

**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: February 7, 2008

Released: February 7, 2008

By the Chief, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION

1. In this *Order* we grant a request to stay¹ the effectiveness of paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling*, which restrict telecommunications relay service (TRS) providers² from using consumer or call databases to contact TRS users.³ For the reasons set forth below, we find that good cause has been shown to stay the effectiveness of these paragraphs for 90 days, starting from the date of release of this *Order*, pending further Commission review.

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,”⁴ 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

¹ Sorenson Communications, Inc., *Request for Stay Pending Judicial Review*, CG Docket No. 03-123 (Jan. 28, 2008) (*Stay Request*).

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 *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, FCC 07-186, paras. 95-96 (Nov. 19, 2007) (*2007 TRS Cost Recovery Declaratory Ruling*).

⁴ *2007 TRS Cost Recovery Declaratory Ruling* at para. 95.

or indirectly, their use of relay service.”⁵ 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.⁶ On January 28, 2008, Sorenson filed with the Commission a request for a stay of paragraphs 95 and 96 pending judicial review.⁷

3. 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.”⁸ 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,⁹ 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.¹⁰ 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.¹¹ Sorenson further asserts that a stay will not injure other parties, as it will simply preserve the *status quo*.¹² Finally, Sorenson asserts that a stay is 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.¹³

III. DISCUSSION

4. In considering requests for stay, the Commission generally considers the four criteria set forth in *Virginia Petroleum Jobbers Association*.¹⁴ These criteria are: (1) a likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of preliminary relief; (3) the degree of injury to other parties if relief is granted; and (4) the issuance of the order will further the public interest.¹⁵ As the Commission has explained, the relative importance of the four criteria will vary depending upon the

⁵ *Id.* at para. 96.

⁶ *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)).

⁷ *Stay Request*.

⁸ *Id.* at 5.

⁹ *Id.* at 8-9.

¹⁰ *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.

¹¹ *Id.* at 21-22.

¹² *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.*

¹³ *Id.* at 23.

¹⁴ *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921, 925 (D.C. Cir. 1958); see generally *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Order, 22 FCC Rcd 5652, 5654, at para. 7 (March 29, 2007).

¹⁵ *Virginia Petroleum Jobbers Association*, 259 F.2d at 925.

circumstances of the case.¹⁶ If there is a particularly overwhelming showing in at least one of the factors, the Commission may find that a stay is warranted notwithstanding the absence of another one of the factors.¹⁷

5. We agree that a temporary stay of paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling* is appropriate under the circumstances presented. Specifically, we conclude that a stay will further the public interest. 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 of the *2007 TRS Cost Recovery Declaratory Ruling*. In order to provide the Commission with sufficient time to consider the arguments presented by Sorenson and others, we find that a temporary stay of those paragraphs is warranted. We therefore find that it is in the public interest to grant the requested stay for a period of 90 days, starting from the date of release of this *Order*.

IV. ORDERING CLAUSES

6. 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 Request for Stay filed by Sorenson Communications, Inc. on January 28, 2008, IS GRANTED, and will remain in effect for a period of 90 days, starting from the date of release of this *Order*.

7. 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

¹⁶ *The 4.9 Ghz Band Transferred from Federal Government Use*, WT Docket No. 00-32, Order, 19 FCC Rcd 15270, 15272, at para. 5 (Aug. 2, 2004).

¹⁷ *Id.*

¹⁸ See December 12, 2007 *ex parte* letter filed by Hands On Relay Services, Inc.; December 14, 2007 *ex parte* letter filed by Sprint Nextel Corporation; January 11, 2008 *ex parte* letter filed by AT&T, Communications Access Center for the Deaf and Hard of Hearing, Inc., CSDVRS, LLC, GoAmerica, Inc., Hands On Relay Services, Inc., Snap Telecommunications, Inc., Sorenson Communications, Inc., and Sprint Nextel Corporation.