

**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)	
)	
Request for Stay Pending Judicial Review)	

ORDER

Adopted: May 6, 2008

Released: May 6, 2008

By the Chief, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION

1. In paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling*,¹ the Commission restricted telecommunications relay service (TRS) providers from using consumer or call databases to contact TRS users.² On February 7, 2008, the Commission's Consumer & Governmental Affairs Bureau (CGB) granted a request to stay³ the effectiveness of these paragraphs for 90 days, pending further Commission review.⁴ In this *Order*, we extend the stay of paragraphs 95 and 96, which is set to expire after May 7, 2008, until May 28, 2008, to afford the Commission sufficient time to complete its review of this matter.

¹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, CG Docket No. 03-123, 22 FCC Rcd 20140, at 20176, paras. 95-96 (Nov. 19, 2007) (*2007 TRS Cost Recovery Declaratory Ruling*).

² 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 that are staffed by specially trained communications assistants (CAs) 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), which is Internet-based. *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, FCC 04-137, 19 FCC Rcd 12475, 12479-86, at paras. 3-13 (June 30, 2004) (*2004 TRS Report & Order*).

³ Sorenson Communications, Inc., *Request for Stay Pending Judicial Review*, CG Docket No. 03-123 (Jan. 28, 2008) (*Stay Request*).

⁴ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, *Request for Stay Pending Judicial Review*, Order, CG Docket No. 03-123, DA 08-312 (Cons. & Govt. Aff. Bur. Feb. 7, 2008) (*February 7th Stay Order*).

II. BACKGROUND

2. On November 19, 2007, the Commission released the *2007 TRS Cost Recovery Declaratory Ruling*, which, among other things, prohibits providers from using a consumer or call database to contact TRS users “for lobbying or any other purpose,”⁵ and prohibits providers from using a consumer or call database to “contact TRS users or to in any way attempt to affect or influence, directly or indirectly, their use of relay service.”⁶

3. 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.⁷ On January 16, 2008, Sorenson Communications, Inc. (Sorenson), a VRS provider, filed a Petition for Review in the United States Court of Appeals for the Tenth Circuit asserting, in part, that the above-quoted language violates the First Amendment rights of TRS providers.⁸ On January 28, 2008, Sorenson filed with the Commission a request for a stay of paragraphs 95 and 96 pending judicial review.⁹

4. In its *Stay Request*, Sorenson contends that it has a substantial likelihood of prevailing on the merits of the judicial review proceeding in the Tenth Circuit because paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling* violate Sorenson’s First Amendment rights by “limiting [its] ability to engage in core political speech and to petition the government for redress of grievances” and by “restrict[ing] [its] ability to engage in protected commercial speech.”¹⁰ Although Sorenson does not dispute that the Commission has a substantial interest in preventing providers from using customer call data to offer TRS users financial incentives to make unnecessary TRS calls,¹¹ it contends that the Commission has no substantial interest in preventing providers from contacting users for other reasons, including to assist them with service issues, to educate them about new service features, or to inform them of potential misuse of the service by third parties.¹² Sorenson also asserts that, absent a stay, it will suffer irreparable harm through the loss of its First Amendment rights and harm to its business as a result of its inability to warn its users of scams and abusive relay practices.¹³ Sorenson further asserts that a stay will not injure other parties, as it will simply preserve the *status quo*.¹⁴ Finally, Sorenson asserts that a stay is

⁵ *2007 TRS Cost Recovery Declaratory Ruling*, 22 FCC Rcd at 20176, para. 95.

⁶ *Id.*, 22 FCC Rcd at 20176, para. 96.

⁷ 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*).

⁸ *Sorenson Communications v. FCC*, Petition for Review, Nos. 08-9503 & 08-9507 (10th Cir. Jan. 16, 2008 (08-9503) and Jan. 23, 2008 (08-9507)).

⁹ *Stay Request*.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 8-9.

¹² *Id.* at 9. Apart from its First Amendment argument, Sorenson also argues that the challenged restrictions are invalid under the Administrative Procedure Act (APA) because the Commission “did not promulgate them using notice-and-comment procedures,” and because the restrictions “are arbitrary and capricious.” *Id.* at 15.

¹³ *Id.* at 21-22.

¹⁴ *Id.* at 22. Sorenson notes that it “does not challenge the prohibition on contacting users for call-pumping purposes” and does not “seek to contact users in ways that violate their reasonable privacy expectations.” *Id.*

in the public interest because the challenged restrictions run afoul of the First Amendment and impair the ability of TRS users to learn about developments in the provision of relay service.¹⁵

5. To afford the Commission sufficient time to consider the arguments presented by Sorenson and others,¹⁶ CGB issued an order on February 7, 2008, granting a 90-day stay of paragraphs 95 and 96.¹⁷ The stay granted by that order is set to expire after May 7, 2008.

III. DISCUSSION

6. In order to provide the Commission with sufficient time to complete its consideration of the arguments presented by Sorenson and others, we find that a brief extension of the February 7th stay of paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling* is warranted. We note that Sorenson and other providers¹⁸ have raised several concerns, including their asserted inability to contact users for emergency or consumer protection-related purposes, that, if borne out by further Commission examination, may cause the Commission to reconsider the language of paragraphs 95 and 96. We therefore find that it is in the public interest to extend the stay of paragraphs 95 and 96 for a period of 21 days, until May 28, 2008, pending further Commission review.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated under Sections 0.141 and 0.361 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, that the STAY granted by the Commission's Consumer & Governmental Affairs Bureau on February 7, 2008, IS EXTENDED, and will remain in effect for a period of 21 days, until May 28, 2008.

8. 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 *Order* can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb/dro/trs.html#orders>.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau

¹⁵ *Id.* at 23.

¹⁶ *See* note 7, *supra*.

¹⁷ *February 7th Stay Order*.

¹⁸ *See* note 7, *supra*.