

IN THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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SORENSEN COMMUNICATIONS, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION and
UNITED STATES OF AMERICA,

Respondents.

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Case No. _____
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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 the 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. 08-138 (released May 28, 2008) (“2008 Declaratory Ruling”), which purported to clarify the language contained in Paragraphs 95 and 96 of the Report and Order and Declaratory Ruling issued in November 2007 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

¹ Paragraphs 95 and 96 of the TRS Order significantly restricted TRS providers’ ability to contact their customers and engage in lawful lobbying and commercial speech activities. Petitioner filed two petitions for review of Paragraphs 95 and 96 of the TRS Order in this Court, the first on January

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A copy of the 2008 Declaratory Ruling is attached as Exhibit 1 to this Petition. This Petition for Review is filed within 60 days of the release of the Declaratory Ruling. Venue is proper under 28 U.S.C. § 2343.

The 2008 Declaratory Ruling, in conjunction with the TRS Order, imposes a series of severe speech restrictions on TRS providers such as Petitioner. Petitioner seeks relief from the 2008 Declaratory Ruling (as it has from paragraphs 95 and 96 of the TRS Order) on the grounds that it is 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 is arbitrary, capricious, and otherwise contrary to law. *See* 5 U.S.C. § 706. Petitioner requests that this Court hold the 2008 Declaratory Ruling unlawful, and that it enter an order vacating, enjoining, and setting aside the 2008 Declaratory Ruling. *See* 5 U.S.C. § 706.

17, 2008, within 60 days of the release of the TRS Order, *see Sorenson v. FCC*, No. 08-9503 (10th Cir.), and the second on January 24, 2008, within 60 days of the publication of the TRS Order in the Federal Register, *see Sorenson v. FCC*, No. 08-9507 (10th Cir.). The appeals were consolidated on February 26, 2008. On February 7, 2008, the FCC stayed the effectiveness of Paragraphs 95 and 96 in order to consider the constitutional and statutory concerns raised by Petitioner and other TRS providers. Accordingly, this Court stayed consolidated appeal of the TRS Order until May 28, 2008. On May 28, 2008, the FCC issued the 2008 Declaratory Ruling, which purports to clarify Paragraphs 95 and 96 of the TRS Order, but still significantly restrains the speech of TRS providers.

Dated: June 6, 2008

Respectfully submitted,



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EXHIBIT 1

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Telecommunications Relay Services)
And Speech-to-Speech Services for) CG Docket No. 03-123
Individuals with Hearing and Speech)
Disabilities)

DECLARATORY RULING

Adopted: May 28, 2008

Released: May 28, 2008

By the Commission:

I. INTRODUCTION

1. In the *2007 TRS Cost Recovery Declaratory Ruling*, the Commission reminded telecommunications relay service (TRS) providers¹ seeking compensation from the Interstate TRS Fund (Fund) of the prohibition, announced in previous Commission rulings, against offering consumers financial or other tangible incentives to make relay calls.² The *2007 TRS Cost Recovery Declaratory Ruling* also called attention to previous instances where the Commission had imposed restrictions on TRS providers' use of consumer or call databases to contact TRS consumers.³ In order to clarify the scope of those restrictions, the Commission provided examples, in paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling*, of certain prohibited uses of consumer or call database information by TRS providers, including restrictions on the use of such information, among other things, "[to] attempt to ... influence ... [consumers'] use of relay service," or "for lobbying or any other purpose."⁴ We continue to

¹ TRS, mandated by Title IV of the Americans with Disabilities Act (ADA) of 1990, enables an individual with a hearing or speech disability to communicate by telephone with a person without such a disability. See 47 U.S.C. § 225; 47 C.F.R. § 64.601 *et seq.* (implementing regulations). This is accomplished through TRS facilities staffed by specially trained communications assistants who relay conversations between persons using various types of assistive communication devices and persons using a standard telephone. There are presently several forms of TRS, including Video Relay Service (VRS), IP Relay, and IP captioned telephone service, which are Internet-based services. See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket Nos. 90-571 & 98-67, CG Docket No. 03-123, 19 FCC Rcd 12475, 12479-86, paras. 3-13 (June 30, 2004) (*2004 TRS Report & Order*).

² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20173-76, paras. 89-96 (Nov. 19, 2007) (*2007 TRS Cost Recovery Declaratory Ruling*).

³ See, e.g., *id.*, 22 FCC Rcd at 20174, para. 91.

