Petitions had been stayed, and the administrative record had not yet been filed with this Court. On May 28, 2008, the Commission issued the *2008 Declaratory Ruling*, which continues to impose unconstitutional limitations on speech and represents other statutory violations as outlined herein. Sorenson accordingly appealed the *2008 Declaratory Ruling* (*Sorenson v. FCC*, No. 08-9545 (10th Cir. June 6, 2008)), the Commission filed the certified list of items with this Court on June 11, 2008, and GoAmerica subsequently consented to the Commission’s motion to transfer GoAmerica’s petition for review of the *TRS Marketing Ruling* from the D.C. Circuit to the Tenth Circuit. On June 17, 2008, the D.C. Circuit granted the motion to transfer *GoAmerica v. FCC*, No. 08-1121 to this Court. (See *GoAmerica v. FCC*, No. 08-1121, Order (June 17, 2008) (Exhibit 3)). *GoAmerica v. FCC* is now No. 08-9547 on the Tenth Circuit’s docket.

by improperly prohibiting otherwise lawful speech; (3) violated Title IV of the Americans with Disabilities Act by impeding the implementation of functionally equivalent telecommunications relay services to the extent possible and in the most efficient manner; (4) arbitrarily and capriciously violated its own precedent without explaining the basis for its prohibitions against certain marketing practices and other contact with customers by providers of telecommunications relay services; and (5) otherwise acted arbitrarily and capriciously and contrary to law.

GoAmerica is a provider of telecommunications relay services, and is therefore aggrieved by the Commission's ruling in the above-referenced *2008 Declaratory Ruling* which purports to clarify the *TRS Marketing Ruling*. This petition is filed within 60 days of the release of the *2008 Declaratory Ruling*. Venue is proper here because: (1) the D.C. Circuit's June 17, 2008 Order transferred *GoAmerica v. FCC*, (then) No. 08-1121, to the Tenth Circuit pursuant to 28 U.S.C. § 2112(a)(5); (2) Sorenson has petitioned this Court for review of the *2008 Declaratory Ruling* in *Sorenson v. FCC*, No. 08-9545 (10th Cir. June 6, 2008); and (3) counsel to the Commission was consulted and has consented to venue.

GoAmerica respectfully requests that this Court hold unlawful, vacate, enjoin, and set aside the *2008 Declaratory Ruling* and order all such other relief as may be just and proper.

Dated: June 27, 2008

Respectfully submitted,

CHADBOURNE & PARKE LLP

By: _____ s/ Dana Frix

Dana Frix

A Member of the Firm

Attorneys for Petitioner GoAmerica, Inc.

1200 New Hampshire Avenue, N.W.

Suite 300

Washington, DC 20036

Telephone: (202) 974-5600

dfrix@chadbourne.com

CERTIFICATION OF DIGITAL SUBMISSIONS

Pursuant to *In re Electronic Submission of Documents and Conversion to an Electronic Case Management System*, No. 95-01, General Order (10th Cir. Aug. 10, 2007), I hereby certify that (1) all required privacy redactions have been made, and, with the exception of those redactions, every electronic document submitted herewith is an exact copy of the written document to be filed with the Clerk, and; (2) this entire digital submission, including the attachments, has been scanned for viruses with the most recent version of McAfee VirusScan Enterprise 8.0.0, last updated June 25, 2008, and, according to that program, are free of viruses.

Dated: June 27, 2008

CHADBOURNE & PARKE LLP

By: s/ Dana Frix
Dana Frix
A Member of the Firm
Attorneys for Petitioner GoAmerica, Inc.
1200 New Hampshire Avenue, N.W.
Suite 300
Washington, DC 20036
Telephone: (202) 974-5600
dfrix@chadbourne.com

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, GoAmerica, Inc. ("GoAmerica") hereby submits its Corporate Disclosure Statement. GoAmerica is a publicly held corporation duly incorporated under the laws of the State of Delaware, and its primary purpose is to provide telecommunications relay services. GoAmerica has no parent company, and no publicly held corporation owns 10% or more of GoAmerica's stock.

Dated: June 27, 2008

CHADBOURNE & PARKE LLP

By: s/ Dana Frix
Dana Frix
A Member of the Firm
Attorneys for Petitioner GoAmerica, Inc.
1200 New Hampshire Avenue, N.W.
Suite 300
Washington, DC 20036
Telephone: (202) 974-5600
dfrix@chadbourne.com

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June, 2008, pursuant to Rule 15(c) of the Federal Rules of Appellate Procedure, I served via first-class mail, postage prepaid, the foregoing Petition for Review (without attachments) 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 Marketing Ruling* (which the *2008 Declaratory Ruling* purports to clarify):

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, N.W.
Washington, DC 20008-4214

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

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

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

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 Avenue
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 Street, Suite 220
San Leandro, CA 94578-2926

AT&T, Inc,
Attn: Davida Grant
1120 20th Street, N.W., Suite 1100
Washington, DC 20036