⁴ *Id.*, 22 FCC Rcd at 20176, paras. 95-96. In paragraphs 95 and 96, the Commission stated, in relevant part, that:

[A]part from attempting to generate additional calls that can be billed to the Fund, providers also may not use a consumer or call database to contact TRS users for lobbying or any other purpose. The Commission has made clear ... that TRS customer profile information cannot be used for any purpose other than handling relay calls. Therefore, for example, a provider may not contact its customers, by

(continued...)

believe that reasonable restrictions on the use of consumer information are necessary to prevent improper marketing practices and to ensure that interstate TRS funds are used for their intended purpose. However, to address concerns that paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling* may be overly broad, we clarify the language set forth in those paragraphs, as explained more fully below. The restrictions on provider-consumer contacts, as clarified here, apply to relay providers in connection with their offering of interstate relay services, including all Internet-based relay calls and any other relay calls that are compensated by the Fund.⁵

II. BACKGROUND

2. Title IV of the ADA requires common carriers offering telephone voice transmission services to also provide TRS throughout the area in which they offer service to ensure that persons with hearing and speech disabilities have access to the telephone system. As we have explained, Congress, in enacting Title IV, “place[d] the obligation on carriers providing voice telephone services to *also* offer TRS to, in effect, remedy the discriminatory effects of a telephone system inaccessible to persons with disabilities.”⁶ To this end, Section 225 is intended to ensure that individuals with hearing or speech disabilities have access to telephone services that are “functionally equivalent” to those available to individuals without such disabilities.⁷

3. Because the provision of TRS is directed at ensuring that certain persons, notwithstanding their disabilities, can access the telephone system, Congress mandated that the cost of the TRS service is not paid by the TRS user.⁸ The statute and regulations provide that eligible TRS providers offering interstate services and certain intrastate services will be compensated for their just and “reasonable” costs of doing so from the Fund.⁹ Under this mechanism, TRS providers submit to the Fund administrator on a monthly basis the number of minutes of service they provided of the various forms of TRS, and the Fund administrator compensates them based on per-minute compensation rates. In addition,

(...continued from previous page)

an automated message, postcards, or otherwise, to inform them about pending TRS compensation issues and urge them to contact the Commission about the compensation rates. Similarly, as noted above, a provider may not use call data to monitor the TRS use by its customers (or the customers of other providers) and to determine whether they are making a sufficient number of calls to warrant further benefits from the provider.

In sum, because the obligation placed on TRS providers is to be available to handle calls consumers choose to make, when they choose to make them, *i.e.*, to be the “dial tone” for a consumer that uses relay to call to a voice telephone user, and because consumers do not pay for this service but rather providers are compensated pursuant to Title IV of the ADA, providers may not offer relay users financial and similar incentives, directly or indirectly, to use their service. Likewise, they may not use consumer or call data to contact TRS users or to in any way attempt to affect or influence, directly or indirectly, their use of relay service.

Id. (internal footnotes omitted).

⁵ If, in the future, evidence comes to our attention of the misuse of consumer or call database information by traditional TRS providers, in connection with their offering of intrastate relay services, we may revisit this issue and consider the adoption of additional restrictions at that time.

⁶ See, e.g., *2004 TRS Report & Order*, 19 FCC Rcd at 12543-45, paras. 179, 182 n.521.

⁷ See, e.g., 47 U.S.C. § 225(a)(3).

⁸ See, e.g., *2004 TRS Report & Order*, 19 FCC Rcd at 12480-81, para. 4 n.23.

⁹ See, e.g., 47 C.F.R. § 64.604(c)(5)(iii)(E) (implementing 47 U.S.C. § 225(d)).

consumers using the Internet-based forms of TRS presently do not pay any long distance charges in connection with a call.¹⁰ Therefore, there is no cost to the consumer for placing Internet-based relay calls.

4. As explained in the *2007 TRS Cost Recovery Declaratory Ruling*, the Commission has addressed TRS provider marketing and incentive programs directed at generating relay calls.¹¹ First, the *2005 Financial Incentives Declaratory Ruling* concluded that “any program that involves the use of any type of financial incentives to encourage or reward a consumer for placing a TRS call” violates Section 225.¹² The item reasoned that “[t]he fact that any TRS reward or incentive program has the effect of enticing TRS consumers to make TRS calls that they would not otherwise make, which allows the provider to receive additional payments from the Fund, and results in ‘payments’ to consumers for using the service, puts such programs in violation of Section 225.”¹³ The item explained that the obligation placed on TRS providers is to be available to handle calls consumers choose to make, when they choose to make them, and that “[b]ecause the Fund, and not the consumer, pays for the cost of the TRS call, such financial incentives are tantamount to enticing consumers to make calls that they might not ordinarily make.”¹⁴

5. Also in January 2005, the Commission released a Public Notice addressing impermissible VRS marketing practices.¹⁵ This item noted that apparently “some providers use their customer database to contact prior users of their service and suggest, urge, or tell them to make more VRS calls.”¹⁶ The item concluded that “[t]his marketing practice constitutes an improper use of information obtained from consumers using the service ... and may constitute a fraud on the Interstate TRS Fund because the Fund, and not the consumer, pays for the cost of the VRS call.”¹⁷ The item further stated that “[e]ntities electing to offer VRS (or other forms of TRS) should not be contacting users of their service and asking or telling them to make TRS calls,” but rather “must be available to handle the calls that consumers choose to make.”¹⁸

6. In the *2007 TRS Cost Recovery Declaratory Ruling*, the Commission expressly “reaffirm[ed] the *2005 Financial Incentives Declaratory Ruling* and the *2005 TRS Marketing Practices PN*, and reiterate[d] that providers seeking compensation from the Fund may not offer consumers financial or other tangible incentives, either directly or indirectly, to make relay calls.”¹⁹ The Commission also specified in greater detail the nature and types of incentive programs that are

¹⁰ See *2004 TRS Report & Order*, 19 FCC Rcd at 12524-25, paras. 127-29 & n.364.

¹¹ *2007 TRS Cost Recovery Declaratory Ruling*, 22 FCC Rcd at 20173-74, paras. 89-91.

¹² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Declaratory Ruling, 20 FCC Rcd 1466, para. 1 (Cons. & Govt. Aff. Bur. Jan. 26, 2005) (*2005 Financial Incentives Declaratory Ruling*).

¹³ *Id.*, 20 FCC Rcd at 1469, para. 8.

¹⁴ *Id.* The item added that in these circumstances, “TRS is no longer simply ... [a means] for persons with certain disabilities [to access the telephone system], but an opportunity for their financial gain.” *Id.*

¹⁵ *Federal Communications Commission Clarifies that Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices are Improper and Reminds that Video Relay Service (VRS) May Not be Used as a Video Remote Interpreting Service*, CC Docket No. 98-67, CG Docket No. 03-123, Public Notice, 20 FCC Rcd 1471 (Jan. 26, 2005) (*2005 TRS Marketing Practices PN*).

¹⁶ *2005 TRS Marketing Practices PN*, 20 FCC Rcd at 1473.

¹⁷ *Id.*

¹⁸ *Id.* The item also “question[ed] whether there are any circumstances in which it is appropriate for a TRS provider to contact or call a prior user of their service,” given that “the role of the provider is to make available a service to consumers ... under the ADA when a consumer may choose to use that service.” *Id.*

¹⁹ *2007 TRS Cost Recovery Declaratory Ruling*, 22 FCC Rcd at 20175, para. 92.

impermissible, clarified that “a financial incentive program is not permissible even in circumstances where the benefit goes to a third party,” and stated that providers cannot condition the ongoing use or possession of TRS equipment (or the receipt of upgraded equipment) on a consumer’s call volume.²⁰ The *2007 TRS Cost Recovery Declaratory Ruling* also addressed in greater detail providers’ use of consumer or call databases to contact consumers for lobbying or to attempt to influence their use of relay.²¹

7. Following release of the *2007 TRS Cost Recovery Declaratory Ruling*, several TRS providers, in filings with the Commission, asserted that the restrictions contained in paragraphs 95 and 96 violate the First Amendment rights of TRS providers.²² In January 2008, Sorenson Communications, Inc. (Sorenson), filed a Petition for Review with the United States Court of Appeals for the Tenth Circuit seeking judicial review of this language,²³ and sought a stay from the Commission pending resolution of its Petition for Review.²⁴ Among other things, Sorenson contends that the restrictions contained in paragraphs 95 and 96 are unconstitutionally vague, violate the First Amendment rights of TRS providers, and are procedurally deficient under the Administrative Procedure Act.²⁵ In order to give the Commission sufficient time to consider the arguments presented by Sorenson and others, the Commission’s Consumer & Governmental Affairs Bureau (CGB) issued an order on February 7, 2008, granting a 90-day stay of paragraphs 95 and 96.²⁶ The stay granted by that order was set to expire after May 7, 2008, but was subsequently extended until May 28, 2008.²⁷

III. DISCUSSION

8. We believe that reasonable restrictions on the use of consumer information are necessary to prevent improper marketing practices and to ensure that interstate TRS funds are used for their intended purpose. However, to address concerns that the restrictions set forth in paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling* may be overly broad and may have the unintended effect of preventing TRS providers from communicating important information, including critical public safety information, to TRS users relating to the handling of relay calls,²⁸ we clarify the restrictions in those

²⁰ *Id.* at 20175, paras. 92-94.

²¹ *Id.* at 20176, paras. 95-96; *see supra* note 4.

²² Letter from George L. Lyon, Jr., Hands On Video Relay Services, Inc., to Marlene H. Dortch, FCC, dated December 12, 2007 (*Hands On Ex Parte*); Letter from Michael B. Fingerhut, Sprint Nextel Corporation, to Marlene H. Dortch, FCC, dated December 14, 2007 (*Sprint Ex Parte*); Letter from Toni Acton, AT&T, Deb MacLean, Communication Access Center for the Deaf and Hard of Hearing, Inc., Sean Belanger, CSDVRS, LLC, Mark Stern, GoAmerica, Inc., Kelby Brick, Hands On Video Relay Services, Inc., Jeff Rosen, Snap Telecommunications, Inc., Michael D. Maddix, Sorenson Communications, Inc., Michael B. Fingerhut, Sprint Nextel Corporation, and Carla Mathers, Viable, Inc., to Marlene H. Dortch, FCC, dated January 11, 2008 (*Coalition Ex Parte*).

²³ *Sorenson Communications v. FCC*, Petition for Review, Nos. 08-9503 & 08-9507 (10th Cir., filed Jan. 16, 2008 (08-9503) and Jan. 23, 2008 (08-9507)) (*Sorenson Petition for Review*).

²⁴ Sorenson, *Request for Stay Pending Judicial Review*, CG Docket No. 03-123 (filed Jan. 28, 2008) (*Sorenson Stay Request*).

²⁵ *See generally Sorenson Stay Request*.

²⁶ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Request for Stay Pending Judicial Review*, CG Docket No. 03-123, Order, 23 FCC Rcd 1705 (CGB Feb. 7, 2008).

²⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Request for Stay Pending Judicial Review*, CG Docket No. 03-123, Order, DA 08-1079 (CGB rel. May 6, 2008).

²⁸ *Coalition Ex Parte* at 1-2.

paragraphs. We also provide examples of the circumstances in which providers may use consumer or call databases to contact relay users.

9. First, we clarify that the language in paragraphs 95 and 96 restricting the use of consumer information “for any ... purpose,” does not prohibit contacts by TRS providers with TRS users that are directly related to the handling of TRS calls. Consistent with the Commission’s TRS rules and orders, providers may use information derived from a consumer or call database established in conjunction with Section 225 to contact users as long as it is for purposes *related to the handling of relay calls*.²⁹ Therefore, for example, a provider reasonably could directly contact relay users (using such customer information) in order to inform users of a service outage, respond to a consumer’s call for emergency services, assist in the delivery of emergency services, and provide technical support for TRS products or services used by the consumer.³⁰ Providers also may use such customer data, for example, to comply with a federal statute, a Commission rule or order, a court order, “or other lawful authority.”³¹ We emphasize that any such direct contacts with relay users must be informational in nature and must relate to the provision of, or the consumer’s use of, TRS.³² On the other hand, providers may not contact consumers and offer financial or other incentives to generate additional or longer calls that can be billed to the Fund because such contacts are *not* directly related to the purpose of handling relay calls. We may

²⁹ See, e.g., *Telecommunications Relay Services and Speech-to-Speech Service for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5175, para. 83 (March 6, 2000) (stating that providers may not use such data “for any purpose other than the provision of TRS”). We have received a significant amount of confidential, anecdotal, or other evidence (including copies of mailings from VRS providers to consumers) indicating that some providers contact consumers to alert them to matters unrelated to the actual handling of relay calls. See, e.g., *infra* note 33.

³⁰ Under this *Declaratory Ruling*, Snap!VRS reasonably could contact users, as it reportedly did in January 2008, to inform them of a service outage. See Email from Snap!VRS Customer Service to Snap!VRS Customer (embedded in email from Jeff Rosen, Snap!VRS, to FCC Staff (dated Jan. 30, 2008)). On the contrary, correspondence, such as that reportedly sent by Snap!VRS to VRS users recently discussing a payment dispute between Snap!VRS and a particular video phone manufacturer, would not be considered related to the actual handling of relay calls and therefore, upon the effective date of this *Declaratory Ruling*, could not be sent directly to VRS users. See *Ex parte* letter from Edward Bosson, Consumer, to FCC staff (dated Feb. 29, 2008) (attaching Letter from Richard Schatzberg, CEO, Snap!VRS to Snap!VRS Customers, dated Feb. 6, 2008).

³¹ *Coalition Ex Parte* at 1-2. We do not address the request in the *Coalition Ex Parte* that we explicitly allow the disclosure of user-specific information to third parties designated by the user and information to protect TRS users from fraudulent, abusive or unlawful use of TRS. *Id.* at 2. We believe this issue would be better addressed in the context of the Commission’s consideration of whether, and if so, how to extend customer proprietary network information (CPNI) requirements to TRS providers. See *Telecommunications Relay Services And Speech-To-Speech Services For Individuals With Hearing And Speech Disabilities, E911 Requirements For IP-Enabled Service Providers*, CG 03-123, WC 05-196, Report and Order, 23 FCC Rcd 5255 (Mar. 19, 2008) (*Interim Emergency Call Handling Order*); *Consumer & Governmental Affairs Bureau Seeks to Refresh Record on Assigning Internet Protocol (IP)-Based Telecommunications Relay Service (TRS) Users Ten-Digit Telephone Numbers Linked to North American Numbering Plan (NANP) and Related Issues*, CG Docket No. 03-123, Public Notice, 23 FCC Rcd 4727 (Mar. 19, 2008) (*IP-Based Relay Numbering PN*) (seeking to refresh the record on the proposed establishment of a global database of proxy telephone numbers for Internet-based TRS users and on consumer protection issues related to numbering, including the application of CPNI requirements).

³² In a Letter from Claude L. Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, FCC, dated May 21, 2008 (incorporating a May 20, 2008 e-mail submitted on behalf of the Deaf and Hard of Hearing Consumer Advocacy Network) (*Consumer Ex Parte*), consumer advocates asked the Commission to ensure that consumers be asked by providers to opt-in to receiving marketing and promotional materials before receiving such information directly from providers. We do not address the request in the *Consumer Ex Parte*; rather, we believe this issue would be better addressed in the context of the Commission’s consideration of whether, and if so, how to extend CPNI requirements to TRS providers. See *Interim Emergency Call Handling Order, IP-Based Relay Numbering PN*.

revisit these determinations if specific facts are brought to our attention suggesting an abuse of this proviso.

10. Second, we clarify that providers may not use customer information obtained through the provision of federally-funded relay services, or use funds obtained from the Interstate TRS Fund, to engage in lobbying or advocacy activities directed at relay users. Evidence in the record shows that at least one service provider has bombarded deaf persons with material seeking to persuade them to support the provider's position on matters pending before the FCC.³³ We find that using revenue from the TRS Fund, or information obtained from end users in the provision of services supported by the TRS Fund, to engage in that kind of advocacy is inconsistent with the purpose of the TRS Fund.

11. These restrictions do not run afoul of the First Amendment. In the context of a federally subsidized program, like the TRS Fund, the government "may certainly insist that these 'public funds be spent for the purposes for which they were authorized.'"³⁴ The TRS Fund is designed to ensure that persons with hearing and speech disabilities have access to the telephone system. It was not intended to finance lobbying by TRS providers directed at end users. The Commission is under no obligation "to fund such activities out of the public fisc."³⁵ We find that, for the same reasons, it is reasonable to restrict the use of customer information acquired in the provision of federally subsidized TRS services. A consumer or call database that a service provider develops and maintains through participation in the TRS program is inextricably tied to that federally funded program. Consequently, it is permissible to prohibit the use of that database for purposes unrelated to the handling of relay calls,³⁶ such as lobbying end users to support a service provider's position before the Commission.

12. We emphasize that nothing we do here would prevent a provider from using information and funds from other sources to engage in lawful lobbying or advocacy activities. Thus, this is not an "unconstitutional conditions" case in which the government "effectively prohibit[ed] the recipient from engaging in the protected conduct outside the scope of the federally funded program."³⁷ TRS providers are free to use those resources outside the scope of the TRS program to support their positions before the Commission.

13. Finally, we reiterate that a relay provider may not use TRS consumer or call data, *or similar, privately obtained information*, to contact a relay user in an attempt to increase, directly or indirectly, the number or length of relay calls the user otherwise may choose to make via that provider. In this instance, because the practice itself (*i.e.*, offering users financial or similar incentives to generate additional or longer calls that can be billed to the Fund) is prohibited by the Commission, communications with relay users in furtherance of this practice are likewise prohibited, no matter the

³³ See, e.g., *Ex parte* letter from Jon Ziev, consumer, to Kevin Martin, FCC (dated Feb. 4, 2008) (complaining that deaf persons are being subjected to a "virtual bombardment of lobbying material").

³⁴ *United States v. American Library Ass'n*, 539 U.S. 194, 212 (2003) (quoting *Rust v. Sullivan*, 500 U.S. 173, 196 (1991)).

³⁵ *Rust*, 500 U.S. at 198.

³⁶ See *supra* para. 9.

³⁷ *Rust*, 500 U.S. at 197; see also *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 544-46 (1983) (holding that tax exemption for non-profit groups that do not engage in lobbying did not violate First Amendment; and noting that a group could qualify for the tax exemption by adopting a "dual structure," with one arm for non-lobbying activities and another for lobbying); *DKT Int'l, Inc. v. United States Agency for Int'l Development*, 477 F.3d 758 (D.C. Cir. 2007) (rejecting First Amendment challenge to requirement that recipients of funds from AIDS/HIV education program adopt policy of opposition to prostitution and sexual trafficking, and noting that recipients could remain neutral by setting up a subsidiary that would receive the funds and adopt the policy).

source of the consumer or call data. Because the obligation placed on relay providers is to be available to handle calls consumers choose to make, when they choose to make them, *i.e.*, to be the “dial tone” for a consumer that uses relay to call a voice telephone user, and because consumers do not pay for this service but rather providers are compensated pursuant to Title IV of the ADA, we find that these restrictions are necessary to prevent providers from improperly urging consumers to make unnecessary relay calls, and therefore to ensuring that interstate TRS funds are used for their intended purpose. By highlighting examples of both permissible and prohibited uses of consumer or call database information above, we seek to ensure that Interstate TRS funds are not used for activities that are outside the scope of, or incompatible with the purposes of, the Interstate TRS Fund, as defined by Congress.

14. We note that the restrictions on provider-consumer contacts, as clarified here, apply to relay providers in connection with their offering of interstate relay services, including all Internet-based relay calls and any other relay calls that are compensated by the Interstate TRS Fund. As noted above, however, if, in the future, evidence comes to our attention of the misuse of consumer or call database information by traditional TRS providers, in connection with their offering of intrastate relay services, we may revisit this issue and consider the adoption of additional restrictions at that time.

IV. CONCLUSION

15. We find that the clarifications set forth above will help ensure that the limits of the federal TRS program are observed, without placing undue restrictions on provider-user communications. In particular, by prohibiting the use of consumer or call database information that is obtained through the provision of federally funded relay services, and the use of funds obtained from the Interstate TRS Fund for purposes unrelated to the handling of relay calls, we conclude that the restrictions on provider-user communications, as clarified herein, will better serve the goals of the Interstate TRS Fund without interfering with day-to-day contacts between providers and consumers that are necessary to the proper handling of relay calls.

V. PROCEDURAL MATTERS

16. *Paperwork Reduction Act.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

17. *Congressional Review Act.* The Commission will not send a copy of the *Declaratory Ruling* pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A) because the adopted rules are rules of particular applicability.

18. *Materials in Accessible Formats.* To request materials in accessible formats (such as braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Declaratory Ruling* can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb/dro/trs.html#orders>.

VI. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, and 225, this *Declaratory Ruling* IS hereby ADOPTED.

20. IT IS FURTHER ORDERED that this *Declaratory Ruling* shall become effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Dated: June 6, 2008

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2008, pursuant to Fed. R. App. P. 15(c), I served via first-class mail, postage prepaid, the foregoing Petition for Review and Corporate Disclosure Statement on the following parties admitted to participate in the initial agency proceedings.

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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

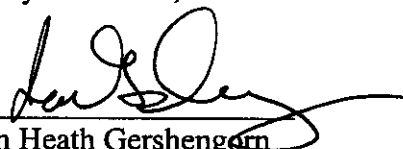
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Dated: June 6, 2008

Respectfully submitted,



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